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Titles 35A through 42

2014
REVISED CODE OF WASHINGTON

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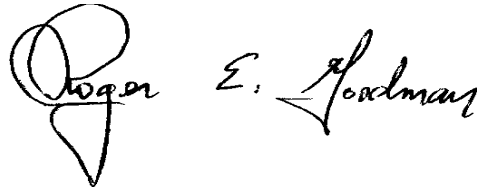
REVISED CODE OF WASHINGTON

2014 Edition

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CERTIFICATE

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ROGER E. GOODMAN, Chair
STATUTE LAW COMMITTEE

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PREFACE

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

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

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

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

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

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

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

Index: Titles 1 through 91 are indexed in the RCW General Index. A separate index is provided for the State Constitution.

Sections repealed or decodified; Disposition table: Information concerning RCW sections repealed or decodified can be found in the table entitled "Disposition of former RCW sections."

Codification tables: To convert a session law citation to its RCW number (for Laws of 1999 or later) consult the codification tables. A complete codification table, including Remington's Revised Statutes, is on the Code Reviser web site at <http://www.leg.wa.gov/codereviser>.

Notes: Notes that are more than ten years old have been removed from the print publication of the RCW except when retention has been deemed necessary to preserve the full intent of the law. All notes are displayed in the electronic copy of the RCW on the Code Reviser web site at <http://www.leg.wa.gov/codereviser>.

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

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

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Title 35A

OPTIONAL MUNICIPAL CODE

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- 35A.84 Taxation—Property.
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- 35A.92 Fire departments—Performance measures.

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Boundary review board, extension of water and sewer service beyond corporate boundaries to go before: RCW 36.93.090.

Credit card use by local governments: RCW 43.09.2855.

Labor relations consultants: RCW 43.09.230.

Local adopt-a-highway programs: RCW 47.40.105.

Municipal business and occupation tax: Chapter 35.102 RCW.

Municipalities—Energy audits and efficiency: RCW 43.19.691.

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Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

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Chapter 35A.01 RCW INTERPRETATION OF TERMS

Sections

- 35A.01.010 Purpose and policy of this title—Interpretation.
- 35A.01.020 Noncharter code city.
- 35A.01.030 Charter code city.
- 35A.01.035 Code city.
- 35A.01.040 Sufficiency of petitions.
- 35A.01.050 The general law.
- 35A.01.060 Optional municipal code—This title.
- 35A.01.070 Definitions—Change of plan or classification of municipal government.
- 35A.01.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

35A.01.010 Purpose and policy of this title—Interpretation. The purpose and policy of this title is to confer upon two optional classes of cities created hereby the broadest powers of local self-government consistent with the Constitution of this state. Any specific enumeration of municipal powers contained in this title or in any other general law shall not be construed in any way to limit the general description of power contained in this title, and any such specifically enumerated powers shall be construed as in addition and supplementary to the powers conferred in general terms by this title. All grants of municipal power to municipalities electing to be governed under the provisions of this title, whether the grant

is in specific terms or in general terms, shall be liberally construed in favor of the municipality. [1967 ex.s. c 119 § 35A.01.010.]

35A.01.020 Noncharter code city. A noncharter code city is one, regardless of population, which has initially incorporated as a noncharter code city, subject to the provisions of this title, or is an incorporated municipality which has elected, under the procedure prescribed in this title, to be classified as a noncharter code city and to be governed according to the provisions of this title under one of the optional forms of government provided for noncharter code cities. [1967 ex.s. c 119 § 35A.01.020.]

35A.01.030 Charter code city. A charter code city is one having at least ten thousand inhabitants at the time of its organization or reorganization which has either initially incorporated as a charter code city and has adopted a charter under the procedure prescribed in this title; or which, as an incorporated municipality, has elected to be classified as a charter code city and to be governed according to the provisions of this title and of its adopted charter. [1967 ex.s. c 119 § 35A.01.030.]

35A.01.035 Code city. The term "code city" means any noncharter code city or charter code city. [1967 ex.s. c 119 § 35A.01.035.]

35A.01.040 Sufficiency of petitions. Wherever in this title petitions are required to be signed and filed, the following rules shall govern the sufficiency thereof:

(1) A petition may include any page or group of pages containing an identical text or prayer intended by the circulators, signers or sponsors to be presented and considered as one petition and containing the following essential elements when applicable, except that the elements referred to in (d) and (e) of this subsection are essential for petitions referring or initiating legislative matters to the voters, but are directory as to other petitions:

(a) The text or prayer of the petition which shall be a concise statement of the action or relief sought by petitioners and shall include a reference to the applicable state statute or city ordinance, if any;

(b) If the petition initiates or refers an ordinance, a true copy thereof;

(c) If the petition seeks the annexation, incorporation, withdrawal, or reduction of an area for any purpose, an accurate legal description of the area proposed for such action and if practical, a map of the area;

(d) Numbered lines for signatures with space provided beside each signature for the name and address of the signer and the date of signing;

(e) The warning statement prescribed in subsection (2) of this section.

(2) Petitions shall be printed or typed on single sheets of white paper of good quality and each sheet of petition paper having a space thereon for signatures shall contain the text or prayer of the petition and the following warning:

WARNING

Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

Each signature shall be executed in ink or indelible pencil and shall be followed by the name and address of the signer and the date of signing.

(3) The term "signer" means any person who signs his or her own name to the petition.

(4) To be sufficient a petition must contain valid signatures of qualified registered voters or property owners, as the case may be, in the number required by the applicable statute or ordinance. Within three working days after the filing of a petition, the officer with whom the petition is filed shall transmit the petition to the county auditor for petitions signed by registered voters, or to the county assessor for petitions signed by property owners for determination of sufficiency. The officer or officers whose duty it is to determine the sufficiency of the petition shall proceed to make such a determination with reasonable promptness and shall file with the officer receiving the petition for filing a certificate stating the date upon which such determination was begun, which date shall be referred to as the terminal date. Additional pages of one or more signatures may be added to the petition by filing the same with the appropriate filing officer prior to such terminal date. Any signer of a filed petition may withdraw his or her signature by a written request for withdrawal filed with the receiving officer prior to such terminal date. Such written request shall so sufficiently describe the petition as to make identification of the person and the petition certain. The name of any person seeking to withdraw shall be signed exactly the same as contained on the petition and, after the filing of such request for withdrawal, prior to the terminal date, the signature of any person seeking such withdrawal shall be deemed withdrawn.

(5) Petitions containing the required number of signatures shall be accepted as prima facie valid until their invalidity has been proved.

(6) A variation on petitions between the signatures on the petition and that on the voter's permanent registration caused by the substitution of initials instead of the first or middle names, or both, shall not invalidate the signature on the petition if the surname and handwriting are the same.

(7) If a person signs a petition more than once, all but the first valid signature must be rejected.

(8) Signatures followed by a date of signing which is more than six months prior to the date of filing of the petition shall be stricken.

(9) When petitions are required to be signed by the owners of property, the determination shall be made by the county assessor. Where validation of signatures to the petition is required, the following shall apply:

(a) The signature of a record owner, as determined by the records of the county auditor, shall be sufficient without the signature of his or her spouse;

(b) In the case of mortgaged property, the signature of the mortgagor shall be sufficient, without the signature of his or her spouse;

(c) In the case of property purchased on contract, the signature of the contract purchaser, as shown by the records of the county auditor, shall be deemed sufficient, without the signature of his or her spouse;

(d) Any officer of a corporation owning land within the area involved who is duly authorized to execute deeds or encumbrances on behalf of the corporation, may sign on behalf of such corporation, and shall attach to the petition a certified excerpt from the bylaws of such corporation showing such authority;

(e) When the petition seeks annexation, any officer of a corporation owning land within the area involved, who is duly authorized to execute deeds or encumbrances on behalf of the corporation, may sign under oath on behalf of such corporation. If an officer signs the petition, he or she must attach an affidavit stating that he or she is duly authorized to sign the petition on behalf of such corporation;

(f) When property stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian, as the case may be, shall be equivalent to the signature of the owner of the property; and

(g) When a parcel of property is owned by multiple owners, the signature of an owner designated by the multiple owners is sufficient.

(10) The officer or officers responsible for determining the sufficiency of the petition shall do so in writing and transmit the written certificate to the officer with whom the petition was originally filed. [2014 c 121 § 3; 2008 c 196 § 2; 2003 c 331 § 9; 1996 c 286 § 7; 1985 c 281 § 26; 1967 ex.s. c 119 § 35A.01.040.]

Finding—Intent—2014 c 121: See note following RCW 35.21.005.

Intent—Severability—Effective date—2003 c 331: See notes following RCW 35.13.410.

Additional notes found at www.leg.wa.gov

35A.01.050 The general law. For the purposes of this optional municipal code, "the general law" means any provision of state law, not inconsistent with this title, enacted before or after the enactment of this title, which is by its terms applicable or available to all cities or towns. Except when expressly provided to the contrary, whenever in this optional municipal code reference is made to "the general law", or to specific provisions of the Revised Code of Washington, it shall mean "the general law, or such specific provisions of the Revised Code of Washington as now enacted or as the same may hereafter be amended". [1967 ex.s. c 119 § 35A.01.050.]

35A.01.060 Optional municipal code—This title. References contained in this title to "Optional Municipal Code", "this title", "this code" or to any specific chapter, section, or provision thereof shall refer to the whole or appropriate part of Title 35A RCW, as now or hereafter amended. [1967 ex.s. c 119 § 35A.01.060.]

35A.01.070 Definitions—Change of plan or classification of municipal government. Where used in this title

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with reference to procedures established by this title in regard to a change of plan or classification of government, unless a different meaning is plainly required by the context:

(1) "Classify" means a change from a city of the first or second class, an unclassified city, or a town, to a code city.

(2) "Classification" means either that portion of the general law under which a city or a town operates under Title 35 RCW as a first or second-class city, unclassified city, or town, or otherwise as a code city.

(3) "Organize" means to provide for officers after becoming a code city, under the same general plan of government under which the city operated prior to becoming a code city, pursuant to RCW 35A.02.055.

(4) "Organization" means the general plan of government under which a city operates.

(5) "Plan of government" means a mayor-council form of government under chapter 35A.12 RCW, council-manager form of government under chapter 35A.13 RCW, or a mayor-council, council-manager, or commission form of government in general that is retained by a noncharter code city as provided in RCW 35A.02.130, without regard to variations in the number of elective offices or whether officers are elective or appointive.

(6) "Reclassify" means changing from a code city to the classification, if any, held by such a city immediately prior to becoming a code city.

(7) "Reclassification" means changing from city or town operating under Title 35 RCW to a city operating under Title 35A RCW, or vice versa; a change in classification.

(8) "Reorganize" means changing the plan of government under which a city or town operates to a different general plan of government. A city or town shall not be deemed to have reorganized simply by increasing or decreasing the number of members of its legislative body.

(9) "Reorganization" means a change in general plan of government under which a city operates, but an increase or decrease in the number of members of its legislative body shall not be deemed to constitute a reorganization. [2001 c 33 § 1. Prior: 1994 c 223 § 24; 1994 c 81 § 66; 1979 ex.s. c 18 § 1.]

Additional notes found at www.leg.wa.gov

35A.01.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 80.]

Chapter 35A.02 RCW
PROCEDURE FOR INCORPORATED
MUNICIPALITY TO BECOME A
NONCHARTER CODE CITY

Sections

- 35A.02.010 Adoption of noncharter code city classification authorized.
- 35A.02.020 Petition method—Direct.
- 35A.02.025 Referendum.
- 35A.02.030 Resolution method.
- 35A.02.035 Referendum.
- 35A.02.040 Certification of ordinance—Transcript of record to secretary of state.
- 35A.02.050 Election of new officers.
- 35A.02.055 Election of new officers—Exception where same general plan of government is retained.
- 35A.02.060 Petition for election.
- 35A.02.070 Resolution for election.
- 35A.02.080 Election of officers upon approval of plan of government by voters.
- 35A.02.090 Alternative plan of government.
- 35A.02.120 Effective date of reclassification and reorganization.
- 35A.02.130 Adoption of classification of noncharter code city without change of governmental plan.
- 35A.02.140 Petition or resolution pending—Restriction—Exception.

Incorporation subject to approval by boundary review board: RCW 36.93.090.

35A.02.010 Adoption of noncharter code city classification authorized. Any incorporated city or town may become a noncharter code city in accordance with, and be governed by, the provisions of this title relating to noncharter code cities and may select one of the plans of government authorized by this title. A city or town adopting and organizing under the optional municipal code shall not be deemed to have reorganized and to have abandoned its existing general plan of government, upon changing classification and becoming a noncharter code city, solely because organizing under a plan of government authorized in this title changes the number of elective offices or changes the terms thereof, or because an office becomes appointive rather than elective, or because that city or town has come under the optional municipal code, or because of any combination of these factors. [1979 ex.s. c 18 § 2; 1967 ex.s. c 119 § 35A.02.010.]

Additional notes found at www.leg.wa.gov

35A.02.020 Petition method—Direct. When a petition is filed, signed by registered voters of an incorporated city or town, in number equal to not less than fifty percent of the votes cast at the last general municipal election, seeking the adoption by the city or town of the classification of noncharter code city, either under its existing authorized plan of government or naming one of the plans of government authorized for noncharter code cities, the county auditor shall promptly proceed to determine the sufficiency of the petition under the rules set forth in RCW 35A.01.040. If the petition is found to be sufficient, the county auditor shall file with the legislative body a certificate of sufficiency of the petition. Thereupon the legislative body of such city or town shall, by resolution, declare that the inhabitants of the city or town have decided to adopt the classification of noncharter code city and to be governed under the provisions of this title. If a prayer for reorganization is included in the petition such resolution shall also declare that the inhabitants of the city or town have decided to reorganize under the plan of government specified in the petition. The legislative body shall cause such resolution to be published at least once in a news-

paper of general circulation within the city or town not later than ten days after the passage of the resolution. Upon the expiration of the ninetieth day from, but excluding the date of, first publication of the resolution, if no timely and sufficient referendum petition has been filed pursuant to RCW 35A.02.025, as now or hereafter amended, as determined by RCW 35A.29.170, the legislative body at its next regular meeting shall effect the decision of the inhabitants, as expressed in the petition, by passage of an ordinance adopting for the city the classification of noncharter code city, and if the petition also sought governmental reorganization by adoption of one of the plans of government authorized for noncharter code cities involving a different general plan of government from that under which the city is operating, then the legislative body shall provide at that time for such reorganization by ordinance and for election of all new officers pursuant to RCW 35A.02.050, as now or hereafter amended. [1990 c 259 § 2; 1979 ex.s. c 18 § 3; 1967 ex.s. c 119 § 35A.02.020.]

Additional notes found at www.leg.wa.gov

35A.02.025 Referendum. Upon the filing of a referendum petition in the manner provided in RCW 35A.29.170 signed by qualified electors in number equal to not less than ten percent of the votes cast in the last general municipal election, such resolution as authorized by RCW 35A.02.020 shall be referred to the voters for confirmation or rejection in the next general municipal election if one is to be held within one hundred and eighty days from the date of filing of the referendum petition, or at a special election to be called for that purpose in accordance with *RCW 29.13.020. [1979 ex.s. c 18 § 4; 1967 ex.s. c 119 § 35A.02.025.]

*Reviser's note: RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Additional notes found at www.leg.wa.gov

35A.02.030 Resolution method. When a majority of the legislative body of an incorporated city or town determines that it would serve the best interests and general welfare of such municipality to change the classification of such city or town to that of noncharter code city, such legislative body may, by resolution, declare its intention to adopt for the city or town the classification of noncharter code city. If the legislative body so determines, such resolution may also contain a declaration of intention to reorganize the municipal government under one of the plans of government authorized in this title, naming such plan; but it shall also be lawful for the legislative body of any incorporated city or town which is governed under a plan of government authorized prior to the time this title takes effect to adopt for the city or town the classification of noncharter code city while retaining the same general plan of government under which such city or town is then operating. Within ten days after the passage of the resolution, the legislative body shall cause it to be published at least once in a newspaper of general circulation within the city or town. Upon the expiration of the ninetieth day from, but excluding the date of first publication of the resolution, if no timely and sufficient referendum petition has been filed pursuant to RCW 35A.02.035, as determined by RCW 35A.29.170, the intent expressed in such resolution shall at the next regular meeting of the legislative body be

effected by an ordinance adopting for the city or town the classification of noncharter code city; and, if the resolution includes a declaration of intention to reorganize, the legislative body shall provide at that time for such reorganization by ordinance. [1979 ex.s. c 18 § 5; 1967 ex.s. c 119 § 35A.02.030.]

Additional notes found at www.leg.wa.gov

35A.02.035 Referendum. Upon the filing of a referendum petition in the manner provided in RCW 35A.29.170 signed by qualified electors of an incorporated city or town in number equal to not less than ten percent of the votes cast in the last general municipal election, such resolution shall be referred for approval or rejection by the voters at an election as specified in RCW 35A.02.025. [1967 ex.s. c 119 § 35A.02.035.]

35A.02.040 Certification of ordinance—Transcript of record to secretary of state. When one or more ordinances are passed under RCW 35A.02.020 or 35A.02.030, as now or hereafter amended, the clerk of the city or town shall forward to the secretary of state a certified copy of any such ordinance. Upon the filing in the office of the secretary of state of a certified copy of an ordinance adopting the classification of noncharter code city, such city or town shall thereafter be classified as a noncharter code city; except that if there is also filed with the secretary of state a certified copy of an ordinance providing for reorganization of the municipal government of such city or town under a different general plan of government, such reclassification and reorganization shall not be effective until the election, qualification, and assumption of office under RCW 35A.02.050 as now or hereafter amended of at least a quorum of all new officers under the plan of government so adopted. [1979 ex.s. c 18 § 6; 1970 ex.s. c 52 § 1; 1967 ex.s. c 119 § 35A.02.040.]

Additional notes found at www.leg.wa.gov

35A.02.050 Election of new officers. The first election of officers where required for reorganization under a different general plan of government newly adopted in a manner provided in RCW 35A.02.020, 35A.02.030, 35A.06.030, or 35A.06.060, as now or hereafter amended, shall be at the next general municipal election if one is to be held more than ninety days but not more than one hundred and eighty days after certification of a reorganization ordinance or resolution, or otherwise at a special election to be held for that purpose in accordance with *RCW 29.13.020. In the event that the first election of officers is to be held at a general municipal election, such election shall be preceded by a primary election pursuant to *RCW 29.21.010 and 29.13.070. In the event that the first election of all officers is to be held at a special election rather than at a general election, and notwithstanding any provisions of any other law to the contrary, such special election shall be preceded by a primary election to be held on a date authorized by *RCW 29.13.010, and the persons nominated at that primary election shall be voted upon at the next succeeding special election that is authorized by *RCW 29.13.010: PROVIDED, That in the event the ordinances calling for reclassification or reclassification and reorganization under the provisions of Title 35A RCW have been filed with the secretary of state pursuant to RCW 35A.02.040 in an

even-numbered year at least ninety days prior to a state general election then the election of new officers shall be concurrent with the state primary and general election and shall be conducted as set forth in general election law.

Upon reorganization, candidates for all offices shall file or be nominated for and successful candidates shall be elected to specific council positions. The initial terms of office for those elected at a first election of all officers shall be as follows: (1) A simple majority of the persons who are elected as councilmembers receiving the greatest numbers of votes and the mayor in a city with a mayor-council plan of government shall be elected to four-year terms of office, if the election is held in an odd-numbered year, or three-year terms of office, if the election is held in an even-numbered year; and (2) the other persons who are elected as councilmembers shall be elected to two-year terms of office, if the election is held in an odd-numbered year, or one-year terms of office, if the election is held in an even-numbered year. The newly elected officials shall take office immediately when they are elected and qualified, but the length of their terms of office shall be calculated from the first day of January in the year following the election. Thereafter, each person elected as a councilmember or mayor in a city with a mayor-council plan of government shall be elected to a four-year term of office. Each councilmember and mayor in a city with a mayor-council plan of government shall serve until a successor is elected and qualified and assumes office as provided in *RCW 29.04.170.

The former officers shall, upon the election and qualification of new officers, deliver to the proper officers of the reorganized noncharter code city all books of record, documents and papers in their possession belonging to such municipal corporation before the reorganization thereof. [1994 c 223 § 25; 1979 ex.s. c 18 § 7; 1971 ex.s. c 251 § 1; 1970 ex.s. c 52 § 2; 1967 ex.s. c 119 § 35A.02.050.]

***Reviser's note:** RCW 29.13.020, 29.21.010, 29.13.070, 29.13.010, and 29.04.170 were recodified as RCW 29A.04.330, 29A.52.210, 29A.04.310, 29A.04.320, and 29A.20.040, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.310 and 29A.04.320 were subsequently repealed by 2004 c 271 § 193. Later enactment of RCW 29A.04.310 and 29A.04.320, see RCW 29A.04.311 and 29A.04.321, respectively. RCW 29A.04.310 was subsequently repealed by 2011 c 349 § 29, effective January 1, 2012. RCW 29A.20.040 was subsequently recodified as RCW 29A.60.280 pursuant to 2013 c 11 § 93.

Additional notes found at www.leg.wa.gov

35A.02.055 Election of new officers—Exception where same general plan of government is retained. Where a city elects to become a noncharter code city under one of the optional plans of government provided in Title 35A RCW for code cities which involves the same general plan of government as that under which the city operated prior to the choice and where with the change in classification the number of council positions in a city remains the same or increases from five to seven, the procedures for the first election of officers which appear in RCW 35A.02.050 shall not be followed. When membership in a city council remains the same or is increased upon becoming a noncharter code city, the terms of incumbent councilmembers shall not be affected. If the number of councilmembers is increased from five to seven, the city council shall, by majority vote, pursuant to RCW 35A.12.050 and 35A.13.020, appoint two persons to

serve in these offices until the next municipal general election, at which election one person shall be elected for a two-year term and one person shall be elected for a four-year term.

A first election of all officers upon a change in classification to a noncharter code city is also not required where the change in classification otherwise retains the same general or specific plan of government and where the change in classification results in a decrease in the number of council positions in a city.

If the membership in a city council is decreased from seven to five members upon adopting the classification of noncharter code city, this decrease in the number of councilmembers shall be determined in the following manner: The councilmembers shall determine by lot which two council positions shall be eliminated upon the expiration of their terms of office. The terms of the remaining councilmembers shall not be affected. [2009 c 549 § 3001; 1979 ex.s. c 18 § 8.]

Additional notes found at www.leg.wa.gov

35A.02.060 Petition for election. When a petition which is sufficient under the rules set forth in RCW 35A.01.040 is filed with the legislative body of an incorporated city or town, signed by qualified electors of such municipality in number equal to not less than ten percent of the votes cast at the last general municipal election, seeking adoption by the city or town of the classification of noncharter code city and the reorganization of the city or town under one of the plans of government authorized in this title, the county auditor shall file with the legislative body thereof a certificate of sufficiency of such petition. Thereupon, the legislative body shall cause such proposal to be submitted to the voters at the next general municipal election if one is to be held within one hundred eighty days after certification of the sufficiency of the petition, or at a special election to be held for that purpose not less than ninety days nor more than one hundred and eighty days from such certification of sufficiency. Ballot titles for elections under this chapter shall be prepared by the city attorney as provided in *RCW 35A.29.120. [1990 c 259 § 3; 1967 ex.s. c 119 § 35A.02.060.]

*Reviser's note: RCW 35A.29.120 was repealed by 1994 c 223 § 92.

35A.02.070 Resolution for election. The legislative body of an incorporated city or town may, by resolution, submit to the voters in the next general municipal election if one is to be held within one hundred and eighty days after passage of the resolution, or in a special election to be called for that purpose not less than ninety days nor more than one hundred and eighty days after passage of the resolution, a proposal that the city or town adopt the classification of noncharter code city and organize under one of the plans of government authorized in this title, naming such plan. [1967 ex.s. c 119 § 35A.02.070.]

35A.02.080 Election of officers upon approval of plan of government by voters. If the majority of votes cast at an election for organization under a plan provided in this title favor the plan, the city or town shall elect in accordance with RCW 35A.02.050 the officers for the positions created. The

former officers of the municipality shall, upon the election and qualification of the new officers, deliver to the proper officers of the new noncharter code city all books of record, documents and papers in their possession belonging to such municipal corporation before reorganization. [1971 ex.s. c 251 § 2; 1967 ex.s. c 119 § 35A.02.080.]

Additional notes found at www.leg.wa.gov

35A.02.090 Alternative plan of government. Proposals for each of the plans of government authorized by this title may be placed on the ballots in the same election by timely petition as provided in this chapter. When the ballot contains alternative proposals for each of the plans of government the ballot shall clearly state that voters may vote for only one of the plans of government. [1971 ex.s. c 251 § 3; 1967 ex.s. c 119 § 35A.02.090.]

Additional notes found at www.leg.wa.gov

35A.02.120 Effective date of reclassification and reorganization. Upon the filing of the certified copy of the resolution with the secretary of state, the county auditor shall issue certificates of election to the successful candidates for the offices under the plan of government for which a majority of the votes were cast, and upon the issuance of such certificates, such city or town shall become a noncharter code city governed under the plan of government chosen by the voters, under the provisions of this title and with the powers conferred by this title. [1967 ex.s. c 119 § 35A.02.120.]

35A.02.130 Adoption of classification of noncharter code city without change of governmental plan. Any incorporated city or town governed under a plan of government authorized prior to the time this title takes effect may become a noncharter code city without changing such plan of government by the use of the petition-for-election or resolution-for-election procedures provided in RCW 35A.02.060 and 35A.02.070 to submit to the voters a proposal that such municipality adopt the classification of noncharter code city while retaining its existing plan of government, and upon a favorable vote on the proposal, such municipality shall be classified as a noncharter code city and retain its old plan of government, such reclassification to be effective upon the filing of the record of such election with the office of the secretary of state. Insofar as the provisions of *RCW 35A.02.100 and 35A.02.110 are applicable to an election on such a reclassification proposal they shall apply to such election. [1994 c 223 § 26; 1994 c 81 § 67; 1967 ex.s. c 119 § 35A.02.130.]

*Reviser's note: RCW 35A.02.100 and 35A.02.110 were repealed by 1994 c 223 § 92.

35A.02.140 Petition or resolution pending—Restriction—Exception. While proceedings are pending under any petition or resolution relating to reclassification of a municipality or reorganization of the government thereof pursuant to this chapter, no resolution shall be passed for the purpose of initiating other such proceedings or submitting other such proposals to the voters at an election thereunder; and no petition for reclassification or reorganization of such municipality shall be accepted for filing pending such proceedings, except that a timely and sufficient petition seeking to place on the ballot for such election a proposal for an alternative plan

of government authorized by this title, as provided in RCW 35A.02.090, may be filed and acted upon. [1967 ex.s. c 119 § 35A.02.140.]

Chapter 35A.03 RCW

INCORPORATION AS NONCHARTER CODE CITY

Sections

- 35A.03.001 Actions subject to review by boundary review board.
35A.03.005 Incorporation to be governed by chapter 35.02 RCW.

35A.03.001 Actions subject to review by boundary review board. Actions taken under chapter 35A.03 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 36.]

35A.03.005 Incorporation to be governed by chapter 35.02 RCW. Noncharter code cities shall be incorporated as provided in chapter 35.02 RCW. [1986 c 234 § 36.]

Chapter 35A.05 RCW

CONSOLIDATION OF CODE CITIES

Sections

- 35A.05.001 Actions subject to review by boundary review board.
35A.05.005 Consolidation of code cities.

35A.05.001 Actions subject to review by boundary review board. Actions taken under chapter 35A.05 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 37.]

35A.05.005 Consolidation of code cities. Code cities shall consolidate as provided in chapter 35.10 RCW. [1985 c 281 § 14.]

Additional notes found at www.leg.wa.gov

Chapter 35A.06 RCW

ADOPTION AND ABANDONMENT OF NONCHARTER CODE CITY CLASSIFICATION OR PLAN OF GOVERNMENT

Sections

- 35A.06.010 Each optional plan of government declared complete form of government.
35A.06.020 Laws applicable to noncharter code cities.
35A.06.030 Abandonment of plan of government of a noncharter code city.
35A.06.040 Abandonment—Resolution or petition for election.
35A.06.050 Abandonment—Election.
35A.06.060 Abandonment—Reorganization under plan adopted—Effective date.
35A.06.070 Abandonment of noncharter code city classification without reorganization.

35A.06.010 Each optional plan of government declared complete form of government. Each of the optional plans of government authorized by chapter 35A.12 RCW and chapter 35A.13 RCW, with any amendments thereto, is declared to be a complete and separate plan of government authorized by the legislature for submission to the voters of a municipality or for adoption by resolution of the legislative body thereof in the manner provided herein, and is additional to the plans of government existing prior to the time this title takes effect. [1967 ex.s. c 119 § 35A.06.010.]

(2014 Ed.)

35A.06.020 Laws applicable to noncharter code cities. The classifications of municipalities as first-class cities, second-class cities, unclassified cities, and towns, and the restrictions, limitations, duties, and obligations specifically imposed by law upon such classes of cities and towns, shall have no application to noncharter code cities, but every noncharter code city, by adopting such classification, has elected to be governed by the provisions of this title, with the powers granted hereby. However, any code city that retains its old plan of government is subject to the laws applicable to that old plan of government until the city abandons its old plan of government and reorganizes and adopts a plan of government under chapter 35A.12 or 35A.13 RCW. [1997 c 361 § 17; 1995 c 134 § 11. Prior: 1994 c 223 § 27; 1994 c 81 § 68; 1967 ex.s. c 119 § 35A.06.020.]

35A.06.030 Abandonment of plan of government of a noncharter code city. By use of the resolution for election or petition for election methods described in RCW 35A.06.040, any noncharter code city which has operated for more than six consecutive years under one of the optional plans of government authorized by this title, or for more than a combined total of six consecutive years under a particular plan of government both as a code city and under the same general plan under Title 35 RCW immediately prior to becoming a code city, may abandon such organization and may reorganize and adopt another plan of government authorized for noncharter code cities, but only after having been a noncharter code city for more than one year or a city after operating for more than six consecutive years under a particular plan of government as a noncharter code city: PROVIDED, That these limitations shall not apply to a city seeking to adopt a charter.

In reorganization under a different general plan of government as a noncharter code city, officers shall serve the remainder of their terms. If a city with a mayor-council plan of government is reorganized with a council-manager plan of government, the mayor shall serve as a councilmember for the remainder of his or her term. If a city with a council-manager plan of government is reorganized with a mayor-council plan of government, the mayor shall be elected as provided in RCW 35A.02.050. When a noncharter code city adopts a plan of government other than those authorized under Title 35A RCW, such city ceases to be governed under this optional municipal code, shall be classified as a city or town of the class selected in the proceeding for adoption of such new plan, with the powers granted to such class under the general law, and shall elect officers as provided in RCW 35A.02.050. [2001 c 33 § 2; 1994 c 223 § 28; 1994 c 81 § 69; 1979 ex.s. c 18 § 14; 1971 ex.s. c 251 § 13; 1967 ex.s. c 119 § 35A.06.030.]

Additional notes found at www.leg.wa.gov

35A.06.040 Abandonment—Resolution or petition for election. Upon the passage of a resolution of the legislative body of a noncharter code city, or upon the filing of a sufficient petition with the county auditor signed by registered voters in number equal to not less than ten percent of the votes cast at the last general municipal election therein, proposing abandonment by the city of the plan of government under which it is then operating and adoption of another plan,

naming such plan, the sufficiency of the petition for abandonment shall be determined, an election ordered and conducted, and the results declared generally as provided in chapter 35A.02 RCW insofar as such provisions are applicable. If the resolution or petition proposes a plan of government other than those authorized in chapters 35A.12 RCW and 35A.13 RCW of this title, the resolution or petition shall specify the class under which such city will be classified upon adoption of such plan. [1990 c 259 § 4; 1967 ex.s. c 119 § 35A.06.040.]

Sufficiency of petition in code city: RCW 35A.01.040.

35A.06.050 Abandonment—Election. The proposal for abandonment of a plan of government as authorized in RCW 35A.06.030 and for adoption of the plan named in the resolution or petition shall be voted upon at the next general election in accordance with RCW 29A.04.330, or at a special election held prior to the next general election in accordance with the resolution of the legislative body. The ballot title and statement of the proposition shall be prepared by the city attorney as provided in RCW 35A.29.120. [2009 c 7 § 1; 2004 c 268 § 2; 1994 c 223 § 29; 1979 ex.s. c 18 § 15; 1967 ex.s. c 119 § 35A.06.050.]

Effective date—2009 c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 18, 2009]." [2009 c 7 § 2.]

Effective date—2004 c 268: "This act takes effect July 1, 2004." [2004 c 268 § 3.]

Additional notes found at www.leg.wa.gov

35A.06.060 Abandonment—Reorganization under plan adopted—Effective date. If a majority of votes cast at the election favor abandonment of the general plan of government under which the noncharter code city is then organized and reorganization under the different general plan proposed in the resolution or petition, the officers to be elected shall be those prescribed by the plan of government so adopted, and they shall be elected as provided in RCW 35A.06.030. If the city is adopting a plan of government other than those authorized under this title, the officers shall be elected at the next succeeding general municipal election. Upon the election, qualification, and assumption of office by such officers the reorganization of the government of such municipality shall be complete and such municipality shall thereafter be governed under such plan. If the plan so adopted is not a plan authorized for noncharter code cities, upon the election, qualification, and assumption of office by such officers the municipality shall cease to be a noncharter code city governed under the provisions of this optional municipal code and shall revert to the classification selected and shall be governed by the general laws relating to municipalities of such class with the powers conferred by law upon municipalities of such class. Such change of classification shall not affect the then existing property rights or liabilities of the municipal corporation. [2001 c 33 § 3; 1979 ex.s. c 18 § 16; 1967 ex.s. c 119 § 35A.06.060.]

Additional notes found at www.leg.wa.gov

35A.06.070 Abandonment of noncharter code city classification without reorganization. By means of the pro-

cedures set forth in this chapter, insofar as they apply, any noncharter code city which has been governed under the provisions of this title for more than six years may abandon the classification of noncharter code city and elect to be governed under the general law relating to cities or towns of the classification held by such city immediately prior to becoming a noncharter code city, if any, or relating to cities or towns of the highest class for which it is qualified by population, with the powers conferred by law upon such class, while retaining the plan of government under which it is then organized. A change of classification approved by a majority of the voters voting on such proposition shall become effective upon the filing of the record of such election with the office of the secretary of state. [1967 ex.s. c 119 § 35A.06.070.]

Chapter 35A.07 RCW PROCEDURE FOR CITY OPERATING UNDER CHARTER TO BECOME A CHARTER CODE CITY

Sections

35A.07.010	Adoption of charter code city classification authorized.
35A.07.020	Petition method—Direct.
35A.07.025	Referendum.
35A.07.030	Resolution method.
35A.07.035	Referendum.
35A.07.040	Certification of ordinance—Transcript of record to secretary of state.
35A.07.050	Petition for election.
35A.07.060	Resolution for election.
35A.07.070	Election on reclassification—Effective date of reclassification upon favorable vote.

35A.07.010 Adoption of charter code city classification authorized. Any city having ten thousand inhabitants which is governed under a charter may become a charter code city by a procedure prescribed in this chapter and be governed under this title, with the powers conferred hereby. [1967 ex.s. c 119 § 35A.07.010.]

35A.07.020 Petition method—Direct. When a petition is filed, signed by registered voters of a charter city in number equal to not less than fifty percent of the votes cast at the last general municipal election, seeking the adoption by the charter city of the classification of charter code city the legislative body of such city shall direct the county auditor to determine the sufficiency of the petition under the rules set forth in RCW 35A.01.040. If the petition is found to be sufficient, the county auditor shall file with the legislative body a certificate of sufficiency of the petition. Thereupon the legislative body of the charter city shall, by resolution, declare that the inhabitants of such city have decided to adopt the classification of charter code city and to be governed under this title. The legislative body shall cause such resolution to be published at least once in a newspaper of general circulation within the city not later than ten days after the passage of the resolution. Upon the expiration of the ninetieth day from, but excluding the date of first publication of the resolution, if no timely and sufficient referendum petition has been filed, as determined by RCW 35A.29.170, the legislative body shall effect the decision of the inhabitants, as expressed in the petition, by passage of an ordinance adopting for the city the classification of charter code city. [1990 c 259 § 5; 1967 ex.s. c 119 § 35A.07.020.]

35A.07.025 Referendum. Upon the filing of a referendum petition in the manner provided in RCW 35A.29.170 signed by qualified electors in number equal to not less than ten percent of the votes cast in the last general municipal election, the resolution authorized by RCW 35A.07.020 shall be referred to the voters for confirmation or rejection in the next general municipal election, if one is to be held within one hundred and eighty days from the date of filing of the referendum petition, or at a special election to be called for that purpose not less than ninety days nor more than one hundred and eighty days from the filing of such referendum petition. [1967 ex.s. c 119 § 35A.07.025.]

35A.07.030 Resolution method. When a majority of the legislative body of a charter city determines that it would serve the best interests and general welfare of such city to become a charter code city, such legislative body may, by resolution, declare its intention to adopt for the city the classification of charter code city and to be governed under the provisions of this title, with the powers conferred hereby. Within ten days after the passage of the resolution, the legislative body shall cause it to be published at least once in a newspaper of general circulation within the city. Upon the expiration of the ninetieth day from, but excluding the date of first publication of the resolution, if no timely and sufficient referendum petition has been filed, as determined by RCW 35A.29.170, the intent expressed in such resolution shall be effected by passage of an ordinance adopting for the city the classification of charter code city. [1967 ex.s. c 119 § 35A.07.030.]

35A.07.035 Referendum. Upon the filing of a referendum petition in the manner provided in RCW 35A.29.170 signed by qualified electors in number equal to not less than ten percent of the votes cast in the last general municipal election, the resolution authorized by RCW 35A.07.030 shall be referred to the voters for approval or rejection at an election as specified in RCW 35A.07.025. [1967 ex.s. c 119 § 35A.07.035.]

35A.07.040 Certification of ordinance—Transcript of record to secretary of state. When an ordinance is passed as provided in RCW 35A.07.020 or 35A.07.030, the clerk of the charter city shall forward to the secretary of state a certified copy thereof. Upon the filing of the certified copy of the ordinance in the office of the secretary of state, such city shall be classified as a charter code city and shall thereafter be governed under the provisions of this optional municipal code and have the powers conferred hereby. [1967 ex.s. c 119 § 35A.07.040.]

35A.07.050 Petition for election. When a petition which is sufficient under the rules set forth in RCW 35A.01.040 is filed with the legislative body of a charter city, signed by registered voters of such city in number equal to not less than ten percent of the votes cast at the last general municipal election, seeking adoption by the city of the classification of charter code city, the county auditor shall file with the legislative body thereof a certificate of sufficiency of such petition. Thereupon the legislative body shall cause such proposal to be submitted to the voters at the next general municipal

election if one is to be held within one hundred eighty days, or at a special election to be held for that purpose not less than ninety days nor more than one hundred and eighty days after the filing of such petition. Ballot titles for such election shall be prepared by the city attorney as provided in *RCW 35A.29.120. [1990 c 259 § 6; 1967 ex.s. c 119 § 35A.07.050.]

*Reviser's note: RCW 35A.29.120 was repealed by 1994 c 223 § 92.

35A.07.060 Resolution for election. The legislative body of a charter city may, by resolution, submit to the voters at an election held within the time period specified in RCW 35A.07.050 a proposal that the city adopt the classification of charter code city and be governed under the provisions of this title with the powers conferred hereby. [1967 ex.s. c 119 § 35A.07.060.]

35A.07.070 Election on reclassification—Effective date of reclassification upon favorable vote. Notice of elections under this chapter shall be given, the election conducted, and the result declared generally as provided in chapter 35A.02 RCW, insofar as such provisions are applicable. If a majority of votes cast on the proposition are in favor of adoption of the classification of charter code city, upon the certification of the record of election to the office of the secretary of state, such city shall become a charter code city and shall be governed under the provisions of this title and have the powers conferred on charter code cities. [1967 ex.s. c 119 § 35A.07.070.]

Chapter 35A.08 RCW

PROCEDURE FOR ADOPTION OF CHARTER AS CHARTER CODE CITY

Sections

- 35A.08.010 Adoption of charter authorized.
- 35A.08.020 Determining population.
- 35A.08.030 Resolution or petition for election.
- 35A.08.040 Election on question—Election of charter commission.
- 35A.08.050 Organization of charter commission—Vacancies—Duties.
- 35A.08.060 Expenses of commission members—Consultants and assistants.
- 35A.08.070 Public hearing.
- 35A.08.080 Submission of charter—Election of officers—Publication.
- 35A.08.090 Conduct of elections.
- 35A.08.100 Ballot titles.
- 35A.08.110 Certificates of election to officers—Effective date of becoming charter code city.
- 35A.08.120 Authentication of charter.

35A.08.010 Adoption of charter authorized. Any city having a population of ten thousand or more inhabitants may become a charter code city and be governed under the provisions of this title by adopting a charter for its own government in the manner prescribed in this chapter. Once any city, having ten thousand population, has adopted such a charter, any subsequent decrease in population below ten thousand shall not affect its status as a charter code city. [1967 ex.s. c 119 § 35A.08.010.]

35A.08.020 Determining population. For the purposes of this chapter, the population of a city shall be the number of residents shown by the figures released for the most recent official state or federal census, by a population determination

made under the direction of the office of financial management, or by a city census conducted in the following manner:

(1) The legislative authority of any such city may provide by ordinance for the appointment by the mayor thereof, of such number of persons as may be designated in the ordinance to make an enumeration of all persons residing within the corporate limits of the city. The enumerators so appointed, before entering upon their duties, shall take an oath for the faithful performance thereof and within five days after their appointment proceed, within their respective districts, to make an enumeration of all persons residing therein, with their names and places of residence.

(2) Immediately upon the completion of the enumeration, the enumerators shall make return thereof upon oath to the legislative authority of the city, who at its next meeting or as soon thereafter as practicable, shall canvass and certify the returns.

(3) If it appears therefrom that the whole number of persons residing within the corporate limits of the city is ten thousand or more, the mayor and clerk under the corporate seal of the city shall certify the number so ascertained to the secretary of state, who shall file it in his or her office. This certificate when so filed shall be conclusive evidence of the population of the city. [2009 c 549 § 3002; 1979 c 151 § 32; 1967 ex.s. c 119 § 35A.08.020.]

Population determinations, office of financial management: Chapter 43.62 RCW.

35A.08.030 Resolution or petition for election. The legislative body of any city having ten thousand or more inhabitants may, by resolution, provide for submission to the voters of the question whether the city shall become a charter code city and be governed in accordance with a charter to be adopted by the voters under the provisions of this title. The legislative body must provide for such an election upon receipt of a sufficient petition therefor signed by qualified electors in number equal to not less than ten percent of the votes cast at the last general municipal election therein. The question may be submitted to the voters at the next general municipal election if one is to be held within one hundred and eighty days or at a special election held for that purpose not less than ninety nor more than one hundred and eighty days after the passage of the resolution or the filing of the certificate of sufficiency of the petition. At such election provision shall also be made for the election of fifteen freeholders who, upon a favorable vote on the question, shall constitute the charter commission charged with the duty of framing a charter for submission to the voters. If the vote in favor of adopting a charter receives forty percent or less of the total vote on the question of charter adoption, no new election on the question of charter adoption may be held for a period of two years from the date of the election in which the charter proposal failed. [2001 c 33 § 4; 1967 ex.s. c 119 § 35A.08.030.]

Sufficiency of petition in code city: RCW 35A.01.040.

35A.08.040 Election on question—Election of charter commission. The election on the question whether to adopt a charter and become a charter code city and the nomination and election of the members of the charter commission shall be conducted, and the result declared, according to the laws regulating and controlling elections in the city. Candi-

dates for election to the charter commission must be nominated by petition signed by ten registered voters of the city and residents therein for a period of at least two years preceding the election. A nominating petition shall be filed within the time allowed for filing declarations of candidacy and shall be verified by an affidavit of one or more of the signers to the effect that the affiant believes that the candidate and all of the signers are registered voters of the city and he or she signed the petition in good faith for the purpose of endorsing the person named therein for election to the charter commission. A written acceptance of the nomination by the nominee shall be affixed to the petition when filed with the county auditor. Nominating petitions need not be in the form prescribed in RCW 35A.01.040. Any nominee may withdraw his or her nomination by a written statement of withdrawal filed at any time not later than five days before the last day allowed for filing nominations. The positions on the charter commission shall be designated by consecutive numbers one through fifteen, and the positions so designated shall be considered as separate offices for all election purposes. A nomination shall be made for a specific numbered position. [2009 c 549 § 3003; 1990 c 259 § 7; 1967 ex.s. c 119 § 35A.08.040.]

35A.08.050 Organization of charter commission—Vacancies—Duties. Within ten days after its election the charter commission shall hold its first meeting, elect one of the members as chair, and adopt such rules for the conduct of its business as it may deem advisable. In the event of a vacancy in the charter commission, the remaining members shall fill it by appointment thereto of some properly qualified person. A majority shall constitute a quorum for transaction of business but final charter recommendations shall require a majority vote of the whole membership of the commission. The commission shall study the plan of government of the city, compare it with other available plans of government, and determine whether, in its judgment, the government of the city could be strengthened, made more responsive or accountable to the people, or whether its operation could be made more economical or more efficient by amendment of the existing plan or adoption of another plan of government. The commission shall consider the plans of government described in this title but shall not be limited to such plans in its recommendations for the government of the city and may frame a charter for any plan it deems suitable for the good government of the city; except that the provisions of such charter shall not be valid if inconsistent with the Constitution of this state, the provisions of this title, or the general laws of the state, insofar as they are applicable to cities governed under this title. [2009 c 549 § 3004; 1967 ex.s. c 119 § 35A.08.050.]

35A.08.060 Expenses of commission members—Consultants and assistants. Members of the charter commission shall serve without compensation but shall be reimbursed by the city from any funds for their necessary expenses incurred in the performance of their duties. The legislative body may, in its discretion, make a reasonable appropriation of the city funds to provide for public information and discussion concerning the purposes and progress of the commission's work and/or to provide technical or clerical assistance to the commission in its work. Within the limits of

any such appropriation and privately contributed funds and services as may be available to it, the charter commission may appoint one or more consultants and clerical or other assistants to serve at the pleasure of the commission and may fix a reasonable compensation to be paid such consultants and assistants. [1967 ex.s. c 119 § 35A.08.060.]

35A.08.070 Public hearing. The charter commission shall hold at least one public hearing in the course of its deliberations, may hold committee meetings and may sponsor public forums and promote public education and discussion respecting its work. [1967 ex.s. c 119 § 35A.08.070.]

35A.08.080 Submission of charter—Election of officers—Publication. Within one hundred and eighty days from the date of its first meeting, the charter commission, or a majority thereof, shall frame a charter for the city and submit the charter to the legislative body of the city, which, within five days thereafter shall initiate proceedings for the submission of the proposed charter to the qualified electors of the city at the next general election if one is to be held within one hundred and eighty days or at a special election to be held for that purpose not less than ninety nor more than one hundred and eighty days after submission of the charter to the legislative body. The legislative body shall cause the proposed charter to be published in a newspaper of general circulation in the city at least once each week for four weeks next preceding the day of submitting the same to the electors for their approval. At this election the first officers to serve under the provisions of the proposed charter shall also be elected. If the election is from wards, the division into wards as specified in the proposed charter shall govern; in all other respects the then existing laws relating to such elections shall govern. The notice of election shall specify the objects for which the election is held and shall be given as required by law. [1967 ex.s. c 119 § 35A.08.080.]

35A.08.090 Conduct of elections. The election upon the question of becoming a charter code city and framing a charter and the election of the charter commission, and the election upon the adoption or rejection of the proposed charter and the officers to be elected thereunder, the returns of both elections, the canvassing thereof, and the declaration of the result shall be governed by the laws regulating and controlling elections in the city. [1967 ex.s. c 119 § 35A.08.090.]

35A.08.100 Ballot titles. Ballot titles for elections under this chapter shall be prepared by the city attorney as provided in *RCW 35A.29.120. The ballot statement in the election for adopting or rejecting the proposed charter shall clearly state that, upon adoption of the proposed charter, the city would be governed by its charter and by this title. [1967 ex.s. c 119 § 35A.08.100.]

*Reviser's note: RCW 35A.29.120 was repealed by 1994 c 223 § 92.

35A.08.110 Certificates of election to officers—Effective date of becoming charter code city. If a majority of the votes cast at the election upon the adoption of the proposed charter favor it, certificates of election shall be issued to each officer elected at that election. Within ten days after the issu-

ance of the certificates of election, the newly elected officers shall qualify as provided in the charter, and on the tenth day thereafter at twelve o'clock noon of that day or on the next business day if the tenth day is a Saturday, Sunday or holiday, the officers so elected and qualified shall enter upon the duties of the offices to which they were elected and at such time the charter shall be authenticated, recorded, attested and go into effect, and the city shall thereafter be classified as a charter code city. When so authenticated, recorded and attested, the charter shall become the organic law of the city and supersede any existing charter and amendments thereto and all special laws inconsistent therewith. [1967 ex.s. c 119 § 35A.08.110.]

35A.08.120 Authentication of charter. The authentication of the charter shall be by certificate of the mayor in substance as follows:

"I,, mayor of the city of, do hereby certify that in accordance with the provisions of the Constitution and statutes of the state of Washington, the city of caused fifteen freeholders to be elected on the day of, 19. . . as a charter commission to prepare a charter for the city; that due notice of that election was given in the manner provided by law and that the following persons were declared elected to prepare and propose a charter for the city, to wit:

.
That thereafter on the day of, 19. . . the charter commission returned a proposed charter for the city of signed by the following members thereof:

That thereafter the proposed charter was published in (indicate name of newspaper in which published), for at least once each week for four weeks next preceding the day of submitting the same to the electors for their approval. (Indicate dates of publication.)

That thereafter on the day of, 19. . ., at an election duly called and held, the proposed charter was submitted to the qualified electors thereof, and the returns canvassed resulting as follows: For the proposed charter votes; against the proposed charter, votes; majority for the proposed charter, votes; whereupon the charter was declared adopted by a majority of the qualified electors voting at the election.

I further certify that the foregoing is a full, true and complete copy of the proposed charter so voted upon and adopted as aforesaid.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the corporate seal of the said city at my office this day of, 19. . .

.
Mayor of the city of

Attest:

.
Clerk of the city of (corporate seal)."

Immediately after authentication, the authenticated charter shall be recorded by the city clerk in a book provided for that purpose known as the charter book of the city of and when so recorded shall be attested by the clerk and mayor

under the corporate seal of the city. All amendments shall be in like manner recorded and attested.

All courts shall take judicial notice of a charter and all amendments thereto when recorded and attested as required in this section. [1967 ex.s. c 119 § 35A.08.120.]

Chapter 35A.09 RCW
AMENDMENT OR REVISION OF CHARTERS
OF CHARTER CODE CITIES

Sections

- 35A.09.010 Amendment of charter—Initiated by legislative body.
- 35A.09.020 Petition for submission of charter amendment.
- 35A.09.030 New or revised charter—Petition—Charter commission.
- 35A.09.040 Submission of new or revised charter—Election.
- 35A.09.050 Publication of proposed charter.
- 35A.09.060 Conduct of elections.
- 35A.09.070 Effect of favorable vote.

35A.09.010 Amendment of charter—Initiated by legislative body. The charter of a charter code city may be amended by proposals therefor submitted by resolution of the legislative authority of such city to the electors thereof at any general election, after publication of such proposed charter amendment in the manner provided in chapter 35A.08 RCW for publication of a proposed charter, and upon notice of election as provided by law. If such proposed charter amendment is ratified by a majority of the qualified electors voting thereon it shall become a part of the charter organic law governing such charter code city. [1967 ex.s. c 119 § 35A.09.010.]

35A.09.020 Petition for submission of charter amendment. Upon the filing with the county auditor of a sufficient petition signed by registered voters of a charter code city, in number equal to at least ten percent of the votes cast at the last general municipal election, seeking the adoption of a specified charter amendment set forth in the petition, providing for any matter within the realm of local affairs, or municipal business, or structure of municipal government, offices, and departments, said amendment shall be submitted to the voters at the next general municipal election if one is to be held within one hundred and eighty days, or at a special election to be held for that purpose not less than ninety days, nor more than one hundred and eighty days after the filing of the certificate of sufficiency of the petition. The proposed charter amendment shall be published as provided in RCW 35A.09.050. Upon approval by a majority of the registered voters voting thereon, such amendment shall become a part of the charter organic law governing such charter code city. [1990 c 259 § 8; 1967 ex.s. c 119 § 35A.09.020.]

Sufficiency of petition in code city: RCW 35A.01.040.

35A.09.030 New or revised charter—Petition—Charter commission. On the petition of a number of qualified electors of a charter code city equal to ten percent of the total votes cast at the last preceding municipal general election, the legislative body of such charter code city shall, or without such petition, may, by resolution, cause an election to be held for the election of a charter commission of fifteen freeholders for the purpose of preparing a new or revised charter for the city by altering, revising, adding to, or repeal-

ing the existing charter including all amendments thereto. The members of the charter commission shall be qualified and nominated as provided by chapter 35A.08 RCW. At such election the proposition of whether or not a charter commission shall be created at all shall be separately stated on the ballots and unless a majority of the votes cast upon that proposition favor it, no further steps shall be taken in the proceedings. [1967 ex.s. c 119 § 35A.09.030.]

Sufficiency of petition in code city: RCW 35A.01.040.

35A.09.040 Submission of new or revised charter—Election. Within ten days after the results of the election authorized by RCW 35A.09.030 have been determined, if a majority of the votes cast favor the proposition, the members of the charter commission elected thereat shall convene and prepare a new or revised charter by altering, revising, adding to, or repealing the existing charter including all amendments thereto and within one hundred and eighty days thereafter file it with the county auditor. The charter commission shall be organized, vacancies filled, alternative plans of government considered, and a public hearing held all in the manner provided in sections of chapter 35A.08 RCW relating to charter commissions, and the commission members shall be reimbursed for their expenses and may obtain technical and clerical assistance in the manner provided in chapter 35A.08 RCW. Upon the filing of the proposed new, altered, changed, or revised charter with the county auditor, it shall be submitted to the registered voters of the charter code city at an election conducted as provided in RCW 35A.09.060. [1990 c 259 § 9; 1967 ex.s. c 119 § 35A.09.040.]

35A.09.050 Publication of proposed charter. The proposed new, altered, or revised charter shall be published in the newspaper having the largest general circulation within the city at least once each week for four weeks next preceding the day of submitting the same to the electors for their approval. [1985 c 469 § 41; 1967 ex.s. c 119 § 35A.09.050.]

35A.09.060 Conduct of elections. The election of the charter commission and the election upon the proposition of adopting the proposed new, altered, or revised charter, may be general or special elections held within the corresponding time period specified in chapter 35A.08 RCW, and except as herein provided, said elections, the notice specifying the objects thereof, the returns, the canvassing, and the declaration of the result shall be governed by the laws regulating and controlling elections in the charter code city. [1967 ex.s. c 119 § 35A.09.060.]

35A.09.070 Effect of favorable vote. If a majority of the voters voting upon the adoption of the proposed new, altered, or revised charter favor it, it shall become the charter of the charter code city and the organic law thereof, superseding any existing charter; but if any offices are abolished or dispensed with by the new, altered, or revised charter, and any new offices created thereby, such charter shall not go into effect until the election and qualification of such new officers at the next general municipal election if one is to be held within one hundred and eighty days, or at a special election to be held for that purpose not less than ninety days, nor more

than one hundred and eighty days after approval of such charter by the voters. [1967 ex.s. c 119 § 35A.09.070.]

Chapter 35A.10 RCW
ADOPTION AND ABANDONMENT OF
CHARTER CODE CITY CLASSIFICATION

Sections

- 35A.10.010 Laws applicable to charter code cities.
- 35A.10.020 Abandonment of charter code city classification.
- 35A.10.030 Resolution or petition for change of classification—Election.
- 35A.10.040 No subsequent vote for six years.

35A.10.010 Laws applicable to charter code cities.

The classifications of municipalities which existed prior to the time this title goes into effect—first-class cities, second-class cities, unclassified cities, and towns—and the restrictions, limitations, duties and obligations specifically imposed by law upon such classes of cities and towns, shall have no application to charter code cities, but every charter code city, by adopting such classification, has elected to be governed by its charter and by the provisions of this title, with the powers thereby granted. [1994 c 81 § 70; 1967 ex.s. c 119 § 35A.10.010.]

35A.10.020 Abandonment of charter code city classification. Any charter code city, which has been so classified under the provisions of this title for more than six years may abandon such classification and elect to be governed according to its charter under the general law relating to charter cities of the classification held by such city immediately prior to becoming a charter code city, if any, or may elect to be governed by the general law relating to charter cities of the highest class, or other class, for which it is qualified by population. [1967 ex.s. c 119 § 35A.10.020.]

35A.10.030 Resolution or petition for change of classification—Election. Upon the passage of a resolution of the legislative body of a charter code city, or upon the filing with the county auditor of a sufficient petition signed by registered voters of a charter code city in number equal to not less than ten percent of the votes cast at the last general municipal election therein, proposing abandonment of the classification of charter code city and that the city be governed under its charter and the general law relating to cities of the classification named in the petition or resolution, the legislative body thereof shall cause the propositions to be submitted to the voters at the next general municipal election if one is to be held within one hundred and eighty days or at a special election to be held for that purpose not less than ninety days nor more than one hundred and eighty days after the passage of the resolution or the filing of the certificate of sufficiency of the petition. Notice of election shall be given, the election conducted, and results declared generally as provided in chapter 35A.02 RCW, insofar as such provisions are applicable. If a majority of the votes cast upon such proposition are in favor of abandonment of the classification of charter code city, upon the certification of the record of election to the office of the secretary of state, such charter city shall be classified as a city of the class selected and shall be governed by the laws relating thereto. [1990 c 259 § 10; 1967 ex.s. c 119 § 35A.10.030.]

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Sufficiency of petition in code city: RCW 35A.01.040.

35A.10.040 No subsequent vote for six years. When a proposition for abandonment of the classification of charter code city has been submitted to the voters of the charter code city in an election and has been rejected by a majority of such voters, such proposition shall not again be submitted to the voters for six years thereafter. [1967 ex.s. c 119 § 35A.10.040.]

Chapter 35A.11 RCW
LAWS GOVERNING NONCHARTER CODE CITIES
AND CHARTER CODE CITIES—POWERS

Sections

- 35A.11.010 Rights, powers, and privileges.
- 35A.11.020 Powers vested in legislative bodies of noncharter and charter code cities.
- 35A.11.030 Applicability of general law.
- 35A.11.035 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility.
- 35A.11.037 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts.
- 35A.11.040 Intergovernmental cooperation and action.
- 35A.11.050 Statement of purpose and policy.
- 35A.11.060 Participation in Economic Opportunity Act programs.
- 35A.11.070 Tourist promotion.
- 35A.11.080 Initiative and referendum—Election to exercise—Restriction or abandonment.
- 35A.11.090 Initiative and referendum—Effective date of ordinances—Exceptions.
- 35A.11.100 Initiative and referendum—Exercise of powers.
- 35A.11.110 Members of legislative bodies authorized to serve as volunteer firefighters, volunteer ambulance personnel, or reserve law enforcement officers.
- 35A.11.200 Criminal code repeal by city operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration.
- 35A.11.210 Juvenile curfews.

35A.11.010 Rights, powers, and privileges. Each city governed under this optional municipal code, whether charter or noncharter, shall be entitled "City of" (naming it), and by such name shall have perpetual succession; may sue and be sued in all courts and proceedings; use a corporate seal approved by its legislative body; and, by and through its legislative body, such municipality may contract and be contracted with; may purchase, lease, receive, or otherwise acquire real and personal property of every kind, and use, enjoy, hold, lease, control, convey or otherwise dispose of it for the common benefit. [1967 ex.s. c 119 § 35A.11.010.]

35A.11.020 Powers vested in legislative bodies of noncharter and charter code cities. The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and to define the functions, powers, and duties of its officers and employees; within the limitations imposed by vested rights, to fix the compensation and working conditions of such officers and employees and establish and maintain civil service, or merit systems, retirement and pension systems not in conflict with the provisions of this title or of existing charter provisions until changed by the people: PROVIDED, That nothing in this section or in this title shall permit any city, whether a code city or otherwise, to enact any provisions establishing or respecting a merit system or system of civil service for firefighters and police officers which

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does not substantially accomplish the same purpose as provided by general law in chapter 41.08 RCW for firefighters and chapter 41.12 RCW for police officers now or as hereafter amended, or enact any provision establishing or respecting a pension or retirement system for firefighters or police officers which provides different pensions or retirement benefits than are provided by general law for such classes.

Such body may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city, and may impose penalties of fine not exceeding five thousand dollars or imprisonment for any term not exceeding one year, or both, for the violation of such ordinances, constituting a misdemeanor or gross misdemeanor as provided therein. However, the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Such a body alternatively may provide that violation of such ordinances constitutes a civil violation subject to monetary penalty, but no act which is a state crime may be made a civil violation.

The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law. By way of illustration and not in limitation, such powers may be exercised in regard to the acquisition, sale, ownership, improvement, maintenance, protection, restoration, regulation, use, leasing, disposition, vacation, abandonment or beautification of public ways, real property of all kinds, waterways, structures, or any other improvement or use of real or personal property, in regard to all aspects of collective bargaining as provided for and subject to the provisions of chapter 41.56 RCW, as now or hereafter amended, and in the rendering of local social, cultural, recreational, educational, governmental, or corporate services, including operating and supplying of utilities and municipal services commonly or conveniently rendered by cities or towns.

In addition and not in limitation, the legislative body of each code city shall have any authority ever given to any class of municipality or to all municipalities of this state before or after the enactment of this title, such authority to be exercised in the manner provided, if any, by the granting statute, when not in conflict with this title. Within constitutional limitations, legislative bodies of code cities shall have within their territorial limits all powers of taxation for local purposes except those which are expressly preempted by the state as provided in RCW 66.08.120, *82.36.440, 48.14.020, and 48.14.080. [2007 c 218 § 66; 1993 c 83 § 8; 1986 c 278 § 7; 1984 c 258 § 807; 1969 ex.s. c 29 § 1; 1967 ex.s. c 119 § 35A.11.020.]

***Reviser's note:** Chapter 82.36 RCW was repealed in its entirety by 2013 c 225 § 501, effective July 1, 2015.

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

35A.11.030 Applicability of general law. Powers of eminent domain, borrowing, taxation, and the granting of franchises may be exercised by the legislative bodies of code cities in the manner provided in this title or by the general law of the state where not inconsistent with this title; and the duties to be performed and the procedure to be followed by such cities in regard to the keeping of accounts and records,

official bonds, health and safety and other matters not specifically provided for in this title, shall be governed by the general law. For the purposes of this title, "the general law" means any provision of state law, not inconsistent with this title, enacted before or after the passage of this title which is by its terms applicable or available to all cities or towns. [1967 ex.s. c 119 § 35A.11.030.]

35A.11.035 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility. See chapter 80.58 RCW.

35A.11.037 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts. See RCW 87.03.825 through 87.03.840.

35A.11.040 Intergovernmental cooperation and action. The legislative body of a code city may exercise any of its powers or perform any of its functions including purchasing, and participate in the financing thereof, jointly or in cooperation, as provided for in chapter 39.34 RCW. The legislative body of a code city shall have power to accept any gift or grant for any public purpose and may carry out any conditions of such gift or grant when not in conflict with state or federal law. [1979 ex.s. c 18 § 17; 1967 ex.s. c 119 § 35A.11.040.]

Additional notes found at www.leg.wa.gov

35A.11.050 Statement of purpose and policy. The general grant of municipal power conferred by this chapter and this title on legislative bodies of noncharter code cities and charter code cities is intended to confer the greatest power of local self-government consistent with the Constitution of this state and shall be construed liberally in favor of such cities. Specific mention of a particular municipal power or authority contained in this title or in the general law shall be construed as in addition and supplementary to, or explanatory of the powers conferred in general terms by this chapter. [1967 ex.s. c 119 § 35A.11.050.]

35A.11.060 Participation in Economic Opportunity Act programs. The legislative body of any city or town is hereby authorized and empowered in its discretion by resolution or ordinance passed by a majority of the legislative body, to take whatever action it deems necessary to enable the city or town to participate in the programs set forth in the Economic Opportunity Act of 1964 (Public Law 88-452; 78 Stat. 508), as amended. Such participation may be engaged in as a sole city or town operation or in conjunction or cooperation with the state, any other city or town, county, or municipal corporation, or any private corporation qualified under said Economic Opportunity Act. [1971 ex.s. c 177 § 4.]

35A.11.070 Tourist promotion. See RCW 35.21.700.

35A.11.080 Initiative and referendum—Election to exercise—Restriction or abandonment. The qualified electors or legislative body of a noncharter code city may provide for the exercise in their city of the powers of initiative and referendum, upon electing so to do in the manner

provided for changing the classification of a city or town in RCW 35A.02.020, 35A.02.025, 35A.02.030, and 35A.02.035, as now or hereafter amended.

The exercise of such powers may be restricted or abandoned upon electing so to do in the manner provided for abandoning the plan of government of a noncharter code city in RCW 35A.06.030, 35A.06.040, 35A.06.050, and 35A.06.060, as now or hereafter amended. [1979 ex.s. c 18 § 18; 1973 1st ex.s. c 81 § 1.]

Imposition or increase of business and occupation tax—Referendum procedure required—Exclusive procedure: RCW 35.21.706.

Initiative and referendum petitions: RCW 35A.29.170.

Additional notes found at www.leg.wa.gov

35A.11.090 Initiative and referendum—Effective date of ordinances—Exceptions. Ordinances of noncharter code cities the qualified electors of which have elected to exercise the powers of initiative and referendum shall not go into effect before thirty days from the time of final passage and are subject to referendum during the interim except:

- (1) Ordinances initiated by petition;
- (2) Ordinances necessary for immediate preservation of public peace, health, and safety or for the support of city government and its existing public institutions which contain a statement of urgency and are passed by unanimous vote of the council;
- (3) Ordinances providing for local improvement districts;
- (4) Ordinances appropriating money;
- (5) Ordinances providing for or approving collective bargaining;
- (6) Ordinances providing for the compensation of or working conditions of city employees; and
- (7) Ordinances authorizing or repealing the levy of taxes; which excepted ordinances shall go into effect as provided by the general law or by applicable sections of Title 35A RCW as now or hereafter amended. [1973 1st ex.s. c 81 § 2.]

35A.11.100 Initiative and referendum—Exercise of powers. Except as provided in RCW 35A.11.090, and except that the number of registered voters needed to sign a petition for initiative or referendum shall be fifteen percent of the total number of names of persons listed as registered voters within the city on the day of the last preceding city general election, the powers of initiative and referendum in noncharter code cities shall be exercised in the manner set forth for the commission form of government in RCW 35.17.240 through 35.17.360, as now or hereafter amended. [1973 1st ex.s. c 81 § 3.]

Sufficiency of petition in code city: RCW 35A.01.040.

35A.11.110 Members of legislative bodies authorized to serve as volunteer firefighters, volunteer ambulance personnel, or reserve law enforcement officers. Notwithstanding any other provision of law, the legislative body of any code city, by resolution adopted by a two-thirds vote of the full legislative body, may authorize any of its members to serve as volunteer firefighters, volunteer ambulance personnel, or reserve law enforcement officers, or two or more of such positions, and to receive the same compensation, insurance, and other benefits as are applicable to other volunteer

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firefighters, volunteer ambulance personnel, or reserve law enforcement officers employed by the code city. [2005 c 38 § 1; 1993 c 303 § 2; 1974 ex.s. c 60 § 2.]

35A.11.200 Criminal code repeal by city operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration. A code city operating a municipal court may not repeal in its entirety that portion of its municipal code defining crimes unless the municipality has reached an agreement with the appropriate county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall include provisions for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04A RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04A RCW. [2005 c 433 § 42; 1984 c 258 § 209.]

Application—Captions not law—Savings—Effective date—2005 c 433: See RCW 7.04A.290 through 7.04A.310 and 7.04A.900.

Additional notes found at www.leg.wa.gov

35A.11.210 Juvenile curfews. (1) Any code city has the authority to enact an ordinance, for the purpose of preserving the public safety or reducing acts of violence by or against juveniles that are occurring at such rates as to be beyond the capacity of the police to assure public safety, establishing times and conditions under which juveniles may be present on the public streets, in the public parks, or in any other public place during specified hours.

(2) The ordinance shall not contain any criminal sanctions for a violation of the ordinance. [1994 sp.s. c 7 § 503.]

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

Chapter 35A.12 RCW

MAYOR-COUNCIL PLAN OF GOVERNMENT

Sections

- 35A.12.010 Elective city officers—Size of council.
- 35A.12.020 Appointive officers—Duties—Compensation.
- 35A.12.030 Eligibility to hold elective office.
- 35A.12.040 Elections—Terms of elective officers—Numbering of council positions.
- 35A.12.050 Vacancies.
- 35A.12.060 Vacancy for nonattendance.
- 35A.12.065 Pro tempore appointments.
- 35A.12.070 Compensation of elective officers—Expenses.
- 35A.12.080 Oath and bond of officers.
- 35A.12.090 Appointment and removal of officers—Terms.
- 35A.12.100 Duties and authority of the mayor—Veto—Tie-breaking vote.
- 35A.12.110 Council meetings.
- 35A.12.120 Council—Quorum—Rules—Voting.
- 35A.12.130 Ordinances—Style—Requisites—Veto.
- 35A.12.140 Adoption of codes by reference.
- 35A.12.150 Ordinances—Authentication and recording.
- 35A.12.160 Publication of ordinances or summary—Public notice of hearings and meeting agendas.
- 35A.12.170 Audit and allowance of demands against city.

35A.12.180 Optional division of city into wards.
 35A.12.190 Powers of council.

35A.12.010 Elective city officers—Size of council.

The government of any noncharter code city or charter code city electing to adopt the mayor-council plan of government authorized by this chapter shall be vested in an elected mayor and an elected council. The council of a noncharter code city having less than twenty-five hundred inhabitants shall consist of five members; when there are twenty-five hundred or more inhabitants, the council shall consist of seven members. A city with a population of less than twenty-five hundred at the time of reclassification as an optional municipal code city may choose to maintain a seven-member council. The decision concerning the number of councilmembers shall be made by the council and be incorporated as a section of the ordinance adopting for the city the classification of noncharter code city. If the population of a city after having become a code city decreases from twenty-five hundred or more to less than twenty-five hundred, it shall continue to have a seven-member council. If, after a city has become a mayor-council code city, its population increases to twenty-five hundred or more inhabitants, the number of council offices in such city may increase from five to seven members upon the affirmative vote of a majority of the existing council to increase the number of council offices in the city. When the population of a mayor-council code city having five council offices increases to five thousand or more inhabitants, the number of council offices in the city shall increase from five to seven members. In the event of an increase in the number of council offices, the city council shall, by majority vote, pursuant to RCW 35A.12.050, appoint two persons to serve in these offices until the next municipal general election, at which election one person shall be elected for a two-year term and one person shall be elected for a four-year term. The number of inhabitants shall be determined by the most recent official state or federal census or determination by the state office of financial management. A charter adopted under the provisions of this title, incorporating the mayor-council plan of government set forth in this chapter, may provide for an uneven number of councilmembers not exceeding eleven. For the purposes of determining population under this section, cities may include or exclude the population of any state correctional facility located within the city.

A noncharter code city of less than five thousand inhabitants which has elected the mayor-council plan of government and which has seven council offices may establish a five-member council in accordance with the following procedure. At least six months prior to a municipal general election, the city council shall adopt an ordinance providing for reduction in the number of council offices to five. The ordinance shall specify which two council offices, the terms of which expire at the next general election, are to be terminated. The ordinance shall provide for the renumbering of council positions and shall also provide for a two-year extension of the term of office of a retained council office, if necessary, in order to comply with RCW 35A.12.040.

However, a noncharter code city that has retained its old mayor-council plan of government, as provided in RCW 35A.02.130, is subject to the laws applicable to that old plan of government. [2011 c 14 § 1; 2009 c 549 § 3005; 1997 c

361 § 6; 1994 c 223 § 30; 1994 c 81 § 71; 1985 c 106 § 1; 1983 c 128 § 1; 1979 ex.s. c 18 § 19; 1979 c 151 § 33; 1967 ex.s. c 119 § 35A.12.010.]

Population determinations, office of financial management: Chapter 43.62 RCW.

Additional notes found at www.leg.wa.gov

35A.12.020 Appointive officers—Duties—Compensation. The appointive officers shall be those provided for by charter or ordinance and shall include a city clerk and a chief law enforcement officer. The office of city clerk may be merged with that of a city treasurer, if any, with an appropriate title designated therefor. Provision shall be made for obtaining legal counsel for the city, either by appointment of a city attorney on a full-time or part-time basis, or by any reasonable contractual arrangement for such professional services. The authority, duties and qualifications of all appointive officers shall be prescribed by charter or ordinance, consistent with the provisions of this title, and any amendments thereto, and the compensation of appointive officers shall be prescribed by ordinance: PROVIDED, That the compensation of an appointed municipal judge shall be within applicable statutory limits. [1987 c 3 § 14; 1967 ex.s. c 119 § 35A.12.020.]

Additional notes found at www.leg.wa.gov

35A.12.030 Eligibility to hold elective office. No person shall be eligible to hold elective office under the mayor-council plan unless the person is a registered voter of the city at the time of filing his or her declaration of candidacy and has been a resident of the city for a period of at least one year next preceding his or her election. Residence and voting within the limits of any territory which has been included in, annexed to, or consolidated with such city is construed to have been residence within the city. A mayor or councilmember shall hold within the city government no other public office or employment except as permitted under the provisions of chapter 42.23 RCW. [2009 c 549 § 3006; 1979 ex.s. c 18 § 20; 1967 ex.s. c 119 § 35A.12.030.]

Additional notes found at www.leg.wa.gov

35A.12.040 Elections—Terms of elective officers—Numbering of council positions. Officers shall be elected at biennial municipal elections to be conducted as provided in chapter 35A.29 RCW. The mayor and the councilmembers shall be elected for four-year terms of office and until their successors are elected and qualified and assume office in accordance with *RCW 29.04.170. At any first election upon reorganization, councilmembers shall be elected as provided in RCW 35A.02.050. Thereafter the requisite number of councilmembers shall be elected biennially as the terms of their predecessors expire and shall serve for terms of four years. The positions to be filled on the city council shall be designated by consecutive numbers and shall be dealt with as separate offices for all election purposes. Election to positions on the council shall be by majority vote from the city at large, unless provision is made by charter or ordinance for election by wards. The mayor and councilmembers shall qualify by taking an oath or affirmation of office and as may be provided by law, charter, or ordinance. [1994 c 223 § 31;

1979 ex.s. c 18 § 21; 1970 ex.s. c 52 § 3; 1967 ex.s. c 119 § 35A.12.040.]

*Reviser's note: RCW 29.04.170 was recodified as RCW 29A.20.040 pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.20.040 was subsequently recodified as RCW 29A.60.280 pursuant to 2013 c 11 § 93.

Additional notes found at www.leg.wa.gov

35A.12.050 Vacancies. The office of a mayor or councilmember shall become vacant if the person who is elected or appointed to that position fails to qualify as provided by law, fails to enter upon the duties of that office at the time fixed by law without a justifiable reason, or as provided in RCW 35A.12.060 or 42.12.010. A vacancy in the office of mayor or in the council shall be filled as provided in chapter 42.12 RCW. An incumbent councilmember is eligible to be appointed to fill a vacancy in the office of mayor. [2008 c 50 § 4; 1994 c 223 § 32; 1967 ex.s. c 119 § 35A.12.050.]

35A.12.060 Vacancy for nonattendance. In addition a council position shall become vacant if the councilmember fails to attend three consecutive regular meetings of the council without being excused by the council. [1994 c 223 § 33; 1967 ex.s. c 119 § 35A.12.060.]

35A.12.065 Pro tempore appointments. Biennially at the first meeting of a new council, or periodically, the members thereof, by majority vote, may designate one of their number as mayor pro tempore or deputy mayor for such period as the council may specify, to serve in the absence or temporary disability of the mayor; or, in lieu thereof, the council may, as the need may arise, appoint any qualified person to serve as mayor pro tempore in the absence or temporary disability of the mayor. In the event of the extended excused absence or disability of a councilmember, the remaining members by majority vote may appoint a councilmember pro tempore to serve during the absence or disability. [2009 c 549 § 3007; 1967 ex.s. c 119 § 35A.12.065.]

35A.12.070 Compensation of elective officers—Expenses. The salaries of the mayor and the councilmembers shall be fixed by ordinance and may be revised from time to time by ordinance, but any increase in the compensation attaching to an office shall not be applicable to the term then being served by the incumbent if such incumbent is a member of the city legislative body fixing his or her own compensation or as mayor in a mayor-council code city casts a tie-breaking vote relating to such ordinance: PROVIDED, That if the mayor of such a city does not cast such a vote, his or her salary may be increased during his or her term of office.

Until the first elective officers under this mayor-council plan of government may lawfully be paid the compensation provided by such salary ordinance, such officers shall be entitled to be compensated in the same manner and in the same amount as the compensation paid to officers of such city performing comparable services immediately prior to adoption of this mayor-council plan.

Until a salary ordinance can be passed and become effective as to elective officers of a newly incorporated code city, such first officers shall be entitled to compensation as follows: In cities having less than five thousand inhabitants, the

mayor shall be entitled to a salary of one hundred and fifty dollars per calendar month and a councilmember shall be entitled to twenty dollars per meeting for not more than two meetings per month; in cities having more than five thousand but less than fifteen thousand inhabitants, the mayor shall be entitled to a salary of three hundred and fifty dollars per calendar month and a councilmember shall be entitled to one hundred and fifty dollars per calendar month; in cities having more than fifteen thousand inhabitants, the mayor shall be entitled to a salary of twelve hundred and fifty dollars per calendar month and a councilmember shall be entitled to four hundred dollars per calendar month: PROVIDED, That such interim compensation shall remain in effect only until a salary ordinance is passed and becomes effective as to such officers, and the amounts herein provided shall not be construed as fixing the usual salary of such officers. The mayor and councilmembers shall receive reimbursement for their actual and necessary expenses incurred in the performance of the duties of their office, or the council by ordinance may provide for a per diem allowance. Procedure for approval of claims for expenses shall be as provided by ordinance. [2009 c 549 § 3008; 1971 ex.s. c 251 § 5; 1967 ex.s. c 119 § 35A.12.070.]

Limitations on salaries: State Constitution Art. 11 § 8.

Additional notes found at www.leg.wa.gov

35A.12.080 Oath and bond of officers. Any officer before entering upon the performance of his or her duties may be required to take an oath or affirmation as prescribed by charter or by ordinance for the faithful performance of his or her duties. The oath or affirmation shall be filed with the county auditor. The clerk, treasurer, if any, chief of police, and such other officers or employees as may be designated by ordinance or by charter shall be required to furnish annually an official bond conditioned on the honest and faithful performance of their official duties. The terms and penalty of official bonds and the surety therefor shall be prescribed by ordinance or charter and the bond shall be approved by the chief administrative officer of the city. The premiums on such bonds shall be paid by the city. When the furnishing of an official bond is required of an officer or employee, compliance with such provisions shall be an essential part of qualification for office. [2009 c 549 § 3009; 1986 c 167 § 20; 1967 ex.s. c 119 § 35A.12.080.]

Additional notes found at www.leg.wa.gov

35A.12.090 Appointment and removal of officers—Terms. The mayor shall have the power of appointment and removal of all appointive officers and employees subject to any applicable law, rule, or regulation relating to civil service. The head of a department or office of the city government may be authorized by the mayor to appoint and remove subordinates in such department or office, subject to any applicable civil service provisions. All appointments of city officers and employees shall be made on the basis of ability and training or experience of the appointees in the duties they are to perform, from among persons having such qualifications as may be prescribed by ordinance or by charter, and in compliance with provisions of any merit system applicable to such city. Confirmation by the city council of appointments of officers and employees shall be required only when the

city charter, or the council by ordinance, provides for confirmation of such appointments. Confirmation of mayoral appointments by the council may be required by the council in any instance where qualifications for the office or position have not been established by ordinance or charter provision. Appointive offices shall be without definite term unless a term is established for such office by law, charter or ordinance. [1987 c 3 § 15; 1967 ex.s. c 119 § 35A.12.090.]

Additional notes found at www.leg.wa.gov

35A.12.100 Duties and authority of the mayor—Veto—Tie-breaking vote. The mayor shall be the chief executive and administrative officer of the city, in charge of all departments and employees, with authority to designate assistants and department heads. The mayor may appoint and remove a chief administrative officer or assistant administrative officer, if so provided by ordinance or charter. He or she shall see that all laws and ordinances are faithfully enforced and that law and order is maintained in the city, and shall have general supervision of the administration of city government and all city interests. All official bonds and bonds of contractors with the city shall be submitted to the mayor or such person as he or she may designate for approval or disapproval. He or she shall see that all contracts and agreements made with the city or for its use and benefit are faithfully kept and performed, and to this end he or she may cause any legal proceedings to be instituted and prosecuted in the name of the city, subject to approval by majority vote of all members of the council. The mayor shall preside over all meetings of the city council, when present, but shall have a vote only in the case of a tie in the votes of the councilmembers with respect to matters other than the passage of any ordinance, grant, or revocation of franchise or license, or any resolution for the payment of money. He or she shall report to the council concerning the affairs of the city and its financial and other needs, and shall make recommendations for council consideration and action. He or she shall prepare and submit to the council a proposed budget, as required by chapter 35A.33 RCW. The mayor shall have the power to veto ordinances passed by the council and submitted to him or her as provided in RCW 35A.12.130 but such veto may be overridden by the vote of a majority of all councilmembers plus one more vote. The mayor shall be the official and ceremonial head of the city and shall represent the city on ceremonial occasions, except that when illness or other duties prevent the mayor's attendance at an official function and no mayor pro tempore has been appointed by the council, a member of the council or some other suitable person may be designated by the mayor to represent the city on such occasion. [2009 c 549 § 3010; 1979 ex.s. c 18 § 22; 1967 ex.s. c 119 § 35A.12.100.]

Additional notes found at www.leg.wa.gov

35A.12.110 Council meetings. The city council and mayor shall meet regularly, at least once a month, at a place and at such times as may be designated by the city council. All final actions on resolutions and ordinances must take place within the corporate limits of the city. Special meetings may be called by the mayor or any three members of the council by written notice delivered to each member of the council at least twenty-four hours before the time specified for the proposed meeting. All actions that have heretofore

been taken at special council meetings held pursuant to this section, but for which the number of hours of notice given has been at variance with requirements of RCW 42.30.080, are hereby validated. All council meetings shall be open to the public except as permitted by chapter 42.30 RCW. No ordinance or resolution shall be passed, or contract let or entered into, or bill for the payment of money allowed at any meeting not open to the public, nor at any public meeting the date of which is not fixed by ordinance, resolution, or rule, unless public notice of such meeting has been given by such notice to each local newspaper of general circulation and to each local radio or television station, as provided in RCW 42.30.080 as now or hereafter amended. Meetings of the council shall be presided over by the mayor, if present, or otherwise by the mayor pro tempore, or deputy mayor if one has been appointed, or by a member of the council selected by a majority of the councilmembers at such meeting. Appointment of a councilmember to preside over the meeting shall not in any way abridge his or her right to vote on matters coming before the council at such meeting. In the absence of the clerk, a deputy clerk or other qualified person appointed by the clerk, the mayor, or the council, may perform the duties of clerk at such meeting. A journal of all proceedings shall be kept, which shall be a public record. [2009 c 549 § 3011; 1993 c 199 § 3; 1979 ex.s. c 18 § 23; 1967 ex.s. c 119 § 35A.12.110.]

Additional notes found at www.leg.wa.gov

35A.12.120 Council—Quorum—Rules—Voting. At all meetings of the council a majority of the councilmembers shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The council shall determine its own rules and order of business, and may establish rules for the conduct of council meetings and the maintenance of order. At the desire of any member, any question shall be voted upon by roll call and the ayes and nays shall be recorded in the journal.

The passage of any ordinance, grant or revocation of franchise or license, and any resolution for the payment of money shall require the affirmative vote of at least a majority of the whole membership of the council. [2009 c 549 § 3012; 1967 ex.s. c 119 § 35A.12.120.]

35A.12.130 Ordinances—Style—Requisites—Veto. The enacting clause of all ordinances shall be as follows: "The city council of the city of do ordain as follows:" No ordinance shall contain more than one subject and that must be clearly expressed in its title.

No ordinance or any section or subsection thereof shall be revised or amended unless the new ordinance sets forth the revised ordinance or the amended section or subsection at full length.

No ordinance shall take effect until five days after the date of its publication unless otherwise provided by statute or charter, except that an ordinance passed by a majority plus one of the whole membership of the council, designated therein as a public emergency ordinance necessary for the protection of public health, public safety, public property or the public peace, may be made effective upon adoption, but

such ordinance may not levy taxes, grant, renew, or extend a franchise, or authorize the borrowing of money.

Every ordinance which passes the council in order to become valid must be presented to the mayor; if he or she approves it, he or she shall sign it, but if not, he or she shall return it with his or her written objections to the council and the council shall cause his or her objections to be entered at large upon the journal and proceed to a reconsideration thereof. If upon reconsideration a majority plus one of the whole membership, voting upon a call of ayes and nays, favor its passage, the ordinance shall become valid notwithstanding the mayor's veto. If the mayor fails for ten days to either approve or veto an ordinance, it shall become valid without his or her approval. Ordinances shall be signed by the mayor and attested by the clerk. [2009 c 549 § 3013; 1967 ex.s. c 119 § 35A.12.130.]

35A.12.140 Adoption of codes by reference. Ordinances may by reference adopt Washington state statutes and state, county, or city codes, regulations, or ordinances or any standard code of technical regulations, or portions thereof, including, for illustrative purposes but not limited to, fire codes and codes or ordinances relating to the construction of buildings, the installation of plumbing, the installation of electric wiring, health and sanitation, the slaughtering, processing, and selling of meats and meat products for human consumption, the production, pasteurizing, and sale of milk and milk products, or other subjects, together with amendments thereof or additions thereto, on the subject of the ordinance. Such Washington state statutes or codes or other codes or compilations so adopted need not be published in a newspaper as provided in RCW 35A.12.160, but the adopting ordinance shall be so published and a copy of any such adopted statute, ordinance, or code, or portion thereof, with amendments or additions, if any, in the form in which it was adopted, shall be filed in the office of the city clerk for use and examination by the public. While any such statute, code, or compilation is under consideration by the council prior to adoption, not less than one copy thereof shall be filed in the office of the city clerk for examination by the public. [1995 c 71 § 1; 1982 c 226 § 2; 1967 ex.s. c 119 § 35A.12.140.]

Additional notes found at www.leg.wa.gov

35A.12.150 Ordinances—Authentication and recording. The city clerk shall authenticate by his or her signature and record in full in a properly indexed book kept for the purpose all ordinances and resolutions adopted by the council. Such book, or copies of ordinances and resolutions, shall be available for inspection by the public at reasonable times and under reasonable conditions. [2009 c 549 § 3014; 1967 ex.s. c 119 § 35A.12.150.]

35A.12.160 Publication of ordinances or summary—Public notice of hearings and meeting agendas. Promptly after adoption, the text of each ordinance or a summary of the content of each ordinance shall be published at least once in the city's official newspaper.

For purposes of this section, a summary shall mean a brief description which succinctly describes the main points of the ordinance. Publication of the title of an ordinance authorizing the issuance of bonds, notes, or other evidences

of indebtedness shall constitute publication of a summary of that ordinance. When the city publishes a summary, the publication shall include a statement that the full text of the ordinance will be mailed upon request.

An inadvertent mistake or omission in publishing the text or a summary of the content of an ordinance shall not render the ordinance invalid.

In addition to the requirement that a city publish the text or a summary of the content of each adopted ordinance, every city shall establish a procedure for notifying the public of upcoming hearings and the preliminary agenda for the forthcoming council meeting. Such procedure may include, but not be limited to, written notification to the city's official newspaper, publication of a notice in the official newspaper, posting of upcoming council meeting agendas, or such other processes as the city determines will satisfy the intent of this requirement. [1994 c 273 § 15; 1988 c 168 § 7; 1987 c 400 § 3; 1985 c 469 § 42; 1967 ex.s. c 119 § 35A.12.160.]

35A.12.170 Audit and allowance of demands against city. All demands against a code city shall be presented and audited in accordance with such regulations as may be prescribed by charter or ordinance; and upon the allowance of a demand, the clerk shall draw a warrant upon the treasurer for it, which warrant shall be countersigned by the mayor, or such person as he or she may designate, and shall specify the fund from which it is to be paid; or, payment may be made by a bank check when authorized by the legislative body of the code city under authority granted by RCW 35A.40.020, which check shall bear the signatures of the officers designated by the legislative body as required signatories of checks of such city, and shall specify the fund from which it is to be paid. [2009 c 549 § 3015; 1967 ex.s. c 119 § 35A.12.170.]

35A.12.180 Optional division of city into wards. At any time not within three months previous to a municipal general election the council of a noncharter code city organized under this chapter may divide the city into wards or change the boundaries of existing wards. No change in the boundaries of wards shall affect the term of any councilmember, and councilmembers shall serve out their terms in the wards of their residences at the time of their elections: PROVIDED, That if this results in one ward being represented by more councilmembers than the number to which it is entitled those having the shortest unexpired terms shall be assigned by the council to wards where there is a vacancy, and the councilmembers so assigned shall be deemed to be residents of the wards to which they are assigned for purposes of those positions being vacant. The representation of each ward in the city council shall be in proportion to the population as nearly as is practicable.

Wards shall be redrawn as provided in *chapter 29.70 RCW. Wards shall be used as follows: (1) Only a resident of the ward may be a candidate for, or hold office as, a councilmember of the ward; and (2) only voters of the ward may vote at a primary to nominate candidates for a councilmember of the ward. Voters of the entire city may vote at the general election to elect a councilmember of a ward, unless the city had prior to January 1, 1994, limited the voting in the general election for any or all council positions to only voters resid-

ing within the ward associated with the council positions. If a city had so limited the voting in the general election to only voters residing within the ward, then the city shall be authorized to continue to do so. [1994 c 223 § 34; 1967 ex.s. c 119 § 35A.12.180.]

*Reviser's note: Chapter 29.70 RCW was recodified as chapter 29A.76 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

35A.12.190 Powers of council. The council of any code city organized under the mayor-council plan of government provided in this chapter shall have the powers and authority granted to the legislative bodies of cities governed by this title, as more particularly described in chapter 35A.11 RCW. [1967 ex.s. c 119 § 35A.12.190.]

Chapter 35A.13 RCW

COUNCIL-MANAGER PLAN OF GOVERNMENT

Sections

- 35A.13.010 City officers—Size of council.
- 35A.13.020 Election of councilmembers—Eligibility—Terms—Vacancies—Forfeiture of office—Council chair.
- 35A.13.030 Mayor—Election—Chair to be mayor—Duties.
- 35A.13.033 Election on proposition to designate person elected to position one as chair—Subsequent holders of position one to be chair.
- 35A.13.035 Mayor pro tempore or deputy mayor.
- 35A.13.040 Compensation of councilmembers—Expenses.
- 35A.13.050 City manager—Qualifications.
- 35A.13.060 City manager may serve two or more cities.
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- 35A.13.080 City manager—Powers and duties.
- 35A.13.090 Creation of departments, offices, and employment—Compensation.
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- 35A.13.120 City manager—Interference by councilmembers.
- 35A.13.130 City manager—Removal—Resolution and notice.
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- 35A.13.200 Authentication, recording and publication of ordinances.
- 35A.13.210 Audit and allowance of demands against city.
- 35A.13.220 Optional division of city into wards.
- 35A.13.230 Powers of council.

35A.13.010 City officers—Size of council. The councilmembers shall be the only elective officers of a code city electing to adopt the council-manager plan of government authorized by this chapter, except where statutes provide for an elective municipal judge. The council shall appoint an officer whose title shall be "city manager" who shall be the chief executive officer and head of the administrative branch of the city government. The city manager shall be responsible to the council for the proper administration of all affairs of the code city. The council of a noncharter code city having less than twenty-five hundred inhabitants shall consist of five members; when there are twenty-five hundred or more inhabitants the council shall consist of seven members: PROVIDED, That if the population of a city after having become a code city decreases from twenty-five hundred or more to less than twenty-five hundred, it shall continue to have a seven-member council. If, after a city has become a council-manager code city its population increases to twenty-five hundred or more inhabitants, the number of council offices in such city may increase from five to seven members upon the

affirmative vote of a majority of the existing council to increase the number of council offices in the city. When the population of a council-manager code city having five council offices increases to five thousand or more inhabitants, the number of council offices in the city shall increase from five to seven members. In the event of an increase in the number of council offices, the city council shall, by majority vote, pursuant to RCW 35A.13.020, appoint two persons to serve in these offices until the next municipal general election, at which election one person shall be elected for a two-year term and one person shall be elected for a four-year term. The number of inhabitants shall be determined by the most recent official state or federal census or determination by the state office of financial management. A charter adopted under the provisions of this title, incorporating the council-manager plan of government set forth in this chapter may provide for an uneven number of councilmembers not exceeding eleven.

A noncharter code city of less than five thousand inhabitants which has elected the council-manager plan of government and which has seven council offices may establish a five-member council in accordance with the following procedure. At least six months prior to a municipal general election, the city council shall adopt an ordinance providing for reduction in the number of council offices to five. The ordinance shall specify which two council offices, the terms of which expire at the next general election, are to be terminated. The ordinance shall provide for the renumbering of council positions and shall also provide for a two-year extension of the term of office of a retained council office, if necessary, in order to comply with RCW 35A.12.040.

However, a noncharter code city that has retained its old council-manager plan of government, as provided in RCW 35A.02.130, is subject to the laws applicable to that old plan of government.

For the purposes of determining population under this section, cities may include or exclude the population of any state correctional facility located within the city. [2011 c 14 § 2; 2009 c 549 § 3016; 1994 c 223 § 35; 1994 c 81 § 72; 1987 c 3 § 16; 1985 c 106 § 2; 1983 c 128 § 2; 1979 ex.s. c 18 § 24; 1979 c 151 § 34; 1967 ex.s. c 119 § 35A.13.010.]

Population determinations, office of financial management: Chapter 43.62 RCW.

Additional notes found at www.leg.wa.gov

35A.13.020 Election of councilmembers—Eligibility—Terms—Vacancies—Forfeiture of office—Council chair. In council-manager code cities, eligibility for election to the council, the manner of electing councilmembers, the numbering of council positions, the terms of councilmembers, the occurrence and the filling of vacancies, the grounds for forfeiture of office, and appointment of a mayor pro tempore or deputy mayor or councilmember pro tempore shall be governed by the corresponding provisions of RCW 35A.12.030, 35A.12.040, 35A.12.050, 35A.12.060, and 35A.12.065 relating to the council of a code city organized under the mayor-council plan, except that in council-manager cities where all council positions are at-large positions, the city council may, pursuant to RCW 35A.13.033, provide that the person elected to council position one shall be the council chair and shall carry out the duties prescribed by RCW

35A.13.030. [2009 c 549 § 3017; 1994 c 223 § 36; 1975 1st ex.s. c 155 § 1; 1967 ex.s. c 119 § 35A.13.020.]

35A.13.030 Mayor—Election—Chair to be mayor—Duties. Biennially at the first meeting of the new council the members thereof shall choose a chair from among their number unless the chair is elected pursuant to RCW 35A.13.033. The chair of the council shall have the title of mayor and shall preside at meetings of the council. In addition to the powers conferred upon him or her as mayor, he or she shall continue to have all the rights, privileges, and immunities of a member of the council. The mayor shall be recognized as the head of the city for ceremonial purposes and by the governor for purposes of military law. He or she shall have no regular administrative duties, but in time of public danger or emergency, if so authorized by ordinance, shall take command of the police, maintain law, and enforce order. [2009 c 549 § 3018; 1975 1st ex.s. c 155 § 2; 1967 ex.s. c 119 § 35A.13.030.]

35A.13.033 Election on proposition to designate person elected to position one as chair—Subsequent holders of position one to be chair. The city council of a council-manager city may by resolution place before the voters of the city, a proposition to designate the person elected to council position one as the chair of the council with the powers and duties set forth in RCW 35A.13.030. If a majority of those voting on the proposition cast a positive vote, then at all subsequent general elections at which position one is on the ballot, the person who is elected to position one shall become the chair upon taking office. [2009 c 549 § 3019; 1975 1st ex.s. c 155 § 3.]

35A.13.035 Mayor pro tempore or deputy mayor. Biennially at the first meeting of a new council, or periodically, the members thereof, by majority vote, may designate one of their number as mayor pro tempore or deputy mayor for such period as the council may specify, to serve in the absence or temporary disability of the mayor; or, in lieu thereof, the council may, as the need may arise, appoint any qualified person to serve as mayor pro tempore in the absence or temporary disability of the mayor. In the event of the extended excused absence or disability of a councilmember, the remaining members by majority vote may appoint a councilmember pro tempore to serve during the absence or disability. [2009 c 549 § 3020; 1969 ex.s. c 81 § 1.]

Additional notes found at www.leg.wa.gov

35A.13.040 Compensation of councilmembers—Expenses. The salaries of the councilmembers, including the mayor, shall be fixed by ordinance and may be revised from time to time by ordinance, but any increase or reduction in the compensation attaching to an office shall not become effective until the expiration of the term then being served by the incumbent: PROVIDED, That compensation of councilmembers may not be increased or diminished after their election nor may the compensation of the mayor be increased or diminished after the mayor has been chosen by the council.

Until councilmembers of a newly organized council-manager code city may lawfully be paid as provided by salary ordinance, such councilmembers shall be entitled to compensation in the same manner and in the same amount as council-

members of such city prior to the adoption of this council-manager plan.

Until a salary ordinance can be passed and become effective as to elective officers of a newly incorporated code city, the first councilmembers shall be entitled to compensation as follows: In cities having less than five thousand inhabitants—twenty dollars per meeting for not more than two meetings per month; in cities having more than five thousand but less than fifteen thousand inhabitants—a salary of one hundred and fifty dollars per calendar month; in cities having more than fifteen thousand inhabitants—a salary of four hundred dollars per calendar month. A councilmember who is occupying the position of mayor, in addition to his or her salary as a councilmember, shall be entitled, while serving as mayor, to an additional amount per calendar month, or portion thereof, equal to twenty-five percent of the councilmember salary: PROVIDED, That such interim compensation shall remain in effect only until a salary ordinance is passed and becomes effective as to such officers, and the compensation provided herein shall not be construed as fixing the usual compensation of such officers. Councilmembers shall receive reimbursement for their actual and necessary expenses incurred in the performance of the duties of their office, or the council by ordinance may provide for a per diem allowance. Procedure for approval of claims for expenses shall be as provided by ordinance. [2009 c 549 § 3021; 1979 ex.s. c 18 § 25; 1967 ex.s. c 119 § 35A.13.040.]

Additional notes found at www.leg.wa.gov

35A.13.050 City manager—Qualifications. The city manager need not be a resident at the time of his or her appointment, but shall reside in the code city after his or her appointment unless such residence is waived by the council. He or she shall be chosen by the council solely on the basis of his or her executive and administrative qualifications with special reference to his or her actual experience in, or his or her knowledge of, accepted practice in respect to the duties of his or her office. No person elected to membership on the council shall be eligible for appointment as city manager until one year has elapsed following the expiration of the term for which he or she was elected. [2009 c 549 § 3022; 1967 ex.s. c 119 § 35A.13.050.]

35A.13.060 City manager may serve two or more cities. Whether the city manager shall devote his or her full time to the affairs of one code city shall be determined by the council. A city manager may serve two or more cities in that capacity at the same time. [2009 c 549 § 3023; 1967 ex.s. c 119 § 35A.13.060.]

35A.13.070 City manager—Bond and oath. Before entering upon the duties of his or her office the city manager shall take an oath or affirmation for the faithful performance of his or her duties and shall execute and file with the clerk of the council a bond in favor of the code city in such sum as may be fixed by the council. The premium on such bond shall be paid by the city. [2009 c 549 § 3024; 1967 ex.s. c 119 § 35A.13.070.]

35A.13.080 City manager—Powers and duties. The powers and duties of the city manager shall be:

(1) To have general supervision over the administrative affairs of the code city;

(2) To appoint and remove at any time all department heads, officers, and employees of the code city, except members of the council, and subject to the provisions of any applicable law, rule, or regulation relating to civil service: PROVIDED, That the council may provide for the appointment by the mayor, subject to confirmation by the council, of a city planning commission, and other advisory citizens' committees, commissions, and boards advisory to the city council: PROVIDED FURTHER, That if the municipal judge of the code city is appointed, such appointment shall be made by the city manager subject to confirmation by the council, for a four year term. The council may cause an audit to be made of any department or office of the code city government and may select the persons to make it, without the advice or consent of the city manager;

(3) To attend all meetings of the council at which his or her attendance may be required by that body;

(4) To see that all laws and ordinances are faithfully executed, subject to the authority which the council may grant the mayor to maintain law and order in times of emergency;

(5) To recommend for adoption by the council such measures as he or she may deem necessary or expedient;

(6) To prepare and submit to the council such reports as may be required by that body or as he or she may deem it advisable to submit;

(7) To keep the council fully advised of the financial condition of the code city and its future needs;

(8) To prepare and submit to the council a proposed budget for the fiscal year, as required by chapter 35A.33 RCW, and to be responsible for its administration upon adoption;

(9) To perform such other duties as the council may determine by ordinance or resolution. [2009 c 549 § 3025; 1987 c 3 § 17; 1967 ex.s. c 119 § 35A.13.080.]

Additional notes found at www.leg.wa.gov

35A.13.090 Creation of departments, offices, and employment—Compensation. On recommendation of the city manager or upon its own action, the council may create such departments, offices, and employments as it may find necessary or advisable and may determine the powers and duties of each department or office. Compensation of appointive officers and employees may be fixed by ordinance after recommendations are made by the city manager. The appointive officers shall include a city clerk and a chief of police or other law enforcement officer. Pursuant to recommendation of the city manager, the council shall make provision for obtaining legal counsel for the city, either by appointment of a city attorney on a full time or part time basis, or by any reasonable contractual arrangement for such professional services. [1967 ex.s. c 119 § 35A.13.090.]

35A.13.100 City manager—Department heads—Authority. The city manager may authorize the head of a department or office responsible to him or her to appoint and remove subordinates in such department or office. Any officer or employee who may be appointed by the city manager, or by the head of a department or office, except one who holds his or her position subject to civil service, may be removed by the manager or other such appointing officer at

any time subject to any applicable law, rule, or regulation relating to civil service. Subject to the provisions of RCW 35A.13.080 and any applicable civil service provisions, the decision of the manager or other appointing officer, shall be final and there shall be no appeal therefrom to any other office, body, or court whatsoever. [2009 c 549 § 3026; 1967 ex.s. c 119 § 35A.13.100.]

35A.13.110 City manager—Appointment of subordinates—Qualifications—Terms. Appointments made by or under the authority of the city manager shall be on the basis of ability and training or experience of the appointees in the duties which they are to perform, and shall be in compliance with provisions of any merit system applicable to such city. Residence within the code city shall not be a requirement. All such appointments shall be without definite term. [1967 ex.s. c 119 § 35A.13.110.]

35A.13.120 City manager—Interference by councilmembers. Neither the council, nor any of its committees or members, shall direct the appointment of any person to, or his or her removal from, office by the city manager or any of his or her subordinates. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the manager and neither the council nor any committee or member thereof shall give orders to any subordinate of the city manager, either publicly or privately. The provisions of this section do not prohibit the council, while in open session, from fully and freely discussing with the city manager anything pertaining to appointments and removals of city officers and employees and city affairs. [2009 c 549 § 3027; 1967 ex.s. c 119 § 35A.13.120.]

35A.13.130 City manager—Removal—Resolution and notice. The city manager shall be appointed for an indefinite term and may be removed by a majority vote of the council. At least thirty days before the effective date of his or her removal, the city manager must be furnished with a formal statement in the form of a resolution passed by a majority vote of the city council stating the council's intention to remove him or her and the reasons therefor. Upon passage of the resolution stating the council's intention to remove the manager, the council by a similar vote may suspend him or her from duty, but his or her pay shall continue until his or her removal becomes effective. [2009 c 549 § 3028; 1967 ex.s. c 119 § 35A.13.130.]

35A.13.140 City manager—Removal—Reply and hearing. The city manager may, within thirty days from the date of service upon him or her of a copy thereof, reply in writing to the resolution stating the council's intention to remove him or her. In the event no reply is timely filed, the resolution shall upon the thirty-first day from the date of such service, constitute the final resolution removing the manager and his or her services shall terminate upon that day. If a reply shall be timely filed with the city clerk, the council shall fix a time for a public hearing upon the question of the manager's removal and a final resolution removing the manager shall not be adopted until a public hearing has been had. The action of the council in removing the manager shall be final. [2009 c 549 § 3029; 1967 ex.s. c 119 § 35A.13.140.]

35A.13.150 City manager—Substitute. The council may designate a qualified administrative officer of the city or town to perform the duties of manager:

(1) Upon the adoption of the council-manager plan, pending the selection and appointment of a manager; or

(2) Upon the termination of the services of a manager, pending the selection and appointment of a new manager; or

(3) During the absence, disability, or suspension of the manager. [1967 ex.s. c 119 § 35A.13.150.]

35A.13.160 Oath and bond of officers. All provisions of RCW 35A.12.080 relating to oaths and bonds of officers, shall be applicable to code cities organized under this council-manager plan. [1967 ex.s. c 119 § 35A.13.160.]

35A.13.170 Council meetings—Quorum—Rules—Voting. All provisions of RCW 35A.12.110, as now or hereafter amended, and 35A.12.120, relating to council meetings, a quorum for transaction of business, rules and voting at council meetings, shall be applicable to code cities organized under this council-manager plan. [1979 ex.s. c 18 § 26; 1967 ex.s. c 119 § 35A.13.170.]

Additional notes found at www.leg.wa.gov

35A.13.180 Adoption of codes by reference. Ordinances of cities organized under this chapter may adopt codes by reference as provided in RCW 35A.12.140. [1967 ex.s. c 119 § 35A.13.180.]

35A.13.190 Ordinances—Style—Requisites—Veto. The enacting clause of all ordinances shall be as follows: "The city council of the city of do ordain as follows:" No ordinance shall contain more than one subject and that must be clearly expressed in its title.

No ordinance or any section or subsection thereof shall be revised or amended unless the new ordinance sets forth the revised ordinance or the amended section or subsection at full length.

No ordinance shall take effect until five days after the date of its publication unless otherwise provided by statute or charter, except that an ordinance passed by a majority plus one of the whole membership of the council, designated therein as a public emergency ordinance necessary for the protection of public health, public safety, public property or the public peace, may be made effective upon adoption, but such ordinance may not levy taxes, grant, renew, or extend a franchise, or authorize the borrowing of money. [1967 ex.s. c 119 § 35A.13.190.]

35A.13.200 Authentication, recording and publication of ordinances. Ordinances of code cities organized under this chapter shall be authenticated, recorded and published as provided in RCW 35A.12.150 and 35A.12.160. [1967 ex.s. c 119 § 35A.13.200.]

35A.13.210 Audit and allowance of demands against city. RCW 35A.12.170 shall apply to the audit and allowance of demands against the city. [1967 ex.s. c 119 § 35A.13.210.]

35A.13.220 Optional division of city into wards. A code city organized under this chapter may be divided into wards as provided in RCW 35A.12.180. [1967 ex.s. c 119 § 35A.13.220.]

35A.13.230 Powers of council. The council of any code city organized under the council-manager plan provided in this chapter shall have the powers and authority granted to legislative bodies of cities governed by this title as more particularly described in chapter 35A.11 RCW, except insofar as such power and authority is vested in the city manager. [1967 ex.s. c 119 § 35A.13.230.]

Chapter 35A.14 RCW

ANNEXATION BY CODE CITIES

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Annexation of fire protection district territory: RCW 35.02.190 through 35.02.205.

Resolution initiating election may provide for inclusion of annexed area into community municipal corporation: RCW 35.13.015.

Water, sewer, or fire districts, annexation of: Chapter 35.13A RCW.

35A.14.001 Actions subject to review by boundary review board. Actions taken under chapter 35A.14 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 38.]

35A.14.005 Annexations beyond urban growth areas prohibited. No code city located in a county in which urban growth areas have been designated under RCW 36.70A.110 may annex territory beyond an urban growth area. [1990 1st ex.s. c 17 § 31.]

Additional notes found at www.leg.wa.gov

35A.14.010 Authority for annexation. Any portion of a county not incorporated as part of a city or town but lying contiguous to a code city may become a part of the charter code city or noncharter code city by annexation. An area proposed to be annexed to a charter code city or noncharter code city shall be deemed contiguous thereto even though separated by water or tide or shore lands and, upon annexation of such area, any such intervening water and/or tide or shore lands shall become a part of such annexing city. [2009 c 402 § 4; 1967 ex.s. c 119 § 35A.14.010.]

Intent—2009 c 402: See note following RCW 35.13.490.

35A.14.015 Election method—Resolution for election—Contents of resolution. When the legislative body of a charter code city or noncharter code city shall determine that the best interests and general welfare of such city would be served by the annexation of unincorporated territory contiguous to such city, such legislative body may, by resolution,

call for an election to be held to submit to the voters of such territory the proposal for annexation. The resolution shall, subject to RCW 35.02.170, describe the boundaries of the area to be annexed, state the number of voters residing therein as nearly as may be, and shall provide that said city will pay the cost of the annexation election. The resolution may require that there also be submitted to the electorate of the territory sought to be annexed a proposition that all property within the area annexed shall, upon annexation, be assessed and taxed at the same rate and on the same basis as the property of such annexing city is assessed and taxed to pay for all or any portion of the then-outstanding indebtedness of the city to which said area is annexed, which indebtedness has been approved by the voters, contracted for, or incurred prior to, or existing at, the date of annexation. Whenever such city has prepared and filed a proposed zoning regulation for the area to be annexed as provided for in RCW 35A.14.330 and 35A.14.340, the resolution initiating the election may also provide for the simultaneous adoption of the proposed zoning regulation upon approval of annexation by the electorate of the area to be annexed. A certified copy of the resolution shall be filed with the legislative authority of the county in which said territory is located. A certified copy of the resolution shall be filed with the boundary review board as provided for in chapter 36.93 RCW or the county annexation review board established by RCW 35A.14.200, unless such annexation proposal is within the provisions of RCW 35A.14.220. [1986 c 234 § 29; 1979 ex.s. c 124 § 1; 1975 1st ex.s. c 220 § 14; 1971 ex.s. c 251 § 10; 1967 ex.s. c 119 § 35A.14.015.]

Legislative finding, intent—1975 1st ex.s. c 220: See note following RCW 35.02.170.

Additional notes found at www.leg.wa.gov

35A.14.020 Election method—Contents of petition—Certification by auditor—Approval or rejection by legislative body—Costs. When a petition is sufficient under the rules set forth in RCW 35A.01.040, calling for an election to vote upon the annexation of unincorporated territory contiguous to a code city, describing the boundaries of the area proposed to be annexed, stating the number of voters therein as nearly as may be, and signed by qualified electors resident in such territory equal in number to ten percent of the votes cast at the last state general election therein, it shall be filed with the auditor of the county in which all, or the greatest portion, of the territory is located, and a copy of the petition shall be filed with the legislative body of the code city. If the territory is located in more than a single county, the auditor of the county with whom the petition is filed shall act as the lead auditor and transmit a copy of the petition to the auditor of each other county within which a portion of the territory is located. The auditor or auditors shall examine the petition, and the auditor or lead auditor shall certify the sufficiency of the petition to the legislative authority of the code city.

If the signatures on the petition are certified as containing sufficient valid signatures, the city legislative authority shall, by resolution entered within sixty days thereafter, notify the petitioners, either by mail or by publication in the same manner notice of hearing is required by RCW 35A.14.040 to be published, of its approval or rejection of the proposed action. In approving the proposed action, the legis-

lative body may require that there also be submitted to the electorate of the territory to be annexed, a proposition that all property within the area to be annexed shall, upon annexation, be assessed and taxed at the same rate and on the same basis as the property of such annexing city is assessed and taxed to pay for all or any portion of the then-outstanding indebtedness of the city to which said area is annexed, which indebtedness has been approved by the voters, contracted for, or incurred prior to, or existing at, the date of annexation. Only after the legislative body has completed preparation and filing of a proposed zoning regulation for the area to be annexed as provided for in RCW 35A.14.330 and 35A.14.340, the legislative body in approving the proposed action, may require that the proposed zoning regulation be simultaneously adopted upon the approval of annexation by the electorate of the area to be annexed. The approval of the legislative body shall be a condition precedent to further proceedings upon the petition. The costs of conducting the election called for in the petition shall be a charge against the city concerned. The proposition or questions provided for in this section may be submitted to the voter either separately or as a single proposition. [1989 c 351 § 4; 1981 c 332 § 6; 1979 ex.s. c 124 § 2; 1967 ex.s. c 119 § 35A.14.020.]

Additional notes found at www.leg.wa.gov

35A.14.025 Election method—Creation of community municipal corporation. The resolution initiating the annexation of territory under RCW 35A.14.015, and the petition initiating the annexation of territory under RCW 35A.14.020, may provide for the simultaneous creation of a community municipal corporation and election of community councilmembers as provided for in chapter 35.14 RCW, as separate ballot measures or as part of the same ballot measure authorizing the annexation, or for the simultaneous inclusion of the annexed area into a named existing community municipal corporation operating under chapter 35.14 RCW, as separate ballot measures or as part of the same ballot measure authorizing the annexation. If the petition so provides for the creation of a community municipal corporation and election of community councilmembers, the petition shall describe the boundaries of the proposed service area, state the number of voters residing therein as nearly as may be, and pray for the election of community councilmembers by the voters residing in the service area.

The ballots shall contain the words "For annexation and creation of community municipal corporation" and "Against annexation and creation of community municipal corporation," or "For creation of community municipal corporation" and "Against creation of community municipal corporation," as the case may be. Approval of either optional ballot proposition shall be by simple majority vote of the voters voting on the proposition, but the annexation must be authorized before a community municipal corporation is created. [1993 c 75 § 3.]

35A.14.030 Filing of petition as approved by city.

Upon approval of the petition for election by the legislative body of the code city to which such territory is proposed to be annexed, the petition shall be filed with the legislative authority of the county in which such territory is located, along with a statement, in the form required by the city, of the provi-

sions, if any there be, relating to assumption of the portion of the debt that the city requires to be assumed by the owners of property of the area proposed to be annexed, and/or the simultaneous adoption of a proposed zoning regulation for the area. A copy of the petition and the statement, if any, shall also be filed with the boundary review board as provided for in chapter 36.93 RCW or the county annexation review board established by RCW 35A.14.160, unless such proposed annexation is within the provisions of RCW 35A.14.220. [1979 ex.s. c 124 § 3; 1971 ex.s. c 251 § 6; 1967 ex.s. c 119 § 35A.14.030.]

Additional notes found at www.leg.wa.gov

35A.14.040 Election method—Hearing by review board—Notice. Within ten days after receipt of a petition or resolution calling for an election on the question of annexation, the county annexation review board shall meet and, if the proposed annexation complies with the requirements of law, shall fix a date for a hearing thereon, to be held not less than fifteen days nor more than thirty days thereafter, of which hearing the city must give notice by publication at least once a week for two weeks prior thereto in one or more newspapers of general circulation within the city and in one or more newspapers of general circulation within the area proposed to be annexed. The hearing shall be held within the city to which the territory is proposed to be annexed, at a time and place to be designated by the board. Upon the day fixed, the board shall conduct a hearing upon the petition or resolution, at which hearing a representative of the city shall make a brief presentation to the board in explanation of the annexation and the benefits to be derived therefrom, and the petitioners and any resident of the city or the area proposed to be annexed shall be afforded a reasonable opportunity to be heard. The hearing may be adjourned from time to time in the board's discretion, not to exceed thirty days in all from the commencement of the hearing. [1967 ex.s. c 119 § 35A.14.040.]

35A.14.050 Decision of the county annexation review board—Filing—Date for election. After consideration of the proposed annexation as provided in RCW 35A.14.200, the county annexation review board, within thirty days after the final day of hearing, shall take one of the following actions:

- (1) Approval of the proposal as submitted.
- (2) Subject to RCW 35.02.170, modification of the proposal by adjusting boundaries to include or exclude territory; except that any such inclusion of territory shall not increase the total area of territory proposed for annexation by an amount exceeding the original proposal by more than five percent: PROVIDED, That the county annexation review board shall not adjust boundaries to include territory not included in the original proposal without first affording to residents and property owners of the area affected by such adjustment of boundaries an opportunity to be heard as to the proposal.
- (3) Disapproval of the proposal.

The written decision of the county annexation review board shall be filed with the board of county commissioners and with the legislative body of the city concerned. If the annexation proposal is modified by the county annexation

review board, such modification shall be fully set forth in the written decision. If the decision of the boundary review board or the county annexation review board is favorable to the annexation proposal, or the proposal as modified by the review board, the legislative body of the city at its next regular meeting if to be held within thirty days after receipt of the decision of the boundary review board or the county annexation review board, or at a special meeting to be held within that period, shall indicate to the county auditor its preference for a special election date for submission of such annexation proposal, with any modifications made by the review board, to the voters of the territory proposed to be annexed. The special election date that is so indicated shall be one of the dates for special elections provided under *RCW 29.13.020 that is sixty or more days after the date the preference is indicated. The county legislative authority shall call the special election at the special election date so indicated by the city. If the boundary review board or the county annexation review board disapproves the annexation proposal, no further action shall be taken thereon, and no proposal for annexation of the same territory, or substantially the same as determined by the board, shall be initiated or considered for twelve months thereafter. [1989 c 351 § 5; 1986 c 234 § 30; 1975 1st ex.s. c 220 § 15; 1971 ex.s. c 251 § 7; 1967 ex.s. c 119 § 35A.14.050.]

*Reviser's note: RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Legislative finding, intent—1975 1st ex.s. c 220: See note following RCW 35.02.170.

Additional notes found at www.leg.wa.gov

35A.14.070 Election method—Notice of election.

Notice of an annexation election shall particularly describe the boundaries of the area proposed to be annexed, as the same may have been modified by the boundary review board or the county annexation review board, state the objects of the election as prayed in the petition or as stated in the resolution, and require the voters to cast ballots which shall contain the words "For Annexation" or "Against Annexation" or words equivalent thereto, or contain the words "For Annexation and Adoption of Proposed Zoning Regulation", and "Against Annexation and Adoption of Proposed Zoning Regulation", or words equivalent thereto in case the simultaneous adoption of a proposed zoning regulation is proposed, and in case the assumption of all or a portion of indebtedness is proposed, shall contain an appropriate, separate proposition for or against the portion of indebtedness that the city requires to be assumed. The notice shall be posted for at least two weeks prior to the date of election in four public places within the area proposed to be annexed and published at least once a week for two weeks prior to the date of election in a newspaper of general circulation within the limits of the territory proposed to be annexed. Such notice shall be in addition to the notice required by general election law. [1994 c 223 § 38; 1979 ex.s. c 124 § 4; 1967 ex.s. c 119 § 35A.14.070.]

Additional notes found at www.leg.wa.gov

35A.14.080 Election method—Vote required for annexation—Proposition for assumption of indebtedness—Certification. On the Monday next succeeding the annexation election, the county canvassing board shall pro-

ceed to canvass the returns thereof and shall submit the statement of canvass to the county legislative authority.

The proposition for or against annexation or for or against annexation and adoption of the proposed zoning regulation, as the case may be, shall be deemed approved if a majority of the votes cast on that proposition are cast in favor of annexation or in favor of annexation and adoption of the proposed zoning regulation, as the case may be. If a proposition for or against assumption of all or any portion of indebtedness was submitted to the electorate, it shall be deemed approved if a majority of at least three-fifths of the electors of the territory proposed to be annexed voting on such proposition vote in favor thereof, and the number of persons voting on such proposition constitutes not less than forty percent of the total number of votes cast in such territory at the last preceding general election. If either or both propositions were approved by the electors, the county legislative authority shall enter a finding to that effect on its minutes, a certified copy of which shall be forthwith transmitted to and filed with the clerk of the city to which annexation is proposed, together with a certified abstract of the vote showing the whole number who voted at the election, the number of votes cast for annexation and the number cast against annexation or for annexation and adoption of the proposed zoning regulation and the number cast against annexation and adoption of the proposed zoning regulation, as the case may be, and if a proposition for assumption of all or any portion of indebtedness was submitted to the electorate, the abstract shall include the number of votes cast for assumption of indebtedness and the number of votes cast against assumption of indebtedness, together with a statement of the total number of votes cast in such territory at the last preceding general election. [1979 ex.s. c 124 § 5; 1967 ex.s. c 119 § 35A.14.080.]

Additional notes found at www.leg.wa.gov

35A.14.085 Election method—Vote required for annexation with assumption of indebtedness—Without assumption of indebtedness. A code city may cause a proposition authorizing an area to be annexed to the city to be submitted to the qualified voters of the area proposed to be annexed in the same ballot proposition as the question to authorize an assumption of indebtedness. If the measures are combined, the annexation and the assumption of indebtedness shall be authorized only if the proposition is approved by at least three-fifths of the voters of the area proposed to be annexed voting on the proposition, and the number of persons voting on the proposition constitutes not less than forty percent of the total number of votes cast in the area at the last preceding general election.

However, the code city council may adopt a resolution accepting the annexation, without the assumption of indebtedness, where the combined ballot proposition is approved by a simple majority vote of the voters voting on the proposition. [1989 c 84 § 23.]

35A.14.090 Election method—Ordinance providing for annexation, assumption of indebtedness. Upon filing of the certified copy of the finding of the county legislative authority, the clerk shall transmit it to the legislative body of the city at the next regular meeting or as soon thereafter as practicable. If only a proposition relating to annexation or to

annexation and adoption of a proposed zoning regulation was submitted to the voters and such proposition was approved, the legislative body shall adopt an ordinance providing for the annexation or adopt ordinances providing for the annexation and adoption of a proposed zoning regulation, as the case may be. If a proposition for annexation or for annexation and adoption of a proposed zoning regulation, and a proposition for assumption of all or any portion of indebtedness were both submitted, and both were approved, the legislative body shall adopt an ordinance providing for the annexation or for annexation and adoption of the proposed zoning regulation, including the assumption of the portion of indebtedness that was approved by the voters. If both propositions were submitted and only the annexation or the annexation and adoption of the proposed zoning regulation was approved, the legislative body may adopt an ordinance providing for the annexation or adopt ordinances providing for the annexation and adoption of the proposed zoning regulation, as the case may be, or the legislative body may refuse to annex when a proposal for assumption of the portion of indebtedness has been disapproved by the voters. [1979 ex.s. c 124 § 6; 1967 ex.s. c 119 § 35A.14.090.]

Additional notes found at www.leg.wa.gov

35A.14.100 Election method—Effective date of annexation. Upon the date fixed in the ordinance of annexation, the area annexed shall become a part of the city. Upon the date fixed in the ordinances of annexation and adoption of the proposed zoning regulation, the area annexed shall become a part of the city, and property in the annexed area shall be subject to the proposed zoning regulation, as prepared and filed as provided for in RCW 35A.14.330 and 35A.14.340. All property within the territory hereafter annexed shall, if the proposition approved by the people so provides, be assessed and taxed at the same rate and on the same basis as the property of such annexing city is assessed and taxed to pay for the portion of indebtedness of the city that was approved by the voters. [1979 ex.s. c 124 § 7; 1967 ex.s. c 119 § 35A.14.100.]

Additional notes found at www.leg.wa.gov

35A.14.110 Election method is alternative. The method of annexation provided for in RCW 35A.14.015 through 35A.14.100 is an alternative method and is additional to the other methods provided for in this chapter. [1967 ex.s. c 119 § 35A.14.110.]

35A.14.120 Direct petition method—Notice to legislative body—Meeting—Assumption of indebtedness—Proposed zoning regulation—Contents of petition. Proceedings for initiating annexation of unincorporated territory to a charter code city or noncharter code city may be commenced by the filing of a petition of property owners of the territory proposed to be annexed, in the following manner. This method of annexation shall be alternative to other methods provided in this chapter. Prior to the circulation of a petition for annexation, the initiating party or parties, who shall be the owners of not less than ten percent in value, according to the assessed valuation for general taxation of the property for which annexation is sought, shall notify the legislative body of the code city in writing of their intention to com-

mence annexation proceedings. The legislative body shall set a date, not later than sixty days after the filing of the request, for a meeting with the initiating parties to determine whether the code city will accept, reject, or geographically modify the proposed annexation, whether it shall require the simultaneous adoption of a proposed zoning regulation, if such a proposal has been prepared and filed for the area to be annexed as provided for in RCW 35A.14.330 and 35A.14.340, and whether it shall require the assumption of all or of any portion of existing city indebtedness by the area to be annexed. If the legislative body requires the assumption of all or of any portion of indebtedness and/or the adoption of a proposed zoning regulation, it shall record this action in its minutes and the petition for annexation shall be so drawn as to clearly indicate these facts. Approval by the legislative body shall be a condition precedent to circulation of the petition. There shall be no appeal from the decision of the legislative body. A petition for annexation of an area contiguous to a code city may be filed with the legislative body of the municipality to which annexation is desired. It must be signed by the owners, as defined by RCW 35A.01.040(9) (a) through (d), of not less than sixty percent in value, according to the assessed valuation for general taxation of the property for which annexation is petitioned: PROVIDED, That a petition for annexation of an area having at least eighty percent of the boundaries of such area contiguous with a portion of the boundaries of the code city, not including that portion of the boundary of the area proposed to be annexed that is coterminous with a portion of the boundary between two counties in this state, need be signed by only the owners of not less than fifty percent in value according to the assessed valuation for general taxation of the property for which the annexation is petitioned. Such petition shall set forth a description of the property according to government legal subdivisions or legal plats and shall be accompanied by a map which outlines the boundaries of the property sought to be annexed. If the legislative body has required the assumption of all or any portion of city indebtedness by the area annexed or the adoption of a proposed zoning regulation, these facts, together with a quotation of the minute entry of such requirement, or requirements, shall also be set forth in the petition. [1989 c 351 § 6; 1979 ex.s. c 124 § 8; 1967 ex.s. c 119 § 35A.14.120.]

Sufficiency of petition in code city: RCW 35A.01.040.

Additional notes found at www.leg.wa.gov

35A.14.130 Direct petition method—Notice of hearing. Whenever such a petition for annexation is filed with the legislative body of a code city, which petition meets the requirements herein specified and is sufficient according to the rules set forth in RCW 35A.01.040, the legislative body may entertain the same, fix a date for a public hearing thereon and cause notice of the hearing to be published in one or more issues of a newspaper of general circulation in the city. The notice shall also be posted in three public places within the territory proposed for annexation, and shall specify the time and place of hearing and invite interested persons to appear and voice approval or disapproval of the annexation. [1967 ex.s. c 119 § 35A.14.130.]

35A.14.140 Direct petition method—Ordinance providing for annexation. Following the hearing, if the legisla-

tive body determines to effect the annexation, they shall do so by ordinance. Subject to RCW 35.02.170, the ordinance may annex all or any portion of the proposed area but may not include in the annexation any property not described in the petition. Upon passage of the annexation ordinance a certified copy shall be filed with the board of county commissioners of the county in which the annexed property is located. [1986 c 234 § 31; 1975 1st ex.s. c 220 § 16; 1967 ex.s. c 119 § 35A.14.140.]

Legislative finding, intent—1975 1st ex.s. c 220: See note following RCW 35.02.170.

35A.14.150 Direct petition method—Effective date of annexation. Upon the date fixed in the ordinance of annexation the area annexed shall become part of the city. All property within the territory hereafter annexed shall, if the annexation petition so provided, be assessed and taxed at the same rate and on the same basis as the property of such annexing code city is assessed and taxed to pay for the portion of any then-outstanding indebtedness of the city to which said area is annexed, which indebtedness has been approved by the voters, contracted for, or incurred prior to, or existing at, the date of annexation and that the city has required to be assumed. If the annexation petition so provided, all property in the annexed area shall be subject to and a part of the proposed zoning regulation as prepared and filed as provided for in RCW 35A.14.330 and 35A.14.340. [1979 ex.s. c 124 § 9; 1967 ex.s. c 119 § 35A.14.150.]

Additional notes found at www.leg.wa.gov

35A.14.160 Annexation review board—Composition. There is hereby established in each county of the state, other than counties having a boundary review board as provided for in chapter 189, Laws of 1967 [chapter 36.93 RCW], a board to be known as the "annexation review board for the county of (naming the county)", which shall be charged with the duty of reviewing proposals for annexation of unincorporated territory to charter code cities and noncharter code cities within its respective county; except that proposals within the provisions of RCW 35A.14.220 shall not be subject to the jurisdiction of such board.

In all counties in which a boundary review board is established pursuant to chapter 189, Laws of 1967 [chapter 36.93 RCW] review of proposals for annexation of unincorporated territory to charter code cities and noncharter code cities within such counties shall be subject to chapter 189, Laws of 1967 [chapter 36.93 RCW]. Whenever any county establishes a boundary review board pursuant to chapter 189, Laws of 1967 [chapter 36.93 RCW] the provisions of this act relating to annexation review boards shall not be applicable.

Except as provided above in this section, whenever one or more cities of a county shall have elected to be governed by this title by becoming a charter code city or noncharter code city, the governor shall, within forty-five days thereafter, appoint an annexation review board for such county consisting of five members appointed in the following manner:

Two members shall be selected independently by the governor. Three members shall be selected by the governor from the following sources: (1) One member shall be appointed from nominees of the individual members of the board of county commissioners; (2) one member shall be

appointed from nominees of the individual mayors of charter code cities within such county; (3) one member shall be appointed from nominees of the individual mayors of non-charter code cities within such county.

Each source shall nominate at least two persons for an available position. In the event there are less than two nominees for any position, the governor may appoint the member for that position independently. If, at the time of appointment, there are within the county no cities of one of the classes named above as a nominating source, a position which would otherwise have been filled by nomination from such source shall be filled by independent appointment of the governor.

In making appointments independently and in making appointments from among nominees, the governor shall strive to appoint persons familiar with municipal government and administration by experience and/or training. [1971 ex.s. c 251 § 8; 1967 ex.s. c 119 § 35A.14.160.]

Additional notes found at www.leg.wa.gov

35A.14.170 Time for filing nominations—Vacancies. Upon the initial formation of a county annexation review board the governor shall give written notice of such formation to all the nominating sources designated therein and nominations must be filed with the office of the governor within fifteen days after receipt of such notice. Nominations to fill vacancies caused by expiration of terms must be filed at least thirty days preceding the expiration of the terms. When vacancies occur in the membership of the board, the governor shall solicit nominations from the appropriate source and if none are filed within fifteen days thereafter, the governor shall fill the vacancy by an independent appointment. [1967 ex.s. c 119 § 35A.14.170.]

35A.14.180 Terms of members. The members of the annexation review board shall be appointed for five year terms. Upon the initial formation of a board, one member appointed by the governor independently shall be appointed for a four year term, the member appointed from among nominees of the board of county commissioners shall be appointed for a three year term, the member appointed from among nominees of the mayors of noncharter code cities shall be appointed for a three year term, and the remaining members shall be appointed for five year terms. Thereafter board members shall be appointed for five year terms as the terms of their predecessors expire. Members shall be eligible for reappointment to the board for successive terms. [1967 ex.s. c 119 § 35A.14.180.]

35A.14.190 Organization of annexation review board—Rules—Journal—Authority. The members of each annexation review board shall elect from among the members a chair and a vice chair, and may employ a non-member as chief clerk, who shall be the secretary of the board. The board shall determine its own rules and order of business, shall provide by resolution for the time and manner of holding regular or special meetings, and shall keep a journal of its proceedings which shall be a public record. A majority of all the members shall constitute a quorum for the transaction of business.

The chief clerk of the board, the chair, or the vice chair shall have the power to administer oaths and affirmations,

certify to all official acts, issue subpoenas to any public officer or employee ordering him or her to testify before the board and produce public records, papers, books or documents. The chief clerk, the chair or the vice chair may invoke the aid of any court of competent jurisdiction to carry out such powers.

The planning departments of the county, other counties, and any city, and any state or regional planning agency shall furnish such information to the board at its request as may be reasonably necessary for the performance of its duties.

At the request of the board, the state attorney general shall provide counsel for the board. [2009 c 549 § 3030; 1967 ex.s. c 119 § 35A.14.190.]

35A.14.200 Determination by county annexation review board—Factors considered—Filing of findings and decision. The jurisdiction of the county annexation review board shall be invoked upon the filing with the board of a resolution for an annexation election as provided in RCW 35A.14.015, or of a petition for an annexation election as provided in RCW 35A.14.030, and the board shall proceed to hold a hearing, upon notice, all as provided in RCW 35A.14.040. A verbatim record shall be made of all testimony presented at the hearing and upon request and payment of the reasonable costs thereof, a copy of the transcript of such testimony shall be provided to any person or governmental unit. The board shall make and file its decision, all as provided in RCW 35A.14.050, insofar as said section is applicable to the matter before the board. Dissenting members of the board shall have the right to have their written dissents included as part of the decision. In reaching a decision on an annexation proposal, the county annexation review board shall consider the factors affecting such proposal, which shall include but not be limited to the following:

(1) The immediate and prospective population of the area proposed to be annexed, the configuration of the area, land use and land uses, comprehensive use plans and zoning, per capita assessed valuation, topography, natural boundaries and drainage basins, the likelihood of significant growth in the area and in adjacent incorporated and unincorporated areas during the next ten years, location and coordination of community facilities and services; and

(2) The need for municipal services and the available municipal services, effect of ordinances and governmental codes, regulations and resolutions on existing uses, present cost and adequacy of governmental services and controls, the probable future needs for such services and controls, the probable effect of the annexation proposal or alternatives on cost and adequacy of services and controls in area and adjacent area, the effect on the finances, debt structure, and contractual obligations and rights of all affected governmental units; and

(3) The effect of the annexation proposal or alternatives on adjacent areas, on mutual economic and social interests, and on the local governmental structure of the county.

The county annexation review board shall determine whether the proposed annexation would be in the public interest and for the public welfare. The decision of the board shall be accompanied by the findings of the board. Such findings need not include specific data on all the factors listed in this section, but shall indicate that all such factors were con-

sidered. [1971 ex.s. c 251 § 11; 1967 ex.s. c 119 § 35A.14.200.]

Additional notes found at www.leg.wa.gov

35A.14.210 Court review of decisions of the county annexation review board. Decisions of the county annexation review board shall be final unless within ten days from the date of said action a governmental unit affected by the decision or any person owning real property in or residing in the area proposed to be annexed files in the superior court a notice of appeal. The filing of such notice of appeal within such time limit shall stay the effective date of the decision of the board until such time as the appeal shall have been adjudicated or withdrawn. On appeal the superior court shall not take any evidence other than that contained in the record of the hearing before the board. The superior court may affirm the decision of the county annexation review board or remand the case for further proceedings; or the court may reverse the decision and remand if it finds that substantial rights have been prejudiced because the findings, conclusions, or decision of the board are:

- (1) In violation of constitutional provisions; or
- (2) In excess of the statutory authority or jurisdiction of the board; or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error of law; or
- (5) Unsupported by material and substantial evidence in view of the entire record as submitted; or
- (6) Arbitrary or capricious. [1971 ex.s. c 251 § 12; 1967 ex.s. c 119 § 35A.14.210.]

Additional notes found at www.leg.wa.gov

35A.14.220 When review procedure may be dispensed with. Annexations under the provisions of RCW 35A.14.295, 35A.14.297, 35A.14.300, and 35A.14.310 shall not be subject to review by the annexation review board: PROVIDED, That in any county in which a boundary review board is established under chapter 36.93 RCW all annexations shall be subject to review except as provided for in RCW 36.93.110. When the area proposed for annexation in a petition or resolution, initiated and filed under any of the methods of initiating annexation authorized by this chapter, is less than fifty acres or less than two million dollars in assessed valuation, review procedures shall not be required as to such annexation proposal, except as provided in chapter 36.93 RCW in those counties with a review board established pursuant to chapter 36.93 RCW: PROVIDED, That when an annexation proposal is initiated by the direct petition method authorized by RCW 35A.14.120, review procedures shall not be required without regard to acreage or assessed valuation, except as provided in chapter 36.93 RCW in those counties with a boundary review board established pursuant to chapter 36.93 RCW. [1979 ex.s. c 18 § 27; 1973 1st ex.s. c 195 § 26; 1967 ex.s. c 119 § 35A.14.220.]

Additional notes found at www.leg.wa.gov

35A.14.231 Territory subject to annexation proposal—When annexation by another city or incorporation allowed. After a petition proposing an annexation by a code city has been filed with the city or the city legislative authority, or after a resolution proposing the annexation by a

code city has been adopted by the city legislative authority, no territory included in the proposed annexation may be annexed by another city or town or incorporated into a city or town unless: (1) The boundary review board or county annexation review board created under RCW 35A.14.160 modifies the boundaries of the proposed annexation and removes the territory; (2) the boundary review board or county annexation review board created under RCW 35A.14.160 rejects the proposed annexation; or (3) the city legislative authority rejects the proposed annexation or voters defeat the ballot proposition authorizing the annexation. [1994 c 216 § 8.]

Additional notes found at www.leg.wa.gov

35A.14.295 Annexation of unincorporated island of territory within code city—Resolution—Notice of hearing. (1) The legislative body of a code city may resolve to annex territory to the city if there is within the city, unincorporated territory:

(a) Containing less than one hundred seventy-five acres and having all of the boundaries of such area contiguous to the code city; or

(b) Of any size containing residential property owners and having at least eighty percent of the boundaries of such area contiguous to the city. Territory annexed under this subsection (1)(b) must be within the same county and within the same urban growth area designated under RCW 36.70A.110, and the city must plan under chapter 36.70A RCW.

(2) The resolution shall describe the boundaries of the area to be annexed, state the number of voters residing therein as nearly as may be, and set a date for a public hearing on such resolution for annexation. Notice of the hearing shall be given by publication of the resolution at least once a week for two weeks prior to the date of the hearing, in one or more newspapers of general circulation within the code city and one or more newspapers of general circulation within the area to be annexed.

(3) For purposes of subsection (1)(b) of this section, territory bounded by a river, lake, or other body of water is considered contiguous to a city that is also bounded by the same river, lake, or other body of water. [2013 2nd sp.s. c 27 § 1; 2013 c 333 § 1; 1997 c 429 § 36; 1967 ex.s. c 119 § 35A.14.295.]

Effective date—2013 2nd sp.s. c 27: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 28, 2013." [2013 2nd sp.s. c 27 § 4.]

Additional notes found at www.leg.wa.gov

35A.14.297 Ordinance providing for annexation of unincorporated island of territory—Referendum. On the date set for hearing as provided in RCW 35A.14.295, residents or property owners of the area included in the resolution for annexation shall be afforded an opportunity to be heard. The legislative body may provide by ordinance for annexation of the territory described in the resolution, but the effective date of the ordinance shall be not less than forty-five days after the passage thereof. The legislative body shall cause notice of the proposed effective date of the annexation, together with a description of the property to be annexed, to be published at least once each week for two weeks subse-

quent to passage of the ordinance, in one or more newspapers of general circulation within the city and in one or more newspapers of general circulation within the area to be annexed. If the annexation ordinance provides for assumption of indebtedness or adoption of a proposed zoning regulation, the notice shall include a statement of such requirements. Such annexation ordinance shall be subject to referendum for forty-five days after the passage thereof. Upon the filing of a timely and sufficient referendum petition as provided in RCW 35A.14.299 below, a referendum election shall be held as provided in RCW 35A.14.299, and the annexation shall be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition thereto. After the expiration of the forty-fifth day from, but excluding the date of passage of the annexation ordinance, if no timely and sufficient referendum petition has been filed, as provided by RCW 35A.14.299 below, the area annexed shall become a part of the code city upon the date fixed in the ordinance of annexation. [1967 ex.s. c 119 § 35A.14.297.]

35A.14.299 Annexation of unincorporated island of territory within code city—Referendum—Effective date if no referendum. Such annexation ordinance as provided for in RCW 35A.14.297 shall be subject to referendum for forty-five days after the passage thereof. Upon the filing of a timely and sufficient referendum petition with the legislative body, signed by qualified electors in number equal to not less than ten percent of the votes cast in the last general state election in the area to be annexed, the question of annexation shall be submitted to the voters of such area in a general election if one is to be held within ninety days or at a special election called for that purpose according to RCW 29A.04.330. Notice of such election shall be given as provided in RCW 35A.14.070 and the election shall be conducted as provided in RCW 35A.29.151. The annexation shall be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition thereto.

After the expiration of the forty-fifth day from but excluding the date of passage of the annexation ordinance, if no timely and sufficient referendum petition has been filed, the area annexed shall become a part of the code city upon the date fixed in the ordinance of annexation. From and after such date, if the ordinance so provided, property in the annexed area shall be subject to the proposed zoning regulation prepared and filed for such area as provided in RCW 35A.14.330 and 35A.14.340. If the ordinance so provided, all property within the area annexed shall be assessed and taxed at the same rate and on the same basis as the property of such annexing code city is assessed and taxed to pay for any then outstanding indebtedness of such city contracted prior to, or existing at, the date of annexation. [2006 c 344 § 25; 1967 ex.s. c 119 § 35A.14.299.]

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

35A.14.300 Annexation for municipal purposes. Legislative bodies of code cities may by a majority vote annex territory outside the limits of such city whether contiguous or noncontiguous for any municipal purpose when such territory is owned by the city. [1981 c 332 § 7; 1967 ex.s. c 119 § 35A.14.300.]

Additional notes found at www.leg.wa.gov

35A.14.310 Annexation of federal areas. A code city may annex an unincorporated area contiguous to the city that is owned by the federal government by adopting an ordinance providing for the annexation and which ordinance either acknowledges an agreement of the annexation by the government of the United States, or accepts a gift, grant, or lease from the government of the United States of the right to occupy, control, improve it or sublet it for commercial, manufacturing, or industrial purposes: PROVIDED, That this right of annexation shall not apply to any territory more than four miles from the corporate limits existing before such annexation. Whenever a code city proposes to annex territory under this section, the city shall provide written notice of the proposed annexation to the legislative authority of the county within which such territory is located. The notice shall be provided at least thirty days before the city proposes to adopt the annexation ordinance. The city shall not adopt the annexation ordinance, and the annexation shall not occur under this section, if within twenty-five days of receipt of the notice, the county legislative authority adopts a resolution opposing the annexation, which resolution makes a finding that the proposed annexation will have an adverse fiscal impact on the county or road district. [1985 c 105 § 1; 1967 ex.s. c 119 § 35A.14.310.]

35A.14.320 Annexation of federal areas—Provisions of ordinance—Authority over annexed territory. In the ordinance annexing territory pursuant to a gift, grant, or lease from the government of the United States, a code city may include such tide and shorelands as may be necessary or convenient for the use thereof, and may include in the ordinance an acceptance of the terms and conditions attached to the gift, grant, or lease. A code city may cause territory annexed pursuant to a gift, grant, or lease of the government of the United States to be surveyed, subdivided and platted into lots, blocks, or tracts and lay out, reserve for public use, and improve streets, roads, alleys, slips, and other public places. It may grant or sublet any lot, block, or tract therein for commercial, manufacturing, or industrial purposes and reserve, receive and collect rents therefrom. It may expend the rents received therefrom in making and maintaining public improvements therein, and if any surplus remains at the end of any fiscal year, may transfer it to the city's current expense fund. [1967 ex.s. c 119 § 35A.14.320.]

35A.14.330 Proposed zoning regulation—Purposes of regulations and restrictions. The legislative body of any code city acting through a planning agency created pursuant to chapter 35A.63 RCW, or pursuant to its granted powers, may prepare a proposed zoning regulation to become effective upon the annexation of any area which might reasonably be expected to be annexed by the code city at any future time. Such proposed zoning regulation, to the extent deemed reasonably necessary by the legislative body to be in the interest of health, safety, morals and the general welfare may provide, among other things, for:

(1) The regulation and restriction within the area to be annexed of the location and the use of buildings, structures and land for residence, trade, industrial and other purposes;

the height, number of stories, size, construction and design of buildings and other structures; the size of yards, courts and other open spaces on the lot or tract; the density of population; the set-back of buildings and structures along highways, parks or public water frontages; and the subdivision and development of land;

(2) The division of the area to be annexed into districts or zones of any size or shape, and within such districts or zones regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land;

(3) The appointment of a board of adjustment, to make, in appropriate cases and subject to appropriate conditions and safeguards established by ordinance, special exceptions in harmony with the general purposes and intent of the proposed zoning regulation; and

(4) The time interval following an annexation during which the ordinance or resolution adopting any such proposed regulation, or any part thereof, must remain in effect before it may be amended, supplemented or modified by subsequent ordinance or resolution adopted by the annexing city or town.

All such regulations and restrictions shall be designed, among other things, to encourage the most appropriate use of land throughout the area to be annexed; to lessen traffic congestion and accidents; to secure safety from fire; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to promote a coordinated development of the unbuilt areas; to encourage the formation of neighborhood or community units; to secure an appropriate allotment of land area in new developments for all the requirements of community life; to conserve and restore natural beauty and other natural resources; to facilitate the adequate provision of transportation, water, sewerage and other public uses and requirements. [1967 ex.s. c 119 § 35A.14.330.]

35A.14.340 Notice and hearing—Filings and recordings. The legislative body of the code city shall hold two or more public hearings, to be held at least thirty days apart, upon the proposed zoning regulation, giving notice of the time and place thereof by publication in a newspaper of general circulation in the annexing city and the area to be annexed. A copy of the ordinance or resolution adopting or embodying such proposed zoning regulation or any part thereof or any amendment thereto, duly certified as a true copy by the clerk of the annexing city, shall be filed with the county auditor. A like certified copy of any map or plat referred to or adopted by the ordinance or resolution shall likewise be filed with the county auditor. The auditor shall record the ordinance or resolution and keep on file the map or plat. [1967 ex.s. c 119 § 35A.14.340.]

Annexation of water, sewer, and fire districts: Chapter 35.13A RCW.

35A.14.380 Ownership of assets of fire protection district—Assumption of responsibility of fire protection—When at least sixty percent of assessed valuation is annexed or incorporated in code city. If a portion of a fire protection district including at least sixty percent of the assessed valuation of the real property of the district is annexed to or incorporated into a code city, ownership of all of the assets of the district shall be vested in the code city,

upon payment in cash, properties or contracts for fire protection services to the district within one year, of a percentage of the value of said assets equal to the percentage of the value of the real property in the entire district remaining outside the incorporated or annexed area.

The fire protection district may elect, by a vote of a majority of the persons residing outside the annexed area who vote on the proposition, to require the annexing code city to assume responsibility for the provision of fire protection, and for the operation and maintenance of the district's property, facilities, and equipment throughout the district and to pay the code city a reasonable fee for such fire protection, operation, and maintenance. [1981 c 332 § 8; 1967 ex.s. c 119 § 35A.14.380.]

Additional notes found at www.leg.wa.gov

35A.14.400 Ownership of assets of fire protection district—When less than sixty percent of assessed valuation is annexed or incorporated in code city. If a portion of a fire protection district including less than sixty percent of the assessed value of the real property of the district is annexed to or incorporated into a code city, the ownership of all assets of the district shall remain in the district and the district shall pay to the code city within one year or within such period of time as the district continues to collect taxes in such incorporated or annexed areas, in cash, properties or contracts for fire protection services, a percentage of the value of said assets equal to the percentage of the value of the real property in the entire district lying within the area so incorporated or annexed: PROVIDED, That if less than five percent of the area of the district is affected, no payment shall be made to the code city except as provided in RCW 35.02.205. The fire protection district shall provide fire protection to the incorporated or annexed area for such period as the district continues to collect taxes levied in such annexed or incorporated area. [1989 c 267 § 2; 1967 ex.s. c 119 § 35A.14.400.]

35A.14.410 When right-of-way may be included—Use of right-of-way line as corporate boundary. The boundaries of a code city arising from an annexation of territory shall not include a portion of the right-of-way of any public street, road, or highway except where the boundary runs from one edge of the right-of-way to the other edge of the right-of-way. However, the right-of-way line of any public street, road, or highway, or any segment thereof, may be used to define a part of a corporate boundary in an annexation proceeding. [1989 c 84 § 9.]

35A.14.420 Alternative direct petition method—Notice to legislative body—Meeting—Assumption of indebtedness—Proposed zoning regulation—Contents of petition. (1) Proceedings for initiating annexation of unincorporated territory to a charter code city or noncharter code city may be commenced by the filing of a petition of property owners of the territory proposed to be annexed, in the following manner which is alternative to other methods provided in this chapter:

(a) Before the circulation of a petition for annexation, the initiating party or parties, who shall be the owners of not less than ten percent of the acreage for which annexation is sought, shall notify the legislative body of the code city in

writing of their intention to commence annexation proceedings;

(b) The legislative body shall set a date, not later than sixty days after the filing of the request, for a meeting with the initiating parties to determine whether the code city will accept, reject, or geographically modify the proposed annexation, whether it shall require the simultaneous adoption of a proposed zoning regulation, if such a proposal has been prepared and filed for the area to be annexed as provided for in RCW 35A.14.330 and 35A.14.340, and whether it shall require the assumption of all or any portion of existing city indebtedness by the area to be annexed;

(c) If the legislative body requires the assumption of all or any portion of indebtedness and/or the adoption of a proposed zoning regulation, it shall record this action in its minutes and the petition for annexation shall be so drawn as to clearly indicate these facts;

(d) Approval by the legislative body shall be a condition precedent to circulation of the petition; and

(e) There shall be no appeal from the decision of the legislative body.

(2) A petition for annexation of an area contiguous to a code city may be filed with the legislative body of the municipality to which annexation is desired. The petition for annexation must be signed by the owners of a majority of the acreage for which annexation is petitioned and a majority of the registered voters residing in the area for which annexation is petitioned.

(3) If no residents exist within the area proposed for annexation, the petition must be signed by the owners of a majority of the acreage for which annexation is petitioned.

(4) The petition shall set forth a legal description of the property proposed to be annexed that complies with RCW 35A.14.410, and shall be accompanied by a drawing that outlines the boundaries of the property sought to be annexed. If the legislative body has required the assumption of all or any portion of city indebtedness by the area annexed or the adoption of a proposed zoning regulation, these facts, together with a quotation of the minute entry of such requirement, or requirements, shall also be set forth in the petition. [2003 c 331 § 10.]

Intent—Severability—Effective date—2003 c 331: See notes following RCW 35.13.410.

35A.14.430 Alternative direct petition method—Notice of hearing. When a petition for annexation is filed with the legislative body of a code city, that meets the requirements of RCW 35A.01.040 and 35A.14.420, the legislative body may entertain the same, fix a date for a public hearing thereon and cause notice of the hearing to be published in one or more issues of a newspaper of general circulation in the city. The notice shall also be posted in three public places within the territory proposed for annexation, and shall specify the time and place of hearing and invite interested persons to appear and voice approval or disapproval of the annexation. [2003 c 331 § 11.]

Intent—Severability—Effective date—2003 c 331: See notes following RCW 35.13.410.

35A.14.440 Alternative direct petition method—Ordinance providing for annexation. Following the hear-

ing, if the legislative body determines to effect the annexation, they shall do so by ordinance. Subject to RCW 35A.14.410, the ordinance may annex all or any portion of the proposed area but may not include in the annexation any property not described in the petition. Upon passage of the annexation ordinance, a certified copy shall be filed with the board of county commissioners of the county in which the annexed property is located. [2003 c 331 § 12.]

Intent—Severability—Effective date—2003 c 331: See notes following RCW 35.13.410.

35A.14.450 Alternative direct petition method—Effective date of annexation. Upon the date fixed in the ordinance of annexation, the area annexed shall become part of the city. All property within the annexed territory shall, if the annexation petition so provided, be assessed and taxed at the same rate and on the same basis as the property of the annexing code city is assessed and taxed to pay for the portion of any then-outstanding indebtedness of the city to which the area is annexed, which indebtedness has been approved by the voters, contracted for, or incurred before, or existing at, the date of annexation and that the city has required to be assumed. If the annexation petition so provided, all property in the annexed area shall be subject to and a part of the proposed zoning regulation as prepared and filed as provided for in RCW 35A.14.330 and 35A.14.340. [2003 c 331 § 13.]

Intent—Severability—Effective date—2003 c 331: See notes following RCW 35.13.410.

35A.14.460 Annexation of territory within urban growth areas—Interlocal agreement—Public hearing—Ordinance providing for annexation. (1) The legislative body of a county or code city planning under chapter 36.70A RCW and subject to the requirements of RCW 36.70A.215 may initiate an annexation process for unincorporated territory by adopting a resolution commencing negotiations for an interlocal agreement as provided in chapter 39.34 RCW between a county and any code city within the county. The territory proposed for annexation must meet the following criteria: (a) Be within the code city urban growth area designated under RCW 36.70A.110, and (b) at least sixty percent of the boundaries of the territory proposed for annexation must be contiguous to the annexing code city or one or more cities or towns.

(2) If the territory proposed for annexation has been designated in an adopted county comprehensive plan as part of an urban growth area, urban service area, or potential annexation area for a specific city, or if the urban growth area territory proposed for annexation has been designated in a written agreement between a city and a county for annexation to a specific city or town, the designation or designations shall receive full consideration before a city or county may initiate the annexation process provided for in RCW 35A.14.470.

(3) The agreement shall describe the boundaries of the territory to be annexed. A public hearing shall be held by each legislative body, separately or jointly, before the agreement is executed. Each legislative body holding a public hearing shall, separately or jointly, publish the agreement at least once a week for two weeks before the date of the hearing in one or more newspapers of general circulation within the territory proposed for annexation.

(4) Following adoption and execution of the agreement by both legislative bodies, the city legislative body shall adopt an ordinance providing for the annexation of the territory described in the agreement. The legislative body shall cause notice of the proposed effective date of the annexation, together with a description of the property to be annexed, to be published at least once each week for two weeks subsequent to passage of the ordinance, in one or more newspapers of general circulation within the city and in one or more newspapers of general circulation within the territory to be annexed. If the annexation ordinance provides for assumption of indebtedness or adoption of a proposed zoning regulation, the notice shall include a statement of the requirements. Any territory to be annexed through an ordinance adopted under this section is annexed and becomes a part of the city upon the date fixed in the ordinance of annexation, which date may not be fewer than forty-five days after adoption of the ordinance. [2003 c 299 § 3.]

35A.14.470 Annexation of territory within urban growth areas—County may initiate process with other cities or towns—Interlocal agreement—Public hearing—Ordinance—Referendum—Election, when necessary. (1) The legislative body of any county planning under chapter 36.70A RCW and subject to the requirements of RCW 36.70A.215 may initiate an annexation process with the legislative body of any other cities or towns that are contiguous to the territory proposed for annexation in RCW 35A.14.460 if:

(a) The county legislative body initiated an annexation process as provided in RCW 35A.14.460; and

(b) The affected city legislative body adopted a responsive resolution rejecting the proposed annexation or declined to create the requested interlocal agreement with the county; or

(c) More than one hundred eighty days have passed since adoption of a county resolution as provided for in RCW 35A.14.460 and the parties have not adopted or executed an interlocal agreement providing for the annexation of unincorporated territory. The legislative body for either the county or an affected city may, however, pass a resolution extending the negotiation period for one or more six-month periods if a public hearing is held and findings of fact are made prior to each extension.

(2) Any county initiating the process provided for in subsection (1) of this section must do so by adopting a resolution commencing negotiations for an interlocal agreement as provided in chapter 39.34 RCW between the county and any city or town within the county. The annexation area must be within an urban growth area designated under RCW 36.70A.110 and at least sixty percent of the boundaries of the territory to be annexed must be contiguous to one or more cities or towns.

(3) The agreement shall describe the boundaries of the territory to be annexed. A public hearing shall be held by each legislative body, separately or jointly, before the agreement is executed. Each legislative body holding a public hearing shall, separately or jointly, publish the agreement at least once a week for two weeks before the date of the hearing in one or more newspapers of general circulation within the territory proposed for annexation.

(4) Following adoption and execution of the agreement by both legislative bodies, the city or town legislative body shall adopt an ordinance providing for the annexation. The legislative body shall cause notice of the proposed effective date of the annexation, together with a description of the property to be annexed, to be published at least once each week for two weeks subsequent to passage of the ordinance, in one or more newspapers of general circulation within the city and in one or more newspapers of general circulation within the territory to be annexed. If the annexation ordinance provides for assumption of indebtedness or adoption of a proposed zoning regulation, the notice shall include a statement of the requirements. Any area to be annexed through an ordinance adopted under this section is annexed and becomes a part of the city or town upon the date fixed in the ordinance of annexation, which date may not be less than forty-five days after adoption of the ordinance.

(5) The annexation ordinances provided for in RCW 35A.14.460(4) and subsection (4) of this section are subject to referendum for forty-five days after passage. Upon the filing of a timely and sufficient referendum petition with the legislative body, signed by registered voters in number equal to not less than fifteen percent of the votes cast in the last general state election in the area to be annexed, the question of annexation shall be submitted to the voters of the area in a general election if one is to be held within ninety days or at a special election called for that purpose according to RCW 29A.04.330. Notice of the election shall be given as provided in RCW 35A.14.070 and the election shall be conducted as provided in the general election law. The annexation shall be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition thereto.

After the expiration of the forty-fifth day from but excluding the date of passage of the annexation ordinance, if no timely and sufficient referendum petition has been filed, the area annexed shall become a part of the city or town upon the date fixed in the ordinance of annexation.

(6) If more than one city or town adopts interlocal agreements providing for annexation of the same unincorporated territory as provided by this section, an election shall be held in the area to be annexed pursuant to RCW 35A.14.070. In addition to the provisions of RCW 35A.14.070, the ballot shall also contain a separate proposition allowing voters to cast votes in favor of annexation to any one city or town participating in an interlocal agreement as provided by this section. If a majority of voters voting on the proposition vote against annexation, the proposition is defeated. If, however, a majority of voters voting in the election approve annexation, the area shall be annexed to the city or town receiving the highest number of votes among those cast in favor of annexation.

(7) Costs for an election required under subsection (6) of this section shall be borne by the county. [2006 c 344 § 26; 2003 c 299 § 4.]

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

35A.14.475 Annexation of territory within regional transit authorities. When territory is annexed under this chapter to a code city located within the boundaries of a regional transit authority, the territory is simultaneously

included within the boundaries of the authority and subject from the effective date of the annexation to all taxes and other liabilities and obligations applicable within the code city with respect to the authority. The code city must notify the authority of the annexation. [2010 c 19 § 2.]

35A.14.480 Annexation of territory served by fire districts—Interlocal agreement process. (1)(a) An annexation by a code city proposing to annex territory served by one or more fire protection districts may be accomplished by ordinance after entering into an interlocal agreement as provided in chapter 39.34 RCW with the county and the fire protection district or districts that have jurisdiction over the territory proposed for annexation.

(b) A code city proposing to annex territory shall initiate the interlocal agreement process by sending notice to the fire protection district representative and county representative stating the code city's interest to enter into an interlocal agreement negotiation process. The parties have forty-five days to respond in the affirmative or negative. A negative response must state the reasons the parties do not wish to participate in an interlocal agreement negotiation. A failure to respond within the forty-five day period is deemed an affirmative response and the interlocal agreement negotiation process may proceed. The interlocal agreement process may not proceed if any negative responses are received within the forty-five day period.

(c) The interlocal agreement must describe the boundaries of the territory proposed for annexation and must be consistent with the boundaries identified in an ordinance describing the boundaries of the territory proposed for annexation and setting a date for a public hearing on the ordinance. If the boundaries of the territory proposed for annexation are agreed to by all parties, a notice of intention must be filed with the boundary review board created under RCW 36.93.030. However, the jurisdiction of the board may not be invoked as described in RCW 36.93.100 for annexations that are the subject of such agreement.

(2) An interlocal annexation agreement under this section must include the following:

(a) A statement of the goals of the agreement. Goals must include, but are not limited to:

(i) The transfer of revenues and assets between the fire protection district and the code city;

(ii) A consideration and discussion of the impact to the level of service of annexation on the unincorporated area, and an agreement that the impact on the ability of fire protection and emergency medical services within the incorporated area must not be negatively impacted at least through the budget cycle in which the annexation occurs;

(iii) A discussion with fire protection districts regarding the division of assets and its impact to citizens inside and outside the newly annexed area;

(iv) Community involvement, including an agreed upon schedule of public meetings in the area or areas proposed for annexation;

(v) Revenue sharing, if any;

(vi) Debt distribution;

(vii) Capital facilities obligations of the code city, county, and fire protection districts;

(viii) An overall schedule or plan on the timing of any annexations covered under this agreement; and

(ix) A description of which of the annexing code cities' development regulations will apply and be enforced in the area.

(b) The subject areas and policies and procedures the parties agree to undertake in annexations. Subject areas may include, but are not limited to:

(i) Roads and traffic impact mitigation;

(ii) Surface and storm water management;

(iii) Coordination and timing of comprehensive plan and development regulation updates;

(iv) Outstanding bonds and special or improvement district assessments;

(v) Annexation procedures;

(vi) Distribution of debt and revenue sharing for annexation proposals, code enforcement, and inspection services;

(vii) Financial and administrative services; and

(viii) Consultation with other service providers, including water-sewer districts, if applicable.

(c) A term of at least five years, which may be extended by mutual agreement of the code city, the county, and the fire protection district.

(3) If the fire protection district, annexing code city, and county reach an agreement on the enumerated goals, or if only the annexing code city and county reach an agreement on the enumerated goals, the code city may adopt an annexation ordinance, but the annexation ordinance provided for in this section is subject to referendum for forty-five days after its passage, provided that no referendum shall be allowed for an annexation under this section if the fire protection district, annexing code city, and the county reach agreement on an annexation for which a code city has initiated the interlocal agreement process by sending notice to the fire protection district representative and county representative prior to July 28, 2013. Upon the filing of a timely and sufficient referendum petition with the legislative body of the code city, signed by qualified electors in a number not less than ten percent of the votes cast in the last general state election in the area to be annexed, the question of annexation must be submitted to the voters of the area in a general election if one is to be held within ninety days or at a special election called for that purpose according to RCW 29A.04.330. Notice of the election must be given as provided in RCW 35A.14.070, and the election must be conducted as provided in the general election laws under Title 29A RCW. The annexation must be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition to the annexation.

After the expiration of the forty-fifth day from, but excluding, the date of passage of the annexation ordinance, if a timely and sufficient referendum petition has not been filed, the area annexed becomes a part of the code city upon the date fixed in the ordinance of annexation. [2013 2nd sp.s. c 27 § 2; 2009 c 60 § 9.]

Effective date—2013 2nd sp.s. c 27: See note following RCW 35A.14.295.

35A.14.485 Annexation of fire districts—Transfer of employees. (1) If any portion of a fire protection district is proposed for annexation to or incorporation into a code city, both the fire protection district and the code city shall jointly

inform the employees of the fire protection district about hires, separations, terminations, and any other changes in employment that are a direct consequence of annexation or incorporation at the earliest reasonable opportunity.

(2) An eligible employee may transfer into the civil service system of the code city fire department by filing a written request with the code city civil service commission and by giving written notice of the request to the board of commissioners of the fire protection district. Upon receipt of the request by the civil service commission, the transfer of employment must be made. The needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 35.10.360 and 35.10.370 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the code city fire department when appropriate positions become available. Employees who are not immediately hired by the code city shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies.

(3)(a) Upon transfer, an employee is entitled to the employee rights, benefits, and privileges to which he or she would have been entitled as an employee of the fire protection district, including rights to:

(i) Compensation at least equal to the level of compensation at the time of transfer, unless the employee's rank and duties have been reduced as a result of the transfer. If the transferring employee is placed in a position with reduced rank and duties, the employee's compensation may be adjusted, but the adjustment may not result in a decrease of greater than fifty percent of the difference between the employee's compensation before the transfer and the compensation level for the position that the employee is transferred to;

(ii) Retirement, vacation, sick leave, and any other accrued benefit;

(iii) Promotion and service time accrual; and

(iv) The length or terms of probationary periods, including no requirement for an additional probationary period if one had been completed before the transfer date.

(b) (a) of this subsection does not apply if upon transfer an agreement for different terms of transfer is reached between the collective bargaining representatives of the transferring employees and the participating fire protection jurisdictions.

(4) If upon transfer, the transferring employee receives the rights, benefits, and privileges established under subsection (3)(a)(i) through (iv) of this section, those rights, benefits, and privileges are subject to collective bargaining at the end of the current bargaining period for the jurisdiction to which the employee has transferred.

(5) Such bargaining must take into account the years of service the transferring employee accumulated before the transfer and must be treated as if those years of service occurred in the jurisdiction to which the employee has transferred. [2009 c 60 § 10.]

35A.14.488 Fire protection and safety in proposed annexed territory—Report request. Upon the written request of a fire protection district, code cities annexing territory under this chapter shall, prior to completing the annexation, issue a report regarding the likely effects that the annexation and any associated asset transfers may have upon the safety of residents within and outside the proposed annexation area. The report must address, but is not limited to, the provisions of fire protection and emergency medical services within and outside of the proposed annexation area. A fire protection district may only request a report under this section when at least five percent of the assessed valuation of the fire protection district will be annexed. [2009 c 60 § 11.]

35A.14.490 Annexation of territory used for an agricultural fair. (1) Territory owned by a county and used for an agricultural fair as provided in chapter 15.76 RCW or chapter 36.37 RCW may only be annexed to a code city through the method prescribed in this section.

(a) The legislative body of the city proposing the annexation must submit a request for annexation and a legal description of the subject territory to the legislative authority of the county within which the territory is located.

(b) Upon receipt of the request and description, the county legislative authority has thirty days to review the proposal and determine if the annexation proceedings will continue. As a condition of approval, the county legislative authority may modify the proposal, but it may not add territory that was not included in the request and description. Approval of the county legislative authority is a condition precedent to further proceedings upon the request and there is no appeal of the county legislative authority's decision.

(c) If the county legislative authority determines that the proceedings may continue, it must, within thirty days of the determination, fix a date for a public hearing on the proposal, and cause notice of the hearing to be published at least once a week for two weeks prior to the hearing in one or more newspapers of general circulation in the territory proposed for annexation. The notice must also be posted in three public places within the subject territory, specify the time and place of the hearing, and invite interested persons to appear and voice approval or disapproval of the annexation. If the annexation proposal provides for assumption of indebtedness or adoption of a proposed zoning regulation, the notice must include a statement of these requirements.

(d) If, following the conclusion of the hearing, a majority of the county legislative authority deems the annexation proposal to be in the best interest of the county, it may adopt a resolution approving of the annexation.

(e) If, following the county legislative authority's adoption of the annexation approval resolution, the legislative body of the city proposing annexation determines to effect the annexation, it must do so by ordinance. The ordinance: (i) May only include territory approved for annexation in the resolution adopted under (d) of this subsection; and (ii) must not exclude territory approved for annexation in the resolution adopted under (d) of this subsection. Upon passage of the annexation ordinance, a certified copy must be filed with the applicable county legislative authority.

(2) Any territory annexed through an ordinance adopted under this section is annexed and becomes a part of the code city upon the date fixed in the ordinance. [2009 c 402 § 5.]

Intent—2009 c 402: See note following RCW 35.13.490.

35A.14.500 Outstanding indebtedness not affected. When any portion of a fire protection district is annexed by or incorporated into a code city, any outstanding indebtedness, bonded or otherwise, shall remain an obligation of the taxable property annexed or incorporated as if the annexation or incorporation had not occurred. [1967 ex.s. c 119 § 35A.14.500.]

35A.14.550 Providing annexation information to public. A code city can provide factual public information on the effects of pending annexation proposed for the code city. [1989 c 351 § 9.]

35A.14.700 Determining population of annexed territory—Certificate—As basis for allocation of state funds—Revised certificate. (1) Whenever any territory is annexed to a code city, a certificate as hereinafter provided shall be submitted in triplicate to the office of financial management within thirty days of the effective date of annexation specified in the relevant ordinance. After approval of the certificate, the office of financial management shall retain the original copy in its files, and transmit the second copy to the department of transportation and return the third copy to the code city. Such certificates shall be in such form and contain such information as shall be prescribed by the office of financial management. A copy of the complete ordinance containing a legal description and a map showing specifically the boundaries of the annexed territory shall be attached to each of the three copies of the certificate. The certificate shall be signed by the mayor and attested by the city clerk. Upon request, the office of financial management shall furnish certification forms to any code city.

(2)(a) The resident population of the annexed territory shall be determined by, or under the direction of, the mayor of the code city. (b) If the annexing code city has a population of ten thousand or less, the annexed territory consists entirely of one or more partial federal census blocks, or 2010 federal decennial census data has not been released within twelve months immediately prior to the date of annexation, the population determination shall consist of an actual enumeration of the population.

(c) In any circumstance, the code city may choose to have the population determination of the entire annexed territory consist of an actual enumeration. However, if the code city does not use actual enumeration for determining population, the annexed territory includes or consists of one or more complete federal census blocks, and 2010 federal decennial census data has been released within twelve months immediately prior to the date of annexation, the population determination shall consist of:

(i) Relevant 2010 federal decennial census data pertaining to the complete block or blocks, as such data has been updated by the most recent official population estimate released by the office of financial management pursuant to RCW 43.62.030;

(ii) An actual enumeration of any population located within the annexed territory but outside the complete federal census block or blocks; and

(iii) If the office of financial management, at least two weeks prior to the date of annexation, confirms the existence of a known census error within a complete federal census block and identifies a structure or complex listed in (c)(iii)(A) through (E) of this subsection (2) as a likely source of the error, an actual enumeration of one or more of the block's identified:

(A) Group quarters;

(B) Mobile home parks;

(C) Apartment buildings that are composed of at least fifty units and are certified for occupancy between January 1, 2010, and April 1, 2011;

(D) Missing subdivisions; and

(E) Closures of any of the categories in (c)(iii)(A) through (D) of this subsection.

(d) Whenever an actual enumeration is used, it shall be made in accordance with the practices and policies of, and subject to the approval of, the office of financial management.

(e) The code city shall be responsible for the full cost of the population determination.

(3) Upon approval of the annexation certificate, the office of financial management shall forward to each state official or department responsible for making allocations or payments to cities or towns, a revised certificate reflecting the increase in population due to such annexation. Upon and after the date of the commencement of the next quarterly period, the population determination indicated in such revised certificate shall be used as the basis for the allocation and payment of state funds to such city or town.

For the purposes of this section, each quarterly period shall commence on the first day of the months of January, April, July, and October. Whenever a revised certificate is forwarded by the office of financial management thirty days or less prior to the commencement of the next quarterly period, the population of the annexed territory shall not be considered until the commencement of the following quarterly period.

(4) Until an annexation certificate is filed and approved as provided herein, such annexed territory shall not be considered by the office of financial management in determining the population of such code city. [2011 c 342 § 2; 1979 ex.s. c 18 § 28; 1979 c 151 § 35; 1975 1st ex.s. c 31 § 2; 1967 ex.s. c 119 § 35A.14.700.]

Effective date—2011 c 342: See note following RCW 35.13.260.

Population determinations, office of financial management: Chapter 43.62 RCW.

Additional notes found at www.leg.wa.gov

35A.14.801 Taxes collected in annexed territory—Notification of annexation. (1) Whenever any territory is annexed to a code city which is part of a road district of the county and road district taxes have been levied but not collected on any property within the annexed territory, the same shall when collected by the county treasurer be paid to the code city and by the city placed in the city street fund; except that road district taxes that are delinquent before the date of

annexation shall be paid to the county and placed in the county road fund.

(2) When territory that is part of a fire district is annexed to a code city, the following apply:

(a) Fire district taxes on annexed property that were levied, but not collected, and were not delinquent at the time of the annexation shall, when collected, be paid to the annexing code city at times required by the county, but no less frequently than by July 10th for collections through June 30th and January 10th for collections through December 31st following the annexation; and

(b) Fire district taxes on annexed property that were levied, but not collected, and were delinquent at the time of the annexation and the pro rata share of the current year levy budgeted for general obligation debt, when collected, shall be paid to the fire district.

(3) When territory that is part of a library district is annexed to a code city, the following apply:

(a) Library district taxes on annexed property that were levied, but not collected, and were not delinquent at the time of the annexation shall, when collected, be paid to the annexing code city at times required by the county, but no less frequently than by July 10th for collections through June 30th and January 10th for collections through December 31st following the annexation; and

(b) Library district taxes on annexed property that were levied, but not collected, and were delinquent at the time of the annexation and the pro rata share of the current year levy budgeted for general obligation debt, when collected, shall be paid to the library district.

(4) Subsections (1) through (3) of this section do not apply to any special assessments due in behalf of such property.

(5) If a code city annexes property within a fire district or library district while any general obligation bond secured by the taxing authority of the district is outstanding, the bonded indebtedness of the fire district or library district remains an obligation of the taxable property annexed as if the annexation had not occurred.

(6) For each annexation by a code city, the code city must provide notification, by certified mail or electronic means, that includes a list of annexed parcel numbers and the street address to the county treasurer and assessor, to the light and power businesses and gas distribution businesses, and to the fire district and library district, as appropriate, at least sixty days before the effective date of the annexation. The county treasurer is only required to remit to the code city those road taxes, fire district taxes, and library district taxes collected sixty or more days after receipt of the notification. The light and power businesses and gas distribution businesses are only required to remit to the *city or town those utility taxes collected sixty days or more after receipt of the notification.

(7)(a) In counties that do not have a boundary review board, the code city shall provide notification to the fire district or library district of the jurisdiction's resolution approving the annexation. The notification required under this subsection must:

(i) Be made by certified mail within seven days of the resolution approving the annexation; and

(ii) Include a description of the annexed area.

(b) In counties that have a boundary review board, the code city shall provide notification of the proposed annexation to the fire district or library district simultaneously when notice of the proposed annexation is provided by the jurisdiction to the boundary review board under RCW 36.93.090.

(8) The provisions of this section regarding (a) the transfer of fire and library district property taxes and (b) code city notifications to fire and library districts do not apply if the code city has been annexed to and is within the fire or library district when the code city approves a resolution to annex unincorporated county territory.

(9) An error or accidental omission by a code city in the transmitted annexation notice required under this section may be corrected by the city by providing an amended notice to the county treasurer and assessor, the light and power businesses, the gas distribution businesses, and to the fire district and library district, as appropriate. The recipient of the amended notice is only required to remit applicable taxes to the city, in accordance with the corrected information, sixty days after its receipt of the amended notice.

(10) For purposes of this section, "electronic means" means an electronic format agreed to by both sender and recipient that conveys all applicable notification information. [2014 c 123 § 2; 2007 c 285 § 2; 2001 c 299 § 3; 1998 c 106 § 2; 1971 ex.s. c 251 § 14.]

*Reviser's note: The reference to "city or town" appears to be erroneous. "Code city" was apparently intended.

Additional notes found at www.leg.wa.gov

35A.14.900 Cancellation, acquisition of franchise or permit for operation of public service business in territory annexed—Regulation of solid waste collection. The annexation by any code city of any territory pursuant to this chapter shall cancel, as of the effective date of such annexation, any franchise or permit theretofore granted to any person, firm or corporation by the state of Washington, or by the governing body of such annexed territory, authorizing or otherwise permitting the operation of any public utility, including but not limited to, public electric, water, transportation, garbage disposal or other similar public service business or facility within the limits of the annexed territory, but the holder of any such franchise or permit canceled pursuant to this section shall be forthwith granted by the annexing code city a franchise to continue such business within the annexed territory for a term of not less than seven years from the date of issuance thereof, and the annexing code city, by franchise, permit or public operation, shall not extend similar or competing services to the annexed territory except upon a proper showing of the inability or refusal of such person, firm or corporation to adequately service said annexed territory at a reasonable price: PROVIDED, That the provisions of this section shall not preclude the purchase by the annexing code city of said franchise, business, or facilities at an agreed or negotiated price, or from acquiring the same by condemnation upon payment of damages, including a reasonable amount for the loss of the franchise or permit. In the event that any person, firm or corporation whose franchise or permit has been canceled by the terms of this section shall suffer any measurable damages as a result of any annexation pursuant to the provisions of the laws above-mentioned, such person, firm or

corporation shall have a right of action against any code city causing such damages.

After an annexation by a code city, the utilities and transportation commission shall continue to regulate solid waste collection within the limits of the annexed territory until such time as the city notifies the commission, in writing, of its decision to contract for solid waste collection or provide solid waste collection itself pursuant to RCW 81.77.020. In the event the annexing city at any time decides to contract for solid waste collection or decides to undertake solid waste collection itself, the holder of any such franchise or permit that is so canceled in whole or in part shall be forthwith granted by the annexing city a franchise to continue such business within the annexed territory for a term of not less than the remaining term of the original franchise or permit, or not less than seven years, whichever is the shorter period, and the city, by franchise, permit, or public operation, shall not extend similar or competing services to the annexed territory except upon a proper showing of the inability or refusal of such person, firm, or corporation to adequately service the annexed territory at a reasonable price. Upon the effective date specified by the code city council's ordinance or resolution to have the code city contract for solid waste collection or undertake solid waste collection itself, the transition period specified in this section begins to run. This section does not preclude the purchase by the annexing city of the franchise, business, or facilities at an agreed or negotiated price, or from acquiring the same by condemnation upon payment of damages, including a reasonable amount for the loss of the franchise or permit. In the event that any person, firm, or corporation whose franchise or permit has been canceled by the terms of this section suffers any measurable damages as a result of any annexation pursuant to this chapter, such person, firm, or corporation has a right of action against any city causing such damages. [1997 c 171 § 3; 1967 ex.s. c 119 § 35A.14.900.]

Additional notes found at www.leg.wa.gov

35A.14.901 Application of chapter to annexations involving water or sewer service. Nothing in this chapter precludes or otherwise applies to an annexation by a code city of unincorporated territory as authorized by RCW 57.24.170, 57.24.190, and 57.24.210. [1996 c 230 § 1604; 1995 c 279 § 4.]

Additional notes found at www.leg.wa.gov

Chapter 35A.15 RCW DISINCORPORATION

Sections

35A.15.001	Actions subject to review by boundary review board.
35A.15.010	Authority for disincorporation—Petition—Resolution.
35A.15.020	Election on disincorporation—Receiver.
35A.15.040	Ballots—Election results.
35A.15.050	Effect of disincorporation—Powers—Offices.
35A.15.060	Receiver—Qualification—Bond—When receiver may be appointed.
35A.15.070	Duties and authority of receiver—Claims—Priority.
35A.15.080	Compensation of receiver.
35A.15.090	Receiver—Removal for cause—Successive appointments.
35A.15.100	Receiver—Final account and discharge.
35A.15.105	Applicability of general receivership law.
35A.15.110	Involuntary dissolution.

35A.15.001 Actions subject to review by boundary review board. Actions taken under chapter 35A.15 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 39.]

35A.15.010 Authority for disincorporation—Petition—Resolution. Any noncharter code city may be disincorporated. Proceedings may be initiated by the filing with the county auditor of a petition for disincorporation signed by a majority of the registered voters resident in such city, or the legislative body of the city may provide by resolution for an election on the proposition of disincorporation. [1990 c 259 § 11; 1967 ex.s. c 119 § 35A.15.010.]

Sufficiency of petition in code city: RCW 35A.01.040.

35A.15.020 Election on disincorporation—Receiver. The legislative body shall cause the proposition of disincorporation to be submitted to the voters at the next general municipal election if one is to be held within one hundred and eighty days, or at a special election called for that purpose not less than ninety days, nor more than one hundred and eighty days, after the certification of sufficiency of the petition, or the passage of the resolution, as the case may be. If the code city has any indebtedness or outstanding liabilities, the legislative body shall provide for election of a receiver at the same election. [1967 ex.s. c 119 § 35A.15.020.]

35A.15.040 Ballots—Election results. Ballot titles shall be prepared by the city as provided in RCW 35A.29.120 and shall contain the words "For Dissolution" and "Against Dissolution", and shall contain on separate lines, alphabetically, the names of candidates for receiver. If a majority of the votes cast on the proposition are for dissolution, the municipal corporation shall be dissolved upon certification of the election results to the office of the secretary of state. [1994 c 223 § 39; 1967 ex.s. c 119 § 35A.15.040.]

35A.15.050 Effect of disincorporation—Powers—Offices. The effect of disincorporation of a noncharter code city shall be as provided in RCW 35.07.090, 35.07.100, and 35.07.110. [1967 ex.s. c 119 § 35A.15.050.]

35A.15.060 Receiver—Qualification—Bond—When receiver may be appointed. The receiver shall qualify and post a bond as provided in RCW 35.07.120. If an elected receiver fails to qualify within the time prescribed, or if no receiver has been elected and the code city does have indebtedness or an outstanding liability, a receiver shall be appointed in the manner provided in RCW 35.07.130 or as provided in RCW 35.07.140. [1967 ex.s. c 119 § 35A.15.060.]

35A.15.070 Duties and authority of receiver—Claims—Priority. The duties and authority of the receiver and the disposition and priority of claims against the former municipality shall be as provided in RCW 35.07.150, and the receiver shall have the rights, powers, and limitations provided for such a receiver in RCW 35.07.160, 35.07.170, and 35.07.180. [1967 ex.s. c 119 § 35A.15.070.]

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35A.15.080 Compensation of receiver. The compensation of the receiver shall be as provided in RCW 35.07.190. [1967 ex.s. c 119 § 35A.15.080.]

35A.15.090 Receiver—Removal for cause—Successive appointments. The receiver may be removed for cause as provided in RCW 35.07.200 and a successor to the receiver may be appointed as provided in RCW 35.07.210. [1967 ex.s. c 119 § 35A.15.090.]

35A.15.100 Receiver—Final account and discharge. The receiver shall file a final account, pay remaining funds to the county treasurer, and be discharged, all as provided in RCW 35.07.220. [1967 ex.s. c 119 § 35A.15.100.]

35A.15.105 Applicability of general receivership law. The provisions of Title 7 RCW generally applicable to receivers and receiverships do not apply to receivers elected or appointed under this chapter. [2004 c 165 § 44.]

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

35A.15.110 Involuntary dissolution. A noncharter code city may be involuntarily dissolved in the manner provided in RCW 35.07.230, 35.07.240, 35.07.250, and 35.07.260 upon the existence of the conditions stated in RCW 35.07.230. [1967 ex.s. c 119 § 35A.15.110.]

Chapter 35A.16 RCW REDUCTION OF CITY LIMITS

Sections

35A.16.001	Actions subject to review by boundary review board.
35A.16.010	Petition or resolution for election.
35A.16.030	Abstract of vote.
35A.16.040	Effective date of reduction.
35A.16.050	Recording of ordinance and plat on effective date of reduction.
35A.16.060	Effect of exclusion as to liability for indebtedness.
35A.16.070	Franchises within territory excluded.
35A.16.080	Exclusion of agricultural land from the incorporated area of a code city.

35A.16.001 Actions subject to review by boundary review board. Actions taken under chapter 35A.16 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 40.]

35A.16.010 Petition or resolution for election. Upon the filing of a petition which is sufficient as determined by RCW 35A.01.040 praying for the exclusion from the boundaries of a code city of an area described by metes and bounds or by reference to a recorded plat or government survey, signed by qualified voters of the city in number equal to not less than ten percent of the number of votes cast at the last general municipal election, the legislative body of the code city shall cause the question to be submitted to the voters. As an alternate method, such a proposal for exclusion from the code city of a described area may be submitted to the voters by resolution of the legislative body. The question shall be submitted at the next general municipal election if one is to be held within one hundred and eighty days or at a special election called for that purpose not less than ninety days nor more than one hundred and eighty days after the certification of sufficiency of the petition or the passage of the resolution.

The petition or resolution shall set out and describe the territory to be excluded from the code city, together with the boundaries of the code city as it will exist after such change is made. [1967 ex.s. c 119 § 35A.16.010.]

35A.16.030 Abstract of vote. If three-fifths of the votes cast on the proposition favor the reduction of the corporate limits, the county auditor shall make and transmit to the office of the secretary of state a certified abstract of the vote. [1994 c 223 § 40; 1967 ex.s. c 119 § 35A.16.030.]

35A.16.040 Effective date of reduction. Promptly after the filing of the abstract of votes with the secretary of state the legislative body shall adopt an ordinance defining and fixing the corporate limits after excluding the area as determined by the election. The ordinance shall also describe the excluded territory by metes and bounds or by reference to a recorded plat or government survey and declare it no longer a part of the code city. [1967 ex.s. c 119 § 35A.16.040.]

35A.16.050 Recording of ordinance and plat on effective date of reduction. Upon the effective date of the ordinance a certified copy thereof together with a map showing the corporate limits as altered shall be filed and recorded in the office of the county auditor of the county in which the code city is situated, and thereupon the boundaries shall be as set forth therein. [1967 ex.s. c 119 § 35A.16.050.]

35A.16.060 Effect of exclusion as to liability for indebtedness. The exclusion of an area from the boundaries of the code city shall not exempt any real property therein from taxation for the purpose of paying any indebtedness of the code city existing at the time of its exclusion and the interest thereon. [1967 ex.s. c 119 § 35A.16.060.]

35A.16.070 Franchises within territory excluded. In regard to franchises previously granted for operation of any public service business or facility within the territory excluded from a code city by proceedings under this chapter, the rights, obligations, and duties of the legislative body of the county or other political subdivision having jurisdiction over such territory and of the franchise holder shall be as provided in RCW 35.02.160, relating to inclusion of territory by an incorporation, and such a franchise shall be canceled and a new franchise issued by the legislative body having jurisdiction, as therein provided. [1967 ex.s. c 119 § 35A.16.070.]

35A.16.080 Exclusion of agricultural land from the incorporated area of a code city. Proceedings for excluding agricultural land from the boundaries of a charter code city or noncharter code city may be commenced by the filing of a petition which is sufficient as determined by RCW 35A.01.040 by property owners of the agricultural land proposed to be excluded, in the following manner which is alternative to other methods provided in this chapter:

(1) A petition for exclusion of agricultural land from the incorporated area of a code city shall be filed with the legislative body of the municipality. The petition for exclusion must be signed by the owners of not less than one hundred percent of the agricultural land for which exclusion is sought and, if residents exist within the area proposed for exclusion,

a majority of the registered voters residing in the area for which exclusion is petitioned.

(2) The petition shall set forth a legal description of the territory proposed to be excluded and shall be accompanied by a drawing that outlines the boundaries of the territory sought to be excluded.

(3) When a petition for exclusion that meets the requirements of this section and RCW 35A.01.040 is filed with the legislative body of the code city, the legislative body shall set a date, not later than sixty days after the filing of the request, for a public hearing thereon and cause notice of the hearing to be published in one or more issues of a newspaper of general circulation in the city. The notice shall also be posted in three public places within the territory proposed for exclusion, and shall specify the time and place of hearing and invite interested persons to appear and voice approval or disapproval of the exclusion.

(4) Following the hearing, if the legislative body determines to effect the exclusion from city boundaries, they shall do so by ordinance. The ordinance may exclude all or any portion of the proposed territory but may not include in the exclusion any territory not described in the petition. The ordinance shall contain a legal description of the territory and declare it no longer a part of the code city. [2005 c 77 § 1.]

Chapter 35A.21 RCW

PROVISIONS AFFECTING ALL CODE CITIES

Sections

- 35A.21.010 Validity of ordinances and resolutions—Deficiencies of form.
- 35A.21.020 Conflict between charter and optional code.
- 35A.21.030 Mandatory duties of code city officers.
- 35A.21.040 Merit systems.
- 35A.21.050 Pension and retirement systems.
- 35A.21.060 Garbage ordinance—Lien—Foreclosure.
- 35A.21.070 Office hours prescribed by ordinance.
- 35A.21.080 Computation of time.
- 35A.21.090 Jurisdiction over adjacent waters—Control of street over tidelands.
- 35A.21.100 Lien for utility services.
- 35A.21.110 Warrants—Interest rate—Payment.
- 35A.21.120 Utilities—Facilities for generation of electricity.
- 35A.21.125 Locally regulated utilities—Attachments to poles.
- 35A.21.130 Codification of ordinances.
- 35A.21.140 Change of name.
- 35A.21.150 Sewerage and refuse collection and disposal systems.
- 35A.21.152 Solid waste collection—Rate increase notice.
- 35A.21.153 Solid waste collection curbside recycling—Reduced rate.
- 35A.21.155 Collection and transportation of recyclable materials by recycling companies or nonprofit entities—Reuse or reclamation—Application of chapter.
- 35A.21.160 General application of laws to code cities.
- 35A.21.161 Regulation of activities and enforcement of penal laws.
- 35A.21.162 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility.
- 35A.21.164 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts.
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- 35A.21.220 Insurance and workers' compensation for offenders performing community restitution.
- 35A.21.230 Designation of official newspaper.
- 35A.21.240 Right-of-way donations—Credit against required improvements.

- 35A.21.245 Facilities and rights-of-way—Requirements and restrictions—Application to code cities.
- 35A.21.250 Building construction projects—Code city prohibited from requiring state agencies or local governments to provide bond or other security as a condition for issuance of permit.
- 35A.21.260 Amateur radio antennas—Local regulation to conform with federal law.
- 35A.21.270 Assumption of substandard water system—Limited immunity from liability.
- 35A.21.275 Regulation of automatic number or location identification—Prohibited.
- 35A.21.280 Statement of restrictions applicable to real property.
- 35A.21.290 Fish enhancement project—Code city's liability.
- 35A.21.300 Rail fixed guideway system—Safety program plan and security and emergency preparedness plan.
- 35A.21.310 Mobile home, manufactured home, or park model moving or installing—Copies of permits—Definitions.
- 35A.21.312 Authority to regulate placement or use of homes—Regulation of manufactured homes—Issuance of permits—Restrictions on location of manufactured/mobile homes and entry or removal of recreational vehicles used as primary residences.
- 35A.21.320 Abandoned or derelict vessels.
- 35A.21.322 Transfer of ownership of a code city-owned vessel—Review of vessel's physical condition.
- 35A.21.324 Transfer of ownership of a code city-owned vessel—Further requirements.
- 35A.21.330 Regulation of financial transactions—Limitations.
- 35A.21.335 Registration under or compliance with streamlined sales and use tax agreement—Prohibited requirement for businesses.
- 35A.21.340 Contractors—Authority of city to verify registration and report violations.
- 35A.21.350 Community athletics programs—Sex discrimination prohibited.
- 35A.21.360 Temporary encampments for the homeless—Hosting by religious organizations authorized—Prohibitions on local actions.
- 35A.21.370 State and federal background checks of license applicants and licensees of occupations under local licensing authority.
- Demonstration Cities and Metropolitan Development Act—Authority of cities to contract with federal government: RCW 35.21.660.*
- Disturbances at state penal facilities—Local participation and reimbursement: Chapter 72.02 RCW.*
- Fire protection, ambulance or other emergency services provided by municipal corporation within county—Financial and other assistance by county authorized: RCW 36.32.470.*
- Limitation on penalty for act constituting a crime under state law: RCW 35.21.163.*
- Local adopt-a-highway programs: RCW 47.40.105.*
- Transfer of real property or contract for use for park and recreational purposes: RCW 39.33.060.*

35A.21.010 Validity of ordinances and resolutions—Deficiencies of form. Deficiencies in the form of an ordinance or resolution shall not affect the validity thereof if the following requirements are met:

- (1) The purpose and intent of the ordinance or resolution are clear.
- (2) Any regulatory or procedural provisions thereof are expressed in clear and unambiguous terms, or the legislative intent can be determined by usual methods of judicial construction.
- (3) The legislative action was taken at an authorized public meeting held within the code city limits at a time and place made known to residents of the city, as provided by law.
- (4) The legislative body of the code city followed the prescribed procedures, if any, for passage of such an ordinance or resolution, as provided in the law or charter provision delegating to the legislative body the authority to so legislate; or, if prescribed procedures were not strictly complied with, no substantial detriment was incurred by any affected person, by reason of such irregularity.

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If the foregoing requirements have been met, brevity or awkwardness of language, or defects of form not going to the substance, or inadvertent use of an incorrect or inaccurate proper name or term shall not render an ordinance or resolution invalid, if otherwise in compliance with law. [1967 ex.s. c 119 § 35A.21.010.]

35A.21.020 Conflict between charter and optional code. This optional municipal code is intended to be a general law, available to all cities and towns within the state, and to all legal intents and purposes a "general law" within the meaning of Article 11, section 10 of the state Constitution, as amended.

If any provision of this title is in conflict with any provision of the charter or amendments thereto of any charter code city, the provisions of this title shall govern and control, except where the legislative body of such charter code city, by ordinance, elects to retain such charter provision or amendment, in which event such charter provision shall prevail notwithstanding a conflict with provisions of this optional code: PROVIDED, That such ordinance shall be subject to referendum as provided in RCW 35A.29.170. [1967 ex.s. c 119 § 35A.21.020.]

35A.21.030 Mandatory duties of code city officers. Except as otherwise provided in this title, every officer of a code city shall perform, in the manner provided, all duties of his or her office which are imposed by state law on officers of every other class of city who occupy a like position and perform like functions. [2009 c 549 § 3031; 1967 ex.s. c 119 § 35A.21.030.]

35A.21.040 Merit systems. Provisions for a merit system, made by charter or ordinance of a code city, shall be in compliance with any applicable statutes relating to civil service for employees of such city: PROVIDED, That nothing herein shall impair the validity of charter provisions adopted prior to the effective date of this title and relating to a merit system. [1967 ex.s. c 119 § 35A.21.040.]

35A.21.050 Pension and retirement systems. Nothing in this title shall be construed to alter or affect vested rights of city employees under pension and retirement systems in effect at the time this title becomes effective. [1967 ex.s. c 119 § 35A.21.050.]

35A.21.060 Garbage ordinance—Lien—Foreclosure. A garbage ordinance of a code city may contain the provisions authorized by RCW 35.21.130. Notice shall be given of a lien for garbage collection and disposal service, the lien shall have priority and be foreclosed all as provided in RCW 35.21.140 and 35.21.150. [1967 ex.s. c 119 § 35A.21.060.]

35A.21.070 Office hours prescribed by ordinance. All code city offices shall be kept open for the transaction of business during such days and hours as the legislative body of such city shall by ordinance prescribe. [1967 ex.s. c 119 § 35A.21.070.]

35A.21.080 Computation of time. When, under the provisions of this title, an act is to be done within a certain time period, the time shall be computed by excluding the first day and including the last, except that when the last day is a Saturday, Sunday, or a day designated by RCW 1.16.050 or by the city's ordinances as a holiday, then it also is excluded and the act must be completed on the next business day. [1967 ex.s. c 119 § 35A.21.080.]

35A.21.090 Jurisdiction over adjacent waters—Control of street over tidelands. The legislative body of a code city shall have supervision and control within its corporate limits of streets over tidelands or upon or across tide and shore lands of the first class as provided in RCW 35.21.230, 35.21.240 and 35.21.250; and shall have jurisdiction over adjacent waters as provided in RCW 35.21.160. [1967 ex.s. c 119 § 35A.21.090.]

35A.21.100 Lien for utility services. Code cities owning or operating waterworks or electric light distribution or power plants shall have a lien for such utility services as provided by RCW 35.21.290 for cities owning such plants and as limited therein, which lien may be enforced only as provided in RCW 35.21.300. [1967 ex.s. c 119 § 35A.21.100.]

35A.21.110 Warrants—Interest rate—Payment. Code city warrants shall draw interest, be paid, and called for all as provided in RCW 35.21.320 and the duty and liability of the treasurer of a code city in calling and paying warrants of the city shall be as provided in RCW 35.21.320. [1967 ex.s. c 119 § 35A.21.110.]

35A.21.120 Utilities—Facilities for generation of electricity. Any code city owning and operating a public utility and having facilities and/or land for the generation of electricity shall be governed by the provisions of RCW 35.21.420 through 35.21.450. [1967 ex.s. c 119 § 35A.21.120.]

35A.21.125 Locally regulated utilities—Attachments to poles. (1) As used in this section:

(a) "Attachment" means the affixation or installation of any wire, cable or other physical material capable of carrying electronic impulses or light waves for the carrying of intelligence for telecommunications or television, including, but not limited to cable, and any related device, apparatus, or auxiliary equipment upon any pole owned or controlled in whole or in part by one or more locally regulated utilities where the installation has been made with the necessary consent.

(b) "Locally regulated utility" means a code city owning and operating an electric utility not subject to rate or service regulation by the utilities and transportation commission.

(c) "Nondiscriminatory" means that pole owners may not arbitrarily differentiate among or between similar classes of persons approved for attachments.

(2) All rates, terms, and conditions made, demanded or received by a locally regulated utility for attachments to its poles must be just, reasonable, nondiscriminatory and sufficient. A locally regulated utility shall levy attachment space

rental rates that are uniform for the same class of service within the locally regulated utility service area.

(3) Nothing in this section shall be construed or is intended to confer upon the utilities and transportation commission any authority to exercise jurisdiction over locally regulated utilities. [1996 c 32 § 4.]

35A.21.130 Codification of ordinances. Compilation, codification, and revision of code city ordinances shall be as provided by and be governed by the provisions of RCW 35.21.500 through 35.21.570. [1967 ex.s. c 119 § 35A.21.130.]

35A.21.140 Change of name. Any code city may change its name in accordance with the procedure provided in chapter 35.62 RCW. [1967 ex.s. c 119 § 35A.21.140.]

35A.21.150 Sewerage and refuse collection and disposal systems. The general law as contained in, but not limited to, chapter 35.67 RCW, relating to sewerage systems and the collection and disposal of refuse, the manner of providing therefor, and the issuance of general obligation or revenue bonds therefor, the establishment of a revenue bond fund in connection therewith, compulsory connection with a city sewer system, setting and collection of rates, fees, and charges therefor, and the existence, enforcement, and foreclosure of a lien for sewer services is hereby recognized as applicable to code cities operating systems of sewerage and systems and plants for refuse collection and disposal. A code city may exercise the powers, in the manner provided, perform the duties, and shall have the rights and obligations provided in chapter 35.67 RCW, subject to the conditions and limitations therein provided. [1967 ex.s. c 119 § 35A.21.150.]

35A.21.152 Solid waste collection—Rate increase notice. (1) A city that contracts for the collection of solid waste, or provides for the collection of solid waste directly, shall notify the public of each proposed rate increase for a solid waste handling service. The notice may be mailed to each affected ratepayer or published once a week for two consecutive weeks in a newspaper of general circulation in the collection area. The notice shall be available to affected ratepayers at least forty-five days prior to the proposed effective date of the rate increase.

(2) For purposes of this section, "solid waste handling" has the same meaning as provided in RCW 70.95.030. [1994 c 161 § 3.]

Findings—Declaration—1994 c 161: See note following RCW 35.21.157.

35A.21.153 Solid waste collection curbside recycling—Reduced rate. (1) Each city or town providing by ordinance or resolution a reduced solid waste collection rate to residents participating in a residential curbside recycling program implemented under RCW 70.95.090, may provide a similar reduced rate to residents participating in any other recycling program, if such program is approved by the jurisdiction. Nothing in this section shall be interpreted to reduce the authority of a city to adopt ordinances under RCW 35.21.130(1).

(2) For the purposes of this section, "reduced rate" means a residential solid waste collection rate incorporating a rebate, refund, or discount. Reduced rate shall not include residential solid waste collection rate based on the volume or weight of solid waste set out for collection. [1991 c 319 § 405.]

Additional notes found at www.leg.wa.gov

35A.21.155 Collection and transportation of recyclable materials by recycling companies or nonprofit entities—Reuse or reclamation—Application of chapter. Nothing in this chapter shall prevent a recycling company or nonprofit entity from collecting and transporting recyclable materials from a buy-back center, drop-box, or from a commercial or industrial generator of recyclable materials, or upon agreement with a solid waste collection company.

Nothing in this chapter shall be construed as prohibiting a commercial or industrial generator of commercial recyclable materials from selling, conveying, or arranging for transportation of such material to a recycler for reuse or reclamation. [1989 c 431 § 35.]

Additional notes found at www.leg.wa.gov

35A.21.160 General application of laws to code cities. A code city organized or reorganized under this title shall have all of the powers which any city of any class may have and shall be governed in matters of state concern by statutes applicable to such cities in connection with such powers to the extent to which such laws are appropriate and are not in conflict with the provisions specifically applicable to code cities. [1967 ex.s. c 119 § 35A.21.160.]

35A.21.161 Regulation of activities and enforcement of penal laws. All code cities shall observe and enforce, in addition to its local regulations, the provisions of state laws relating to the conduct, location and limitation on activities as regulated by state law and shall supply police information to the *section on identification of the state patrol as required by chapter 43.43 RCW. [1983 c 3 § 59; 1967 ex.s. c 119 § 35A.21.161.]

*Reviser's note: The "section on identification" was renamed the "identification and criminal history section" by 2006 c 294 § 1.

35A.21.162 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility. See chapter 80.58 RCW.

35A.21.164 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts. See RCW 87.03.825 through 87.03.840.

35A.21.170 Fiscal year. The fiscal year of a code city shall commence on the first day of January and end on the thirty-first day of December of each calendar year unless a different fiscal period is authorized by RCW 1.16.030, as amended. [1967 ex.s. c 119 § 35A.21.170.]

35A.21.180 Flags to be displayed. The flag of the United States and the flag of the state shall be prominently installed and displayed and maintained in code city buildings

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and shall be as provided in RCW 1.20.010. [1967 ex.s. c 119 § 35A.21.180.]

35A.21.190 Daylight saving time. No code city shall adopt any provision for the observance of daylight saving time other than as authorized by RCW 1.20.050 and 1.20.051. [1967 ex.s. c 119 § 35A.21.190.]

35A.21.195 Actions by and against code cities. A code city may exercise the power to bring an action or special proceeding at law as authorized by Title 4 RCW, chapters 7.24, 7.25, and 6.27 RCW, and shall be subject to actions and process of law in accordance with procedures prescribed by law and rules of court. [1987 c 442 § 1117; 1983 c 3 § 58; 1967 ex.s. c 119 § 35A.20.150. Formerly RCW 35A.20.150.]

35A.21.200 Limitation of actions. The limitations prescribed in chapter 4.16 RCW shall apply to actions brought in the name or for the benefit of, or against, a code city, except as otherwise provided by general law or by this title. [1967 ex.s. c 119 § 35A.21.200.]

35A.21.210 Revision of corporate boundary within street, road, or highway right-of-way by substituting right-of-way line—Not subject to review. (1) The governing bodies of a county and any code city located therein may by agreement revise any part of the corporate boundary of the city which coincides with the centerline, edge, or any portion of a public street, road or highway right-of-way by substituting therefor a right-of-way line of the same public street, road or highway so as fully to include or fully to exclude that segment of the public street, road or highway from the corporate limits of the city.

(2) The revision of a corporate boundary as authorized by this section shall become effective when approved by ordinance of the city council and by ordinance or resolution of the county legislative authority. Such a boundary revision is not subject to potential review by a boundary review board. [1989 c 84 § 11; 1975 1st ex.s. c 220 § 18.]

Legislative finding, intent—1975 1st ex.s. c 220: See note following RCW 35.02.170.

Boundary line adjustment: RCW 35.13.300 through 35.13.330.

Use of right-of-way line as corporate boundary in incorporation proceeding—When right-of-way may be included in territory to be incorporated: RCW 35.02.170.

When right-of-way may be included in territory to be annexed—Use of right-of-way line as corporate boundary in annexation: RCW 35A.14.410.

35A.21.220 Insurance and workers' compensation for offenders performing community restitution. The legislative authority of a code city may purchase liability insurance in an amount it deems reasonable to protect the code city, its officers, and employees against liability for the wrongful acts of offenders or injury or damage incurred by offenders in the course of court-ordered community restitution, and may elect to treat offenders as employees and/or workers under Title 51 RCW. [2002 c 175 § 31; 1984 c 24 § 2.]

Workers' compensation coverage of offenders performing community restitution: RCW 51.12.045.

Additional notes found at www.leg.wa.gov

35A.21.230 Designation of official newspaper. Each code city shall designate an official newspaper by resolution. The newspaper shall be of general circulation in the city and have the qualifications prescribed by chapter 65.16 RCW. [1985 c 469 § 102.]

35A.21.240 Right-of-way donations—Credit against required improvements. Where the zoning and planning provisions of a city or town require landscaping, parking, or other improvements as a condition to granting permits for commercial or industrial developments, the city or town may credit donations of right-of-way in excess of that required for traffic improvement against such landscaping, parking, or other requirements. [1987 c 267 § 8.]

Right-of-way donations: Chapter 47.14 RCW.

Additional notes found at www.leg.wa.gov

35A.21.245 Facilities and rights-of-way—Requirements and restrictions—Application to code cities. Each code city is subject to the requirements and restrictions regarding facilities and rights-of-way under *this chapter. [2000 c 83 § 10.]

*Reviser's note: A reference to chapter 35.99 RCW was apparently intended.

"Facilities," "right-of-way" defined: RCW 35.99.010.

35A.21.250 Building construction projects—Code city prohibited from requiring state agencies or local governments to provide bond or other security as a condition for issuance of permit. A code city may not require any state agency or unit of local government to secure the performance of a permit requirement with a surety bond or other financial security device, including cash or assigned account, as a condition of issuing a permit to that unit of local government for a building construction project.

As used in this section, "building construction project" includes, in addition to its usual meaning, associated landscaping, street alteration, pedestrian or vehicular access alteration, or other amenities or alterations necessarily associated with the project. [1993 c 439 § 2.]

35A.21.260 Amateur radio antennas—Local regulation to conform with federal law. No code city shall enact or enforce an ordinance or regulation that fails to conform to the limited preemption entitled "Amateur Radio Preemption, 101 FCC 2nd 952 (1985)" issued by the federal communications commission. An ordinance or regulation adopted by a code city with respect to amateur radio antennas shall conform to the limited federal preemption, that states local regulations that involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to reasonably accommodate amateur communications, and to represent the minimal practicable regulation to accomplish the local authority's legitimate purpose. [1994 c 50 § 2.]

Additional notes found at www.leg.wa.gov

35A.21.270 Assumption of substandard water system—Limited immunity from liability. A code city assuming responsibility for a water system that is not in compliance with state or federal requirements for public drinking water

systems, and its agents and employees, are immune from lawsuits or causes of action, based on noncompliance with state or federal requirements for public drinking water systems, which predate the date of assuming responsibility and continue after the date of assuming responsibility, provided that the city has submitted and is complying with a plan and schedule of improvements approved by the department of health. This immunity shall expire on the earlier of the date the plan of improvements is completed or four years from the date of assuming responsibility. This immunity does not apply to intentional injuries, fraud, or bad faith. [1994 c 292 § 6.]

Findings—Intent—1994 c 292: See note following RCW 57.04.050.

35A.21.275 Regulation of automatic number or location identification—Prohibited. No code city may enact or enforce an ordinance or regulation mandating automatic number identification or automatic location identification for a private telecommunications system or for a provider of private shared telecommunications services. [1995 c 243 § 7.]

Findings—Severability—1995 c 243: See notes following RCW 80.36.555.

35A.21.280 Statement of restrictions applicable to real property. (1) A property owner may make a written request for a statement of restrictions applicable to a single parcel, tract, lot, or block of real property to the code city in which the real property is located.

(2) Within thirty days of the receipt of the request, the code city shall provide the owner, by registered mail, with a statement of restrictions as described in subsection (3) of this section.

(3) The statement of restrictions shall include the following:

(a) The zoning currently applicable to the real property;

(b) Pending zoning changes currently advertised for public hearing that would be applicable to the real property;

(c) Any designations made by the code city pursuant to chapter 36.70A RCW of any portion of the real property as agricultural land, forest land, mineral resource land, wetland, an area with a critical recharging effect on aquifers used for potable water, a fish and wildlife habitat conservation area, a frequently flooded area, and as a geological hazardous area; and

(d) If information regarding the designations listed in (c) of this subsection are not readily available, inform the owner of the procedure by which the owner can obtain that site-specific information from the code city.

(4) If a code city fails to provide the statement of restrictions within thirty days after receipt of the written request, the owner shall be awarded recovery of all attorneys' fees and costs incurred in any successful application for a writ of mandamus to compel production of a statement.

(5) For purposes of this section:

(a) "Owner" means any vested owner or any person holding the buyer's interest under a recorded real estate contract in which the seller is the vested owner; and

(b) "Real property" means a parcel, tract, lot or block: (i) Containing a single-family residence that is occupied by the owner or a member of his or her family, or rented to another by the owner; or (ii) five acres or less in size.

(6) This section does not affect the vesting of permits or development rights.

Nothing in this section shall be deemed to create any liability on the part of a code city. [1996 c 206 § 7.]

Findings—1996 c 206: See note following RCW 43.05.030.

Additional notes found at www.leg.wa.gov

35A.21.290 Fish enhancement project—Code city's liability. A code city is not liable for adverse impacts resulting from a fish enhancement project that meets the criteria of RCW 77.55.181 and has been permitted by the department of fish and wildlife. [2014 c 120 § 11; 2003 c 39 § 16; 1998 c 249 § 10.]

Findings—Purpose—Report—Effective date—1998 c 249: See notes following RCW 77.55.181.

35A.21.300 Rail fixed guideway system—Safety program plan and security and emergency preparedness plan. (1) Each code city that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety program plan and a system security and emergency preparedness plan for that guideway to the state department of transportation by September 1, 1999, or at least one hundred eighty calendar days before beginning operations or instituting revisions to its plans. These plans must describe the code city's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plans must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the code city shall revise its plans to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plans for review.

(2) Each code city shall implement and comply with its system safety program plan and system security and emergency preparedness plan. The code city shall perform internal safety and security audits to evaluate its compliance with the plans, and submit its audit schedule to the department of transportation no later than December 15th each year. The code city shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plans.

(3) Each code city shall notify the department of transportation within two hours of an occurrence of a reportable accident, unacceptable hazardous condition, or security breach. The department may adopt rules further defining a reportable accident, unacceptable hazardous condition, or security breach. The code city shall investigate all reportable accidents, unacceptable hazardous conditions, or security breaches and provide a written investigation report to the department within forty-five calendar days after the report-

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able accident, unacceptable hazardous condition, or security breach.

(4) The system security and emergency preparedness plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.56 RCW. However, the system safety program plan as described in this section is not subject to this exemption. [2007 c 422 § 2; 2005 c 274 § 267; 1999 c 202 § 2.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Additional notes found at www.leg.wa.gov

35A.21.310 Mobile home, manufactured home, or park model moving or installing—Copies of permits—Definitions. (1) A code city shall transmit a copy of any permit issued to a tenant or the tenant's agent for a mobile home, manufactured home, or park model installation in a mobile home park to the landlord.

(2) A code city shall transmit a copy of any permit issued to a person engaged in the business of moving or installing a mobile home, manufactured home, or park model in a mobile home park to the tenant and the landlord.

(3) As used in this section:

(a) "Landlord" has the same meaning as in RCW 59.20.030;

(b) "Mobile home park" has the same meaning as in RCW 59.20.030;

(c) "Mobile or manufactured home installation" has the same meaning as in *RCW 43.63B.010; and

(d) "Tenant" has the same meaning as in RCW 59.20.030. [1999 c 359 § 19.]

*Reviser's note: RCW 43.63B.010 was recodified as RCW 43.22A.010 pursuant to 2007 c 432 § 13.

Additional notes found at www.leg.wa.gov

35A.21.312 Authority to regulate placement or use of homes—Regulation of manufactured homes—Issuance of permits—Restrictions on location of manufactured/mobile homes and entry or removal of recreational vehicles used as primary residences. (1) A code city may not adopt an ordinance that has the effect, directly or indirectly, of discriminating against consumers' choices in the placement or use of a home in such a manner that is not equally applicable to all homes. Homes built to 42 U.S.C. Sec. 5401-5403 standards (as amended in 2000) must be regulated for the purposes of siting in the same manner as site built homes, factory built homes, or homes built to any other state construction or local design standard. However, except as provided in subsection (2) of this section, any code city may require that:

(a) A manufactured home be a new manufactured home;

(b) The manufactured home be set upon a permanent foundation, as specified by the manufacturer, and that the space from the bottom of the home to the ground be enclosed by concrete or an approved concrete product which can be either load bearing or decorative;

(c) The manufactured home comply with all local design standards applicable to all other homes within the neighborhood in which the manufactured home is to be located;

(d) The home is thermally equivalent to the state energy code; and

(e) The manufactured home otherwise meets all other requirements for a designated manufactured home as defined in RCW 35.63.160.

A code city with a population of one hundred thirty-five thousand or more may choose to designate its building official as the person responsible for issuing all permits, including department of labor and industries permits issued under chapter 43.22 RCW in accordance with an interlocal agreement under chapter 39.34 RCW, for alterations, remodeling, or expansion of manufactured housing located within the city limits under this section.

(2) A code city may not adopt an ordinance that has the effect, directly or indirectly, of restricting the location of manufactured/mobile homes in manufactured/mobile home communities that were legally in existence before June 12, 2008, based exclusively on the age or dimensions of the manufactured/mobile home. This does not preclude a code city from restricting the location of a manufactured/mobile home in manufactured/mobile home communities for any other reason including, but not limited to, failure to comply with fire, safety, or other local ordinances or state laws related to manufactured/mobile homes.

(3) Except as provided under subsection (4) of this section, a code city may not adopt an ordinance that has the effect, directly or indirectly, of preventing the entry or requiring the removal of a recreational vehicle used as a primary residence in manufactured/mobile home communities.

(4) Subsection (3) of this section does not apply to any local ordinance or state law that:

(a) Imposes fire, safety, or other regulations related to recreational vehicles;

(b) Requires utility hookups in manufactured/mobile home communities to meet state or federal building code standards for manufactured/mobile home communities or recreational vehicle parks; or

(c) Includes both of the following provisions:

(i) A recreational vehicle must contain at least one internal toilet and at least one internal shower; and

(ii) If the requirement in (c)(i) of this subsection is not met, a manufactured/mobile home community must provide toilets and showers.

(5) For the purposes of this section, "manufactured/mobile home community" has the same meaning as in RCW 59.20.030.

(6) This section does not override any legally recorded covenants or deed restrictions of record.

(7) This section does not affect the authority granted under chapter 43.22 RCW. [2009 c 79 § 2; 2008 c 117 § 2; 2004 c 256 § 3.]

Findings—Intent—Effective date—2004 c 256: See notes following RCW 35.21.684.

35A.21.320 Abandoned or derelict vessels. A code city has the authority, subject to the processes and limitation outlined in chapter 79.100 RCW, to store, strip, use, auction, sell, salvage, scrap, or dispose of an abandoned or derelict vessel found on or above publicly or privately owned aquatic lands within the jurisdiction of the code city. [2002 c 286 § 16.]

Additional notes found at www.leg.wa.gov

35A.21.322 Transfer of ownership of a code city-owned vessel—Review of vessel's physical condition. (1) Prior to transferring ownership of a code city-owned vessel, the code city shall conduct a thorough review of the physical condition of the vessel, the vessel's operating capability, and any containers and other materials that are not fixed to the vessel.

(2) If the code city determines that the vessel is in a state of advanced deterioration or poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination, the code city may: (a) Not transfer the vessel until the conditions identified under this subsection have been corrected; or (b) permanently dispose of the vessel by landfill, deconstruction, or other related method.

(3) Vessels taken into custody under chapter 79.100 RCW are not subject to this section or RCW 35A.21.324. [2013 c 291 § 17.]

35A.21.324 Transfer of ownership of a code city-owned vessel—Further requirements. (1) Following the inspection required under RCW 35A.21.322 and prior to transferring ownership of a code city-owned vessel, a code city shall obtain the following from the transferee:

(a) The purposes for which the transferee intends to use the vessel; and

(b) Information demonstrating the prospective owner's intent to obtain legal moorage following the transfer, in the manner determined by the code city.

(2)(a) The code city shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.

(b) However, the code city may transfer a vessel with:

(i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the code city's satisfaction that the container's or material's presence is consistent with the anticipated use of the vessel; and

(ii) A reasonable amount of fuel as determined by the code city, based on factors including the vessel's size, condition, and anticipated use of the vessel, including initial destination following transfer.

(c) The code city may consult with the department of ecology in carrying out the requirements of this subsection.

(3) Prior to sale, and unless the vessel has a title or valid marine document, the code city is required to apply for a certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550. [2013 c 291 § 18.]

35A.21.330 Regulation of financial transactions—Limitations. A code city or governmental entity subject to this title may not regulate the terms, conditions, or disclosures of any lawful financial transaction between a consumer and (1) a business or professional under the jurisdiction of the department of financial institutions, or (2) any financial institution as defined under *RCW 30.22.041. [2005 c 338 § 3.]

*Reviser's note: RCW 30.22.041 was recodified as RCW 30A.22.041 pursuant to 2014 c 37 § 4, effective January 5, 2015.

Finding—Intent—2005 c 338: See note following RCW 35.21.698.

35A.21.335 Registration under or compliance with streamlined sales and use tax agreement—Prohibited requirement for businesses. A code city may not require a

business to be licensed based solely upon registration under or compliance with the streamlined sales and use tax agreement. [2008 c 129 § 5.]

35A.21.340 Contractors—Authority of city to verify registration and report violations. A city that issues a business license to a person required to be registered under chapter 18.27 RCW may verify that the person is registered under chapter 18.27 RCW and report violations to the department of labor and industries. The department of revenue must conduct the verification for cities that participate in the business licensing system. [2013 c 144 § 37; 2011 c 298 § 23; 2009 c 432 § 3.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Report—2009 c 432: See RCW 18.27.800.

35A.21.350 Community athletics programs—Sex discrimination prohibited. The antidiscrimination provisions of RCW 49.60.500 apply to community athletics programs and facilities operated, conducted, or administered by a code city. [2009 c 467 § 6.]

Findings—Declarations—2009 c 467: See note following RCW 49.60.500.

35A.21.360 Temporary encampments for the homeless—Hosting by religious organizations authorized—Prohibitions on local actions. (1) A religious organization may host temporary encampments for the homeless on property owned or controlled by the religious organization whether within buildings located on the property or elsewhere on the property outside of buildings.

(2) A code city may not enact an ordinance or regulation or take any other action that:

(a) Imposes conditions other than those necessary to protect public health and safety and that do not substantially burden the decisions or actions of a religious organization regarding the location of housing or shelter for homeless persons on property owned by the religious organization;

(b) Requires a religious organization to obtain insurance pertaining to the liability of a municipality with respect to homeless persons housed on property owned by a religious organization or otherwise requires the religious organization to indemnify the municipality against such liability; or

(c) Imposes permit fees in excess of the actual costs associated with the review and approval of the required permit applications.

(3) For the purposes of this section, "religious organization" means the federally protected practice of a recognized religious assembly, school, or institution that owns or controls real property.

(4) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470 is immune from civil liability for (a) damages arising from the permitting decisions for a temporary encampment for the homeless as provided in this section and (b) any conduct or unlawful activity that may occur as a result of the temporary encampment for the homeless as provided in this section. [2010 c 175 § 4.]

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Findings—Intent—Construction—Prior consent decrees and negotiated settlements for temporary encampments for the homeless not superseded—2010 c 175: See notes following RCW 36.01.290.

35A.21.370 State and federal background checks of license applicants and licensees of occupations under local licensing authority. Code cities may, by ordinance, require a state and federal background investigation of license applicants or licensees in occupations specified by ordinance for the purpose of receiving criminal history record information by code city officials. The investigation shall consist of a background check as allowed through the Washington state criminal records privacy act under RCW 10.97.050, the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834, and the federal bureau of investigation. These background checks must be done through the Washington state patrol identification and criminal history section and may include a national check from the federal bureau of investigation, which shall be through the submission of fingerprints. The Washington state patrol shall serve as the sole source for receipt of fingerprint submissions and the responses to the submissions from the federal bureau of investigation, which must be disseminated to the code city. The code city shall transmit appropriate fees for a state and national criminal history check to the Washington state patrol, unless alternately arranged. [2010 c 47 § 3.]

Chapter 35A.24 RCW AERONAUTICS

Sections

35A.24.010 Airport operation, planning and zoning.

35A.24.010 Airport operation, planning and zoning. A code city may exercise the powers relating to airport planning and zoning, improvement and operation as authorized by chapters 14.07, 14.08, and 14.12 RCW and chapter 35A.63 RCW of this title in accordance with the procedures therein prescribed. [1967 ex.s. c 119 § 35A.24.010.]

Chapter 35A.27 RCW LIBRARIES, MUSEUMS, AND HISTORICAL ACTIVITIES

Sections

35A.27.010 General laws applicable.

35A.27.010 General laws applicable. Every code city may exercise the powers relating to the acquisition, development, improvement and operation of libraries and museums and the preservation of historical materials to the same extent authorized by general law for cities of any class, including, but not limited to, the authority for city libraries granted by RCW 35.22.280, the power to acquire and operate art museums, auditoriums, and other facilities as authorized by RCW 35.21.020, to participate in the establishment of regional libraries, and to contract for library service for public libraries with county, intercounty, and rural library districts, and for regional libraries as authorized by chapter 27.12 RCW, to have a county law library or branch thereof generally under the provisions of chapter 27.24 RCW, to preserve historical

materials, markers, graves and records as provided in chapters 27.48 and 27.34 RCW, and to expend municipal funds thereon. [1985 c 7 § 101; 1983 c 3 § 60; 1967 ex.s. c 119 § 35A.27.010.]

Chapter 35A.28 RCW SCHOOLS

Sections

35A.28.010 General laws applicable.

35A.28.010 General laws applicable. Code cities shall have the authority to enter into contracts for joint acquisition of land and improvement thereof with school districts. Code cities and their relationship with public schools, colleges and school districts shall be governed by the provisions of general law, including Titles 28A and 28B RCW. Each code city shall be contained within one school district except as may be otherwise provided in *RCW 28A.315.250. [1983 c 3 § 61; 1967 ex.s. c 119 § 35A.28.010.]

*Reviser's note: RCW 28A.315.250 was repealed by 1999 c 315 § 801.

Chapter 35A.29 RCW MUNICIPAL ELECTIONS IN CODE CITIES

Sections

35A.29.120 Ballot titles.
35A.29.130 Notice of ballot title—Appeal.
35A.29.151 Conduct of elections.
35A.29.170 Initiative and referendum petitions—Suspension of effectiveness of legislative action.
35A.29.180 Recall.

35A.29.120 Ballot titles. When any question is to be submitted to the voters of a code city, or when a proposition is to be submitted to the voters of an area under provisions of this title, the question or proposition shall be advertised as provided for nominees for office, and in such cases there shall also be printed on the ballot a ballot title for the question or proposition in the form applicable under RCW *29.79.055, **29.27.060, 82.14.036, 82.46.021, or 82.80.090 or as otherwise expressly required by state law. The ballot title shall be prepared by the attorney for the code city, or as specified in **RCW 29.27.060 for elections held outside of a code city. [1993 c 256 § 13; 1979 ex.s. c 18 § 31; 1967 ex.s. c 119 § 35A.29.120.]

Reviser's note: *(1) RCW 29.79.055 was recodified as RCW 29.27.066 pursuant to 2000 c 197 § 16. RCW 29.27.066 was subsequently recodified as RCW 29A.36.070 pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.36.070 was subsequently repealed by 2004 c 271 § 193. Later enactment of RCW 29A.36.070, see RCW 29A.36.071.

** (2) RCW 29.27.060 was repealed by 2000 c 197 § 15.

Additional notes found at www.leg.wa.gov

35A.29.130 Notice of ballot title—Appeal. Upon the filing of a ballot title as defined in RCW 35A.29.120, the county auditor shall forthwith notify the persons proposing the measure of the exact language of the ballot title. If the persons filing any local question covered by RCW 35A.29.120 are dissatisfied with the ballot title formulated by the attorney for the code city or by the county prosecuting attorney, they may appeal to the superior court of the county

where the question is to appear on the ballot, as provided in *RCW 29.27.067. [1967 ex.s. c 119 § 35A.29.130.]

*Reviser's note: RCW 29.27.067 was recodified as RCW 29A.36.090 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

35A.29.151 Conduct of elections. Elections for code cities shall comply with general election law. [1994 c 223 § 41.]

35A.29.170 Initiative and referendum petitions—Suspension of effectiveness of legislative action. Initiative and referendum petitions authorized to be filed under provisions of this title, or authorized by charter, or authorized for code cities having the commission form of government as provided by chapter 35.17 RCW, shall be in substantial compliance with the provisions of RCW 35A.01.040 as to form and content of the petition, insofar as such provisions are applicable; shall contain a true copy of a resolution or ordinance sought to be referred to the voters; and must contain valid signatures of registered voters of the code city in the number required by the applicable provision of this title. Except when otherwise provided by statute, referendum petitions must be filed with the clerk of the legislative body of the code city within ninety days after the passage of the resolution or ordinance sought to be referred to the voters, or within such lesser number of days as may be authorized by statute or charter in order to precede the effective date of an ordinance: PROVIDED, That nothing herein shall be construed to abrogate or affect an exemption from initiative and/or referendum provided by a code city charter. The clerk shall transmit the petition to the county auditor who shall determine the sufficiency of the petition under the rules set forth in RCW 35A.01.040. When a referendum petition is filed with the clerk, the legislative action sought to be referred to the voters shall be suspended from taking effect. Such suspension shall terminate when: (1) There is a final determination of insufficiency or untimeliness of the referendum petition; or (2) the legislative action so referred is approved by the voters at a referendum election. [1996 c 286 § 8; 1967 ex.s. c 119 § 35A.29.170.]

35A.29.180 Recall. Elective officers of code cities may be recalled in the manner provided in *chapter 29.82 RCW. [1967 ex.s. c 119 § 35A.29.180.]

*Reviser's note: Chapter 29.82 RCW was recodified as chapter 29A.56 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Chapter 35A.31 RCW ACCIDENT CLAIMS AND FUNDS

Sections

35A.31.010 Claims—Statement of residence required—Time for filing—Verification.
35A.31.020 Liberal construction.
35A.31.030 Report—Manner of filing.
35A.31.050 Charter code cities—Provisions cumulative.
35A.31.060 Accident fund—Warrants for judgments.
35A.31.070 Tax levy for fund.
35A.31.080 Surplus to general fund.

35A.31.010 Claims—Statement of residence required—Time for filing—Verification. Claims for damages sounding in tort against any code city shall be presented

and filed within the time, in the manner and by the person prescribed in RCW 4.96.020. [1967 ex.s. c 119 § 35A.31.010.]

35A.31.020 Liberal construction. With respect to the content of such claims the provisions of RCW 4.96.020 shall be liberally construed so that substantial compliance will be deemed satisfactory. [1967 ex.s. c 119 § 35A.31.020.]

35A.31.030 Report—Manner of filing. No ordinance or resolution shall be passed allowing such claim or any part thereof, or appropriating any money or other property to pay or satisfy the same or any part thereof, until the claim has first been referred to the proper department or committee, nor until such department or committee has made its report thereon to the legislative body of the code city pursuant to such reference.

No action shall be maintained against any code city for any claim for damages until the claim has been filed in the manner set forth in chapter 4.96 RCW. [1993 c 449 § 9; 1967 ex.s. c 119 § 35A.31.030.]

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

35A.31.050 Charter code cities—Provisions cumulative. Nothing herein shall be construed as in anywise modifying, limiting, or repealing any valid provision of the charter of any charter code city relating to such claims for damages, except when in conflict herewith, but the provisions hereof shall be in addition to such charter provisions, and such claims for damages, in all other respects, shall conform to and comply with such charter provisions. [1967 ex.s. c 119 § 35A.31.050.]

35A.31.060 Accident fund—Warrants for judgments. Every code city may create an accident fund upon which the clerk shall draw warrants for the full amount of any judgment including interest and costs against the city on account of personal injuries suffered by any person as shown by a transcript of the judgment duly certified to the clerk. Warrants issued for such purpose shall be in denominations not less than one hundred dollars nor more than five hundred dollars; they shall draw interest at the rate of six percent per annum, shall be numbered consecutively and be paid in the order of their issue. [1967 ex.s. c 119 § 35A.31.060.]

35A.31.070 Tax levy for fund. The legislative body of the code city, after the drawing of warrants against the accident fund, shall estimate the amount necessary to pay the warrant with accrued interest thereon and may appropriate and transfer money from the contingency fund sufficient therefor, or if there is not sufficient money in the contingency fund the legislative body shall levy a tax sufficient to pay all or such unpaid portion of any judgment not exceeding seventy-five cents per thousand dollars of assessed value. If a single levy of seventy-five cents per thousand dollars of assessed value is not sufficient, and if other moneys are not available therefor, an annual levy of seventy-five cents per thousand dollars of assessed value shall be made until the warrants and interest are fully paid. [1973 1st ex.s. c 195 § 27; 1967 ex.s. c 119 § 35A.31.070.]

(2014 Ed.)

Additional notes found at www.leg.wa.gov

35A.31.080 Surplus to general fund. If there is no judgment outstanding against the city for personal injuries, the money remaining in the accident fund after the payment of the warrants drawn on that fund and interest in full shall be transferred to the general fund. [1967 ex.s. c 119 § 35A.31.080.]

Chapter 35A.33 RCW BUDGETS IN CODE CITIES

Sections

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35A.33.146	Contingency fund—Withdrawals.
35A.33.150	Unexpended appropriations.
35A.33.160	Violations and penalties.

35A.33.010 Definitions. Unless the context clearly indicates otherwise, the following words as used in this chapter shall have the meaning herein prescribed:

(1) "Chief administrative officer" as used in this chapter includes the mayor of cities having a mayor-council form of government, the commissioners in cities having a commission form of government, the city manager, or any other city official designated by the charter or ordinances of such city under the plan of government governing the same, or the budget or finance officer designated by the mayor, manager or commissioners, to perform the functions, or portions thereof, contemplated by this chapter.

(2) "Clerk" as used in this chapter includes the officer performing the functions of a finance or budget director, comptroller, auditor, or by whatever title he or she may be known in any code city.

(3) "Council" as used in this chapter includes the commissioners in cities having a commission form of government and any other group of city officials serving as the legislative body of a code city.

(4) "Department" as used in this chapter includes each office, division, service, system or institution of the city for which no other statutory or charter provision is made for budgeting and accounting procedures or controls.

(5) "Fiscal year" as used in this chapter means that fiscal period set by the code city pursuant to authority given under RCW 1.16.030.

(6) "Fund", as used in this chapter and "funds" where clearly used to indicate the plural of "fund", shall mean the budgeting or accounting entity authorized to provide a sum of money for specified activities or purposes.

(7) "Funds" as used in this chapter where not used to indicate the plural of "fund" shall mean money in hand or available for expenditure or payment of a debt or obligation.

(8) Except as otherwise defined herein, municipal accounting terms used in this chapter have the meaning prescribed in "Governmental Accounting, Auditing and Financial Reporting" prepared by the National Committee on Governmental Accounting, 1968. [2009 c 549 § 3032; 1969 ex.s. c 81 § 2; 1967 ex.s. c 119 § 35A.33.010.]

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

Additional notes found at www.leg.wa.gov

35A.33.020 Applicability of chapter. The provisions of this chapter apply to all code cities except those which have adopted an ordinance under RCW 35A.34.040 providing for a biennial budget. In addition, this chapter shall not apply to any municipal utility or enterprise for which separate budgeting provisions are made by general state law. [1985 c 175 § 33; 1967 ex.s. c 119 § 35A.33.020.]

35A.33.030 Budget estimates. On or before the second Monday of the fourth month prior to the beginning of the city's next fiscal year, or at such other time as the city may provide by ordinance or charter, the clerk shall notify in writing the head of each department of a code city to file with the clerk within fourteen days of the receipt of such notification, detailed estimates of the probable revenue from sources other than ad valorem taxation and of all expenditures required by his or her department for the ensuing fiscal year. The notice shall be accompanied by the proper forms provided by the clerk, prepared in accordance with the requirements and classification established by the state auditor. The clerk shall prepare the estimates for interest and debt redemption requirements and all other estimates, the preparation of which falls properly within the duties of his or her office. The chief administrative officers of the city shall submit to the clerk detailed estimates of all expenditures proposed to be financed from the proceeds of bonds or warrants not yet authorized, together with a statement of the proposed method of financing them. In the absence or disability of the official or person regularly in charge of a department, the duties herein required shall devolve upon the person next in charge of such department. [1995 c 301 § 51; 1967 ex.s. c 119 § 35A.33.030.]

35A.33.040 Classification and segregation of budget estimates. All estimates of receipts and expenditures for the ensuing year shall be fully detailed in the annual budget and shall be classified and segregated according to a standard classification of accounts to be adopted and prescribed by the state auditor after consultation with the Washington finance officers association, the association of Washington cities and the association of Washington city managers. [1995 c 301 § 52; 1967 ex.s. c 119 § 35A.33.040.]

35A.33.050 Proposed preliminary budget. On or before the first business day in the third month prior to the beginning of the fiscal year of a code city or at such other time as the city may provide by ordinance or charter, the clerk or other person designated by the charter, by ordinances, or by the chief administrative officer of the city shall submit to the chief administrative officer a proposed preliminary budget which shall set forth the complete financial program of the city for the ensuing fiscal year, showing the expenditure program requested by each department and the sources of revenue by which each such program is proposed to be financed.

The revenue section shall set forth in comparative and tabular form for each fund the actual receipts for the last completed fiscal year, the estimated receipts for the current fiscal year and the estimated receipts for the ensuing fiscal year, which shall include the amount to be raised from ad valorem taxes and unencumbered fund balances estimated to be available at the close of the current fiscal year.

The expenditure section shall set forth in comparative and tabular form for each fund and every department operating within each fund the actual expenditures for the last completed fiscal year, the appropriations for the current fiscal year and the estimated expenditures for the ensuing fiscal year. The salary or salary range for each office, position or job classification shall be set forth separately together with the title or position designation thereof: PROVIDED, That salaries may be set out in total amounts under each department if a detailed schedule of such salaries and positions be attached to and made a part of the budget document. [1967 ex.s. c 119 § 35A.33.050.]

35A.33.052 Preliminary budget. The chief administrative officer shall prepare the preliminary budget in detail, making any revisions or addition to the reports of the department heads deemed advisable by such chief administrative officer and at least sixty days before the beginning of the city's next fiscal year he or she shall file it with the city clerk as the recommendation of the chief administrative officer for the final budget. The clerk shall provide a sufficient number of copies of such preliminary budget and budget message to meet the reasonable demands of taxpayers therefor and have them available for distribution not later than six weeks before the beginning of the city's next fiscal year. [2009 c 549 § 3033; 1967 ex.s. c 119 § 35A.33.052.]

35A.33.055 Budget message—Preliminary hearings. In every code city a budget message prepared by or under the direction of the city's chief administrative officer shall be submitted as a part of the preliminary budget to the city's legislative body at least sixty days before the beginning of the city's next fiscal year and shall contain the following:

- (1) An explanation of the budget document;
- (2) An outline of the recommended financial policies and programs of the city for the ensuing fiscal year;
- (3) A statement of the relation of the recommended appropriation to such policies and programs;
- (4) A statement of the reason for salient changes from the previous year in appropriation and revenue items;
- (5) An explanation for any recommended major changes in financial policy.

Prior to the final hearing on the budget, the legislative body or a committee thereof, shall schedule hearings on the budget or parts thereof, and may require the presence of department heads to give information regarding estimates and programs. [1967 ex.s. c 119 § 35A.33.055.]

35A.33.060 Budget—Notice of hearing on final. Immediately following the filing of the preliminary budget with the clerk, the clerk shall publish a notice once each week for two consecutive weeks stating that the preliminary budget for the ensuing fiscal year has been filed with the clerk, that a copy thereof will be furnished to any taxpayer who will call at the clerk's office therefor and that the legislative body of the city will meet on or before the first Monday of the month next preceding the beginning of the ensuing fiscal year for the purpose of fixing the final budget, designating the date, time and place of the legislative budget meeting and that any taxpayer may appear thereat and be heard for or against any part of the budget. The publication of the notice shall be made in the official newspaper of the city. [1985 c 469 § 43; 1973 c 67 § 1; 1967 ex.s. c 119 § 35A.33.060.]

35A.33.070 Budget—Hearing. The council shall meet on the day fixed by RCW 35A.33.060 for the purpose of fixing the final budget of the city at the time and place designated in the notice thereof. Any taxpayer may appear and be heard for or against any part of the budget. The hearing may be continued from day to day but not later than the twenty-fifth day prior to commencement of the city's fiscal year. [1967 ex.s. c 119 § 35A.33.070.]

35A.33.075 Budget adoption. Following conclusion of the hearing, and prior to the beginning of the fiscal year, the legislative body shall make such adjustments and changes as it deems necessary or proper and after determining the allowance in each item, department, classification and fund, and shall by ordinance, adopt the budget in its final form and content. Appropriations shall be limited to the total estimated revenues contained therein including the amount to be raised by ad valorem taxes and the unencumbered fund balances estimated to be available at the close of the current fiscal year. Such ordinances may adopt the final budget by reference: PROVIDED, That the ordinance adopting such budget shall set forth in summary form the totals of estimated revenues and appropriations for each separate fund and the aggregate totals for all such funds combined.

A complete copy of the final budget as adopted shall be transmitted to the state auditor, and to the association of Washington cities. [1995 c 301 § 53; 1969 ex.s. c 81 § 3; 1967 ex.s. c 119 § 35A.33.075.]

Additional notes found at www.leg.wa.gov

35A.33.080 Emergency expenditures—Nondebatable emergencies. Upon the happening of any emergency caused by violence of nature, casualty, riot, insurrection, war, or other unanticipated occurrence requiring the immediate preservation of order or public health, or for the restoration to a condition of usefulness of any public property which has been damaged or destroyed by accident, or for public relief from calamity, or in settlement of approved claims for personal injuries or property damage, or to meet mandatory

expenditures required by laws enacted since the last annual budget was adopted, or to cover expenses incident to preparing for or establishing a new form of government authorized or assumed after adoption of the current budget, including any expenses incident to selection of additional or new officials required thereby, or incident to employee recruitment at any time, the city council, upon the adoption of an ordinance, by the vote of one more than the majority of all members of the legislative body, stating the facts constituting the emergency and the estimated amount required to meet it, may make the expenditures therefor without notice or hearing. [1967 ex.s. c 119 § 35A.33.080.]

35A.33.090 Emergency expenditures—Other emergencies—Hearing. If a public emergency which could not reasonably have been foreseen at the time of filing the preliminary budget requires the expenditure of money not provided for in the annual budget, and if it is not one of the emergencies specifically enumerated in RCW 35A.33.080, the city council before allowing any expenditure therefor shall adopt an ordinance stating the facts constituting the emergency and the estimated amount required to meet it and declaring that an emergency exists.

Such ordinance shall not be voted on until five days have elapsed after its introduction, and for passage shall require the vote of one more than the majority of all members of the legislative body of the code city.

Any taxpayer may appear at the meeting at which the emergency ordinance is to be voted on and be heard for or against the adoption thereof. [1967 ex.s. c 119 § 35A.33.090.]

35A.33.100 Emergency expenditures—Warrants—Payments. All expenditures for emergency purposes as provided in this chapter shall be paid by warrants from any available money in the fund properly chargeable with such expenditures. If, at any time, there is insufficient money on hand in a fund with which to pay such warrants as presented, the warrants shall be registered, bear interest and be called in the same manner as other registered warrants as prescribed in RCW 35A.21.110. [1967 ex.s. c 119 § 35A.33.100.]

35A.33.102 Registered warrants—Appropriations. In adopting the final budget for any fiscal year, the council shall appropriate from estimated revenue sources available, a sufficient amount to pay the principal and interest on all outstanding registered warrants issued since the adoption of the last preceding budget except those issued and identified as revenue warrants and except those for which an appropriation previously has been made: PROVIDED, That no portion of the revenues which are restricted in use by law may be appropriated for the redemption of warrants issued against a utility or other special purpose fund of a self-supporting nature: PROVIDED FURTHER, That all or any portion of the city's outstanding registered warrants may be funded into bonds in any manner authorized by law. [1967 ex.s. c 119 § 35A.33.102.]

35A.33.105 Adjustment of wages, etc., of employees permissible budget notwithstanding. Notwithstanding the appropriations for any salary, or salary range of any

employee or employees adopted in a final budget, the legislative body of any code city may, by ordinance, change the wages, hours, and conditions of employment of any or all of its appointive employees if sufficient funds are available for appropriation to such purposes. [1967 ex.s. c 119 § 35A.33.105.]

35A.33.110 Forms—Accounting—Supervision by state. The state auditor is empowered to make and install the forms and classifications required by this chapter to define what expenditures are chargeable to each budget class and to establish the accounting and cost systems necessary to secure accurate budget information. [1995 c 301 § 54; 1967 ex.s. c 119 § 35A.33.110.]

35A.33.120 Funds—Limitations on expenditures—Transfers and adjustments. The expenditures as classified and itemized in the final budget shall constitute the city's appropriations for the ensuing fiscal year. Unless otherwise ordered by a court of competent jurisdiction, and subject to further limitations imposed by ordinance of the code city, the expenditure of city funds or the incurring of current liabilities on behalf of the city shall be limited to the following:

(1) The total amount appropriated for each fund in the budget for the current fiscal year, without regard to the individual items contained therein, except that this limitation shall not apply to wage adjustments authorized by RCW 35A.33.105; and

(2) The unexpended appropriation balances of a preceding budget which may be carried forward from prior fiscal years pursuant to RCW 35A.33.150; and

(3) Funds received from the sale of bonds or warrants which have been duly authorized according to law; and

(4) Funds received in excess of estimated revenues during the current fiscal year, when authorized by an ordinance amending the original budget; and

(5) Expenditures required for emergencies, as authorized in RCW 35A.33.080 and 35A.33.090.

Transfers between individual appropriations within any one fund may be made during the current fiscal year by order of the city's chief administrative officer subject to such regulations, if any, as may be imposed by the city council. Notwithstanding the provisions of RCW 43.09.210 or of any statute to the contrary, transfers, as herein authorized, may be made within the same fund regardless of the various offices, departments or divisions of the city which may be affected.

The city council, upon a finding that it is to the best interests of the code city to decrease, revoke or recall all or any portion of the total appropriations provided for any one fund, may, by ordinance, approved by the vote of one more than the majority of all members thereof, stating the facts and findings for doing so, decrease, revoke or recall all or any portion of an unexpended fund balance, and by said ordinance, or a subsequent ordinance adopted by a like majority, the moneys thus released may be reappropriated for another purpose or purposes, without limitation to department, division or fund, unless the use of such moneys is otherwise restricted by law, charter, or ordinance. [1967 ex.s. c 119 § 35A.33.120.]

35A.33.122 Administration, oversight, or supervision of utility—Reimbursement from utility budget

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authorized. Whenever any code city apportions a percentage of the city manager's, administrator's, or supervisor's time, or the time of other management or general government staff, for administration, oversight, or supervision of a utility operated by the city, or to provide services to the utility, the utility budget may identify such services and budget for reimbursement of the city's current expense fund for the value of such services. [1991 c 152 § 3.]

35A.33.125 Limitation on expenditures—Void. Liabilities incurred by any officer or employee of the city in excess of any budget appropriations shall not be a liability of the city. The clerk shall issue no warrant and the city council or other authorized person shall approve no claim for an expenditure in excess of the total amount appropriated for any individual fund, except upon an order of a court of competent jurisdiction or for emergencies as provided in this chapter. [1969 ex.s. c 81 § 4; 1967 ex.s. c 119 § 35A.33.125.]

Additional notes found at www.leg.wa.gov

35A.33.130 Funds received from sales of bonds and warrants—Expenditures program—Federal tax law. Moneys received from the sale of bonds or warrants must be used for no other purpose than that for which they were issued. If any unexpended fund balance remains from the proceeds realized from the bonds or warrants after the accomplishment of the purpose for which they were issued it must be used for the payment of principal of or interest on such indebtedness consistent with applicable provisions of federal tax law. Where a budget contains an expenditure program to be partially or wholly financed from a bond issue to be authorized thereafter, expenditures of amounts anticipated to be reimbursed from the proceeds of the issuance and sale of such bonds must be made or incurred consistent with any applicable federal tax law requirements. [2011 c 210 § 4; 1967 ex.s. c 119 § 35A.33.130.]

Application to previously issued bonds—2011 c 210: See note following RCW 39.46.040.

35A.33.135 Levy for ad valorem tax. At a time fixed by the city's ordinance or charter, not later than the first Monday in October of each year, the chief administrative officer shall provide the city's legislative body with current information on estimates of revenues from all sources as adopted in the budget for the current year, together with estimates submitted by the clerk under RCW 35A.33.050. The city's legislative body and the city's administrative officer or his or her designated representative shall consider the city's total anticipated financial requirements for the ensuing fiscal year, and the legislative body shall determine and fix by ordinance the amount to be raised by ad valorem taxes. Upon adoption of the ordinance fixing the amount of ad valorem taxes to be levied, the clerk shall certify the same to the board of county commissioners as required by RCW 84.52.020. [2009 c 549 § 3034; 1967 ex.s. c 119 § 35A.33.135.]

35A.33.140 Funds—Quarterly report of status. At such intervals as may be required by city charter or ordinance, however, being not less than quarterly, the clerk shall submit to the city's legislative body and chief administrative officer a report showing the expenditures and liabilities

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against each separate budget appropriation incurred during the preceding reporting period and like information for the whole of the current fiscal year to the first day of the current reporting period together with the unexpended balance of each appropriation. The report shall also show the receipts from all sources. [1967 ex.s. c 119 § 35A.33.140.]

35A.33.145 Contingency fund—Creation. Every code city may create and maintain a contingency fund to provide moneys with which to meet any municipal expense, the necessity or extent of which could not have been foreseen or reasonably evaluated at the time of adopting the annual budget, or from which to provide moneys for those emergencies described in RCW 35A.33.080 and 35A.33.090. Such fund may be supported by a budget appropriation from any tax or other revenue source not restricted in use by law, or also may be supported by a transfer from other unexpended or decreased funds made available by ordinance as set forth in RCW 35A.33.120: PROVIDED, That the total amount accumulated in such fund at any time shall not exceed the equivalent of thirty-seven and one-half cents per thousand dollars of assessed valuation of property within the city at such time. Any moneys in the contingency fund at the end of the fiscal year shall not lapse except upon reappropriation by the council to another fund in the adoption of a subsequent budget. [1973 1st ex.s. c 195 § 28; 1967 ex.s. c 119 § 35A.33.145.]

Additional notes found at www.leg.wa.gov

35A.33.146 Contingency fund—Withdrawals. No money shall be withdrawn from the contingency fund except by transfer to the appropriate operating fund authorized by a resolution or ordinance of the council, adopted by a vote of the majority of the entire council, clearly stating the facts constituting the reason for the withdrawal or the emergency as the case may be, specifying the fund to which the withdrawn money shall be transferred. [1967 ex.s. c 119 § 35A.33.146.]

35A.33.150 Unexpended appropriations. All appropriations in any current operating fund shall lapse at the end of each fiscal year: PROVIDED, That this shall not prevent payments in the following year upon uncompleted programs or improvements in progress or on orders subsequently filled or claims subsequently billed for the purchase of material, equipment and supplies or for personal or contractual services not completed or furnished by the end of the fiscal year, all of which have been properly budgeted and contracted for prior to the close of such fiscal year but furnished or completed in due course thereafter.

All appropriations in a special fund authorized by ordinance or by state law to be used only for the purpose or purposes therein specified, including any cumulative reserve funds lawfully established in specific or general terms for any municipal purpose or purposes, or a contingency fund as authorized by RCW 35A.33.145, shall not lapse, but shall be carried forward from year to year until fully expended or the purpose has been accomplished or abandoned, without necessity of reappropriation.

The accounts for budgetary control for each fiscal year shall be kept open for twenty days after the close of such fiscal year for the purpose of paying and recording claims for

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indebtedness incurred during such fiscal year; any claim presented after the twentieth day following the close of the fiscal year shall be paid from appropriations lawfully provided for the ensuing period, including those made available by provisions of this section, and shall be recorded in the accounts for the ensuing fiscal year. [1967 ex.s. c 119 § 35A.33.150.]

35A.33.160 Violations and penalties. Upon the conviction of any city official, department head or other city employee of knowingly failing, or refusing, without just cause, to perform any duty imposed upon such officer or employee by this chapter, or city ordinance or charter, in connection with the giving of notice, the preparing and filing of estimates of revenues or expenditures or other information required for preparing a budget report in the time and manner required, or of knowingly making expenditures in excess of budget appropriations, he or she shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars for each separate violation. [2009 c 549 § 3035; 1967 ex.s. c 119 § 35A.33.160.]

Chapter 35A.34 RCW BIENNIAL BUDGETS

Sections

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- 35A.34.020 Application of chapter.
- 35A.34.030 Definitions.
- 35A.34.040 Biennial budget authorized—Limitations.
- 35A.34.050 Budget estimates—Submittal.
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- 35A.34.240 Funds—Quarterly report of status.
- 35A.34.250 Contingency fund—Creation.
- 35A.34.260 Contingency fund—Withdrawals.
- 35A.34.270 Unexpended appropriations.
- 35A.34.280 Violations and penalties.

35A.34.010 Legislative intent. See RCW 35.34.010.

35A.34.020 Application of chapter. This chapter applies to all code cities which have by ordinance adopted this chapter authorizing the adoption of a fiscal biennium budget. [1985 c 175 § 34.]

35A.34.030 Definitions. Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(1) "Clerk" includes the officer performing the functions of a finance or budget director, comptroller, auditor, or by whatever title the officer may be known in any code city.

(2) "Department" includes each office, division, service, system, or institution of the city for which no other statutory or charter provision is made for budgeting and accounting procedures or controls.

(3) "Legislative body" includes the council, commission, or any other group of officials serving as the legislative body of a code city.

(4) "Chief administrative officer" includes the mayor of cities having a mayor-council plan of government, the commissioners in cities having a commission plan of government, the manager, or any other city official designated by the charter or ordinances of such city under the plan of government governing the same, or the budget or finance officer designated by the mayor, manager, or commissioners, to perform the functions, or portions thereof, contemplated by this chapter.

(5) "Fiscal biennium" means the period from January 1 of each odd-numbered year through December 31 of the next succeeding even-numbered year.

(6) "Fund" and "funds" where clearly used to indicate the plural of "fund" means the budgeting or accounting entity authorized to provide a sum of money for specified activities or purposes.

(7) "Funds" where not used to indicate the plural of "fund" means money in hand or available for expenditure or payment of a debt or obligation.

(8) Except as otherwise defined in this chapter, municipal accounting terms used in this chapter have the meaning prescribed by the state auditor pursuant to RCW 43.09.200. [1985 c 175 § 35.]

"Fiscal biennium" defined: RCW 1.16.020.

35A.34.040 Biennial budget authorized—Limitations. All code cities are authorized to establish by ordinance a two-year fiscal biennium budget. The ordinance shall be enacted at least six months prior to commencement of the fiscal biennium and this chapter applies to all code cities which utilize a fiscal biennium budget. Code cities which establish a fiscal biennium budget are authorized to repeal such ordinance and provide for reversion to a fiscal year budget. The ordinance may only be repealed effective as of the conclusion of a fiscal biennium. However, the city shall comply with chapter 35A.33 RCW in developing and adopting the budget for the first fiscal year following repeal of the ordinance. [1985 c 175 § 36.]

35A.34.050 Budget estimates—Submittal. On or before the second Monday of the fourth month prior to the beginning of the city's next fiscal biennium, or at such other time as the city may provide by ordinance or charter, the clerk shall notify in writing the head of each department of a city to file with the clerk within fourteen days of the receipt of such notification, detailed estimates of the probable revenue from sources other than ad valorem taxation and of all expenditures required by the department for the ensuing fiscal biennium. The notice shall be accompanied by the proper forms provided by the clerk, prepared in accordance with the requirements and classification established by the state audi-

tor. The clerk shall prepare the estimates for interest and debt redemption requirements and all other estimates, the preparation of which falls properly within the duties of the clerk's office. The chief administrative officers of the city shall submit to the clerk detailed estimates of all expenditures proposed to be financed from the proceeds of bonds or warrants not yet authorized, together with a statement of the proposed method of financing them. In the absence or disability of the official or person regularly in charge of a department, the duties required by this section shall devolve upon the person next in charge of such department. [1995 c 301 § 55; 1985 c 175 § 37.]

35A.34.060 Budget estimates—Classification and segregation. All estimates of receipts and expenditures for the ensuing fiscal biennium shall be fully detailed in the biennial budget and shall be classified and segregated according to a standard classification of accounts to be adopted and prescribed by the state auditor after consultation with the Washington finance officers association, the association of Washington cities, and the association of Washington city managers. [1995 c 301 § 56; 1985 c 175 § 38.]

35A.34.070 Proposed preliminary budget. On or before the first business day in the third month prior to the beginning of the biennium of a city or at such other time as the city may provide by ordinance or charter, the clerk or other person designated by the charter, by ordinances, or by the chief administrative officer of the city shall submit to the chief administrative officer a proposed preliminary budget which shall set forth the complete financial program of the city for the ensuing fiscal biennium, showing the expenditure program requested by each department and the sources of revenue by which each such program is proposed to be financed.

The revenue section shall set forth in comparative and tabular form for each fund the actual receipts for the last completed fiscal biennium, the estimated receipts for the current fiscal biennium, and the estimated receipts for the ensuing fiscal biennium, which shall include the amount to be raised from ad valorem taxes and unencumbered fund balances estimated to be available at the close of the current fiscal biennium. However, if the city was not utilizing a fiscal biennium budget for the previous three years, it shall set forth its fiscal years' revenues to reflect actual and estimated receipts as if it had previously utilized a biennial budgetary process.

The expenditure section shall set forth in comparative and tabular form for each fund and every department operating within each fund the actual expenditures for the last completed fiscal biennium, the appropriations for the current fiscal biennium, and the estimated expenditures for the ensuing fiscal biennium. However, if the city was not utilizing a fiscal biennium budget for the previous three years, it shall set forth its fiscal years' expenditures to reflect actual and estimated levels as if it had previously utilized a biennial budgetary process. The expenditure section shall further set forth separately the salary or salary range for each office, position, or job classification together with the title or position designation thereof. However, salaries may be set out in total amounts under each department if a detailed schedule of such salaries

and positions be attached and made a part of the budget document. [1985 c 175 § 39.]

35A.34.080 Preliminary budget. The chief administrative officer shall prepare the preliminary budget in detail, making any revisions or additions to the reports of the department heads deemed advisable by such chief administrative officer. At least sixty days before the beginning of the city's next fiscal biennium the chief administrative officer shall file it with the clerk as the recommendation of the chief administrative officer for the final budget. The clerk shall provide a sufficient number of copies of such preliminary budget and budget message to meet the reasonable demands of taxpayers therefor and have them available for distribution not later than six weeks before the beginning of the city's next fiscal biennium. [1985 c 175 § 40.]

35A.34.090 Budget message—Hearings. (1) In every city, a budget message prepared by or under the direction of the city's chief administrative officer shall be submitted as a part of the preliminary budget to the city's legislative body at least sixty days before the beginning of the city's next fiscal biennium and shall contain the following:

- (a) An explanation of the budget document;
- (b) An outline of the recommended financial policies and programs of the city for the ensuing fiscal biennium;
- (c) A statement of the relation of the recommended appropriation to such policies and programs;
- (d) A statement of the reason for salient changes from the previous biennium in appropriation and revenue items; and
- (e) An explanation for any recommended major changes in financial policy.

(2) Prior to the final hearing on the budget, the legislative body or a committee thereof shall schedule hearings on the budget or parts thereof, and may require the presence of department heads to give information regarding estimates and programs. [1985 c 175 § 41.]

35A.34.100 Budget—Notice of hearing. Immediately following the filing of the preliminary budget with the clerk, the clerk shall publish a notice once a week for two consecutive weeks stating that the preliminary budget for the ensuing fiscal biennium has been filed with the clerk, that a copy thereof will be made available to any taxpayer who will call at the clerk's office therefor, that the legislative body of the city will meet on or before the first Monday of the month next preceding the beginning of the ensuing fiscal biennium for the purpose of fixing the final budget, designating the date, time, and place of the legislative budget meeting, and that any taxpayer may appear thereat and be heard for or against any part of the budget. The publication of the notice shall be made in the official newspaper of the city if there is one, otherwise in a newspaper of general circulation in the city. If there is no newspaper of general circulation in the city, then notice may be made by posting in three public places fixed by ordinance as the official places for posting the city's official notices. [1985 c 175 § 42.]

35A.34.110 Budget—Hearing. The legislative body shall meet on the day fixed by RCW 35A.34.100 for the pur-

pose of fixing the final budget of the city at the time and place designated in the notice thereof. Any taxpayer may appear and be heard for or against any part of the budget. The hearing may be continued from day to day but not later than the twenty-fifth day prior to commencement of the city's fiscal biennium. [1985 c 175 § 43.]

35A.34.120 Budget—Adoption. Following conclusion of the hearing, and prior to the beginning of the fiscal biennium, the legislative body shall make such adjustments and changes as it deems necessary or proper and, after determining the allowance in each item, department, classification, and fund, shall by ordinance adopt the budget in its final form and content. Appropriations shall be limited to the total estimated revenues contained therein including the amount to be raised by ad valorem taxes and the unencumbered fund balances estimated to be available at the close of the current fiscal biennium. Such ordinances may adopt the final budget by reference. However, the ordinance adopting the budget shall set forth in summary form the totals of estimated revenues and appropriations for each separate fund and the aggregate totals for all such funds combined.

A complete copy of the final budget as adopted shall be transmitted to the state auditor and to the association of Washington cities. [1995 c 301 § 57; 1985 c 175 § 44.]

35A.34.130 Budget—Mid-biennial review and modification. The legislative authority of a city having adopted the provisions of this chapter shall provide by ordinance for a mid-biennial review and modification of the biennial budget. The ordinance shall provide that such review and modification shall occur no sooner than eight months after the start nor later than conclusion of the first year of the fiscal biennium. The chief administrative officer shall prepare the proposed budget modification and shall provide for publication of notice of hearings consistent with publication of notices for adoption of other city ordinances. City ordinances providing for a mid-biennium review and modification shall establish procedures for distribution of the proposed modification to members of the city legislative authority, procedures for making copies available to the public, and shall provide for public hearings on the proposed budget modification. The budget modification shall be by ordinance approved in the same manner as are other ordinances of the city.

A complete copy of the budget modification as adopted shall be transmitted to the state auditor and to the association of Washington cities. [1995 c 301 § 58; 1985 c 175 § 45.]

35A.34.140 Emergency expenditures—Nondebatable emergencies. Upon the happening of any emergency caused by violence of nature, casualty, riot, insurrection, war, or other unanticipated occurrence requiring the immediate preservation of order or public health, or for the property which has been damaged or destroyed by accident, or for public relief from calamity, or in settlement of approved claims for personal injuries or property damages, or to meet mandatory expenditures required by law enacted since the last budget was adopted, or to cover expenses incident to preparing for or establishing a new form of government authorized or assumed after adoption of the current budget, including any expenses incident to selection of additional or new

officials required thereby, or incident to employee recruitment at any time, the city legislative body, upon the adoption of an ordinance, by the vote of one more than the majority of all members of the legislative body, stating the facts constituting the emergency and the estimated amount required to meet it, may make the expenditures therefor without notice or hearing. [1985 c 175 § 46.]

35A.34.150 Emergency expenditures—Other emergencies—Hearing. If a public emergency which could not reasonably have been foreseen at the time of filing the preliminary budget requires the expenditure of money not provided for in the budget, and if it is not one of the emergencies specifically enumerated in RCW 35A.34.140, the city legislative body before allowing any expenditure therefor shall adopt an ordinance stating the facts constituting the emergency and the estimated amount required to meet it and declaring that an emergency exists.

The ordinance shall not be voted on until five days have elapsed after its introduction, and for passage shall require the vote of one more than the majority of all members of the legislative body of the city.

Any taxpayer may appear at the meeting at which the emergency ordinance is to be voted on and be heard for or against the adoption thereof. [1985 c 175 § 47.]

35A.34.160 Emergency expenditures—Warrants—Payment. All expenditures for emergency purposes as provided in this chapter shall be paid by warrants from any available money in the fund properly chargeable with such expenditures. If, at any time, there is insufficient money on hand in a fund with which to pay such warrants as presented, the warrants shall be registered, bear interest, and be called in the same manner as other registered warrants as prescribed in RCW 35A.21.110. [1985 c 175 § 48.]

35A.34.170 Registered warrants—Payment. In adopting the final budget for any fiscal biennium, the legislative body shall appropriate from estimated revenue sources available, a sufficient amount to pay the principal and interest on all outstanding registered warrants issued since the adoption of the last preceding budget except those issued and identified as revenue warrants and except those for which an appropriation previously has been made. However, no portion of the revenues which are restricted in use by law may be appropriated for the redemption of warrants issued against a utility or other special purpose fund of a self-supporting nature. In addition, all or any portion of the city's outstanding registered warrants may be funded into bonds in any manner authorized by law. [1985 c 175 § 49.]

35A.34.180 Adjustment of wages, hours and conditions of employment. Notwithstanding the appropriations for any salary or salary range of any employee or employees adopted in a final budget, the legislative body of any city may, by ordinance, change the wages, hours, and conditions of employment of any or all of its appointive employees if sufficient funds are available for appropriation to such purposes. [1985 c 175 § 50.]

35A.34.190 Forms—Accounting—Supervision by state. The state auditor is empowered to make and install the forms and classifications required by this chapter to define what expenditures are chargeable to each budget class and to establish the accounting and cost systems necessary to secure accurate budget information. [1995 c 301 § 59; 1985 c 175 § 51.]

35A.34.200 Funds—Limitations on expenditures—Transfers and adjustments. (1) The expenditures as classified and itemized in the final budget shall constitute the city's appropriations for the ensuing fiscal biennium. Unless otherwise ordered by a court of competent jurisdiction, and subject to further limitations imposed by ordinance of the city, the expenditure of city funds or the incurring of current liabilities on behalf of the city shall be limited to the following:

(a) The total amount appropriated for each fund in the budget for the current fiscal biennium, without regard to the individual items contained therein, except that this limitation does not apply to wage adjustments authorized by RCW 35A.34.180;

(b) The unexpended appropriation balances of a preceding budget which may be carried forward from prior fiscal periods pursuant to RCW 35A.34.270;

(c) Funds received from the sale of bonds or warrants which have been duly authorized according to law;

(d) Funds received in excess of estimated revenues during the current fiscal biennium, when authorized by an ordinance amending the original budget; and

(e) Expenditures authorized by budget modification as provided by RCW 35A.34.130 and those required for emergencies, as authorized by RCW 35A.34.140 and 35A.34.150.

(2) Transfers between individual appropriations within any one fund may be made during the current fiscal biennium by order of the city's chief administrative officer subject to such regulations, if any, as may be imposed by the city legislative body. Notwithstanding the provisions of RCW 43.09.210 or of any statute to the contrary, transfers, as authorized in this section, may be made within the same fund regardless of the various offices, departments, or divisions of the city which may be affected.

(3) The city legislative body, upon a finding that it is to the best interests of the city to decrease, revoke, or recall all or any portion of the total appropriations provided for any one fund, may, by ordinance, approved by the vote of one more than the majority of all members thereof, stating the facts and findings for doing so, decrease, revoke, or recall all or any portion of an unexpended fund balance, and by said ordinance, or a subsequent ordinance adopted by a like majority, the moneys thus released may be reappropriated for another purpose or purposes, without limitation to department, division, or fund, unless the use of such moneys is otherwise restricted by law, charter, or ordinance. [1985 c 175 § 52.]

35A.34.205 Administration, oversight, or supervision of utility—Reimbursement from utility budget authorized. Whenever any code city apportions a percentage of the city manager's, administrator's, or supervisor's time, or the time of other management or general government staff, for administration, oversight, or supervision of a utility

operated by the city, or to provide services to the utility, the utility budget may identify such services and budget for reimbursement of the city's current expense fund for the value of such services. [1991 c 152 § 4.]

35A.34.210 Liabilities incurred in excess of budget.

Liabilities incurred by any officer or employee of the city in excess of any budget appropriations shall not be a liability of the city. The clerk shall issue no warrant and the city legislative body or other authorized person shall approve no claim for an expenditure in excess of the total amount appropriated for any individual fund, except upon an order of a court of competent jurisdiction or for emergencies as provided in this chapter. [1985 c 175 § 53.]

35A.34.220 Funds received from sales of bonds and warrants—Expenditures program—Federal tax law.

Moneys received from the sale of bonds or warrants must be used for no other purpose than that for which they were issued. If any unexpended fund balance remains from the proceeds realized from the bonds or warrants after the accomplishment of the purpose for which they were issued, it must be used for the payment of principal of or interest on such indebtedness consistent with applicable provisions of federal tax law. Where a budget contains an expenditure program to be partially or wholly financed from a bond issue to be authorized thereafter, expenditures of amounts anticipated to be reimbursed from the proceeds of the issuance and sale of such bonds must be made or incurred consistent with any applicable federal tax law requirements. [2011 c 210 § 5; 1985 c 175 § 54.]

Application to previously issued bonds—2011 c 210: See note following RCW 39.46.040.

35A.34.230 Revenue estimates—Amount to be raised by ad valorem taxes.

At a time fixed by the city's ordinance or city charter, not later than the first Monday in October of the second year of each fiscal biennium, the chief administrative officer shall provide the city's legislative body with current information on estimates of revenues from all sources as adopted in the budget for the current biennium, together with estimates submitted by the clerk under RCW 35A.34.070. The city's legislative body and the city's administrative officer or the officer's designated representative shall consider the city's total anticipated financial requirements for the ensuing fiscal biennium, and the legislative body shall determine and fix by ordinance the amount to be raised the first year of the biennium by ad valorem taxes. The legislative body shall review such information as is provided by the chief administrative officer and shall adopt an ordinance establishing the amount to be raised by ad valorem taxes during the second year of the biennium. Upon adoption of the ordinance fixing the amount of ad valorem taxes to be levied, the clerk shall certify the same to the county legislative authority as required by RCW 84.52.020. [1985 c 175 § 55.]

35A.34.240 Funds—Quarterly report of status.

At such intervals as may be required by city charter or city ordinance, however, being not less than quarterly, the clerk shall submit to the city's legislative body and chief administrative officer a report showing the expenditures and liabilities

against each separate budget appropriation incurred during the preceding reporting period and like information for the whole of the current fiscal biennium to the first day of the current reporting period together with the unexpended balance of each appropriation. The report shall also show the receipts from all sources. [1985 c 175 § 56.]

35A.34.250 Contingency fund—Creation. Every city may create and maintain a contingency fund to provide moneys with which to meet any municipal expense, the necessity or extent of which could not have been foreseen or reasonably evaluated at the time of adopting the annual budget, or from which to provide moneys for those emergencies described in RCW 35A.34.140 and 35A.34.150. Such fund may be supported by a budget appropriation from any tax or other revenue source not restricted in use by law, or also may be supported by a transfer from other unexpended or decreased funds made available by ordinance as set forth in RCW 35A.34.200. However, the total amount accumulated in such fund at any time shall not exceed the equivalent of thirty-seven and one-half cents per thousand dollars of assessed valuation of property within the city at such time. Any moneys in the emergency fund at the end of the fiscal biennium shall not lapse except upon reappropriation by the council to another fund in the adoption of a subsequent budget. [1985 c 175 § 57.]

35A.34.260 Contingency fund—Withdrawals. No money shall be withdrawn from the contingency fund except by transfer to the appropriate operating fund authorized by a resolution or ordinance of the legislative body of the city, adopted by a majority vote of the entire legislative body, clearly stating the facts constituting the reason for the withdrawal or the emergency as the case may be, specifying the fund to which the withdrawn money shall be transferred. [1985 c 175 § 58.]

35A.34.270 Unexpended appropriations. All appropriations in any current operating fund shall lapse at the end of each fiscal biennium. However, this shall not prevent payments in the following biennium upon uncompleted programs or improvements in progress or on orders subsequently filled or claims subsequently billed for the purchase of material, equipment, and supplies or for personal or contractual services not completed or furnished by the end of the fiscal biennium, all of which have been properly budgeted and contracted for prior to the close of such fiscal biennium, but furnished or completed in due course thereafter.

All appropriations in a special fund authorized by ordinance or by state law to be used only for the purpose or purposes therein specified, including any cumulative reserve funds lawfully established in specific or general terms for any municipal purpose or purposes, or a contingency fund as authorized by RCW 35A.34.250, shall not lapse, but shall be carried forward from biennium to biennium until fully expended or the purpose has been accomplished or abandoned, without necessity of reappropriation.

The accounts for budgetary control for each fiscal biennium shall be kept open for twenty days after the close of such fiscal biennium for the purpose of paying and recording claims for indebtedness incurred during such fiscal biennium;

any claim presented after the twentieth day following the close of the fiscal biennium shall be paid from appropriations lawfully provided for the ensuing period, including those made available by provisions of this section, and shall be recorded in the accounts for the ensuing fiscal biennium. [1985 c 175 § 59.]

35A.34.280 Violations and penalties. Upon the conviction of any city official, department head, or other city employee of knowingly failing, or refusing, without just cause, to perform any duty imposed upon such officer or employee by this chapter, or city charter or city ordinance, in connection with the giving of notice, the preparing and filing of estimates of revenues or expenditures or other information required for preparing a budget report in the time and manner required, or of knowingly making expenditures in excess of budget appropriations, the official or employee shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars for each separate violation. [1985 c 175 § 60.]

Chapter 35A.35 RCW INTERGOVERNMENTAL RELATIONS

Sections

- 35A.35.010 Joint facilities and agreements.
35A.35.020 Demonstration Cities and Metropolitan Development Act—
Authority to contract with federal government.

35A.35.010 Joint facilities and agreements. In addition to exercising all authority granted to cities of any class for joint or intergovernmental cooperation and activity and agreements for the acquisition, ownership, leasing, control, improvement, occupation and use of land or other property with a county, another city, or governmental agency, and in addition to authority granted to code cities by RCW 35A.11.040, every code city may exercise the powers relating to jails, places of detention, civic centers, civic halls and armories as is authorized by chapters 36.64 and 38.20 RCW. [1967 ex.s. c 119 § 35A.35.010.]

35A.35.020 Demonstration Cities and Metropolitan Development Act—Authority to contract with federal government. See RCW 35.21.660.

Chapter 35A.36 RCW EXECUTION OF BONDS BY PROXY IN CODE CITIES

Sections

- 35A.36.010 Appointment of proxies.
35A.36.020 Coupons—Printing facsimile signatures.
35A.36.030 Deputies—Exemptions.
35A.36.040 Designation of bonds to be signed.
35A.36.050 Liability of officer.
35A.36.060 Notice to council.
35A.36.070 Revocation of proxy.

35A.36.010 Appointment of proxies. The mayor, finance officer, city clerk, or other officer of a code city who is authorized or required by law, charter, or ordinance to execute bonds of the city or any subdivision or district thereof may designate one or more bonded persons to affix such officer's signature to any bond or bonds requiring his or her sig-

nature. If the signature of one of these officers is affixed to a bond during his or her continuance in office by a proxy designated by him or her whose authority has not been revoked, the bond shall be as binding upon the city and all concerned as though the officer had signed the bond in person. This chapter shall apply to all bonds, whether they constitute obligations of the city as a whole or of any local improvement or other district or subdivision thereof, whether they call for payment from the general funds of the city or from a local, special or other fund, and whether negotiable or otherwise. [2009 c 549 § 3036; 1967 ex.s. c 119 § 35A.36.010.]

35A.36.020 Coupons—Printing facsimile signatures. A facsimile reproduction of the signature of any of the code city officers referred to in RCW 35A.36.010 may be printed, engraved, or lithographed upon bond coupons with the same effect as though the particular officer had signed the coupon in person. [1967 ex.s. c 119 § 35A.36.020.]

35A.36.030 Deputies—Exemptions. This chapter shall not be construed to require the appointment of deputy finance officers or deputy city clerks of code cities to be made in accordance with this chapter insofar as concerns signatures or other acts which may lawfully be made or done by such deputy officer under the provisions of any other law. [1967 ex.s. c 119 § 35A.36.030.]

35A.36.040 Designation of bonds to be signed. (1) The officer of a code city whose duty it is to cause any bonds to be printed, engraved, or lithographed, shall specify in a written order or requisition to the printer, engraver, or lithographer the number of bonds to be printed, engraved or lithographed and the manner of numbering them.

(2) Every printer, engraver, or lithographer who knowingly prints, engraves, or lithographs a greater number of bonds than that specified or who knowingly prints, engraves, or lithographs more than one bond bearing the same number is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 200; 1967 ex.s. c 119 § 35A.36.040.]

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

35A.36.050 Liability of officer. A code city officer authorizing the affixing of his or her signature to a bond by a proxy shall be subject to the same liability personally and on his or her bond for any signature so affixed and to the same extent as if he or she had affixed his or her signature in person. [2009 c 549 § 3037; 1967 ex.s. c 119 § 35A.36.050.]

35A.36.060 Notice to council. In order to designate a proxy to affix his or her signature to bonds, a code city officer shall address a written notice to the legislative body of the city giving the name of the person whom he or she has selected therefor and stating generally or specifically what bonds are to be so signed.

Attached to or included in the notice shall be a written signature of the officer making the designation executed by the proposed proxy followed by the word "by" and his or her own signature; or, if the notice so states, the specimen signatures may consist of a facsimile reproduction of the officer's

signature impressed by some mechanical process followed by the word "by" and the proxy's own signature.

If the authority is intended to include the signature upon bonds bearing an earlier date than the effective date of the notice, the prior dated bonds must be specifically described by reasonable reference thereto.

The notice designating a proxy shall be filed with the city finance officer or city clerk, together with the specimen signatures attached thereto and a record of the filing shall be made in the journal of the legislative body. This record shall note the date and hour of filing and may be made by the official who keeps the journal at any time after the filing of the notice, even during a period of recess or adjournment of the legislative body. The notice shall be effective from the time of its recording. [2009 c 549 § 3038; 1967 ex.s. c 119 § 35A.36.060.]

35A.36.070 Revocation of proxy. Any designation of a proxy may be revoked by written notice addressed to the legislative body of the code city signed by the officer who made the designation and filed and recorded in the same manner as the notice of designation. It shall be effective from the time of its recording but shall not affect the validity of any signatures theretofore made. [1967 ex.s. c 119 § 35A.36.070.]

Chapter 35A.37 RCW FUNDS, SPECIAL PURPOSE

Sections

35A.37.010 Segregating and accounting.

35A.37.010 Segregating and accounting. Code cities shall establish such funds for the segregation, budgeting, expenditure, and accounting for moneys received for special purposes as are required by general law applicable to such cities' activities and the officers thereof shall pay into, expend from, and account for such moneys in the manner provided therefor including, but not limited to, the requirements of the following:

- (1) Accounting funds as required by RCW 35.37.010;
- (2) Annexation and consolidation fund as required by chapters 35.10 and 35.13 RCW;
- (3) Assessment fund as required by RCW 8.12.480;
- (4) Equipment rental fund as authorized by RCW 35.21.088;
- (5) Current expense fund as required by RCW 35.37.010, usually referred to as the general fund;
- (6) Local improvement guaranty fund as required by RCW 35.54.010;
- (7) An indebtedness and sinking fund, together with separate funds for utilities and institutions as required by RCW 35.37.020;
- (8) Local improvement district fund and revolving fund as required by RCW 35.45.130 and 35.48.010;
- (9) City street fund as required by chapter 35.76 RCW and RCW 47.24.040;
- (10) Firefighters' relief and pension fund as required by chapters 41.16 and 41.18 RCW;
- (11) Police relief and pension fund as required by RCW 41.20.130 and 63.32.030;

(2014 Ed.)

(12) First-class cities' employees retirement and pension system as authorized by chapter 41.28 RCW;

(13) Applicable rules of the state auditor. [2013 c 23 § 64; 1995 c 301 § 60; 1983 c 3 § 62; 1967 ex.s. c 119 § 35A.37.010.]

Chapter 35A.38 RCW EMERGENCY SERVICES

Sections

35A.38.010 Local organization.

35A.38.010 Local organization. A code city may participate in the creation of local organizations for emergency services, provide for mutual aid, and exercise all of the powers and privileges and perform all of the functions and duties, and the officers and employees thereof shall have the same powers, duties, rights, privileges and immunities as any city of any class, and the employees thereof, have in connection with emergency services as provided in chapter 38.52 RCW in the manner provided by said chapters or by general law. [1974 ex.s. c 171 § 2; 1967 ex.s. c 119 § 35A.38.010.]

Chapter 35A.39 RCW PUBLIC DOCUMENTS AND RECORDS

Sections

35A.39.010 Legislative and administrative records.

35A.39.010 Legislative and administrative records. Every code city shall keep a journal of minutes of its legislative meetings with orders, resolutions and ordinances passed, and records of the proceedings of any city department, division or commission performing quasi-judicial functions as required by ordinances of the city and general laws of the state and shall keep such records open to the public as required by RCW 42.32.030 and shall keep and preserve all public records and publications or reproduce and destroy the same as provided by Title 40 RCW. Each code city may duplicate and sell copies of its ordinances at fees reasonably calculated to defray the cost of such duplication and handling. [1995 c 21 § 2; 1967 ex.s. c 119 § 35A.39.010.]

Chapter 35A.40 RCW FISCAL PROVISIONS APPLICABLE TO CODE CITIES

Sections

- 35A.40.010 Accounting—Funds—Indebtedness—Bonds.
- 35A.40.020 Payment of claims and obligations by warrant or check.
- 35A.40.030 Fiscal—Depositaries.
- 35A.40.050 Fiscal—Investment of funds.
- 35A.40.060 Fiscal—Validation and funding of debts.
- 35A.40.070 Fiscal—Municipal Revenue Bond Act.
- 35A.40.080 Bonds—Form, terms, and maturity.
- 35A.40.090 Indebtedness.
- 35A.40.100 Bankruptcy, readjustment and relief from debts.
- 35A.40.110 Employee checks, drafts, warrants—City may cash.
- 35A.40.200 General law relating to public works and contracts.
- 35A.40.210 Public work or improvement—Procedures—Purchases.

35A.40.010 Accounting—Funds—Indebtedness—Bonds. Municipal accounts and funds, the contracting of

indebtedness for municipal purposes and the issuance and payment of bonds therefor, the validation of preexisting obligations by the voters of a consolidated city, debt limitations, elections for authorization of the incurring of indebtedness, and provisions pertaining to the issuance, sale, funding and redemption of general obligation bonds and remedies for nonpayment thereof are governed and controlled by the general law as contained in, but not limited to chapters 35.37, 39.40, 39.46, 39.52, 39.56, and 43.80 RCW, and are hereby recognized as applicable to code cities. [1984 c 186 § 24; 1967 ex.s. c 119 § 35A.40.010.]

Purpose—1984 c 186: See note following RCW 39.46.110.

35A.40.020 Payment of claims and obligations by warrant or check. A code city, by ordinance, may adopt a policy for the payment of claims or other obligations of the city, which are payable out of solvent funds, electing either to pay such obligations by warrant, or to pay such obligations by check: PROVIDED, That no check shall be issued when the applicable fund is not solvent at the time payment is ordered, but a warrant shall be issued therefor. When checks are to be used, the legislative body shall designate the qualified public depository whereon such checks are to be drawn, and the officers authorized or required to sign such checks. Wherever in this title, reference is made to warrants, such term shall include checks where authorized by this section. [1984 c 177 § 5; 1967 ex.s. c 119 § 35A.40.020.]

35A.40.030 Fiscal—Depositaries. The legislative body of a code city, at the end of each fiscal year, or at such other times as the legislative body may direct, shall designate one or more financial institutions which are qualified public depositories as set forth by the public deposit protection commission as depository or depositories of the moneys required to be kept by the code city treasurer or other officer performing the duties commonly performed by the treasurer of a code city: PROVIDED, That where any bank has been designated as a depository hereunder such designation shall continue in force until revoked by a majority vote of the legislative body of such code city. The provisions relating to depositories, contained in chapter 39.58 RCW, as now or hereafter amended, are hereby recognized as applicable to code cities and to the depositories designated by them. [1984 c 177 § 6; 1973 c 126 § 4; 1967 ex.s. c 119 § 35A.40.030.]

35A.40.050 Fiscal—Investment of funds. Excess and inactive funds on hand in the treasury of any code city may be invested in the same manner and subject to the same limitations as provided for city and town funds in all applicable statutes, including, but not limited to the following: RCW 35.39.030, 35.58.510, 35.81.070, 35.82.070, 36.29.020, 39.58.020, 39.58.080, 39.58.130, 39.60.010, 39.60.020, 41.16.040, 68.52.060, 68.52.065, and 72.19.120.

The responsibility for determining the amount of money available in each fund for investment purposes shall be placed upon the department, division, or board responsible for the administration of such fund.

Moneys thus determined available for this purpose may be invested on an individual fund basis or may, unless otherwise restricted by law be commingled within one common investment portfolio for the mutual benefit of all participating

funds: PROVIDED, That if such moneys are commingled in a common investment portfolio, all income derived therefrom shall be apportioned among the various participating funds or the general or current expense fund as the governing body of the code city determines by ordinance or resolution.

Any excess or inactive funds on hand in the city treasury not otherwise invested for the specific benefit of any particular fund, may be invested by the city treasurer in United States government bonds, notes, bills or certificates of indebtedness for the benefit of the general or current expense fund. [2007 c 64 § 1; 1987 c 331 § 77; 1983 c 66 § 2; 1983 c 3 § 64; 1967 ex.s. c 119 § 35A.40.050.]

Additional notes found at www.leg.wa.gov

35A.40.060 Fiscal—Validation and funding of debts. The provisions of general law contained in chapters 35.40 and 39.90 RCW, relating to the validation and funding of debts and elections pertaining thereto is hereby recognized as applicable to code cities. [1967 ex.s. c 119 § 35A.40.060.]

35A.40.070 Fiscal—Municipal Revenue Bond Act. All provisions of chapter 35.41 RCW, the Municipal Revenue Bond Act, shall be applicable and/or available to code cities. [1967 ex.s. c 119 § 35A.40.070.]

35A.40.080 Bonds—Form, terms, and maturity. In addition to any other authority granted by law, a code city shall have authority to ratify and fund indebtedness as provided by chapter 35.40 RCW; to issue revenue bonds, coupons and warrants as authorized by chapter 35.41 RCW; to authorize and issue local improvement bonds and warrants, installment notes and interest certificates as authorized by chapter 35.45 RCW; to fund indebtedness and to issue other bonds as authorized by chapters 39.44, 39.48, 39.52 RCW, RCW 39.56.020, and 39.56.030 in accordance with the procedures and subject to the limitations therein provided. [1967 ex.s. c 119 § 35A.40.080.]

35A.40.090 Indebtedness. The provisions of general law contained in chapter 39.36 RCW relating to municipal indebtedness shall be applicable to code cities. [2001 c 200 § 2; 1973 1st ex.s. c 195 § 29; 1970 ex.s. c 42 § 16; 1967 ex.s. c 119 § 35A.40.090. Cf. 1973 1st ex.s. c 195 § 141.]

Additional notes found at www.leg.wa.gov

35A.40.100 Bankruptcy, readjustment and relief from debts. A code city may exercise the powers and obtain the benefits relating to bankruptcy, readjustment and relief from debts as authorized by chapter 39.64 RCW in accordance with the procedures therein prescribed. [1967 ex.s. c 119 § 35A.40.100.]

35A.40.110 Employee checks, drafts, warrants—City may cash. Any code city is hereby authorized, at its option and after the adoption of the appropriate ordinance, to accept in exchange for cash a payroll check, draft, or warrant; expense check, draft, or warrant; or personal check from a city employee in accordance with the following conditions:

(1) The check, warrant, or draft must be drawn to the order of cash or bearer and be immediately payable by a drawee financial institution;

(2) The person presenting the check, draft, or warrant to the city must produce identification as outlined by the city in the authorizing ordinance;

(3) The payroll check, draft, or warrant or expense check, draft, or warrant must have been issued by the city; and

(4) Personal checks cashed pursuant to this authorization cannot exceed two hundred dollars.

In the event that any personal check cashed for a city employee by the city under this section is dishonored by the drawee financial institution when presented for payment, the city is authorized, after notice to the drawer or endorser of the dishonor, to withhold from the drawer's or endorser's next payroll check, draft, or warrant the full amount of the dishonored check. [1991 c 185 § 2.]

35A.40.200 General law relating to public works and contracts. Every code city shall have the authority to make public improvements and to perform public works under authority provided by general law for any class of city and to make contracts in accordance with procedure and subject to the conditions provided therefor, including but not limited to the provisions of: (1) Chapter 39.04 RCW, relating to public works; (2) RCW 35.23.352 relating to competitive bidding for public works, materials and supplies; (3) RCW 9.18.120 and 9.18.150 relating to suppression of competitive bidding; (4) chapter 60.28 RCW relating to liens for materials and labor performed; (5) chapter 39.08 RCW relating to contractor's bonds; (6) chapters 39.12 and 43.03 RCW relating to prevailing wages; (7) chapter 49.12 RCW relating to hours of labor; (8) chapter 51.12 RCW relating to workers' compensation; (9) chapter 49.60 RCW relating to antidiscrimination in employment; (10) chapter 39.24 RCW relating to the use of Washington commodities; and (11) chapter 39.28 RCW relating to emergency public works. [1995 c 164 § 2; 1987 c 185 § 4; 1983 c 3 § 65; 1967 ex.s. c 119 § 35A.40.200.]

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

35A.40.210 Public work or improvement—Procedures—Purchases. Procedures for any public work or improvement for code cities shall be governed by RCW 35.23.352.

Purchases for code cities with twenty thousand population or more shall be governed by RCW 35.22.620. Purchases for code cities with under twenty thousand population shall be governed by RCW 35.23.352. [2009 c 229 § 5; 1989 c 11 § 8; 1979 ex.s. c 89 § 3.]

Additional notes found at www.leg.wa.gov

Chapter 35A.41 RCW PUBLIC EMPLOYMENT

Sections

- 35A.41.010 Retirement and pension systems for code cities having a population of more than twenty thousand.
- 35A.41.020 Public employment and civil service.
- 35A.41.030 City contracts to obtain sheriff's office law enforcement services.

35A.41.010 Retirement and pension systems for code cities having a population of more than twenty thousand.

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A code city having a population of more than twenty thousand inhabitants, or having been classed theretofore as a city of the first class may exercise all of the powers relating to retirement and pension systems for employees as authorized by RCW 35A.11.020 and by chapter 41.28 RCW in accordance with the procedures prescribed therein and subject to the limitations and penalties thereof. [1967 ex.s. c 119 § 35A.41.010.]

35A.41.020 Public employment and civil service.

Except as otherwise provided in this title, the general provisions relating to public employment, including hospitalization and medical aid as provided in chapter 41.04 RCW, and the application of federal social security for public employees, the acceptance of old age and survivors insurance as provided in chapters 41.47 and 41.48 RCW, military leave as provided in RCW 38.40.060, self-insurance as provided in chapter 48.62 RCW, the application of industrial insurance as provided in Title 51 RCW, and chapter 43.101 RCW relating to training of law enforcement officers, shall apply to code cities. Any code city may retain any civil service system theretofore in effect in such city and may adopt any system of civil service which would be available to any class of city under general law. [1991 sp.s. c 30 § 20; 1983 c 3 § 66; 1967 ex.s. c 119 § 35A.41.020.]

Political activities of public employees: RCW 41.06.250.

Additional notes found at www.leg.wa.gov

35A.41.030 City contracts to obtain sheriff's office law enforcement services. See RCW 41.14.250 through 41.14.280.

Chapter 35A.42 RCW PUBLIC OFFICERS AND AGENCIES, MEETINGS, DUTIES AND POWERS

Sections

- 35A.42.010 City treasurer—Miscellaneous authority and duties.
- 35A.42.020 Qualification, removal, code of ethics, duties.
- 35A.42.030 Continuity of government—Enemy attack.
- 35A.42.040 City clerks and controllers.
- 35A.42.050 Public officers and employees—Conduct.

Dog handler using dog in line of duty—Immunity: RCW 4.24.410.

35A.42.010 City treasurer—Miscellaneous authority and duties. In addition to authority granted and duties imposed upon code city treasurers by this title, code city treasurers, or the officers designated by charter or ordinance to perform the duties of a treasurer, shall have the duties and the authority to perform the following: (1) As provided in RCW 8.12.500 relating to bonds and compensation payments in eminent domain proceedings; (2) as provided in RCW 68.52.050 relating to cemetery improvement funds; (3) as provided in RCW 41.28.080 relating to custody of employees' retirement funds; (4) as provided in RCW 47.08.100 relating to the use of city street funds; (5) as provided in RCW 46.68.080 relating to motor vehicle funds; (6) as provided in RCW 41.16.020 and chapter 41.20 RCW relating to police and firefighters' relief and pension boards; (7) as provided in chapter 42.20 RCW relating to misappropriation of funds; and (8) as provided in chapter 39.60 RCW relating to investment of municipal funds. The treasurer shall be subject

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to the penalties imposed for the violation of any of such provisions. Where a provision of this title, or the general law, names the city treasurer as an officer of a board or other body, or assigns duties to a city treasurer, such position shall be filled, or such duties performed, by the officer of a code city who is performing the duties usually performed by a city treasurer, although he or she may not have that designation. [2009 c 549 § 3039; 1987 c 331 § 78; 1984 c 258 § 320; 1967 ex.s. c 119 § 35A.42.010.]

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

Additional notes found at www.leg.wa.gov

35A.42.020 Qualification, removal, code of ethics, duties. Except as otherwise provided in this title, every elective and appointive officer and all employees of code cities shall: (1) Be possessed of the qualifications and be subject to forfeiture of office, impeachment or removal and recall as provided in chapter 42.04 RCW and RCW 9.81.040; and (2) provide official bonds in accordance with the requirements of this title, and as required in compliance with chapters 42.08 and 48.28 RCW.

When vacancies in public offices in code cities shall occur the term of a replacement officer shall be fixed as provided in chapter 42.12 RCW. A public officer charged with misconduct as defined in chapter 42.20 RCW, shall be charged and, upon conviction, punished as provided for such misconduct in chapter 42.20 RCW. The officers and employees of code cities shall be guided and governed by the code of ethics as provided in chapter 42.23 RCW. Vouchers for the payment of public funds and the provisions for certifying the same shall be as provided in chapter 42.24 RCW. The meetings of any board, agency, or commission of a code city shall be open to the public to the extent and notice given in the manner required by chapter 42.32 RCW. [1967 ex.s. c 119 § 35A.42.020.]

Reviser's note: RCW 42.32.010 and 42.32.020 were repealed by 1971 ex.s. c 250 § 15; later enactment, see chapter 42.30 RCW.

Recall of elective officers: State Constitution Art. 1 §§ 33, 34 (Amendment 8); chapter 29A.56 RCW.

Residence qualifications of officials and employees: RCW 35.21.200.

35A.42.030 Continuity of government—Enemy attack. In the event that the mayor, manager or other chief executive officer of any code city is unavailable by reason of enemy attack to exercise the powers and to discharge the duties of his or her office, his or her successor or substitute shall be selected in the manner provided by RCW 42.14.050 subject to rules and regulations providing for the appointment of temporary interim successors adopted under RCW 42.14.070. [2009 c 549 § 3040; 1967 ex.s. c 119 § 35A.42.030.]

35A.42.040 City clerks and controllers. In addition to any specific enumeration of duties of city clerks in a code city's charter or ordinances, and without limiting the generality of RCW 35A.21.030 of this title, the clerks of all code cities shall perform the following duties in the manner prescribed, to wit: (1) Certification of city streets as part of the highway system in accordance with the provisions of RCW 47.24.010; (2) perform the functions of a member of a firefighters' pension board as provided by RCW 41.16.020; (3)

keep a record of ordinances of the city and provide copies thereof as authorized by RCW 5.44.080; (4) serve as applicable the trustees of any police relief and pension board as authorized by RCW 41.20.010; and (5) serve as secretary-treasurer of volunteer firefighters' relief and pension boards as provided in RCW 41.24.060. [2013 c 23 § 65; 1991 c 81 § 39; 1967 ex.s. c 119 § 35A.42.040.]

Additional notes found at www.leg.wa.gov

35A.42.050 Public officers and employees—Conduct. In addition to provisions of general law relating to public officials and others in public administration, employment or public works, the duties and conduct of such officers and other persons shall be governed by: (1) Chapter 9A.68 RCW relating to bribery of a public officer; (2) Article II, section 30 of the Constitution of the state of Washington relating to bribery or corrupt solicitation; (3) RCW 35.17.150 relating to misconduct in code cities having a commission form of government; (4) chapter 42.23 RCW in regard to interest in contracts; (5) *chapter 29.85 RCW relating to misconduct in connection with elections; (6) RCW 49.44.060 and **49.44.070 relating to grafting by employees; (7) RCW 49.44.020 and 49.44.030 relating to the giving or solicitation of a bribe to a labor representative; (8) chapter 42.20 RCW relating to misconduct of a public officer; (9) RCW 49.52.050 and 49.52.090 relating to rebating by employees; and (10) chapter 9.18 RCW relating to bribery and grafting. [1983 c 3 § 67; 1967 ex.s. c 119 § 35A.42.050.]

Reviser's note: *(1) Chapter 29.85 RCW was recodified as chapter 29A.84 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

** (2) RCW 49.44.070 was repealed by 1995 c 285 § 37, effective July 1, 1995.

Chapter 35A.43 RCW

LOCAL IMPROVEMENTS IN CODE CITIES

Sections

35A.43.010 General law applicable to code cities.

35A.43.020 Public lands subject to local assessments.

35A.43.010 General law applicable to code cities. Chapters 35.43, 35.44, 35.45, 35.47, 35.48, 35.49, 35.50, 35.53, 35.54, 35.55, and 35.56 RCW all relating to municipal local improvements and made applicable to all incorporated cities and towns by RCW 35.43.030 are hereby recognized as applicable to all code cities, and the provisions thereof shall supersede the provisions of any charter of a charter code city inconsistent therewith. The provisions of the chapters named in this section shall be effective as to charter code cities to the same extent as such provisions are effective as to cities of the first class, and all code cities may exercise, in the manner provided, any authority therein granted to any class of city. [1967 ex.s. c 119 § 35A.43.010.]

Local improvements, supplemental authority: Chapter 35.51 RCW.

35A.43.020 Public lands subject to local assessments. In addition to the authority provided by chapter 35.44 RCW, and chapter 79.44 RCW, a code city may assess public lands for the cost of local improvements specially benefiting such lands. [1967 ex.s. c 119 § 35A.43.020.]

Chapter 35A.44 RCW CENSUS

Sections

35A.44.010 Population determination.

35A.44.010 Population determination. The population of code cities shall be determined for specific purposes in accordance with any express provision of state law relating thereto. Where no express provision is made, the provisions of RCW 43.41.110(7) relating to the office of financial management and the provisions of RCW 35.13.260 shall govern. [1979 ex.s. c 18 § 32; 1979 c 151 § 36; 1967 ex.s. c 119 § 35A.44.010.]

Additional notes found at www.leg.wa.gov

Chapter 35A.46 RCW MOTOR VEHICLES

Sections

35A.46.010 State law applicable.

35A.46.010 State law applicable. The provisions of Title 46 RCW relating to regulation of motor vehicles shall be applicable to code cities and its officers and employees to the same extent as such provisions grant powers and impose duties upon cities of any class and their officers and agents, including without limitation the following: (1) Authority to provide for angle parking on certain city streets designated as forming a route of a primary state highway as authorized in RCW 46.61.575; (2) application of city police regulations to port districts as authorized by RCW 53.08.230; (3) authority to establish local regulations relating to city streets forming a part of the state highway system as authorized by RCW 46.44.080; (4) exemption from the payment of vehicle license fees for city owned vehicles as authorized by RCW 46.16A.170 and 46.16A.200(8); (5) authority to establish traffic schools as provided by chapter 46.83 RCW; and (6) authority to enforce the provisions of RCW 81.48.050 relating to railroad crossings. [2010 c 161 § 1104; 1967 ex.s. c 119 § 35A.46.010.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Chapter 35A.47 RCW HIGHWAYS AND STREETS

Sections

- 35A.47.010 Highways, granting land for.
 35A.47.020 Streets—Acquisition, standards of design, use, vacation and abandonment—Funds.
 35A.47.030 Public highways—Acquisition, agreements, transfers, regulations.
 35A.47.040 Franchises and permits—Streets and public ways.

Contracts for street improvements: Chapter 35.72 RCW.

Local adopt-a-highway programs: RCW 47.40.105.

35A.47.010 Highways, granting land for. A code city may exercise the powers relating to granting of property for state highway purposes as authorized by RCW 47.12.040 in accordance with the procedures therein prescribed. [1967 ex.s. c 119 § 35A.47.010.]

(2014 Ed.)

35A.47.020 Streets—Acquisition, standards of design, use, vacation and abandonment—Funds. The designation of code city streets as a part of the state highway system, the jurisdiction and control of such streets, the procedure for acquisition or abandonment of rights-of-way for city streets and state highways, and the sale or lease of state highway land or toll facility to a code city, the requirements for accounting and expenditure of street funds, and the authority for contracting for the construction, repair and maintenance of streets by the state or county shall be the same as is provided in RCW 36.75.090, chapters 47.08, 47.12, 47.24 and 47.56 RCW, and the regulation of signs thereon as provided in chapter 47.42 RCW. Code cities shall be regulated in the acquisition, construction, maintenance, use and vacation of alleys, city streets, parkways, boulevards and sidewalks and in the design standards therefor as provided in chapters 35.68 through 35.79, 35.85, and 35.86 RCW and *RCW 79.93.010 relating to dedication of tidelands and shorelands to public use and in the use of state shared funds as provided by general law. [1983 c 3 § 68; 1967 ex.s. c 119 § 35A.47.020.]

*Reviser's note: RCW 79.93.010 was recodified as RCW 79.120.010 pursuant to 2005 c 155 § 1007.

35A.47.030 Public highways—Acquisition, agreements, transfers, regulations. The provisions of Title 47 RCW shall apply to code cities, its officers and employees to the same extent as such provisions are applicable to any other class of city within the state, including, without limitation, the following: (1) The acquisition by the state of municipal lands and the exchange of state highway and municipal lands, as provided in chapter 47.12 RCW; (2) the dedication of public land for city streets as provided by RCW 36.34.290 and 36.34.300; (3) city contributions to finance toll facilities as provided in RCW 47.56.250; (4) contracts with the department of transportation, as provided in RCW 47.01.210; (5) the construction, maintenance, jurisdiction, and control of city streets, as provided in chapter 47.24 RCW; (6) agreements between the department of transportation and a city for the benefit or improvement of highways, roads, or streets, as provided in RCW 47.28.140; (7) sales, leases, or transfers as authorized by RCW 47.12.063, 47.12.066, and 47.12.080; (8) the erection of information signs as regulated by RCW 47.42.050 and 47.42.060; (9) provisions relating to limited access highways under chapter 47.52 RCW; (10) the acquisition and abandonment for state highways as provided by RCW 36.75.090 and 90.28.020; and (11) the sharing of maintenance of streets and alleys as an extension of county roads as provided by RCW 35.77.020. [1984 c 258 § 321; 1983 c 3 § 69; 1967 ex.s. c 119 § 35A.47.030.]

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

Additional notes found at www.leg.wa.gov

35A.47.040 Franchises and permits—Streets and public ways. Every code city shall have authority to permit and regulate under such restrictions and conditions as it may set by charter or ordinance and to grant nonexclusive franchises for the use of public streets, bridges or other public ways, structures or places above or below the surface of the ground for railroads and other routes and facilities for public conveyances, for poles, conduits, tunnels, towers and structures, pipes and wires and appurtenances thereof for trans-

mission and distribution of electrical energy, signals and other methods of communication, for gas, steam and liquid fuels, for water, sewer and other private and publicly owned and operated facilities for public service. The power hereby granted shall be in addition to the franchise authority granted by general law to cities.

No ordinance or resolution granting any franchise in a code city for any purpose shall be adopted or passed by the city's legislative body on the day of its introduction nor for five days thereafter, nor at any other than a regular meeting nor without first being submitted to the city attorney, nor without having been granted by the approving vote of at least a majority of the entire legislative body, nor without being published at least once in a newspaper of general circulation in the city before becoming effective.

The city council may require a bond in a reasonable amount for any person or corporation obtaining a franchise from the city conditioned upon the faithful performance of the conditions and terms of the franchise and providing a recovery on the bond in case of failure to perform the terms and conditions of the franchise.

A code city may exercise the authority hereby granted, notwithstanding a contrary limitation of any preexisting charter provision. [1967 ex.s. c 119 § 35A.47.040.]

Chapter 35A.49 RCW

LABOR AND SAFETY REGULATIONS

Sections

35A.49.010 Labor regulations—Safety regulations, discrimination in employment, hours, wages.

35A.49.010 Labor regulations—Safety regulations, discrimination in employment, hours, wages. Provisions of state laws relating to labor and safety regulations as provided in Title 49 RCW shall apply to code cities to the same extent as such laws apply to other classes of cities. [1967 ex.s. c 119 § 35A.49.010.]

Chapter 35A.56 RCW

LOCAL SERVICE DISTRICTS

Sections

35A.56.010 Laws relating to special service districts, application to code cities.

35A.56.010 Laws relating to special service districts, application to code cities. Except as otherwise provided in this title, state laws relating to special service or taxing districts shall apply to, grant powers, and impose duties upon code cities and their officers to the same extent as such laws apply to and affect other classes of cities and towns and their employees, including, without limitation, the following: (1) Chapter 70.94 RCW, relating to air pollution control; (2) chapter 68.52 RCW, relating to cemetery districts; (3) *chapter 29.68 RCW, relating to congressional districts; (4) chapters 14.07 and 14.08 RCW, relating to municipal airport districts; (5) chapter 36.88 RCW, relating to county road improvement districts; (6) Title 85 RCW, relating to diking districts, drainage districts, and drainage improvement districts; (7) **chapter 36.54 RCW, relating to ferry districts;

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(8) Title 52 RCW, relating to fire protection districts; (9) Title 86 RCW, relating to flood control districts and flood control; (10) chapter 70.46 RCW, relating to health districts; (11) chapters 87.03 through 87.84 and 89.12 RCW, relating to irrigation districts; (12) chapter 35.61 RCW, relating to metropolitan park districts; (13) chapter 35.58 RCW, relating to metropolitan municipalities; (14) chapter 17.28 RCW, relating to mosquito control districts; (15) chapter 17.12 RCW, relating to agricultural pest districts; (16) Title 53 RCW, relating to port districts; (17) chapter 70.44 RCW, relating to public hospital districts; (18) Title 54 RCW, relating to public utility districts; (19) chapter 91.08 RCW, relating to public waterway districts; (20) chapter 89.12 RCW, relating to reclamation districts; (21) chapters 57.02 through 57.36 RCW, relating to water-sewer districts; and (22) chapter 17.04 RCW, relating to weed districts. [1996 c 230 § 1605; 1987 c 331 § 79; 1979 ex.s. c 30 § 2; 1967 ex.s. c 119 § 35A.56.010.]

Reviser's note: *(1) Chapter 29.68 RCW was recodified as chapter 29A.28 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

** (2) Chapter 36.54 RCW relates to county-owned ferries.

Additional notes found at www.leg.wa.gov

Chapter 35A.57 RCW

INCLUSION OF CODE CITIES IN METROPOLITAN MUNICIPAL CORPORATIONS

Sections

35A.57.020 Metropolitan municipal corporations—May be formed around charter code city.

35A.57.020 Metropolitan municipal corporations—May be formed around charter code city. Any area of the state containing two or more cities, at least one of which is a code city having at least ten thousand population, may organize as a metropolitan municipal corporation. The presence in such area of a code city having at least ten thousand population, shall fulfill the requirement of RCW 35.58.030 as to the class of city required to be included in an area incorporating as a metropolitan municipal corporation. [1967 ex.s. c 119 § 35A.57.020.]

Chapter 35A.58 RCW

BOUNDARIES AND PLATS

Sections

35A.58.010 Locating corners and boundaries.

35A.58.020 Alteration and vacation of plats.

35A.58.030 Platting and subdivision of land.

35A.58.010 Locating corners and boundaries. General laws shall govern the methods, procedures, and standards for surveying, establishing corners and boundaries, describing and perpetuating and recording information and descriptions relating thereto. The boundaries and corners of sections, parcels, plats, and subdivisions of land within a code city, may be surveyed, established, relocated, and perpetuated whenever a majority of the resident owners of any section or part or parts of any section of land within the city makes application in accordance with the provisions of chapter 58.04 RCW. [1967 ex.s. c 119 § 35A.58.010.]

(2014 Ed.)

35A.58.020 Alteration and vacation of plats. The provisions of *chapters 58.11 and 58.12 RCW shall apply in appropriate cases to the alteration or vacation of plats including land or lots within a code city or the vacation of streets therein as provided in chapter 35.79 RCW. The vacation of waterways within a code city shall be governed by the provisions of **chapter 79.16 RCW. [1967 ex.s. c 119 § 35A.58.020.]

Reviser's note: *(1) Chapters 58.11 and 58.12 RCW were repealed by 1987 c 354 § 8.

***(2) Chapter 79.16 RCW was repealed by 1982 1st ex.s. c 21 § 183. For later enactment, see chapters 79.90 through 79.96 RCW. Chapters 79.90 through 79.96 RCW were subsequently recodified as chapters 79.105 through 79.140 RCW pursuant to 2005 c 155.

35A.58.030 Platting and subdivision of land. The provisions of chapter 58.17 RCW together with the provisions of a code city's subdivision regulations as adopted by ordinance not inconsistent with the provisions of chapter 58.17 RCW shall control the platting and subdividing of land into lots or tracts comprising five or more of such lots or tracts or containing a dedication of any part thereof as a public street or highway, or other public place or use: PROVIDED, That nothing herein shall prohibit the legislative body of a code city from adopting reasonable ordinances regulating the subdivision of land into two or more parcels without requiring compliance with all of the requirements of the platting law. [1983 c 3 § 70; 1971 ex.s. c 251 § 9; 1967 ex.s. c 119 § 35A.58.030.]

Additional notes found at www.leg.wa.gov

Chapter 35A.60 RCW LIENS

Sections

35A.60.010 General law applicable.

35A.60.010 General law applicable. The general law relating to liens including but not limited to the provisions of Title 60 RCW, as the same relates to cities of any class shall apply to code cities. Every code city may exercise the authority to perform services to property within the city and to claim and foreclose liens allowed therefor by general laws for any class of city including but not limited to the following provisions: (1) Chapter 35.80 RCW, relating to unfit dwellings, buildings and structures; (2) RCW 35.22.320, relating to the cost of filling cesspools; (3) RCW 35.85.030, relating to assessment liens for viaducts, elevated roadways, tunnels, and subways; (4) RCW 35.21.130, 35.21.140, 35.21.150, and 35.22.320 for garbage collection; (5) chapters 35.50, 35.55 and 35.56 RCW relating to enforcement of local improvement liens; (6) RCW 35.73.050 relating to the expense of sanitary fills; (7) RCW 35.67.200 through 35.67.290, relating to sewerage systems and service; (8) RCW 35.68.070, 35.69.030, 35.70.090, relating to sidewalks; (9) RCW *35.49.120 through 35.49.160, relating to priority of tax liens; (10) RCW 35.21.290 and 35.21.300, providing for liens for utility services; (11) chapter 84.60 RCW relating to lien of taxes upon property; (12) RCW 4.16.030, relating to foreclosure of local improvement liens; (13) chapter 60.76 RCW, relating to lien of employees for contribution to benefit plans;

(2014 Ed.)

and (14) chapter 60.28 RCW, relating to lien for labor and materials on public works. [1967 ex.s. c 119 § 35A.60.010.]

***Reviser's note:** RCW 35.49.120 was repealed by 1994 c 301 § 57.

Chapter 35A.63 RCW PLANNING AND ZONING IN CODE CITIES

Sections

- 35A.63.010 Definitions.
- 35A.63.015 "Solar energy system" defined.
- 35A.63.020 Planning agency—Creation—Powers and duties—Conflicts of interest.
- 35A.63.030 Joint meetings and cooperative action.
- 35A.63.040 Regional planning.
- 35A.63.050 Receipt and expenditure of funds.
- 35A.63.060 Comprehensive plan—General.
- 35A.63.061 Comprehensive plan—Required elements.
- 35A.63.062 Comprehensive plan—Optional elements.
- 35A.63.070 Comprehensive plan—Notice and hearing.
- 35A.63.071 Comprehensive plan—Forwarding to legislative body.
- 35A.63.072 Comprehensive plan—Approval by legislative body.
- 35A.63.073 Comprehensive plan—Amendments and modifications.
- 35A.63.080 Comprehensive plan—Effect.
- 35A.63.100 Municipal authority.
- 35A.63.105 Development regulations—Consistency with comprehensive plan.
- 35A.63.107 Development regulations—Jurisdictions specified—Electric vehicle infrastructure.
- 35A.63.110 Board of adjustment—Creation—Powers and duties.
- 35A.63.120 Administration and enforcement.
- 35A.63.130 Provisions inconsistent with charters.
- 35A.63.140 Duties and responsibilities imposed by other acts.
- 35A.63.145 Prohibitions on manufactured homes—Review required—"Designated manufactured home" defined.
- 35A.63.146 Manufactured housing communities—Prohibitions of code city due to community status as a nonconforming use.
- 35A.63.149 Residential care facilities—Review of need and demand—Adoption of ordinances.
- 35A.63.150 Public hearings.
- 35A.63.152 Public notice—Identification of affected property.
- 35A.63.160 Construction—1967 ex.s. c 119.
- 35A.63.170 Hearing examiner system—Adoption authorized—Alternative—Functions—Procedures.
- 35A.63.200 Conformance with chapter 43.97 RCW required.
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- 35A.63.250 Watershed restoration projects—Permit processing—Fish habitat enhancement project.
- 35A.63.260 Planning regulations—Copies provided to county assessor.
- 35A.63.270 General aviation airports.
- 35A.63.280 Conditional and special use permit applications by parties licensed or certified by the department of social and health services or the department of corrections—Mediation prior to appeal required.
- 35A.63.290 Application for a permit to site an energy plant or alternative energy resource—Written notice to United States department of defense.

Acquisition of interests in land for conservation, protection, preservation, or open space purposes by cities: RCW 64.04.130.

Appearance of fairness doctrine—Application to local land use decisions: RCW 42.36.010.

Associations of municipal corporations or municipal officers to furnish information to legislature and governor: RCW 44.04.170.

35A.63.010 Definitions. The following words or terms as used in this chapter shall have the meanings set forth below unless different meanings are clearly indicated by the context:

(1) "Chief administrative officer" means the mayor in code cities operating under the mayor-council and commission forms, the city manager in code cities operating under the council-manager forms, or such other officer as the charter of a charter code city designates as the chief administrative officer.

(2) "City" means an incorporated city or town.

(3) "Code city" is used where the application of this chapter is limited to a code city; where joint, regional, or cooperative action is intended, a code city may be included in the unrestricted terms "city" or "municipality".

(4) "Comprehensive plan" means the policies and proposals approved by the legislative body as set forth in RCW 35A.63.060 through 35A.63.072 of this chapter and containing, at least, the elements set forth in RCW 35A.63.061.

(5) "Legislative body" means a code city council, a code city commission, and, in cases involving regional or cooperative planning or action, the governing body of a municipality.

(6) "Municipality" includes any code city and, in cases of regional or cooperative planning or action, any city, town, township, county, or special district.

(7) "Ordinance" means a legislative enactment by the legislative body of a municipality; in this chapter "ordinance" is synonymous with the term "resolution" when "resolution" is used as representing a legislative enactment.

(8) "Planning agency" means any person, body, or organization designated by the legislative body to perform a planning function or portion thereof for a municipality, and includes, without limitation, any commission, committee, department, or board together with its staff members, employees, agents, and consultants.

(9) "Special district" means that portion of the state, county, or other political subdivision created under general law for rendering of one or more local public services or for administrative, educational, judicial, or political purposes. [1967 ex.s. c 119 § 35A.63.010.]

35A.63.015 "Solar energy system" defined. As used in this chapter, "solar energy system" means any device or combination of devices or elements which rely upon direct sunlight as an energy source, including but not limited to any substance or device which collects sunlight for use in:

- (1) The heating or cooling of a structure or building;
- (2) The heating or pumping of water;
- (3) Industrial, commercial, or agricultural processes; or
- (4) The generation of electricity.

A solar energy system may be used for purposes in addition to the collection of solar energy. These uses include, but are not limited to, serving as a structural member or part of a roof of a building or structure and serving as a window or wall. [1979 ex.s. c 170 § 6.]

Local governments authorized to encourage and protect solar energy systems: RCW 64.04.140.

Additional notes found at www.leg.wa.gov

35A.63.020 Planning agency—Creation—Powers and duties—Conflicts of interest. By ordinance a code city may create a planning agency and provide for its membership, organization, and expenses. The planning agency shall serve in an advisory capacity to the chief administrative officer

or the legislative body, or both, as may be provided by ordinance and shall have such other powers and duties as shall be provided by ordinance. If any person or persons on a planning agency concludes that he or she has a conflict of interest or an appearance of fairness problem with respect to a matter pending before the agency so that he or she cannot discharge his or her duties on such an agency, he or she shall disqualify himself or herself from participating in the deliberations and the decision-making process with respect to the matter. If this occurs, the appointing authority that appoints such a person may appoint a person to serve as an alternate on the agency to serve in his or her stead in regard to such a matter. [2009 c 549 § 3041; 1979 ex.s. c 18 § 33; 1967 ex.s. c 119 § 35A.63.020.]

Additional notes found at www.leg.wa.gov

35A.63.030 Joint meetings and cooperative action. Pursuant to the authorization of the legislative body, a code city planning agency may hold joint meetings with one or more city or county planning agencies (including city or county planning agencies in adjoining states) in any combination and may contract with another municipality for planning services. A code city may enter into cooperative arrangements with one or more municipalities and with any regional planning council organized under this chapter for jointly engaging a planning director and such other employees as may be required to operate a joint planning staff. [1969 ex.s. c 81 § 5; 1967 ex.s. c 119 § 35A.63.030.]

Additional notes found at www.leg.wa.gov

35A.63.040 Regional planning. A code city with one or more municipalities within a region, otherwise authorized by law to plan, including municipalities of adjoining states, when empowered by ordinances of their respective legislative bodies, may cooperate to form, organize, and administer a regional planning commission to prepare a comprehensive plan and perform other planning functions for the region defined by agreement of the respective municipalities. The various agencies may cooperate in all phases of planning, and professional staff may be engaged to assist in such planning. All costs shall be shared on a pro rata basis as agreed among the various entities. A code city may also cooperate with any department or agency of a state government having planning functions. [1969 ex.s. c 81 § 6; 1967 ex.s. c 119 § 35A.63.040.]

Additional notes found at www.leg.wa.gov

35A.63.050 Receipt and expenditure of funds. Any code city or any regional planning commission that includes a code city, when authorized by the legislative bodies of the municipalities represented by the regional planning commission, may enter into an agreement with any department or agency of the government of the United States or the state of Washington, or its agencies or political subdivisions, or any other public or private agency, to arrange for the receipt and expenditure of funds for planning in the interest of furthering the planning program. [1967 ex.s. c 119 § 35A.63.050.]

35A.63.060 Comprehensive plan—General. Every code city, by ordinance, shall direct the planning agency to prepare a comprehensive plan for anticipating and influencing

ing the orderly and coordinated development of land and building uses of the code city and its environs. The comprehensive plan may be prepared as a whole or in successive parts. The plan should integrate transportation and land use planning. [2002 c 189 § 2; 1967 ex.s. c 119 § 35A.63.060.]

35A.63.061 Comprehensive plan—Required elements. The comprehensive plan shall be in such form and of such scope as the code city's ordinance or charter may require. It may consist of a map or maps, diagrams, charts, reports and descriptive and explanatory text or other devices and materials to express, explain, or depict the elements of the plan; and it shall include a recommended plan, scheme, or design for each of the following elements:

(1) A land-use element that designates the proposed general distribution, general location, and extent of the uses of land. These uses may include, but are not limited to, agricultural, residential, commercial, industrial, recreational, educational, public, and other categories of public and private uses of land. The land-use element shall also include estimates of future population growth in, and statements of recommended standards of population density and building intensity for, the area covered by the comprehensive plan. The land use element shall also provide for protection of the quality and quantity of groundwater used for public water supplies and shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute Puget Sound or waters entering Puget Sound.

(2) A circulation element consisting of the general location, alignment, and extent of existing and proposed major thoroughfares, major transportation routes, and major terminal facilities, all of which shall be correlated with the land-use element of the comprehensive plan. [1985 c 126 § 2; 1984 c 253 § 2; 1967 ex.s. c 119 § 35A.63.061.]

35A.63.062 Comprehensive plan—Optional elements. The comprehensive plan may include also any or all of the following optional elements:

(1) A conservation element for the conservation, development, and utilization of natural resources.

(2) An open space, park, and recreation element.

(3) A transportation element showing a comprehensive system of surface, air, and water transportation routes and facilities.

(4) A public-use element showing general locations, designs, and arrangements of public buildings and uses.

(5) A public utilities element showing general plans for public and franchised services and facilities.

(6) A redevelopment or renewal element showing plans for the redevelopment or renewal of slum and blighted areas.

(7) An urban design element for general organization of the physical parts of the urban landscape.

(8) Other elements dealing with subjects that, in the opinion of the legislative body, relate to the development of the municipality, or are essential or desirable to coordinate public services and programs with such development.

(9) A solar energy element for encouragement and protection of access to direct sunlight for solar energy systems. [1979 ex.s. c 170 § 7; 1967 ex.s. c 119 § 35A.63.062.]

Additional notes found at www.leg.wa.gov

35A.63.070 Comprehensive plan—Notice and hearing. After preparing the comprehensive plan, or successive parts thereof, as the case may be, the planning agency shall hold at least one public hearing on the comprehensive plan or successive part. Notice of the time, place, and purpose of such public hearing shall be given as provided by ordinance and including at least one publication in a newspaper of general circulation delivered in the code city and in the official gazette, if any, of the code city, at least ten days prior to the date of the hearing. Continued hearings may be held at the discretion of the planning agency but no additional notices need be published. [1967 ex.s. c 119 § 35A.63.070.]

35A.63.071 Comprehensive plan—Forwarding to legislative body. Upon completion of the hearing or hearings on the comprehensive plan or successive parts thereof, the planning agency, after making such changes as it deems necessary following such hearing, shall transmit a copy of its recommendations for the comprehensive plan, or successive parts thereof, to the legislative body through the chief administrative officer, who shall acknowledge receipt thereof and direct the clerk to certify thereon the date of receipt. [1967 ex.s. c 119 § 35A.63.071.]

35A.63.072 Comprehensive plan—Approval by legislative body. Within sixty days from its receipt of the recommendation for the comprehensive plan, as above set forth, the legislative body at a public meeting shall consider the same. The legislative body within such period as it may by ordinance provide, shall vote to approve or disapprove or to modify and approve, as modified, the comprehensive plan or to refer it back to the planning agency for further proceedings, in which case the legislative body shall specify the time within which the planning agency shall report back to the legislative body its findings and recommendations on the matters referred to it. The final form and content of the comprehensive plan shall be determined by the legislative body. An affirmative vote of not less than a majority of total members of the legislative body shall be required for adoption of a resolution to approve the plan or its parts. The comprehensive plan, or its successive parts, as approved by the legislative body, shall be filed with an appropriate official of the code city and shall be available for public inspection. [1967 ex.s. c 119 § 35A.63.072.]

35A.63.073 Comprehensive plan—Amendments and modifications. All amendments, modifications, or alterations in the comprehensive plan or any part thereof shall be processed in the same manner as set forth in RCW 35A.63.070 through 35A.63.072. [1967 ex.s. c 119 § 35A.63.073.]

35A.63.080 Comprehensive plan—Effect. From the date of approval by the legislative body the comprehensive plan, its parts and modifications thereof, shall serve as a basic source of reference for future legislative and administrative action: PROVIDED, That the comprehensive plan shall not be construed as a regulation of property rights or land uses: PROVIDED, FURTHER, That no procedural irregularity or informality in the consideration, hearing, and development of the comprehensive plan or a part thereof, or any of its ele-

ments, shall affect the validity of any zoning ordinance or amendment thereto enacted by the code city after the approval of the comprehensive plan.

The comprehensive plan shall be consulted as a preliminary to the establishment, improvement, abandonment, or vacation of any street, park, public way, public building, or public structure, and no dedication of any street or other area for public use shall be accepted by the legislative body until the location, character, extent, and effect thereof shall have been considered by the planning agency with reference to the comprehensive plan. The legislative body shall specify the time within which the planning agency shall report and make a recommendation with respect thereto. Recommendations of the planning agency shall be advisory only. [1967 ex.s. c 119 § 35A.63.080.]

35A.63.100 Municipal authority. After approval of the comprehensive plan, as set forth above, the legislative body, in developing the municipality and in regulating the use of land, may implement or give effect to the comprehensive plan or parts thereof by ordinance or other action to such extent as the legislative body deems necessary or appropriate. Such ordinances or other action may provide for:

(1) Adoption of an official map and regulations relating thereto designating locations and requirements for one or more of the following: Streets, parks, public buildings, and other public facilities, and protecting such sites against encroachment by buildings and other physical structures.

(2) Dividing the municipality, or portions thereof, into appropriate zones within which specific standards, requirements, and conditions may be provided for regulating the use of public and private land, buildings, and structures, and the location, height, bulk, number of stories, and size of buildings and structures, size of yards, courts, open spaces, density of population, ratio of land area to the area of buildings and structures, setbacks, area required for off-street parking, protection of access to direct sunlight for solar energy systems, and such other standards, requirements, regulations, and procedures as are appropriately related thereto. The ordinance encompassing the matters of this subsection is hereinafter called the "zoning ordinance". No zoning ordinance, or amendment thereto, shall be enacted by the legislative body without at least one public hearing, notice of which shall be given as set forth in RCW 35A.63.070. Such hearing may be held before the planning agency or the board of adjustment or such other body as the legislative body shall designate.

(3) Adoption of design standards, requirements, regulations, and procedures for the subdivision of land into two or more parcels, including, but not limited to, the approval of plats, dedications, acquisitions, improvements, and reservation of sites for public use.

(4) Scheduling public improvements on the basis of recommended priorities over a period of years, subject to periodic review.

(5) Such other matters as may be otherwise authorized by law or as the legislative body deems necessary or appropriate to effectuate the goals and objectives of the comprehensive plan or parts thereof and the purposes of this chapter. [1979 ex.s. c 170 § 8; 1967 ex.s. c 119 § 35A.63.100.]

Additional notes found at www.leg.wa.gov

35A.63.105 Development regulations—Consistency with comprehensive plan. Beginning July 1, 1992, the development regulations of each code city that does not plan under RCW 36.70A.040 shall not be inconsistent with the city's comprehensive plan. For the purposes of this section, "development regulations" has the same meaning as set forth in RCW 36.70A.030. [1990 1st ex.s. c 17 § 23.]

Additional notes found at www.leg.wa.gov

35A.63.107 Development regulations—Jurisdictions specified—Electric vehicle infrastructure. (1) By July 1, 2010, the development regulations of any jurisdiction:

(a) Adjacent to Interstate 5, Interstate 90, Interstate 405, or state route number 520, with a population over twenty thousand, and located in a county with a population over one million five hundred thousand; or

(b) Adjacent to Interstate 5 and located in a county with a population greater than six hundred thousand; or

(c) Adjacent to Interstate 5 and located in a county with a state capitol within its borders;

planning under this chapter must allow electric vehicle infrastructure as a use in all areas except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(2) By July 1, 2011, or six months after the distribution required under RCW 43.31.970 occurs, whichever is later, the development regulations of any jurisdiction adjacent to Interstate 5, Interstate 90, Interstate 405, or state route number 520 planning under this chapter must allow electric vehicle infrastructure as a use in all areas except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(3) By July 1, 2011, or six months after the distribution required under RCW 43.31.970 occurs, whichever is later, the development regulations of any jurisdiction planning under this chapter must allow battery charging stations as a use in all areas except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(4) Cities are authorized to adopt incentive programs to encourage the retrofitting of existing structures with the electrical outlets capable of charging electric vehicles. Incentives may include bonus height, site coverage, floor area ratio, and transferable development rights for use in urban growth areas.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable

battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations.

(d) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(6) If federal funding for public investment in electric vehicles, electric vehicle infrastructure, or alternative fuel distribution infrastructure is not provided by February 1, 2010, subsection (1) of this section is null and void. [2009 c 459 § 10.]

Finding—Purpose—2009 c 459: See note following RCW 47.80.090.

Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.

35A.63.110 Board of adjustment—Creation—Powers and duties. A code city which pursuant to this chapter creates a planning agency and which has twenty-five hundred or more inhabitants, by ordinance, shall create a board of adjustment and provide for its membership, terms of office, organization, jurisdiction. A code city which pursuant to this chapter creates a planning agency and which has a population of less than twenty-five hundred may, by ordinance, similarly create a board of adjustment. In the event a code city with a population of less than twenty-five hundred creates a planning agency, but does not create a board of adjustment, the code city shall provide that the city legislative authority shall itself hear and decide the items listed in subdivisions (1), (2), and (3) of this section. The action of the board of adjustment shall be final and conclusive, unless, within twenty-one days from the date of the action, the original applicant or an adverse party makes application to the superior court for the county in which that city is located for a writ of certiorari, a writ of prohibition, or a writ of mandamus. No member of the board of adjustment shall be a member of the planning agency or the legislative body. Subject to conditions, safeguards, and procedures provided by ordinance, the board of adjustment may be empowered to hear and decide:

(1) Appeals from orders, recommendations, permits, decisions, or determinations made by a code city official in the administration or enforcement of the provisions of this chapter or any ordinances adopted pursuant to it.

(2) Applications for variances from the terms of the zoning ordinance, the official map ordinance or other land-use regulatory ordinances under procedures and conditions prescribed by city ordinance, which among other things shall provide that no application for a variance shall be granted unless the board of adjustment finds:

(a) The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application was filed is located; and

(b) That such variance is necessary, because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; and

(c) That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.

(3) Applications for conditional-use permits, unless such applications are to be heard and decided by the planning agency. A conditional use means a use listed among those classified in any given zone but permitted to locate only after review as herein provided in accordance with standards and criteria set forth in the zoning ordinance.

(4) Such other quasi-judicial and administrative determinations as may be delegated by ordinance.

In deciding any of the matters referred to in subsections (1), (2), (3), and (4) of this section, the board of adjustment shall issue a written report giving the reasons for its decision. If a code city provides for a hearing examiner and vests in him or her the authority to hear and decide the items listed in subdivisions (1), (2), and (3) of this section pursuant to RCW 35A.63.170, then the provisions of this section shall not apply to such a city. [2009 c 549 § 3042; 2001 c 200 § 1; 1979 ex.s. c 18 § 34; 1967 ex.s. c 119 § 35A.63.110.]

Additional notes found at www.leg.wa.gov

35A.63.120 Administration and enforcement. In order to carry into effect the purposes of this chapter, administrative and enforcement responsibilities, other than those set forth in RCW 35A.63.110, may be assigned by ordinance to such departments, boards, officials, employees, or agents as the legislative body deems appropriate. [1967 ex.s. c 119 § 35A.63.120.]

35A.63.130 Provisions inconsistent with charters. Insofar as the provisions of an existing charter of a municipality are inconsistent with this chapter, a municipality may exercise the authority, or any part thereof, granted by this chapter notwithstanding the inconsistent provision of an existing charter. [1967 ex.s. c 119 § 35A.63.130.]

35A.63.140 Duties and responsibilities imposed by other acts. Any duties and responsibilities which by other statutes are imposed upon a planning commission may, in a code city, be performed by a planning agency, as provided in this chapter. [1967 ex.s. c 119 § 35A.63.140.]

35A.63.145 Prohibitions on manufactured homes—Review required—"Designated manufactured home" defined. (1) Each comprehensive plan which does not allow for the siting of manufactured homes on individual lots shall be subject to a review by the city of the need and demand for such homes. The review shall be completed by December 31, 1990.

(2) For the purpose of providing an optional reference for cities which choose to allow manufactured homes on individual lots, a "designated manufactured home" is a manufactured home constructed after June 15, 1976, in accordance

with state and federal requirements for manufactured homes, which:

(a) Is comprised of at least two fully enclosed parallel sections each of not less than twelve feet wide by thirty-six feet long;

(b) Was originally constructed with and now has a composition or wood shake or shingle, coated metal, or similar roof of not less than 3:12 pitch; and

(c) Has exterior siding similar in appearance to siding materials commonly used on conventional site-built uniform building code single-family residences.

(3) Nothing in this section precludes cities from allowing any manufactured home from being sited on individual lots through local standards which differ from the designated manufactured home as described in this section, except that the term "designated manufactured home" shall not be used except as defined in subsection (2) of this section. [1988 c 239 § 2.]

35A.63.146 Manufactured housing communities—Prohibitions of code city due to community status as a nonconforming use. (1) After June 10, 2004, a code city may designate a manufactured housing community as a nonconforming use, but may not order the removal or phased elimination of an existing manufactured housing community because of its status as a nonconforming use.

(2) A code city may not prohibit the entry or require the removal of a manufactured/mobile home, park model, or recreational vehicle authorized in a manufactured housing community under chapter 59.20 RCW on the basis of the community's status as a nonconforming use. [2011 c 158 § 10; 2004 c 210 § 2.]

Transfer of residual funds to manufactured home installation training account—2011 c 158: See note following RCW 43.22A.100.

35A.63.149 Residential care facilities—Review of need and demand—Adoption of ordinances. Each municipality that does not provide for the siting of residential care facilities in zones or areas that are designated for single-family or other residential uses, shall conduct a review of the need and demand for the facilities, including the cost of any conditional or special use permit that may be required. The review shall be completed by August 31, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the *department of community development by September 30, 1990.

On or before June 30, 1991, each municipality that plans and zones under this chapter shall have adopted an ordinance or ordinances that are necessary to implement the findings of this review, if the findings indicate that such changes are necessary, or shall notify the *department of community development as to why such implementing ordinances were not adopted. [1989 c 427 § 37.]

***Reviser's note:** Powers, duties, and functions of the department of community development and the department of trade and economic development were transferred to the department of community, trade, and economic development by 1993 c 280, effective July 1, 1994. The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Additional notes found at www.leg.wa.gov

35A.63.150 Public hearings. The legislative body may provide by ordinance for such additional public hearings and notice thereof as it deems to be appropriate in connection with any action contemplated under this chapter. [1967 ex.s. c 119 § 35A.63.150.]

35A.63.152 Public notice—Identification of affected property. Any notice made under chapter 35A.63 RCW that identifies affected property may identify this affected property without using a legal description of the property including, but not limited to, identification by an address, written description, vicinity sketch, or other reasonable means. [1988 c 168 § 10.]

35A.63.160 Construction—1967 ex.s. c 119. This title is intended to implement and preserve to code cities all powers authorized by Article XI, section 11 of the Constitution of the state of Washington and the provision of this title shall not limit any code city from exercising its constitutionally granted power to plan for and to make and enforce within its limits all such local police, sanitary, and other regulations in the manner that its charter or ordinances may provide. [1967 ex.s. c 119 § 35A.63.160.]

35A.63.170 Hearing examiner system—Adoption authorized—Alternative—Functions—Procedures. (1) As an alternative to those provisions of this chapter relating to powers or duties of the planning commission to hear and report on any proposal to amend a zoning ordinance, the legislative body of a city may adopt a hearing examiner system under which a hearing examiner or hearing examiners may hear and decide applications for amending the zoning ordinance when the amendment which is applied for is not of general applicability. In addition, the legislative body may vest in a hearing examiner the power to hear and decide those issues it believes should be reviewed and decided by a hearing examiner, including but not limited to:

(a) Applications for conditional uses, variances, subdivisions, shoreline permits, or any other class of applications for or pertaining to development of land or land use;

(b) Appeals of administrative decisions or determinations; and

(c) Appeals of administrative decisions or determinations pursuant to chapter 43.21C RCW.

The legislative body shall prescribe procedures to be followed by a hearing examiner. If the legislative authority vests in a hearing examiner the authority to hear and decide variances, then the provisions of RCW 35A.63.110 shall not apply to the city.

(2) Each city legislative body electing to use a hearing examiner pursuant to this section shall by ordinance specify the legal effect of the decisions made by the examiner. The legal effect of such decisions may vary for the different classes of applications decided by the examiner but shall include one of the following:

(a) The decision may be given the effect of a recommendation to the legislative body;

(b) The decision may be given the effect of an administrative decision appealable within a specified time limit to the legislative body; or

(c) Except in the case of a rezone, the decision may be given the effect of a final decision of the legislative body.

(3) Each final decision of a hearing examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision. Such findings and conclusions shall also set forth the manner in which the decision would carry out and conform to the city's comprehensive plan and the city's development regulations. Each final decision of a hearing examiner, unless a longer period is mutually agreed to in writing by the applicant and the hearing examiner, shall be rendered within ten working days following conclusion of all testimony and hearings. [1995 c 347 § 424; 1994 c 257 § 7; 1977 ex.s. c 213 § 2.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Additional notes found at www.leg.wa.gov

35A.63.200 Conformance with chapter 43.97 RCW required. With respect to the National Scenic Area, as defined in the Columbia River Gorge National Scenic Area Act, P.L. 99-663, the exercise of any power or authority by a city pursuant to this chapter shall be subject to and in conformity with the requirements of chapter 43.97 RCW, including the Interstate Compact adopted by RCW 43.97.015, and with the management plan regulations and ordinances adopted by the Columbia River Gorge commission pursuant to the Compact. [1987 c 499 § 7.]

35A.63.210 Child care facilities—Review of need and demand—Adoption of ordinances. Each municipality that does not provide for the siting of family day care homes in zones or areas that are designated for single-family or other residential uses, and for the siting of mini-day care centers and day care centers in zones or areas that are designated for any residential or commercial uses, shall conduct a review of the need and demand for child care facilities, including the cost of any conditional or special use permit that may be required. The review shall be completed by August 31, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the *department of community development by September 30, 1990.

On or before June 30, 1991, each municipality that plans and zones under this chapter shall have adopted an ordinance or ordinances that are necessary to implement the findings of this review, if the findings indicate that such changes are necessary, or shall notify the *department of community development as to why such implementing ordinances were not adopted. [1989 c 335 § 5.]

***Reviser's note:** Powers, duties, and functions of the department of community development and the department of trade and economic development were transferred to the department of community, trade, and economic development by 1993 c 280, effective July 1, 1994. The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Findings—Purpose—Severability—1989 c 335: See notes following RCW 35.63.170.

Definitions for RCW 35A.63.210: See RCW 35.63.170.

35A.63.215 Family day-care provider's home facility—City may not prohibit in residential or commercial area—Conditions. (1) Except as provided in subsections (2) and (3) of this section, no city may enact, enforce, or maintain

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an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice that prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's home facility.

(2) A city may require that the facility: (a) Comply with all building, fire, safety, health code, and business licensing requirements; (b) conform to lot size, building size, setbacks, and lot coverage standards applicable to the zoning district except if the structure is a legal nonconforming structure; (c) is certified by the department of early learning licenser as providing a safe passenger loading area; (d) include signage, if any, that conforms to applicable regulations; and (e) limit hours of operations to facilitate neighborhood compatibility, while also providing appropriate opportunity for persons who use family day-care and who work a nonstandard work shift.

(3) A city may also require that the family day-care provider, before state licensing, require proof of written notification by the provider that the immediately adjoining property owners have been informed of the intent to locate and maintain such a facility. If a dispute arises between neighbors and the family day-care provider over licensing requirements, the licenser may provide a forum to resolve the dispute.

(4) Nothing in this section shall be construed to prohibit a city from imposing zoning conditions on the establishment and maintenance of a family day-care provider's home in an area zoned for residential or commercial use, so long as such conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not precluded. As used in this section, "family day-care provider" is as defined in RCW 43.215.010. [2007 c 17 § 11; 2003 c 286 § 4; 1995 c 49 § 2; 1994 c 273 § 16.]

35A.63.220 Moratoria, interim zoning controls—Public hearing—Limitation on length. A legislative body that adopts a moratorium or interim zoning ordinance, without holding a public hearing on the proposed moratorium or interim zoning ordinance, shall hold a public hearing on the adopted moratorium or interim zoning ordinance within at least sixty days of its adoption, whether or not the legislative body received a recommendation on the matter from the planning agency. If the legislative body does not adopt findings of fact justifying its action before this hearing, then the legislative body shall do so immediately after this public hearing. A moratorium or interim zoning ordinance adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium of [or] interim zoning ordinance may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal. [1992 c 207 § 3.]

35A.63.230 Accessory apartments. Any local government, as defined in RCW 43.63A.215, that is planning under this chapter shall comply with RCW 43.63A.215(3). [1993 c 478 § 9.]

35A.63.240 Treatment of residential structures occupied by persons with handicaps. No city may enact or

maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals. As used in this section, "handicaps" are as defined in the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3602). [1993 c 478 § 21.]

35A.63.250 Watershed restoration projects—Permit processing—Fish habitat enhancement project. (1) A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510.

(2) A fish habitat enhancement project meeting the criteria of RCW 77.55.181 shall be reviewed and approved according to the provisions of RCW 77.55.181. [2014 c 120 § 12; 2003 c 39 § 17; 1998 c 249 § 6; 1995 c 378 § 9.]

Findings—Purpose—Report—Effective date—1998 c 249: See notes following RCW 77.55.181.

35A.63.260 Planning regulations—Copies provided to county assessor. By July 31, 1997, a code city planning under RCW 36.70A.040 shall provide to the county assessor a copy of the code city's comprehensive plan and development regulations in effect on July 1st of that year and shall thereafter provide any amendments to the plan and regulations that were adopted before July 31st of each following year. [1996 c 254 § 4.]

35A.63.270 General aviation airports. Adoption and amendment of comprehensive plan provisions and development regulations under this chapter affecting a general aviation airport are subject to RCW 36.70.547. [1996 c 239 § 4.]

35A.63.280 Conditional and special use permit applications by parties licensed or certified by the department of social and health services or the department of corrections—Mediation prior to appeal required. A final decision by a hearing examiner involving a conditional or special use permit application under this chapter that is requested by a party that is licensed or certified by the department of social and health services or the department of corrections is subject to mediation under RCW 35.63.260 before an appeal may be filed. [1998 c 119 § 2.]

35A.63.290 Application for a permit to site an energy plant or alternative energy resource—Written notice to United States department of defense. (1) Upon receipt of an application for a permit to site an energy plant or alternative energy resource that is connected to electrical transmission facilities of a nominal voltage of at least one hundred fifteen thousand volts, the city shall notify in writing the United States department of defense. The notification shall include, but not be limited to, the following:

- (a) A description of the proposed energy plant or alternative energy resource;
- (b) The location of the site;
- (c) The placement of the energy plant or alternative energy resource on the site;

(d) The date and time by which comments must be received by the city; and

(e) Contact information of the city permitting authority and the applicant.

(2) The purpose of the written notification is to provide an opportunity for the United States department of defense to comment upon the application, and to identify potential issues relating to the placement and operations of the energy plant or alternative energy resource, before a permit application is approved. The time period set forth by the city for receipt of such comments shall not extend the time period for the city's processing of the application.

(3) For the purpose of this section, "alternative energy resource," "energy plant," and "electrical transmission facility" shall each have the meaning set forth in RCW 80.50.020. [2011 c 261 § 4.]

Chapter 35A.64 RCW

PUBLIC PROPERTY, REAL AND PERSONAL

Sections

- 35A.64.010 Acquisition of by conditional sales contracts.
- 35A.64.020 Purchase of products made by blind.
- 35A.64.180 Disinfection of property.
- 35A.64.200 Eminent domain by cities.

35A.64.010 Acquisition of by conditional sales contracts. A code city may exercise the powers relating to acquisition of real or personal property under executory conditional sales contracts as authorized by RCW 39.30.010. [1967 ex.s. c 119 § 35A.64.010.]

35A.64.020 Purchase of products made by blind. A code city may exercise the powers relating to the acquisition of products made by the blind as authorized by RCW 19.06.020. [1967 ex.s. c 119 § 35A.64.020.]

35A.64.180 Disinfection of property. Every code city shall disinfect or destroy all infected trees or shrubs growing upon public property within the city's jurisdiction and may expend city funds in carrying out the provisions of this section, and shall otherwise be governed by the provisions of chapter 15.08 RCW relating to horticultural pests and diseases. [1967 ex.s. c 119 § 35A.64.180.]

35A.64.200 Eminent domain by cities. A code city may exercise all powers relating to eminent domain as authorized by chapters 8.12 and 8.28 RCW in accordance with the procedures therein prescribed and subject to any limitations therein provided. [1967 ex.s. c 119 § 35A.64.200.]

Chapter 35A.65 RCW

PUBLICATION AND PRINTING

Sections

- 35A.65.010 Public printing.
- 35A.65.020 Publication of legal notice.

35A.65.010 Public printing. All printing, binding and stationery work done for any code city shall be done within the state and all proposals, requests and invitations to submit bids, prices or contracts thereon and all contracts for such

work shall so stipulate subject to the limitations contained in RCW *43.78.130 and 35.23.352. [1967 ex.s. c 119 § 35A.65.010.]

*Reviser's note: RCW 43.78.130 was recodified as RCW 43.19.748 pursuant to 2011 1st sp.s. c 43 § 315.

35A.65.020 Publication of legal notice. The publication of a legal notice required by general law or by a code city ordinance shall be in a newspaper of general circulation within the city having the qualifications prescribed by chapter 65.16 RCW and shall be governed by the provisions thereof as the same relate to a city of any class. [1967 ex.s. c 119 § 35A.65.020.]

Chapter 35A.66 RCW

HEALTH AND SAFETY—ALCOHOL

Sections

- 35A.66.010 Alcoholism—Standards for institutions.
35A.66.020 Liquors, local option on sale of—Enforcement of state laws, sharing proceeds of liquor profits and excise tax.

35A.66.010 Alcoholism—Standards for institutions. In addition to regulating the use of alcoholic beverages, a code city may exercise the powers relating to prescribing standards for institutions for treating alcoholism as authorized by RCW 71.12.550. [1967 ex.s. c 119 § 35A.66.010.]

35A.66.020 Liquors, local option on sale of—Enforcement of state laws, sharing proceeds of liquor profits and excise tax. The qualified electors of any code city may petition for an election upon the question of whether the sale of liquor shall be permitted within the boundaries of such city as provided by chapter 66.40 RCW, and shall be governed by the procedure therein, and may regulate music, dancing and entertainment as authorized by RCW 66.28.080: PROVIDED, That every code city shall enforce state laws relating to the investigation and prosecution of all violations of Title 66 RCW relating to control of alcoholic beverages and shall be entitled to retain the fines collected therefrom as therein provided. Every code city shall also share in the allocation and distribution of liquor profits and excise as provided in RCW 82.08.170, 66.08.190, and 66.08.210, and make reports of seizure as required by RCW 66.32.090, and otherwise regulate by ordinances not in conflict with state law or liquor board regulations. [1967 ex.s. c 119 § 35A.66.020.]

State liquor control board: Chapter 66.08 RCW.

Chapter 35A.67 RCW

RECREATION AND PARKS

Sections

- 35A.67.010 Parks, beaches and camps.

35A.67.010 Parks, beaches and camps. In addition to exercising all powers relating to the acquisition of land, the improvement and operation thereof, or cooperation with other taxing districts in connection with park or recreation facilities, any code city may exercise the powers relating to acquisition and operation of recreational facilities, establish-

(2014 Ed.)

ment and operation of public camps, and contracting with other taxing or governmental agencies for the acquisition or operation of public parks, camps and recreational facilities as authorized by chapter 67.20 RCW, in accordance with the procedures prescribed in and authorized by *RCW 79.08.080 and 79.08.090 in the application for use of state-owned tide or shorelands for a municipal park or playground purposes. [1967 ex.s. c 119 § 35A.67.010.]

*Reviser's note: RCW 79.08.080 and 79.08.090 were recodified as RCW 79.94.175 and 79.94.181 pursuant to 2003 c 334 § 570. RCW 79.94.175 and 79.94.181 were subsequently recodified as RCW 79.125.710 and 79.125.720 pursuant to 2005 c 155 § 1008.

Acquisition of interests in land for conservation, protection, preservation, or open space purposes by cities: RCW 64.04.130.

Chapter 35A.68 RCW

CEMETERIES AND MORGUES

Sections

- 35A.68.010 Acquisition—Care and investment of funds.

35A.68.010 Acquisition—Care and investment of funds. A code city may exercise the powers to acquire, own, improve, manage, operate and regulate real and personal property for the operation of the city morgue, cemetery or other place for the burial of the dead, to create cemetery boards or commissions, to establish and manage funds for cemetery improvement and care and to make all necessary or desirable rules and regulations concerning the control and management of burial places and the investment of funds relating thereto and accounting therefor as is authorized by chapter 68.52 RCW, RCW 35.22.280, 35.23.440, *35.24.300 and 35.27.370(2) in accordance with the procedures and requirements prescribed by said laws and authority to be included within a cemetery district as authorized and conformed to the requirements of Title 68 RCW. [1987 c 331 § 80; 1967 ex.s. c 119 § 35A.68.010.]

*Reviser's note: RCW 35.24.300 was recodified as RCW 35.23.452 pursuant to 1994 c 81 § 90.

Additional notes found at www.leg.wa.gov

Chapter 35A.69 RCW

FOOD AND DRUG

Sections

- 35A.69.010 Powers and duties prescribed.

35A.69.010 Powers and duties prescribed. Every code city shall have the powers, perform the functions and duties and enforce the regulations prescribed by general laws relating to food and drugs for any class of city as provided by Title 69 RCW; relating to water pollution control as provided by chapter 90.48 RCW; and relating to food fish and shellfish as provided by Title 77 RCW. [2003 c 39 § 18; 1999 c 291 § 31; 1994 c 143 § 512. Prior: 1983 1st ex.s. c 46 § 177; 1983 c 3 § 71; 1967 ex.s. c 119 § 35A.69.010.]

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Chapter 35A.70 RCW HEALTH AND SAFETY

Sections

- 35A.70.010 Waters within city—City's water supply.
 35A.70.020 Regulating assisted living facilities.
 35A.70.040 Buildings, construction standards.
 35A.70.050 City electrical code—State safety regulations.
 35A.70.060 Elevators, moving walks.
 35A.70.070 Public health and safety, general laws applicable.

35A.70.010 Waters within city—City's water supply.

Every code city shall have authority to protect waters within the city or comprising part of the city's water supply pursuant to the authority provided therefor by RCW 9.66.050, 54.16.050, 69.30.130, *57.08.010, 8.12.030, 70.54.010 and 70.54.030. [1996 c 230 § 1606; 1967 ex.s. c 119 § 35A.70.010.]

*Reviser's note: RCW 57.08.010 was repealed by 1996 c 230 § 1703, effective July 1, 1997. For later enactment, see RCW 57.08.005.

Additional notes found at www.leg.wa.gov

35A.70.020 Regulating assisted living facilities. A

code city may exercise the powers relating to enforcement of regulations for assisted living facilities. [2012 c 10 § 40; 1967 ex.s. c 119 § 35A.70.020.]

Application—2012 c 10: See note following RCW 18.20.010.

35A.70.040 Buildings, construction standards. In

addition to other provisions of the law granting authority and imposing duties, a code city may exercise the powers relating to providing standards for the construction of buildings as provided in chapter 70.86 RCW and shall report the issuance of building permits for new construction as required by *RCW 36.21.040 through 36.21.060. [1967 ex.s. c 119 § 35A.70.040.]

*Reviser's note: RCW 36.21.040 through 36.21.060 were repealed by 1989 c 246 § 8.

35A.70.050 City electrical code—State safety regula-

tions. Every code city may adopt ordinances regulating or otherwise controlling the installation of electrical wiring, equipment, apparatus or appliances as authorized by *RCW 19.28.360 and by other general law and shall obey, observe and comply with every order, approval, direction or requirement made by the director or the commission under authority of chapter 19.29 RCW. [1967 ex.s. c 119 § 35A.70.050.]

*Reviser's note: RCW 19.28.360 was recodified as RCW 19.28.141 pursuant to 2000 c 238 § 102.

35A.70.060 Elevators, moving walks. All convey-

ances owned or operated by code cities as defined by the provisions of chapter 70.87 RCW, shall be subject to the provisions of that chapter to the extent specifically provided for therein. [1967 ex.s. c 119 § 35A.70.060.]

35A.70.070 Public health and safety, general laws

applicable. Every code city may exercise the powers authorized and shall perform the duties imposed upon cities of like population relating to the public health and safety as provided by Title 70 RCW and, without limiting the generality of the foregoing, shall: (1) Organize boards of health and appoint a health officer with the authority, duties and functions as provided in chapter 70.05 RCW, or provide for combined city-

county health departments as provided and in accordance with the provisions of chapter 70.08 RCW; (2) contribute and participate in public health pooling funds as authorized by chapter 70.12 RCW; (3) control and provide for treatment of *venereal diseases as authorized by chapter 70.24 RCW; (4) provide for the care and control of tuberculosis as provided in chapters 70.28, 70.30, **70.32, and 70.54 RCW; (5) participate in health districts as authorized by chapter 70.46 RCW; (6) exercise control over water pollution as provided in chapter 35.88 RCW; (7) for all code cities having a population of more than twenty thousand serve as a primary district for registration of vital statistics in accordance with the provisions of chapter 70.58 RCW; (8) observe and enforce the provisions relating to fireworks as provided in chapter 70.77 RCW; (9) enforce the provisions relating to swimming pools provided in chapter 70.90 RCW; (10) enforce the provisions of chapter 18.20 RCW when applicable; (11) perform the functions relating to mentally ill prescribed in chapters 72.06 and 71.12 RCW; (12) cooperate with the state department of social and health services in mosquito control as authorized by RCW 70.22.060; and (13) inspect nursing homes as authorized by RCW 18.51.145. [1987 c 223 § 4; 1985 c 213 § 12; 1981 1st ex.s. c 2 § 25; 1979 c 141 § 42; 1967 ex.s. c 119 § 35A.70.070.]

Reviser's note: *(1) The term "venereal diseases" was changed to "sexually transmitted diseases" by 1988 c 206.

***(2) Chapter 70.32 RCW was repealed and/or recodified in its entirety pursuant to 1999 c 172.

Additional notes found at www.leg.wa.gov

Chapter 35A.74 RCW WELFARE

Sections

- 35A.74.010 General law applicable.

35A.74.010 General law applicable. Code cities may exercise authority granted by general law and available to any class of city for the relief of the poor and destitute, including, but not limited to the provisions of *RCW 74.04.390 through 74.04.470. [1967 ex.s. c 119 § 35A.74.010.]

*Reviser's note: RCW 74.04.390 through 74.04.470 were repealed by 1991 c 126 § 11.

Chapter 35A.79 RCW PROPERTY AND MATERIALS

Sections

- 35A.79.010 Powers to acquire, use and manage.
 35A.79.020 Authority to transfer real property.

35A.79.010 Powers to acquire, use and manage. A code city shall have all powers provided by general law to cities of any class relating to the receipt of donations of money and property, the acquisition, leasing and disposition of municipal property, both real and personal, including, but not limited to, the following: (1) Intergovernmental leasing, transfer or disposition of property as provided by chapter 39.33 RCW; (2) disposition of unclaimed property as provided by chapters 63.32 and 63.21 RCW; (3) disposition of local improvement district foreclosures as provided by chapter 35.53 RCW; (4) materials removed from public lands as

provided by *RCW 79.90.150; (5) purchase of federal surplus property as provided by chapter 39.32 RCW; and (6) land for recreation as provided by **chapter 43.99 RCW. A code city in connection with the acquisition of property shall be subject to provisions relating to tax liens as provided by RCW 84.60.050 and 84.60.070. The general law relating to the damage or destruction of public property of a code city or interferences with the duties of a police or other officer shall relate to code city's properties and officers to the same extent as such laws apply to any class of city, its property or officers. [1983 c 3 § 72; 1979 ex.s. c 30 § 3; 1967 ex.s. c 119 § 35A.79.010.]

Reviser's note: *(1) RCW 79.90.150 was recodified as RCW 79.140.110 pursuant to 2005 c 155 § 1011.

** (2) Chapter 43.99 RCW was recodified as chapter 79A.25 RCW pursuant to 1999 c 249 § 1601.

35A.79.020 Authority to transfer real property.

Code cities are authorized to transfer real property pursuant to RCW 43.99C.070 and 43.83D.120. [2006 c 35 § 11.]

Findings—2006 c 35: See note following RCW 43.99C.070.

Chapter 35A.80 RCW PUBLIC UTILITIES

Sections

35A.80.010	General laws applicable.
35A.80.020	Electric energy.
35A.80.030	Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts.
35A.80.040	Code cities encouraged to provide utility customers with landscaping information and to request voluntary donations for urban forestry.
35A.80.050	Purchase of electric power and energy from joint operating agency.
35A.80.060	Voluntary donations for purpose of supporting hunger programs.

35A.80.010 General laws applicable. A code city may provide utility service within and without its limits and exercise all powers to the extent authorized by general law for any class of city or town. The cost of such improvements may be financed by procedures provided for financing local improvement districts in chapters 35.43 through 35.54 RCW and by revenue and refunding bonds as authorized by chapters 35.41, 35.67 and 35.89 RCW and Title 85 RCW. A code city may protect and operate utility services as authorized by chapters 35.88, 35.91, 35.92, and 35.94 RCW and may acquire and damage property in connection therewith as provided by chapter 8.12 RCW and shall be governed by the regulations of the department of ecology as provided in RCW 90.48.110. [1988 c 127 § 2; 1967 ex.s. c 119 § 35A.80.010.]

35A.80.020 Electric energy. Any code city is authorized to enter into contracts or compacts with any commission or any operating agency or publicly or privately owned utility for the purchase and sale of electric energy or falling waters as provided in RCW 43.52.410 and chapter 35.84 RCW and to exercise any other authority granted to cities as provided in chapter 43.52 RCW. [1967 ex.s. c 119 § 35A.80.020.]

35A.80.030 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts. See RCW 87.03.825 through 87.03.840.

35A.80.040 Code cities encouraged to provide utility customers with landscaping information and to request voluntary donations for urban forestry. (1) Code cities providing utility services under this chapter are encouraged to provide information to their customers regarding landscaping that includes tree planting for energy conservation.

(2)(a) Code cities providing utility services under this chapter are encouraged to request voluntary donations from their customers for the purposes of urban forestry. The request may be in the form of a check-off on the billing statement or other form of a request for a voluntary donation.

(b) Voluntary donations collected by code cities under this section may be used by the code city to:

(i) Support the development and implementation of ever-green community ordinances, as that term is defined in RCW 35.105.010, for cities, towns, or counties within their service areas; or

(ii) Complete projects consistent with the model ever-green community management plans and ordinances developed under RCW 35.105.050.

(c) Donations received under this section do not contribute to the gross income of a light and power business or gas distribution business under chapter 82.16 RCW. [2008 c 299 § 20; 1993 c 204 § 3.]

Short title—2008 c 299: See note following RCW 35.105.010.

Findings—1993 c 204: See note following RCW 35.92.390.

35A.80.050 Purchase of electric power and energy from joint operating agency. A code city may contract to purchase from a joint operating agency electric power and energy required for its present or future requirements. For projects the output of which is limited to qualified alternative energy resources as defined by RCW 19.29A.090(3), the contract may include the purchase of capability of the projects to produce electricity in addition to the actual output of the projects. The contract may provide that the code city must make the payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for. The contract may also provide that payments under the contract are not subject to reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint operating agency or a city, town, or public utility district under the contract or other instrument. [2003 c 138 § 7.]

35A.80.060 Voluntary donations for purpose of supporting hunger programs. (1) Code cities providing utility services under this chapter may request voluntary donations from their customers for the purpose of supporting hunger programs.

(2) Voluntary donations collected by code cities under this section must be used by the code city to support the maintenance and operation of hunger programs.

(3) Donations received under this section do not contribute to the gross income of a light and power business or gas distribution business under chapter 82.16 RCW.

(4) Nothing in this section precludes a code city providing utility services from requesting voluntary donations to support other programs. [2011 c 226 § 3.]

Chapter 35A.81 RCW PUBLIC TRANSPORTATION

Sections

35A.81.010 Application of general law.

35A.81.010 Application of general law. (Effective until July 1, 2015.) Motor vehicles owned and operated by any code city shall be exempt from the provisions of chapter 81.80 RCW, except where specifically otherwise provided. Urban passenger transportation systems shall receive a refund of the amount of the motor vehicle fuel tax paid on each gallon of motor vehicle fuel used in such systems to the extent authorized by chapter 82.36 RCW. Notwithstanding any provision of the law to the contrary, every urban passenger transportation system as defined in RCW 82.38.080 shall be exempt from the provisions of chapter 82.38 RCW which requires the payment of use fuel taxes. [1983 c 3 § 73; 1967 ex.s. c 119 § 35A.81.010.]

35A.81.010 Application of general law. (Effective July 1, 2015.) Motor vehicles owned and operated by any code city are exempt from the provisions of chapter 81.80 RCW, except where specifically otherwise provided. Urban passenger transportation systems must receive a refund of the amount of the motor vehicle fuel tax paid on each gallon of motor vehicle fuel used in such systems to the extent authorized by chapter 82.38 RCW. Notwithstanding any provision of the law to the contrary, every urban passenger transportation system as defined in RCW 82.38.080 are exempt from the provisions of chapter 82.38 RCW which requires the payment of use fuel taxes. [2013 c 225 § 603; 1983 c 3 § 73; 1967 ex.s. c 119 § 35A.81.010.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Chapter 35A.82 RCW TAXATION—EXCISES

Sections

35A.82.010 State shared excises.
 35A.82.020 Licenses and permits—Excises for regulation.
 35A.82.025 Authority to regulate massage practitioners—Limitations.
 35A.82.030 City and county retail sales excise tax and use tax.
 35A.82.040 City and town license fees and taxes on financial institutions.
 35A.82.042 City license fees or taxes on certain business activities to be at a single uniform rate.
 35A.82.050 License fees or taxes upon certain business activities to be at single uniform rate.
 35A.82.055 License fees or taxes on telephone business to be at uniform rate.
 35A.82.060 License fees or taxes on telephone business—Imposition on certain gross revenues authorized—Limitations.
 35A.82.065 Taxes on network telephone services.
 35A.82.070 Taxes on telephone business—Deferral of rate reduction.

35A.82.010 State shared excises. A code city shall collect, receive and share in the distribution of state collected

and distributed excise taxes to the same extent and manner as general laws relating thereto apply to any class of city or town including, but not limited to, funds distributed to cities under *RCW 82.36.020 relating to motor vehicle fuel tax, RCW 82.38.290 relating to use fuel tax, and RCW *82.36.275 and **82.38.080(3). [1998 c 176 § 2; 1995 c 274 § 4; 1985 c 7 § 102; 1983 c 3 § 74; 1967 ex.s. c 119 § 35A.82.010.]

Reviser's note: *(1) Chapter 82.36 RCW was repealed in its entirety by 2013 c 225 § 501, effective July 1, 2015.

***(2) RCW 82.38.080 was amended by 2013 c 225 § 111, deleting subsection (3), effective July 1, 2015. See RCW 82.38.080(1)(f).

Rules—Findings—Effective date—1998 c 176: See RCW 82.36.800, 82.36.900, and 82.36.901.

35A.82.020 Licenses and permits—Excises for regulation. A code city may exercise the authority authorized by general law for any class of city to license and revoke the same for cause, to regulate, make inspections and to impose excises for regulation or revenue in regard to all places and kinds of business, production, commerce, entertainment, exhibition, and upon all occupations, trades and professions and any other lawful activity: PROVIDED, That no license or permit to engage in any such activity or place shall be granted to any who shall not first comply with the general laws of the state.

No such license shall be granted to continue for longer than a period of one year from the date thereof and no license or excise shall be required where the same shall have been preempted by the state, nor where exempted by the state, including, but not limited to, the provisions of RCW 36.71.090 and chapter 73.04 RCW relating to veterans. [1967 ex.s. c 119 § 35A.82.020.]

35A.82.025 Authority to regulate massage practitioners—Limitations. (1) A state licensed massage practitioner seeking a city license to operate a massage business must provide verification of his or her state massage license as provided for in RCW 18.108.030.

(2) The city may charge a licensing or operating fee, but the fee charged a state licensed massage practitioner shall not exceed the licensing or operating fee imposed on similar health care providers, such as physical therapists or occupational therapists, operating within the same city.

(3) A state licensed massage practitioner is not subject to additional licensing requirements not currently imposed on similar health care providers, such as physical therapists or occupational therapists. [1991 c 182 § 2.]

Reviser's note: 1991 c 182 directed that this section be added to chapter 35A.11 RCW. This section has been codified as a part of chapter 35A.82 RCW, which relates more directly to code city licensing authority.

35A.82.030 City and county retail sales excise tax and use tax. See chapter 82.14 RCW.

35A.82.040 City and town license fees and taxes on financial institutions. See chapter 82.14A RCW.

35A.82.042 City license fees or taxes on certain business activities to be at a single uniform rate. See RCW 35.21.710.

35A.82.050 License fees or taxes upon certain business activities to be at single uniform rate. Any code city which imposes a license fee or tax upon business activities consisting of the making of retail sales of tangible personal property which are measured by gross receipts or gross income from such sales, shall impose such tax at a single uniform rate upon all such business activities. This section shall not apply to any business activities subject to the tax imposed by chapter 82.16 RCW. For purposes of this section, the providing to consumers of competitive telephone service, as defined in RCW 82.04.065, or the providing of payphone service as defined in RCW 35.21.710, shall be subject to tax at the same rate as business activities consisting of the making of retail sales of tangible personal property. [2002 c 179 § 3; 1983 2nd ex.s. c 3 § 34; 1981 c 144 § 7; 1972 ex.s. c 134 § 7.]

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

Additional notes found at www.leg.wa.gov

35A.82.055 License fees or taxes on telephone business to be at uniform rate. Any code city which imposes a license fee or tax upon the business activity of engaging in the telephone business, as defined in RCW 82.16.010, which is measured by gross receipts or gross income from the business shall impose the tax at a uniform rate on all persons engaged in the telephone business in the code city.

This section does not apply to the providing of competitive telephone service as defined in RCW 82.04.065 or to the providing of payphone service as defined in RCW 35.21.710. [2007 c 6 § 1012; 2002 c 179 § 4; 1983 2nd ex.s. c 3 § 36; 1981 c 144 § 9.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

Additional notes found at www.leg.wa.gov

35A.82.060 License fees or taxes on telephone business—Imposition on certain gross revenues authorized—Limitations. (1) Any code city which imposes a license fee or tax upon the business activity of engaging in the telephone business which is measured by gross receipts or gross income may impose the fee or tax, if it desires, on one hundred percent of the total gross revenue derived from intrastate toll telephone services subject to the fee or tax: PROVIDED, That the city shall not impose the fee or tax on that portion of network telephone service which represents charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services, or charges for network telephone service that is purchased for the purpose of resale, or charges for mobile telecommunications services provided to customers whose place of primary use is not within the city.

(2) Any city that imposes a license tax or fee under subsection (1) of this section has the authority, rights, and obligations of a taxing jurisdiction as provided in RCW 82.32.490 through 82.32.510.

(2014 Ed.)

(3) The definitions in RCW 82.04.065 and 82.16.010 apply to this section. [2007 c 6 § 1014; 2007 c 6 § 1013; 2002 c 67 § 10; 1989 c 103 § 3; 1986 c 70 § 4; 1983 2nd ex.s. c 3 § 38; 1981 c 144 § 11.]

Contingent effective date—2007 c 6 §§ 1003, 1006, 1014, and 1018: See note following RCW 82.04.065.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Finding—Effective date—2002 c 67: See notes following RCW 82.04.530.

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

Additional notes found at www.leg.wa.gov

35A.82.065 Taxes on network telephone services. Notwithstanding RCW 35.21.714 or 35A.82.060, any city or town which imposes a tax upon business activities measured by gross receipts or gross income from sales, may impose such tax on that portion of network telephone service, as defined in RCW 82.16.010, which represents charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll services, or charges for network telephone service that is purchased for the purpose of resale. Such tax shall be levied at the same rate as is applicable to other competitive telephone service as defined in RCW 82.04.065. [2007 c 6 § 1015; 1989 c 103 § 4; 1986 c 70 § 5.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Additional notes found at www.leg.wa.gov

35A.82.070 Taxes on telephone business—Deferral of rate reduction. A city or town required by RCW 35.21.870(2) to reduce its rate of taxation on telephone business may defer for one year the required reduction in rates for the year 1987. If the delay in rate reductions authorized by the preceding sentence is inadequate for a code city to offset the impact of revenue reductions arising from the removal of revenues from connecting fees, switching charges, or carrier access charges under the provisions of RCW 35A.82.060, then the legislative body of such code city may reimpose for 1987 the rates that such code city had in effect upon telephone business during 1985. In each succeeding year, the city or town shall reduce the rate by one-tenth of the difference between the tax rate on April 20, 1982, and six percent. [1986 c 70 § 6.]

Chapter 35A.84 RCW TAXATION—PROPERTY

Sections

- 35A.84.010 Procedure and rules relating to ad valorem taxes.
- 35A.84.020 Assessment for and collection of ad valorem taxes.
- 35A.84.030 Ex officio collector of code city taxes.

35A.84.010 Procedure and rules relating to ad valorem taxes. The taxation of property in code cities shall be governed by general provisions of the law including, but not limited to, the provisions of: (1) Chapter 84.09 RCW,

relating to the time for establishment of official boundaries of taxing districts on the first day of March of each year; (2) chapter 84.12 RCW relating to the assessment and taxation of public utilities; (3) chapter 84.16 RCW, relating to the apportionment of taxation on private car companies; (4) chapter 84.20 RCW, relating to the taxation of easements of public utilities; (5) *chapter 84.24 RCW, relating to the reassessment of property; (6) chapter 84.36 RCW, relating to property subject to taxation and exemption therefrom; (7) chapter 84.40 RCW relating to the listing of property for assessment; (8) chapter 84.41 RCW, relating to reevaluation of property; (9) chapter 84.44 RCW, relating to the taxable situs of personalty; (10) chapter 84.48 RCW, relating to the equalization of assessments; (11) chapter 84.52 RCW, relating to the levy of taxes, both regular and excess; (12) chapter 84.56 RCW, relating to the collection of taxes; (13) chapter 84.60 RCW, relating to the lien of taxes and the priority thereof; (14) chapter 84.69 RCW, relating to refunds and claims therefor against the code city; and (15) RCW 41.16.060, relating to taxation for firefighters' pension fund. [2013 c 23 § 66; 1967 ex.s. c 119 § 35A.84.010.]

*Reviser's note: Chapter 84.24 RCW was repealed by 1994 c 124 § 42.

35A.84.020 Assessment for and collection of ad valorem taxes. For the purpose of assessment of all property in all code cities, other than code cities having a population of more than twenty thousand inhabitants, the county assessor of the county wherein such code city is situated shall be the ex officio assessor, and as to the code cities having a population of more than twenty thousand inhabitants such county assessor shall perform the duties as provided in *RCW 36.21.020. [1967 ex.s. c 119 § 35A.84.020.]

*Reviser's note: RCW 36.21.020 was repealed by 1994 c 301 § 57.

35A.84.030 Ex officio collector of code city taxes. The treasurer of the county wherein a code city is situated shall be the ex officio collector of such code city's taxes and give bond, and account for the city's funds as provided in chapter 36.29 RCW. [1967 ex.s. c 119 § 35A.84.030.]

Chapter 35A.88 RCW

HARBORS AND NAVIGATION

Sections

- 35A.88.010 Discharge of ballast.
- 35A.88.020 Wharves and landings.
- 35A.88.030 General laws applicable.

35A.88.010 Discharge of ballast. A code city may exercise the powers relating to regulation of discharge of ballast in harbors within or in front of such city as authorized by RCW 88.28.060. [1967 ex.s. c 119 § 35A.88.010.]

35A.88.020 Wharves and landings. A code city shall have and exercise all powers granted by general laws to cities and towns of any class relative to docks and other appurtenances to harbor and shipping, including but not limited to, the provisions of RCW 35.22.280, 35.23.440, *35.24.290, and 88.24.030. [1967 ex.s. c 119 § 35A.88.020.]

*Reviser's note: RCW 35.24.290 was repealed by 1994 c 81 § 89.

35A.88.030 General laws applicable. General laws relating to harbor areas within cities, including but not limited to, chapter 36.08 RCW relating to transfer of territory lying in two or more counties; *RCW 79.92.110 relating to disposition of rental from leasehold in the harbor areas; and RCW 88.32.240 and 88.32.250 relating to joint planning by cities and counties shall apply to, benefit and obligate code cities to the same extent as such general laws apply to any class of city. [1985 c 7 § 103; 1983 c 3 § 75; 1967 ex.s. c 119 § 35A.88.030.]

*Reviser's note: RCW 79.92.110 was recodified as RCW 79.115.150 pursuant to 2005 c 155 § 1006.

Chapter 35A.90 RCW

CONSTRUCTION

Sections

- 35A.90.010 Becoming code city—Rights, actions saved—Continuation of ordinances.
- 35A.90.020 Invalidity of part of title not to affect remainder.
- 35A.90.030 Title, chapter, section headings not part of law.
- 35A.90.040 Effective date—1967 ex.s. c 119.
- 35A.90.050 Severability—1971 ex.s. c 251.

35A.90.010 Becoming code city—Rights, actions saved—Continuation of ordinances. Unless otherwise provided by this title, the election by a city or town to become a code city and to be governed by this title shall not affect any right or liability either in favor of or against such city or town existing at the time, nor any civil or criminal proceeding involving or relating to such city or town; and all rights and property of every description which were vested in such city or town immediately prior to becoming a code city shall continue to be vested in such code city; and all charter provisions, ordinances, resolutions, rules, regulations, or orders lawfully in force in such city or town at the time of becoming a code city, and not inconsistent with or repugnant to this title, shall continue in force in such code city until amended or repealed as provided by law. [1967 ex.s. c 119 § 35A.90.010.]

35A.90.020 Invalidity of part of title not to affect remainder. If any provision, section, or chapter of this title or its application to any person or circumstance is held invalid, the remainder of the provision, section, chapter, or title, or the application thereof to other persons or circumstances is not affected. [1967 ex.s. c 119 § 35A.90.020.]

35A.90.030 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title, do not constitute any part of the law. [1967 ex.s. c 119 § 35A.90.030.]

35A.90.040 Effective date—1967 ex.s. c 119. The effective date of this act shall be July 1, 1969. [1967 ex.s. c 119 § 35A.90.040.]

35A.90.050 Severability—1971 ex.s. c 251. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 251 § 17.]

Chapter 35A.92 RCW
FIRE DEPARTMENTS—
PERFORMANCE MEASURES

Sections

- 35A.92.010 Intent.
 35A.92.020 Definitions.
 35A.92.030 Policy statement—Service delivery objectives.
 35A.92.040 Annual evaluations—Annual report.
 35A.92.050 Maintenance of response times in newly annexed areas—Firefighter transfers.
 35A.92.900 Part headings not law—2005 c 376.

35A.92.010 Intent. The legislature intends for code cities to set standards for addressing the reporting and accountability of substantially career fire departments, and to specify performance measures applicable to response time objectives for certain major services. The legislature acknowledges the efforts of the international city/county management association, the international association of fire chiefs, and the national fire protection association for the organization and deployment of resources for fire departments. The arrival of first responders with automatic external defibrillator capability before the onset of brain death, and the arrival of adequate fire suppression resources before flash-over is a critical event during the mitigation of an emergency, and is in the public's best interest. For these reasons, this chapter contains performance measures, comparable to that research, relating to the organization and deployment of fire suppression operations, emergency medical operations, and special operations by substantially career fire departments. This chapter does not, and is not intended to, in any way modify or limit the authority of code cities to set levels of service. [2005 c 376 § 201.]

35A.92.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advanced life support" means functional provision of advanced airway management, including intubation, advanced cardiac monitoring, manual defibrillation, establishment and maintenance of intravenous access, and drug therapy.

(2) "Aircraft rescue and firefighting" means the firefighting actions taken to rescue persons and to control or extinguish fire involving or adjacent to aircraft on the ground.

(3) "Brain death" as defined by the American heart association means the irreversible death of brain cells that begins four to six minutes after cardiac arrest.

(4) "Code city" means a code city that provides fire protection services, which may include firefighting actions, emergency medical services, and other special operations, in a specified geographic area.

(5) "Fire department" means a code city fire department responsible for firefighting actions, emergency medical services, and other special operations in a specified geographic area. The department must be a substantially career fire department, and not a substantially volunteer fire department.

(6) "Fire suppression" means the activities involved in controlling and extinguishing fires.

(7) "First responder" means provision of initial assessment and basic first-aid intervention, including cardiac pulmonary resuscitation and automatic external defibrillator capability.

(8) "Flash-over" as defined by national institute of standards and technology means when all combustibles in a room burst into flame and the fire spreads rapidly.

(9) "Marine rescue and firefighting" means the firefighting actions taken to prevent, control, or extinguish fire involved in or adjacent to a marine vessel and the rescue actions for occupants using normal and emergency routes for egress.

(10) "Response time" means the time immediately following the turnout time that begins when units are en route to the emergency incident and ends when units arrive at the scene.

(11) "Special operations" means those emergency incidents to which the fire department responds that require specific and advanced training and specialized tools and equipment.

(12) "Turnout time" means the time beginning when units receive notification of the emergency to the beginning point of response time. [2005 c 376 § 202.]

35A.92.030 Policy statement—Service delivery objectives. (1) Every code city shall maintain a written statement or policy that establishes the following:

- (a) The existence of a fire department;
- (b) Services that the fire department is required to provide;
- (c) The basic organizational structure of the fire department;
- (d) The expected number of fire department employees; and
- (e) Functions that fire department employees are expected to perform.

(2) Every code city shall include service delivery objectives in the written statement or policy required under subsection (1) of this section. These objectives shall include specific response time objectives for the following major service components, if appropriate:

- (a) Fire suppression;
- (b) Emergency medical services;
- (c) Special operations;
- (d) Aircraft rescue and firefighting;
- (e) Marine rescue and firefighting; and
- (f) Wild land firefighting.

(3) Every code city, in order to measure the ability to arrive and begin mitigation operations before the critical events of brain death or flash-over, shall establish time objectives for the following measurements:

- (a) Turnout time;
- (b) Response time for the arrival of the first arriving engine company at a fire suppression incident and response time for the deployment of a full first alarm assignment at a fire suppression incident;
- (c) Response time for the arrival of a unit with first responder or higher level capability at an emergency medical incident; and
- (d) Response time for the arrival of an advanced life support unit at an emergency medical incident, where this service is provided by the fire department.

(4) Every code city shall also establish a performance objective of not less than ninety percent for the achievement

of each response time objective established under subsection (3) of this section. [2005 c 376 § 203.]

35A.92.040 Annual evaluations—Annual report. (1) Every code city shall evaluate its level of service and deployment delivery and response time objectives on an annual basis. The evaluations shall be based on data relating to level of service, deployment, and the achievement of each response time objective in each geographic area within the code city's jurisdiction.

(2) Beginning in 2007, every code city shall issue an annual written report which shall be based on the annual evaluations required by subsection (1) of this section.

(a) The annual report shall define the geographic areas and circumstances in which the requirements of this standard are not being met.

(b) The annual report shall explain the predictable consequences of any deficiencies and address the steps that are necessary to achieve compliance. [2005 c 376 § 204.]

35A.92.050 Maintenance of response times in newly annexed areas—Firefighter transfers. Code cities conducting annexations of all or part of fire protection districts shall, at least through the budget cycle, or the following budget cycle if the annexation occurs in the last half of the current budget cycle, in which the annexation occurs, maintain existing fire protection and emergency services response times in the newly annexed areas consistent with response times recorded prior to the annexation as defined in the previous annual report for the fire protection district and as reported in RCW 52.33.040. If the code city is unable to maintain these service levels in the newly annexed area, the transfer of firefighters from the annexed fire protection district as a direct result of the annexation must occur as outlined in RCW 35A.14.485. [2009 c 60 § 12.]

35A.92.900 Part headings not law—2005 c 376. See RCW 35.103.900.

Title 36

COUNTIES

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*Acquisition of interests in land for conservation, protection, preservation, or open space purposes by counties: RCW 64.04.130.
open space, land, or rights to future development by counties, cities, or metropolitan municipal corporations, tax levy: RCW 84.34.200 through 84.34.240, 84.52.010.*

Air pollution control advisory council: RCW 70.94.240.

*Board of adjustment
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management of detention facilities (counties with populations of one million or more): Chapter 13.20 RCW.
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Civil service commission (sheriff's office): Chapter 41.14 RCW.

Community mental health services act: Chapter 71.24 RCW.

Community renewal, application: RCW 35.81.015.

Community services—Local funds for: Chapter 71.20 RCW.

Counties may engage in probation and parole services: RCW 36.01.070.

County and city tuberculosis hospital board of managers: Chapter 70.30 RCW.

County committee on school district organization: Chapter 28A.315 RCW.

Credit card use by local governments: RCW 43.09.2855.

Crime-free rental housing: Chapter 35.106 RCW.

Designation as authority or regional authority auditor under Washington Clean Air Act, duties: RCW 70.94.094.

District health board: Chapter 70.46 RCW.

Ferry system tariffs and charges review commission: RCW 47.60.300.

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Legal aid committee: Chapter 2.50 RCW.

Local adopt-a-highway programs: RCW 47.40.105.

Material removed for channel or harbor improvement, or flood control—Use for public purpose: RCW 79.140.110.

Mental health and retardation services—Interstate contracts by boundary counties: RCW 71.28.010.

Multi-purpose community centers, counties may establish: Chapter 35.59 RCW.

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Outdoor recreation land acquisition or improvement under marine recreation land act: Chapter 79A.25 RCW.

Planning commission: Chapter 35.63 RCW; chapter 36.70 RCW.

Pollution control—Municipal bonding authority: Chapter 70.95A RCW.

Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

Public buildings, provision to be made for use by aged and individuals with disabilities: Chapter 70.92 RCW.

Public hospital district commission: Chapter 70.44 RCW.

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Regional planning commission: RCW 35.63.070, 36.70.060.

Registration of contractor required before issuance of building permit: RCW 18.27.110.

Reports, claims, etc., filing: RCW 1.12.070.

School districts—Agreements with other governmental entities for transportation of students or the public or for other noncommon school purposes—Limitations: RCW 28A.160.120.

Tourism promotion areas: Chapter 35.101 RCW.

Trade centers—Annual service fee—Distribution to counties: RCW 53.29.030.

Transportation centers authorized: Chapter 81.75 RCW.

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Urban arterials, planning, funding, etc.: Chapter 47.26 RCW.

Validity of agreement to indemnify against liability for negligence relative to construction or improvement of roads: RCW 4.24.115.

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Accounts of county, examination of: RCW 43.09.260.

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- counties, limitations on: Chapter 4.16 RCW.
public corporations (counties): RCW 4.08.110, 4.08.120.
- Aeronautics facilities of counties to be made available to department of transportation: RCW 47.68.300.
- Agricultural fairs, county participation: Chapter 15.76 RCW.
- Aircraft excise tax, county exemption: RCW 82.48.100.
- Airport zoning: Chapter 14.12 RCW.
- Ambulance service for second-class cities, county may provide: RCW 35.23.456.
- Armories, county may expend money for site: RCW 38.20.030.
- Blind made products, services, county to procure when available: RCW 19.06.020.
- Boarding homes, county administration, when: Chapter 18.20 RCW.
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- Bonds of corporation not to be owned: State Constitution Art. 8 § 7.
- Bonds of federal agencies as county investment: Chapter 39.64 RCW.
- Cemeteries
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public, and morgues, in counties: RCW 68.52.010, 68.52.020.
- Cemeteries and burial, public, all counties: RCW 68.52.030.
- Cemetery districts authorized for certain counties: Chapter 68.52 RCW.
- Children and youth services, county participation: RCW 72.05.160.
- Cities and towns
agreements with county for planning, construction, etc., of streets: Chapter 35.77 RCW.
community renewal, county participation: RCW 35.81.130.
county aid on street construction, etc.: RCW 47.24.050.
L.I.D. assessment lien, application on sale by county of tax lands: RCW 35.49.160.
property held by under L.I.D. assessment lien not subject to county taxes: RCW 35.53.010.
- Cities may support county in which city-owned utility plant located: RCW 35.21.420 through 35.21.427.
- Civil service
for sheriff's office: Chapter 41.14 RCW.
status retained when on emergency service work: RCW 38.52.140.
- Closed burning seasons in counties: RCW 76.04.205.
- Combined city and county municipal corporations: State Constitution Art. 11 § 16 (Amendment 58).
- Combined city-county health departments: Chapter 70.08 RCW.
- Community centers, counties may establish: Chapter 35.59 RCW.
- Community work and training programs, county participation in: Chapter 74.04 RCW.
- Contractors, regulation of, inapplicable to counties: RCW 18.27.090.
- Contracts
contractor's bond on: Chapter 39.08 RCW.
county may perform work or services for department of transportation: RCW 47.01.210.
executory conditional sales, for purchase of property for park or library purposes: RCW 39.30.010.
public works, application to counties: Chapter 39.04 RCW.
public works, reserve from amount due contractors to cover lien for labor, material or taxes: Chapter 60.28 RCW.
- County airport districts: Chapter 14.08 RCW.
- County and district fairs as agricultural fair classification: RCW 15.76.120.
- County government: State Constitution Art. 11.
- County lands
acquisition of for state highways: RCW 47.12.040, 47.12.150.
city or town L.I.D. assessments, as subject to: RCW 35.43.130, 35.44.140, 35.49.070.
diking, drainage or sewerage improvement assessments, as subject to: RCW 85.08.500, 85.08.530.
diking and drainage intercounty districts assessments, as subject to: RCW 85.24.240.
diking district act, as subject to: RCW 85.05.080, 85.05.380, 85.05.390.
drainage district act, as subject to: RCW 85.06.350, 85.06.360.
eminent domain by cities of: Chapter 8.12 RCW.
eminent domain by public waterway districts of: Chapter 91.08 RCW.
flood control district assessments, as subject to: RCW 86.09.526, 86.09.529.
lease of for underground storage of natural gas: RCW 80.40.070.
pest district assessments, as subject to: RCW 17.12.080.
public waterway district assessments, as subject to: RCW 91.08.570, 91.08.575.
right of entry on given department of transportation: RCW 47.01.170.
rights-of-way over by diking districts: RCW 85.05.080.
subject to diking, drainage or sewerage improvement assessments, resale of or lease of by county: RCW 85.08.500.
weed control district assessments, as subject to: RCW 17.04.180.
- County office, defined for public assistance purposes: RCW 74.04.005(4).
- County roads: Chapter 36.75 RCW.
- Courthouse, county to furnish: RCW 2.28.139.
- Credit not to be loaned: State Constitution Art. 8 § 7.
- Debts of
apportionment on division or enlargement: State Constitution Art. 11 § 3.
limit of: State Constitution Art. 8 § 6 (Amendment 27), Art. 7 § 2 (Amendments 55, 59).
private property not to be taken in satisfaction of: State Constitution Art. 11 § 13.
- Dental hygienists, licensed, county may employ: RCW 18.29.050.
- Department of revenue, visitation to counties: RCW 84.08.010(3).
- Detention, house or room for, establishment of: RCW 13.04.135.
- Detention facilities, management of (counties with populations of one million or more): Chapter 13.20 RCW.
- Detention of state felons in county jails: Chapter 72.68 RCW.
- Diking and drainage intercounty districts: Chapter 85.24 RCW.
- Disinfection of county property as county duty: RCW 15.08.230.
- Disturbances at state penal facilities—Reimbursement to cities and counties for certain expenses incurred: RCW 72.72.050, 72.72.060.
- Electric franchises and rights-of-way, counties may grant: RCW 80.32.010.
- Electrical construction regulations applicable to counties: RCW 19.29.010.
- Emergency management, county participation: Chapter 38.52 RCW.
- Eminent domain
airport purposes: Chapters 14.07, 14.08 RCW.
flood control purposes: RCW 86.12.030.
flood control purposes by counties jointly: RCW 86.13.040.
generally: Chapter 8.08 RCW.
military purposes: RCW 8.04.170, 8.04.180.
of tidelands: RCW 88.24.070.
parks, bathing beaches, public camps: RCW 67.20.010.
wharves purposes: RCW 88.24.070.
- Existing counties recognized: State Constitution Art. 11 § 1.
- Family courts in: Chapter 26.12 RCW.
- Federal areas in counties, generally: Chapter 37.08 RCW.
- Federal property, purchase of from government by counties: Chapter 39.32 RCW.
- Fireworks, county participation in control: Chapter 70.77 RCW.
- Fiscal agent for: Chapter 43.80 RCW.
- Flood control
county: Chapter 86.12 RCW.
county participation with
district: RCW 86.24.040.
state and federal government: Chapter 86.24 RCW.
districts (1937 act), public lands included in: RCW 86.09.013.
maintenance, county participation with state: Chapter 86.26 RCW.
- Forest protection in counties: Chapter 76.04 RCW.
- Fruit and vegetable inspection districts, counties constituting: RCW 15.17.230.
- Funding indebtedness in counties: Chapter 39.52 RCW.

- Group life insurance, public employee associations: RCW 48.24.060.
- Hospitals, private, for care of individuals with mental illness, alcoholics, county may prescribe standards: RCW 71.12.550.
- Housing authority
generally: Chapter 35.82 RCW.
property as exempt from county taxation: RCW 35.82.210.
- Housing cooperation law: Chapter 35.83 RCW.
- Indebtedness, county: State Constitution Art. 8.
- Industrial development districts, county lands may be conveyed to: Chapter 53.25 RCW.
- Intercounty weed districts: Chapter 17.06 RCW.
- Intergovernmental disposition of property, county participation: RCW 39.33.010.
- Irrigation districts, cancellation of county taxes against, when: RCW 87.64.060.
- Island counties, refund of motor vehicle license and fuel tax fees to: RCW 46.68.080.
- Joint aid river and harbor improvements, county participation: RCW 88.32.230 through 88.32.235.
- Joint planning for improvement of navigable stream, county participation: RCW 88.32.240 through 88.32.250.
- Juvenile detention facility as mandatory county function: RCW 13.16.030.
- Leases, mineral and petroleum, on county land: Chapter 78.16 RCW.
- Leases of property, ballot proposition
by jointly with city or town: RCW 35.42.200.
from by city or town: RCW 35.42.200.
- Legal aid: Chapter 2.50 RCW.
- Legal publications of: Chapter 65.16 RCW.
- Libraries: Title 27 RCW.
- Lien for labor, material and taxes on public works: Chapter 60.28 RCW.
- Limitation of indebtedness of taxing districts: Chapter 39.36 RCW.
- Liquor revolving fund moneys, distribution to counties: Chapter 66.08 RCW.
- Local milk inspection service units: Chapter 15.36 RCW.
- Martial law, proclamation of county under: RCW 38.08.030.
- Metropolitan municipal corporations
as borrowers from county: RCW 35.58.480.
county participation: Chapter 35.58 RCW.
- Military offenses, jurisdiction by county when: Chapter 38.32 RCW.
- Mosquito control
county work coordinated with: Chapter 70.22 RCW.
districts, counties where authorized: RCW 17.28.020.
- Motor freight carrier, county vehicle exempt as: RCW 81.80.040.
- Motor vehicle
accidents, peace officer's reports: RCW 46.52.070.
fund moneys for county purposes: RCW 46.68.070 and 46.68.120.
size, weight and load, local regulations: RCW 46.44.080.
- Municipal airports
1941 act: Chapter 14.07 RCW.
1945 act: Chapter 14.08 RCW.
- Old age and survivors' insurance, acceptance of for counties: Chapter 41.47 RCW.
- Operating agencies (electricity, water resources) to act for counties: Chapter 43.52 RCW.
- Park and recreation service areas: RCW 36.68.400 through 36.68.620.
- Parks, bathing beaches, public camps, county may acquire and operate: Chapter 67.20 RCW.
- Person defined to include counties for RCW code purposes: RCW 1.16.080.
- Pesticide application act, county as subject to: RCW 17.21.220.
- Police and sanitary regulations, power to enforce: State Constitution Art. 11 § 11.
- Port districts
contracts or leases with counties by: RCW 53.08.070, 53.08.140, 53.08.240.
- motor vehicle regulation in by county authorities, procedure: RCW 53.08.230.
regulations of, adoption as county ordinance: RCW 53.08.220.
- Printing for counties to be done in state: RCW 43.19.748.
- Public assistance
as county function: RCW 74.04.040.
county participation: Chapter 74.04 RCW.
- Public contracts and indebtedness: Title 39 RCW.
- Public documents (state), distribution to counties: Chapter 40.04 RCW.
- Public employees
hospitalization and medical aid for: RCW 41.04.180, 41.04.190.
interchange of personnel with federal agency, rights preserved: RCW 41.04.140 through 41.04.170.
military leave for: RCW 38.40.060.
minimum wage act, public employee exclusion: RCW 49.46.010.
payroll deductions for: RCW 41.04.020, 41.04.036.
public employees' retirement system, county employees as members: RCW 41.40.062.
retirement systems, retention of rights: Chapter 41.04 RCW.
social security, federal coverage includes: Chapter 41.48 RCW.
- Public lands
rights-of-way over for county bridges, trestles, across waterways, tide or shore lands: RCW 79.110.120.
rights-of-way over for roads, county wharves: RCW 79.36.440.
sale of road material on to counties: RCW 79.15.320.
- Public officers
campaign financing, reporting: Chapter 42.17A RCW.
code of ethics for: Chapter 42.23 RCW.
financial affairs and gifts, reporting: RCW 42.17A.700.
misconduct of enumerated: Chapter 42.20 RCW.
not to receive witness fees: RCW 42.16.020, 42.16.030.
resignations: RCW 42.12.020.
terms when vacancies filled: RCW 42.12.030.
- Public purchase preferences: Chapter 39.24 RCW.
- Public works
emergency, county participation: Chapter 39.28 RCW.
department of transportation, cooperation: RCW 47.08.070.
prevailing wages to be paid on: Chapter 39.12 RCW.
- Publicly owned vehicles
exempt from license fee: RCW 46.16A.170.
license plate retained when change in ownership: RCW 46.16A.200(8).
registration of: RCW 46.16A.170.
to be marked: RCW 46.08.065.
- Railroad grade crossings
apportionment of costs, county liability: RCW 81.53.110, 81.53.130.
counties duty to maintain: RCW 81.53.090.
county participation in grants for: Chapter 81.53 RCW.
- Railroad signals, warning devices on county roads: RCW 81.53.261 through 81.53.291.
- Reclamation and irrigation districts in United States reclamation areas, contract to bring county lands into: RCW 89.12.110.
- Reclamation districts of one million acres, lands in more than one county: RCW 89.30.004.
- Reforestation
county exchange of land to block up holdings: RCW 79.17.020, 79.17.060, and 79.17.070.
grants of county lands for: RCW 79.22.040.
- Regional jail camps, county prisoners may be committed to: RCW 72.64.100, 72.64.110.
- River and harbor improvements by counties jointly: RCW 88.32.180 through 88.32.220.
- Rural housing projects: Chapter 35.82 RCW.
- Savings and loan associations, counties as member: RCW 33.20.060.
- Soft tree fruits commission law, counties constituting districts under: RCW 15.28.010.
- Soil and water conservation districts, county may cooperate with: RCW 89.08.341.
- State patrol retirement allowances exempt from county taxation: RCW 43.43.310.

State vehicle regulations precedence over local: RCW 46.08.020.

State's title to abandoned channels granted to counties: RCW 86.13.110.

Stock restricted areas in: Chapter 16.24 RCW.

Street railroads in counties: Chapter 81.64 RCW.

Superior court judges, each county entitled to: State Constitution Art. 4 § 5, chapter 2.08 RCW.

Surplus federal property, county may purchase: RCW 39.32.010 through 39.32.060.

Tax liens, foreclosure by county when city or town L.I.D. assessments on, rights of city or town: RCW 35.49.130 through 35.49.160.

Taxes

B & O, counties defined as person for purposes of: RCW 82.04.030.

excise, state preempts field, which: RCW 82.02.020.

federal payments in lieu of ad valorem property taxes to counties, distribution: Chapter 84.72 RCW.

for city and town purposes: State Constitution Art. 11 § 12.

local, legislature not to impose: State Constitution Art. 11 § 12.

motor vehicle fuel

counties as subject to: RCW 82.36.240.

state preempts field: RCW 82.36.440.

property

acquisitions of county subject to lien of: RCW 84.60.050.

county by, generally: Title 84 RCW.

county held tax-title property, treatment of: RCW 36.35.100.

county-interstate bridge as exempt from: RCW 84.36.230.

county lands sold on contract as taxable: RCW 84.40.230.

county property as exempt from: RCW 84.36.010.

county revaluation program: Chapter 84.41 RCW.

county right-of-way easements as exempt from: RCW 84.36.210.

excess levies authorized, county application: RCW 84.52.050 through 84.52.056.

limitation on levies, county application: State Constitution Art. 7 § 2 (Amendments 55, 59); RCW 84.52.050.

state, county liability for share of: State Constitution Art. 11 § 9.

Taxing district

county as: RCW 84.04.120.

relief act, county application: Chapter 39.64 RCW.

Teletypewriter communications network, county participation: Chapter 43.89 RCW.

Toll roads, bridges and ferries (state), county participation and liability: Chapter 47.56 RCW.

Township organization in: State Constitution Art. 11 § 4 (Amendment 21).

Traffic

enforcement agencies, duty: Chapter 46.64 RCW.

schools, county participation: Chapter 46.83 RCW.

Unfit dwellings, buildings and structures: Chapter 35.80 RCW.

Uniform system of accounting: Chapter 43.09 RCW.

Validation of bonds and financing proceedings: Chapter 39.90 RCW.

Vehicle wreckers' licensing, county to comply with: RCW 46.80.160.

Veterans

in business, peddling, county licensing limitations: RCW 73.04.050 through 73.04.060.

indigent and deceased, burial as county responsibility: RCW 73.08.070.

public officials duty as considered leave of absence: RCW 73.16.041.

scoring criteria status in county employment reemployment: RCW 41.04.010, Chapter 73.16 RCW.

Veterans'

meeting hall, county may furnish free of charge: RCW 73.04.070.

meeting place, rent from county funds: RCW 73.04.080.

relief as county responsibility: Chapter 73.08 RCW.

Vital statistics, county as a primary registration area: RCW 70.58.010.

Wages

deductions and rebates, application to counties: Chapter 49.52 RCW.

payment and collection of, county employee exclusion: RCW 49.48.080.

rebates of on public works, penalty: RCW 49.52.090.

Warrants, interest rate on: RCW 39.56.020, 39.56.030.

Water pollution control, county application: Chapter 90.48 RCW.

Water rights

appropriation of by counties; procedure: Chapter 90.03 RCW.

United States, county application: Chapter 90.40 RCW.

Wharves, counties may authorize and prescribe rates: RCW 88.24.020.

Workers' compensation, county coverage: RCW 51.12.050.

World fair or exposition, county participation: Chapter 35.60 RCW.

36.01.010 Corporate powers. The several counties in this state shall have capacity as bodies corporate, to sue and be sued in the manner prescribed by law; to purchase and hold lands; to make such contracts, and to purchase and hold such personal property, as may be necessary to their corporate or administrative powers, and to do all other necessary acts in relation to all the property of the county. [1986 c 278 § 1; 1963 c 4 § 36.01.010. Prior: Code 1881 § 2653; 1863 p 538 § 1; 1854 p 329 § 1; RRS § 3982.]

Additional notes found at www.leg.wa.gov

36.01.020 Corporate name. The name of a county, designated by law, is its corporate name, and it must be known and designated thereby in all actions and proceedings touching its corporate rights, property, and duties. [1963 c 4 § 36.01.020. Prior: Code 1881 § 2654; RRS § 3983.]

36.01.030 Powers—How exercised. Its powers can only be exercised by the county commissioners, or by agents or officers acting under their authority or authority of law. [1963 c 4 § 36.01.030. Prior: Code 1881 § 2655; RRS § 3984.]

36.01.040 Conveyances for use of county. Every conveyance of lands, or transfer of other property, made in any manner for the use of any county, shall have the same force and effect as if made to the county in its proper and corporate name. [1963 c 4 § 36.01.040. Prior: Code 1881 § 2656; 1863 p 538 § 2; 1854 p 329 § 2; RRS § 3985.]

36.01.050 Venue of actions by or against counties. (1) All actions against any county may be commenced in the superior court of such county, or in the superior court of either of the two nearest judicial districts. All actions by any county shall be commenced in the superior court of the county in which the defendant resides, or in either of the two judicial districts nearest to the county bringing the action.

(2) The determination of the nearest judicial districts is measured by the travel time between county seats using major surface routes, as determined by the administrative office of the courts. [2005 c 282 § 42; 2000 c 244 § 1; 1997 c 401 § 1; 1963 c 4 § 36.01.050. Prior: 1854 p 329 § 6; No RRS.]

36.01.060 County liable for certain court costs. Each county shall be liable to pay the per diem and mileage, or other compensation in lieu thereof, to jurors of the county attending the superior court; the fees of the sheriff for maintaining prisoners charged with crimes, and the sheriff's costs in conveying them to and from the court, as well as their board while there; the per diem and mileage, or such other compensation as is allowed in lieu thereof, of the sheriff of the county, when in criminal cases the sheriff is required to attend or travel to the superior court out of the limits of the sheriff's county; the costs in criminal cases taken from the

courts of limited jurisdiction to the superior court; but no such claims shall be paid by the treasurer unless the particular items are approved by the judge and certified by the clerk under the seal of the court. For the time or travel which may be paid by the parties or United States, no payment from the county shall be allowed, and no officer, juror, or witness shall receive from the county double pay as a per diem for the same time, or as traveling expenses or mileage for the same travel, in however many different capacities or in however many different causes they may be summoned, notified, or called upon to testify or attend in. [1987 c 202 § 200; 1963 c 4 § 36.01.060. Prior: Code 1881 § 2110; 1869 p 420 § 9; 1863 p 425 § 10; 1857 p 22 § 10; RRS § 508.]

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

36.01.070 Probation and parole services. Notwithstanding the provisions of chapter 72.01 RCW or any other provision of law, counties may engage in probation and parole services and employ personnel therefor under such terms and conditions as any such county shall so determine. If a county elects to assume responsibility for the supervision of superior court misdemeanor offenders placed on probation under RCW 9.92.060 or 9.95.210, the county may contract with other counties to receive or provide such probation services. A county may also enter into partnership agreements with the department of corrections under RCW 72.09.300. [1996 c 298 § 7; 1967 c 200 § 9.]

Indeterminate sentences: Chapter 9.95 RCW.

Additional notes found at www.leg.wa.gov

36.01.080 Parking facilities—Construction, operation and rental charges. Counties may construct, maintain, operate and collect rentals for parking facilities as a part of a courthouse or combined county-city building facility. [1969 ex.s. c 8 § 1.]

Revenue bonds for parking facilities: RCW 36.67.520.

36.01.085 Economic development programs. It shall be in the public purpose for all counties to engage in economic development programs. In addition, counties may contract with nonprofit corporations in furtherance of this and other acts relating to economic development. [1985 c 92 § 2.]

36.01.090 Tourist promotion. See RCW 36.32.450.

36.01.095 Emergency medical services—Authorized—Fees. Any county may establish a system of emergency medical service as defined by *RCW 18.73.030(11). The county legislative authority may adopt by resolution procedures to collect reasonable fees in order to reimburse the county in whole or in part for its costs of providing such service: PROVIDED, That any county which provides emergency medical services supported by an excess levy may waive such charges for service: PROVIDED FURTHER, That whenever the county legislative authority determines that the county or a substantial portion of the county is not adequately served by existing private ambulance service, and existing private ambulance service cannot be encouraged to expand service on a contract basis, the emergency medical service that is established by the county shall not be deemed

to compete with any existing private ambulance service as provided for in RCW 36.01.100. [1975 1st ex.s. c 147 § 1.]

*Reviser's note: RCW 18.73.030 was amended by 2000 c 93 § 16, changing subsection (11) to subsection (9). RCW 18.73.030 was subsequently alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (9) to subsection (10).

36.01.100 Ambulance service authorized—Restriction. The legislative authority of any county may by appropriate legislation provide for the establishment of a system of ambulance service for the entire county or for portions thereof, and award contracts for ambulance service: PROVIDED, That such legislation may not provide for the establishment of any system which would compete with any existing private system. [1972 ex.s. c 89 § 1.]

36.01.104 Levy for emergency medical care and services. See RCW 84.52.069.

36.01.105 Fire protection, ambulance or other emergency services provided by municipal corporation within county—Financial and other assistance authorized. See RCW 36.32.470.

36.01.110 Federal grants and programs—Powers and authority of counties to participate in—Public corporations, commissions or authorities. See RCW 35.21.730 through 35.21.755.

36.01.115 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility. See chapter 80.58 RCW.

36.01.120 Foreign trade zones—Legislative finding, intent. It is the finding of the legislature that foreign trade zones serve an important public purpose by the creation of employment opportunities within the state and that the establishment of zones designed to accomplish this purpose is to be encouraged. It is the further intent of the legislature that the *department of community, trade, and economic development provide assistance to entities planning to apply to the United States for permission to establish such zones. [1995 c 399 § 40; 1985 c 466 § 44; 1977 ex.s. c 196 § 5.]

*Reviser's note: The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Additional notes found at www.leg.wa.gov

36.01.125 Foreign trade zones—Authority to apply for permission to establish, operate and maintain. A county, as zone sponsor, may apply to the United States for permission to establish, operate, and maintain foreign trade zones: PROVIDED, That nothing herein shall be construed to prevent these zones from being operated and financed by a private corporation(s) on behalf of such county acting as zone sponsor. [1977 ex.s. c 196 § 6.]

Additional notes found at www.leg.wa.gov

36.01.130 Controls on rent for residential structures—Prohibited—Exceptions. The imposition of controls on rent is of statewide significance and is preempted by the state. No county may enact, maintain or enforce ordinances or other provisions which regulate the amount of rent

to be charged for single-family or multiple-unit residential rental structures or sites other than properties in public ownership, under public management, or properties providing low-income rental housing under joint public-private agreements for the financing or provision of such low-income rental housing. This section shall not be construed as prohibiting any county from entering into agreements with private persons which regulate or control the amount of rent to be charged for rental properties. [1991 c 363 § 43; 1981 c 75 § 2.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Additional notes found at www.leg.wa.gov

36.01.150 Facilitating recovery from Mt. St. Helens eruption—Scope of local government action. All entities of local government and agencies thereof are authorized to take action as follows to facilitate recovery from the devastation of the eruption of Mt. St. Helens:

(1) Cooperate with the state, state agencies, and the United States Army Corps of Engineers and other agencies of the federal government in planning dredge site selection and dredge spoils removal;

(2) Counties and cities may re-zone areas and sites as necessary to facilitate recovery operations;

(3) Counties may manage and maintain lands involved and the deposited dredge spoils; and

(4) Local governments may assist the Army Corps of Engineers in the dredging and dredge spoils deposit operations. [1982 c 7 § 3.]

Facilitating recovery from Mt. St. Helens eruption—Legislative findings—Purpose: RCW 43.01.200.

Scope of state agency action: RCW 43.01.210.

Additional notes found at www.leg.wa.gov

36.01.160 Penalty for act constituting a crime under state law—Limitation. Except as limited by the maximum penalty authorized by law, no county may establish a penalty for an act that constitutes a crime under state law that is different from the penalty prescribed for that crime by state statute. [1993 c 83 § 2.]

Additional notes found at www.leg.wa.gov

36.01.170 Administration of trusts benefiting school districts. Any county authorized by territorial law to administer moneys held in trust for the benefit of school districts within the county, which moneys were bequeathed for such purposes by testamentary provision, may dissolve any trust, the corpus of which does not exceed fifty thousand dollars, and distribute any moneys remaining in the trust to school districts within the county. Before dissolving the trust, the county must adopt a resolution finding that conditions have changed and it is no longer feasible for the county to administer the trust. [1998 c 65 § 1.]

36.01.180 Zoo and aquarium advisory authority—Constitution—Terms. (1) For any county in which a proposition authorized by RCW 82.14.400 has been passed, there shall be created a zoo and aquarium advisory authority.

(2) The initial board of the authority shall be constituted as follows:

(2014 Ed.)

(a) Three members appointed by the county legislative authority to represent unincorporated areas;

(b) Two members appointed by the legislative authority of the city with the largest population within the county; and

(c) Two members jointly appointed by the legislative authorities of the remaining cities within the county representing at least sixty percent of the combined populations of those cities.

(3) Board members shall hold office for whatever terms are determined by their appointing authorities, except that no term may be less than one year nor more than three years, in duration. However, a vacancy may be filled by an appointment for a term less than twelve months in duration. [1999 c 104 § 4.]

36.01.190 Initial meeting of zoo and aquarium advisory authority—Expenditure of funds—Powers. (1) Upon certification by the county auditor or, in the case of a home rule county, upon certification by the chief elections officer, that a proposition authorized under the terms of RCW 82.14.400 has received a majority of votes cast on the proposition, the county legislative authority shall convene an initial meeting of the zoo and aquarium advisory authority.

(2) Consistent with any agreement between the local governments specified in RCW 82.14.400(1) in requesting an election, the zoo and aquarium advisory authority has authority to expend such funds as it may receive on those purposes set out in RCW 82.14.400(4). In addition, and consistent with any limitation placed on the powers of the authority in such an agreement, the zoo and aquarium advisory authority may exercise the following powers:

(a) Acquire by purchase, gift, or grant and lease, construct, add to, improve, replace, repair, maintain, operate, and regulate the use of any zoo, aquarium, and wildlife preservation and display facilities and properties, together with all lands, rights-of-way, property, equipment, and accessories necessary for those facilities;

(b) Contract with the United States or any agency thereof, any state or agency thereof, any metropolitan municipal corporation, any other county, city, special district, or governmental agency, and any private person, firm, or corporation for the purpose of receiving gifts or grants or securing loans or advances for preliminary planning and feasibility studies, or for the design, construction, operation, or maintenance of zoo, aquarium, and wildlife preservation and display facilities;

(c) Contract with any governmental agency or with a private person, firm, or corporation for the use by either contracting party of all or any part of the facilities, structures, lands, interests in lands, air rights over lands, and rights-of-way of all kinds which are owned, leased, or held by the other party, and for the purpose of planning, constructing, or operating any facility or performing any service related to zoos, aquariums, and wildlife preservation and display facilities;

(d) Fix rates and charges for the use of those facilities;

(e) Sue and be sued in its corporate capacity in all courts and in all proceedings. [1999 c 104 § 3.]

36.01.200 Federal funds designated for state schools—Use limited to reduction of outstanding debt obligations of school districts. The county legislative

authority of any county that receives payment in lieu of taxes and payment equal to tax funds from the United States department of energy under section 168 of the federal atomic energy act of 1954 and nuclear waste policy act of 1982 and that has an agreed settlement or a joint stipulation dated before January 1, 1998, which agreed settlement or joint stipulation includes funds designated for state schools, may direct the county treasurer to distribute those designated funds to reduce the outstanding debt of the school districts within the county. Any such funds shall be divided among the school districts based upon the same percentages that each district's current assessed valuation is of the total assessed value for all eligible school districts if the district has outstanding debt that equals or exceeds the amount of its distribution. If the district does not have outstanding debt that equals or exceeds the amount of its distribution, any amount above the outstanding debt shall be reallocated to the remaining eligible districts. Any funds received before January 1, 1999, shall be distributed using the percentages calculated for 1998. The county treasurer shall apply the funds to any outstanding debt obligation selected by the respective school districts. [1999 c 19 § 1.]

36.01.210 Rail fixed guideway system—Safety program plan and security and emergency preparedness plan. (1) Each county functioning under chapter 36.56 RCW that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety program plan and a system security and emergency preparedness plan for that guideway to the state department of transportation by September 1, 1999, or at least one hundred eighty calendar days before beginning operations or instituting revisions to its plans. These plans must describe the county's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plans must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the county shall revise its plans to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plans for review.

(2) Each county functioning under chapter 36.56 RCW shall implement and comply with its system safety program plan and system security and emergency preparedness plan. The county shall perform internal safety and security audits to evaluate its compliance with the plans, and submit its audit schedule to the department of transportation no later than December 15th each year. The county shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plans.

(3) Each county shall notify the department of transportation within two hours of an occurrence of a reportable acci-

dent, unacceptable hazardous condition, or security breach. The department may adopt rules further defining a reportable accident, unacceptable hazardous condition, or security breach. The county shall investigate all reportable accidents, unacceptable hazardous conditions, or security breaches and provide a written investigation report to the department within forty-five calendar days after the reportable accident, unacceptable hazardous condition, or security breach.

(4) The system security and emergency preparedness plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.56 RCW. However, the system safety program plan as described in this section is not subject to this exemption. [2007 c 422 § 3; 2005 c 274 § 268; 1999 c 202 § 3.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Additional notes found at www.leg.wa.gov

36.01.220 Mobile home, manufactured home, or park model moving or installing—Copies of permits—Definitions. (1) A county shall transmit a copy of any permit issued to a tenant or the tenant's agent for a mobile home, manufactured home, or park model installation in a mobile home park to the landlord.

(2) A county shall transmit a copy of any permit issued to a person engaged in the business of moving or installing a mobile home, manufactured home, or park model in a mobile home park to the tenant and the landlord.

(3) As used in this section:

(a) "Landlord" has the same meaning as in RCW 59.20.030;

(b) "Mobile home park" has the same meaning as in RCW 59.20.030;

(c) "Mobile or manufactured home installation" has the same meaning as in *RCW 43.63B.010; and

(d) "Tenant" has the same meaning as in RCW 59.20.030. [1999 c 359 § 20.]

*Reviser's note: RCW 43.63B.010 was recodified as RCW 43.22A.010 pursuant to 2007 c 432 § 13.

Additional notes found at www.leg.wa.gov

36.01.225 Authority to regulate placement or use of homes—Regulation of manufactured homes—Restrictions on location of manufactured/mobile homes and entry or removal of recreational vehicles used as primary residences. (1) A county may not adopt an ordinance that has the effect, directly or indirectly, of discriminating against consumers' choices in the placement or use of a home in such a manner that is not equally applicable to all homes. Homes built to 42 U.S.C. Sec. 5401-5403 standards (as amended in 2000) must be regulated for the purposes of siting in the same manner as site built homes, factory built homes, or homes built to any other state construction or local design standard. However, except as provided in subsection (2) of this section, any county may require that:

(a) A manufactured home be a new manufactured home;

(b) The manufactured home be set upon a permanent foundation, as specified by the manufacturer, and that the space from the bottom of the home to the ground be enclosed by concrete or an approved concrete product which can be either load bearing or decorative;

(c) The manufactured home comply with all local design standards applicable to all other homes within the neighborhood in which the manufactured home is to be located;

(d) The home is thermally equivalent to the state energy code; and

(e) The manufactured home otherwise meets all other requirements for a designated manufactured home as defined in RCW 35.63.160.

(2) A county may not adopt an ordinance that has the effect, directly or indirectly, of restricting the location of manufactured/mobile homes in manufactured/mobile home communities, as defined in RCW 59.20.030, which were legally in existence before June 12, 2008, based exclusively on the age or dimensions of the manufactured/mobile home. This does not preclude a county from restricting the location of a manufactured/mobile home in manufactured/mobile home communities for any other reason including, but not limited to, failure to comply with fire, safety, or other local ordinances or state laws related to manufactured/mobile homes.

(3) A county may not adopt an ordinance that has the effect, directly or indirectly, of preventing the entry or requiring the removal of a recreational vehicle used as a primary residence in manufactured/mobile home communities, as defined in RCW 59.20.030, unless the recreational vehicle fails to comply with the fire, safety, or other local ordinances or state laws related to recreational vehicles.

(4) This section does not override any legally recorded covenants or deed restrictions of record.

(5) This section does not affect the authority granted under chapter 43.22 RCW. [2009 c 79 § 3; 2008 c 117 § 3; 2004 c 256 § 4.]

Findings—Intent—Effective date—2004 c 256: See notes following RCW 35.21.684.

36.01.230 Cooperative watershed management. A county may, acting through the county legislative authority, participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 8.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

36.01.240 Regulation of financial transactions—Limitations. A county or governmental entity subject to this title may not regulate the terms, conditions, or disclosures of any lawful financial transaction between a consumer and (1) a business or professional under the jurisdiction of the department of financial institutions, or (2) any financial institution as defined under *RCW 30.22.041. [2005 c 338 § 4.]

*Reviser's note: RCW 30.22.041 was recodified as RCW 30A.22.041 pursuant to 2014 c 37 § 4, effective January 5, 2015.

Finding—Intent—2005 c 338: See note following RCW 35.21.698.

36.01.250 Environmental mitigation activities. (1) Any county authorized to acquire and operate utilities or conduct other proprietary or user or ratepayer funded activities may develop and make publicly available a plan for the county to reduce its greenhouse gases emissions or achieve

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no-net emissions from all sources of greenhouse gases that such county utility or proprietary or user or ratepayer funded activity owns, operates, leases, uses, contracts for, or otherwise controls.

(2) Any county authorized to acquire and operate utilities or conduct other proprietary or user or ratepayer funded activities may, as part of such utility or activity, reduce or mitigate the environmental impacts, such as greenhouse gases emissions, of such utility and other proprietary or user or ratepayer funded activity. The mitigation may include, but is not limited to, all greenhouse gases mitigation mechanisms recognized by independent, qualified organizations with proven experience in emissions mitigation activities. Mitigation mechanisms may include the purchase, trade, and banking of carbon offsets or credits. Ratepayer funds, fees, or other revenue dedicated to a county utility or other proprietary or user or ratepayer funded activity may be spent to reduce or mitigate the environmental impacts of greenhouse gases emitted as a result of that function. If a state greenhouse gases registry is established, the county that has purchased, traded, or banked greenhouse gases mitigation mechanisms under this section shall receive credit in the registry. [2007 c 349 § 6.]

Findings—Intent—2007 c 349 § 6: "The legislature finds and declares that greenhouse gases offset contracts, credits, and other greenhouse gases mitigation efforts are a recognized utility purpose that confers a direct benefit on the utility's ratepayers. The legislature also finds and declares that greenhouse gases offset contracts, credits, and other greenhouse gases mitigation efforts are a recognized purpose of other county proprietary activities that are funded by users and ratepayers, and that such mitigation efforts confer a direct benefit on such payers. The legislature declares that section 6 of this act is intended to reverse the result of *Okeson v. City of Seattle* (January 18, 2007), by expressly granting counties the statutory authority to engage in mitigation activities to offset the impact on the environment of their utilities and certain other proprietary and user and ratepayer funded activities." [2007 c 349 § 5.]

36.01.260 Evergreen community ordinances. (1) Any county may adopt evergreen community ordinances, as that term is defined in RCW 35.105.010, which the county must apply to new building or land development in the unincorporated portions of the county's urban growth areas, as that term is defined in RCW 36.70A.030, and may apply to other areas of the county as deemed appropriate by the county.

(2) As an alternative to subsection (1) of this section, a city or town may request that the county in which it is located apply to any new building or land development permit in the unincorporated portions of the urban growth areas, as defined in RCW 36.70A.030, the evergreen community ordinances standards adopted under RCW 35.105.090 by the city or town in the county located closest to the proposed building or development. [2008 c 299 § 15.]

Short title—2008 c 299: See note following RCW 35.105.010.

36.01.270 Contractors—Authority of county to verify registration and report violations. A county that issues a business license to a person required to be registered under chapter 18.27 RCW may verify that the person is registered under chapter 18.27 RCW and report violations to the department of labor and industries. [2009 c 432 § 4.]

Report—2009 c 432: See RCW 18.27.800.

36.01.280 Community athletics programs—Sex discrimination prohibited. The antidiscrimination provisions of RCW 49.60.500 apply to community athletics programs and facilities operated, conducted, or administered by a county. [2009 c 467 § 7.]

Findings—Declarations—2009 c 467: See note following RCW 49.60.500.

36.01.290 Temporary encampments for the homeless—Hosting by religious organizations authorized—Prohibitions on local actions. (1) A religious organization may host temporary encampments for the homeless on property owned or controlled by the religious organization whether within buildings located on the property or elsewhere on the property outside of buildings.

(2) A county may not enact an ordinance or regulation or take any other action that:

(a) Imposes conditions other than those necessary to protect public health and safety and that do not substantially burden the decisions or actions of a religious organization regarding the location of housing or shelter for homeless persons on property owned by the religious organization;

(b) Requires a religious organization to obtain insurance pertaining to the liability of a municipality with respect to homeless persons housed on property owned by a religious organization or otherwise requires the religious organization to indemnify the municipality against such liability; or

(c) Imposes permit fees in excess of the actual costs associated with the review and approval of the required permit applications.

(3) For the purposes of this section, "religious organization" means the federally protected practice of a recognized religious assembly, school, or institution that owns or controls real property.

(4) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470 is immune from civil liability for (a) damages arising from the permitting decisions for a temporary encampment for the homeless as provided in this section and (b) any conduct or unlawful activity that may occur as a result of the temporary encampment for the homeless as provided in this section. [2010 c 175 § 2.]

Findings—2010 c 175: "The legislature finds that there are many homeless persons in our state that are in need of shelter and other services that are not being provided by the state and local governments. The legislature also finds that in many communities, religious organizations play an important role in providing needed services to the homeless, including the provision of shelter upon property owned by the religious organization. By providing such shelter, the religious institutions in our communities perform a valuable public service that, for many, offers a temporary, stop-gap solution to the larger social problem of increasing numbers of homeless persons.

This act provides guidance to cities and counties in regulating homeless encampments within the community, but still leaves those entities with broad discretion to protect the health and safety of its citizens. It is the hope of this legislature that local governments and religious organizations can work together and utilize dispute resolution processes without the need for litigation." [2010 c 175 § 1.]

Intent—Construction—2010 c 175: "Nothing in this act is intended to change applicable law or be interpreted to prohibit a county, city, town, or code city from applying zoning and land use regulations allowable under established law to real property owned by a religious organization, regardless of whether the property owned by the religious organization is used to provide shelter or housing to homeless persons." [2010 c 175 § 5.]

Prior consent decrees and negotiated settlements for temporary encampments for the homeless not superseded—2010 c 175: "Nothing in

this act supersedes a court ordered consent decree or other negotiated settlement between a public agency and religious organization entered into prior to July 1, 2010, for the purposes of establishing a temporary encampment for the homeless as provided in this act." [2010 c 175 § 6.]

36.01.300 State and federal background checks of license applicants and licensees of occupations under local licensing authority. Counties may, by ordinance, require a state and federal background investigation of license applicants or licensees in occupations specified by ordinance for the purpose of receiving criminal history record information by county officials. The investigation shall consist of a background check as allowed through the Washington state criminal records privacy act under RCW 10.97.050, the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834, and the federal bureau of investigation. These background checks must be done through the Washington state patrol identification and criminal history section and may include a national check from the federal bureau of investigation, which shall be through the submission of fingerprints. The Washington state patrol shall serve as the sole source for receipt of fingerprint submissions and the responses to the submissions from the federal bureau of investigation, which must be disseminated to the county. The county shall transmit appropriate fees for a state and national criminal history check to the Washington state patrol, unless alternately arranged. [2010 c 47 § 1.]

36.01.310 Accessible community advisory committees. (1) A county has the option to expand the scope of an advisory committee established and maintained under *RCW 29A.46.260 to that of an accessible community advisory committee, or to create an accessible community advisory committee.

(2) A county that has an active accessible community advisory committee may be reimbursed within available funds from the accessible communities account created in RCW 50.40.071 for travel, per diem, and reasonable accommodation expenses for the participation of that committee's members in committee meetings and sponsored activities.

(3) A county establishes that it has an active accessible community advisory committee by submitting biennial assurances to the governor's committee on disability issues and employment that:

(a) The decision to establish an accessible community advisory committee was made by the county legislative authority, or by agents or officers acting under that authority.

(b) If an accessible community advisory committee is established by expanding the advisory committee established and maintained under *RCW 29A.46.260, the county auditor supports that expansion.

(c) Committee members include persons with a diverse range of disabilities who are knowledgeable in identifying and eliminating attitudinal, programmatic, communication, and physical barriers encountered by persons with disabilities.

(d) The committee is actively involved in the following activities: Advising on addressing the needs of persons with disabilities in emergency plans; advising the county and other local governments within the county on access to programs services and activities, new construction or renovation proj-

ects, sidewalks, other pedestrian routes of travel, and disability parking enforcement; and developing local initiatives and activities to promote greater awareness of disability issues, and acceptance, involvement, and access for persons with disabilities within the community.

(4) Counties may form joint accessible community advisory committees, as long as no more than one of the participating counties has a population greater than seventy thousand. [2010 c 215 § 4.]

*Reviser's note: RCW 29A.46.260 was recodified as RCW 29A.04.223 pursuant to 2011 c 10 § 87.

Findings—2010 c 215: See note following RCW 50.40.071.

36.01.320 Application for a permit to site an energy plant or alternative energy resource—Written notice to United States department of defense. (1) Upon receipt of an application for a permit to site an energy plant or alternative energy resource that is connected to electrical transmission facilities of a nominal voltage of at least one hundred fifteen thousand volts, the county shall notify in writing the United States department of defense. The notification shall include, but not be limited to, the following:

- (a) A description of the proposed energy plant or alternative energy resource;
 - (b) The location of the site;
 - (c) The number and placement of the energy plant or alternative energy resource on the site;
 - (d) The date and time by which comments must be received by the county; and
 - (e) Contact information of the county permitting authority and the applicant.
- (2) The purpose of the written notification is to provide an opportunity for the United States department of defense to comment upon the application, and to identify potential issues relating to the placement and operations of the energy plant or alternative energy resource, before a permit application is approved. The time period set forth by the county for receipt of such comments shall not extend the time period for the county's processing of the application.
- (3) For the purpose of this section, "alternative energy resource," "energy plant," and "electrical transmission facility" shall each have the meaning set forth in RCW 80.50.020. [2011 c 261 § 2.]

**Chapter 36.04 RCW
COUNTY BOUNDARIES**

Sections

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- 36.04.020 Asotin county.
- 36.04.030 Benton county.
- 36.04.040 Chelan county.
- 36.04.050 Clallam county.
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- 36.04.330 Stevens county.
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- 36.04.350 Wahkiakum county.
- 36.04.360 Walla Walla county.
- 36.04.370 Whatcom county.
- 36.04.380 Whitman county.
- 36.04.390 Yakima county.
- 36.04.400 Survey of county boundaries.

Reviser's note: For the reasons set out in the second paragraph of the explanatory note appended to chapter 4, Laws of 1963, the session laws comprising chapter 36.04 RCW were neither repealed nor reenacted in the 1963 reenactment of Title 36 RCW. Pending reenactment of this chapter, it is herein republished as revised by the 1941 code committee; for rules of construction concerning such revision, see RCW 1.04.020 and 1.04.021.

36.04.010 Adams county. Adams county shall consist of the territory bounded as follows, to wit: Beginning at the northwest corner of township fourteen north, range twenty-eight east of the Willamette Meridian; running thence north to the fourth standard parallel; thence east to the Columbia River Guide Meridian; thence north to the fifth standard parallel; thence east on said parallel to the line between the ranges thirty-eight and thirty-nine; thence south on said line to where it intersects the Palouse river in township sixteen; thence down said river to where the line between townships fourteen and fifteen crosses said river; thence west on said line to place of beginning. [1883 p 93 § 1; RRS § 3924.]

36.04.020 Asotin county. Asotin county shall consist of the territory bounded as follows, to wit: Commencing at a point in the channel of Snake river on the township line between ranges forty-four and forty-five east, Willamette Meridian; thence running south to the northwest corner of section thirty, township eleven north, range forty-five east, Willamette Meridian; thence west six miles; south one mile; west two miles; south one mile; west one mile to the northwest corner of section three in township ten north, of range forty-three east, Willamette Meridian; thence south eighteen miles; thence west three miles; thence south to the Oregon line; thence east on said line to the midchannel of Snake river; thence down the midchannel of Snake river to the place of beginning. [1883 p 96 § 1; RRS § 3925.]

36.04.030 Benton county. Benton county shall consist of the territory bounded as follows, to wit: Beginning at the point of intersection of the middle of the main channel of the Columbia river with the township line between township thirteen north, range twenty-three east, and township thirteen north, range twenty-four east, Willamette Meridian; thence running south along the township line, being the line between range twenty-three east and range twenty-four east to the line between Yakima county and Klickitat county; thence south along the township lines, being the lines between ranges twenty-three east and twenty-four east, to the point of inter-

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section with the middle of the main channel of the Columbia river, or to its intersection with the line between the states of Washington and Oregon; thence northeasterly, northerly and northwesterly and westerly along the middle of the main channel of the Columbia river and up said stream to the place of beginning. [1905 c 89 § 1; RRS § 3926.]

36.04.040 Chelan county. Chelan county shall consist of the territory bounded as follows, to wit: Beginning at the point of intersection of the middle of the main channel of the Columbia river with the fifth standard parallel north, thence running west along said fifth standard parallel north to the point where said fifth standard parallel north intersects the summit of the main divide between the waters flowing northerly and easterly into the Wenatchee and Columbia rivers, and the waters flowing southerly and westerly into the Yakima river, thence in a general northwesterly direction along the summit of said main divide between the waters flowing northerly and easterly into the Wenatchee and Columbia rivers and the waters flowing southerly and westerly into the Yakima river, following the course of the center of the summit of the watershed dividing the said respective waters, to the center of the summit of the Cascade mountains, at the eastern boundary line of King county; thence north along the east boundary lines of King, Snohomish and Skagit counties to the point upon the said east boundary of Skagit county, where said boundary is intersected by the watershed between the waters flowing northerly and easterly into the Methow river and the waters flowing southerly and westerly into Lake Chelan, thence in a general southeasterly direction along the summit of the main divide between the waters flowing northerly and easterly into the Methow river and the waters flowing westerly and southerly into Lake Chelan and its tributaries; following the course of the center of the summit of the watershed dividing said respective waters, to the point where the seventh standard parallel north intersects said center of the summit of said watershed; thence east along the said seventh standard parallel north to the point of intersection of the middle of the main channel of the Columbia river with said seventh standard parallel north; thence down the middle of the main channel of the Columbia river to the point of beginning. [1899 c 95 § 1; RRS § 3928.]

36.04.050 Clallam county. Clallam county shall consist of the territory bounded as follows, to wit: Commencing at the northwest corner of Jefferson county at a point opposite the middle of the channel between Protection Island and Diamond Point on the west of Port Discovery Bay; thence following up the middle of said channel to a point directly east of the mouth of Eagle creek; thence west to the mouth of Eagle creek; thence one mile west from the mouth of said creek; thence south to the north boundary line of township twenty-seven north, range two west; thence west to the west boundary of the state in the Pacific Ocean; thence northerly along said boundary to a point marking the north terminus of the west boundary of the state in the Pacific Ocean opposite the Strait of Juan de Fuca; thence easterly along said Strait of Juan de Fuca, where it forms the boundary between the state and British possessions, to the place of beginning. [(i) 1869 p 292 § 1; 1867 p 45 § 1; 1854 p 472 § 1; RRS § 3929. (ii) 1925 ex.s. c 40 § 1; RRS § 3963-1.]

36.04.060 Clark county. Clark county shall consist of the territory bounded as follows, to wit: Commencing at the Columbia river opposite the mouth of Lewis river; thence up Lewis river to the forks of said river; thence up the north fork of Lewis river to where said north fork of Lewis river intersects the range line between ranges four and five east; thence due south to the Columbia river; thence with the main channel of said river to the place of beginning. [(i) 1873 p 561 § 1; 1871 p 153 § 1; 1869 p 295 § 1; RRS § 3930. (ii) 1925 ex.s. c 51 § 1; RRS § 3930-1.]

36.04.070 Columbia county. Columbia county shall consist of the territory bounded as follows, to wit: Commencing at a point in the middle of the channel of Snake river, where the range line between ranges thirty-six and thirty-seven east of the Willamette Meridian intersects said point; thence south on said range line to the northwest corner of township nine north, range thirty-seven east; thence east on the north boundary line of township nine north, range thirty-seven east, to the northeast corner of said township; thence south on the line between ranges thirty-seven and thirty-eight east of the Willamette Meridian, to the northwest corner of township eight north, range thirty-eight east; thence along the north boundary line of township eight north, range thirty-eight east, to the northeast corner of said township; thence due south to the line dividing the state of Washington from the state of Oregon; thence due east on said dividing line to the range line between ranges forty-one and forty-two east; thence north on said range line to the corner of sections thirteen, eighteen, nineteen and twenty-four, township ten north, ranges forty-one and forty-two east; thence west three miles; thence north three miles; thence west one mile; thence north one mile; thence west one mile; thence north three miles; thence west one mile; thence north to the southwest corner of township twelve north, range forty-one east; thence west on township line six miles; thence north on range line between ranges thirty-nine and forty to a point in the midchannel of Snake river; thence down the midchannel of said river to the place of beginning. [(i) 1 H.C. §6; 1875 p 133 § 1; RRS § 3931. (ii) 1879 p 226 § 1; RRS § 3960-1. (iii) 1881 p 175 § 1; RRS § 3936.]

36.04.080 Cowlitz county. Cowlitz county shall consist of the territory bounded as follows, to wit: Commencing at the Columbia river opposite the mouth of Lewis river; thence up Lewis river to the forks of said river; thence up the north fork of Lewis river to where said north fork of Lewis river intersects the range line between ranges four and five east; thence north to the line between townships ten and eleven north; thence west to the first section line east of the range line between ranges four and five west; thence south on said line to the Columbia river, and up the Columbia river to the place of beginning. [1873 p 561 § 1; 1871 p 153 § 1; 1869 p 295 § 1; 1867 p 48 § 1; 1855 p 39; 1854 p 471 § 1; RRS § 3932.]

36.04.090 Douglas county. Douglas county shall consist of the territory bounded as follows, to wit: Beginning at the point where the Columbia Guide Meridian intersects the Columbia river on the northern boundary of Lincoln county; thence running south on said Columbia Guide Meridian to

the township line between townships sixteen and seventeen north; thence running west on said township line to the range line between ranges twenty-seven and twenty-eight east; thence south on said range line to the section line between sections twenty-four and twenty-five in township fourteen north, range twenty-seven east; thence west on said section line to the midchannel of the Columbia river; thence up said channel of said river to the place of beginning, excepting therefrom the territory hereinafter constituted as Grant county. [1883 p 95 § 1; RRS § 3933. (Grant county, 1909 c 17 § 1; RRS § 3937.)]

36.04.100 Ferry county. Ferry county shall consist of the territory bounded as follows, to wit: Commencing at the point where the east boundary line of Okanogan county intersects the Columbia river; thence up the midchannel of the Columbia river to the mouth of Kettle river; thence up the midchannel of Kettle river to the boundary line between the United States and British Columbia; thence westerly along the said boundary line to the intersection thereof with the said east boundary line of Okanogan county; thence southerly along the said boundary line to the place of beginning. [1899 c 18 § 1; RRS § 3934.]

36.04.110 Franklin county. Franklin county shall consist of the territory bounded as follows, to wit: Beginning at a point where the midchannel of the Snake river intersects that of the Columbia river, and running thence up the Columbia river to a point where the section line between sections twenty-one and twenty-eight, township fourteen north, range twenty-seven east, Willamette Meridian, strikes the main body of the Columbia river, on the east side of the island; thence east on said section line to range line between ranges twenty-seven and twenty-eight east; thence north on said range line to the north boundary of township fourteen; thence east on said north boundary of township fourteen to the Palouse river; thence down said river to midchannel of Snake river; thence down Snake river to place of beginning. [1883 p 87 § 1; RRS § 3935.]

36.04.120 Garfield county. Garfield county shall consist of the territory bounded as follows, to wit: Commencing at a point in the midchannel of Snake river on range line between ranges thirty-nine and forty east, W.M.; thence on said line south to the southwest corner of township twelve north, range forty; thence east on township line six miles; thence south to the southwest corner of section seven, township eleven north, range forty-one east; thence east one mile; thence south three miles; thence east one mile; thence south one mile; thence east one mile; thence south three miles; thence east three miles; thence south on township line to the Oregon line; thence due east on said line six miles to the southwest corner of Asotin county; thence northerly following the westerly boundary of Asotin county to a point where the same intersects the midchannel of Snake river; thence down the said midchannel of Snake river to the point of beginning. [1883 p 96 § 1; 1881 p 175 § 1; RRS § 3936.]

36.04.130 Grant county. Grant county shall consist of the territory bounded as follows, to wit: Beginning at the southeast corner of township seventeen north, range thirty

east of the Willamette Meridian, thence running west on the township line between townships sixteen and seventeen to the range line between ranges twenty-seven and twenty-eight; thence south on said range line to the section line between sections twenty-four and twenty-five in township fourteen north, range twenty-seven east; thence west on said section line to the midchannel of the Columbia river; thence up the channel of the river to a point, thence at right angles to the course of said channel to the meander corner of section thirteen, township twenty north, range twenty-two east Willamette Meridian, and section eighteen, township twenty north, range twenty-three east Willamette Meridian; thence north along the range line between ranges twenty-two and twenty-three to the northwest corner of section eighteen, township twenty-one north, range twenty-three east Willamette Meridian; thence east one mile to the southeast corner section seven, township twenty-one, range twenty-three east; north one mile to the northwest corner section eight, township twenty-one, range twenty-three east; east one mile to the southeast corner of section five, township twenty-one, range twenty-three east; north one mile to the northeast corner section five, township twenty-one, range twenty-three east; east one mile to the northeast corner of section four, township twenty-one, range twenty-three east; north one mile to the southeast corner section twenty-eight, township twenty-two, range twenty-three east; east one mile to the southeast corner section twenty-seven, township twenty-two, range twenty-three east; north two miles to the northeast corner of section twenty-two, township twenty-two, range twenty-three east; east one mile to the southeast corner of section fourteen, township twenty-two, range twenty-three east; north one mile to the southeast corner section eleven, township twenty-two, range twenty-three east; east one mile to the southeast corner of section twelve, township twenty-two, range twenty-three east; north two miles to the northwest corner of section six, township twenty-two north, range twenty-four east; east sixteen miles to the northeast corner of section three, township twenty-two north, range twenty-six east; north six miles to the northeast corner of section three, township twenty-three north, range twenty-six east; east one mile to the northeast corner of section two, township twenty-three north, range twenty-six east; north one mile to the northeast corner of section thirty-five, township twenty-four north, range twenty-six east; east one mile to the southeast corner of section twenty-five, township twenty-four north, range twenty-six east; north one mile to the southeast corner of section twenty-four, township twenty-four north, range twenty-six east; east one mile to the southeast corner of section nineteen, township twenty-four north, range twenty-seven east; north one mile to the southeast corner of section eighteen, township twenty-four north, range twenty-seven east; east one mile to the southeast corner of section seventeen, township twenty-four north, range twenty-seven east; north one mile to the southeast corner of section eight, township twenty-four north, range twenty-seven east; east one mile to the southeast corner of section nine, township twenty-four north, range twenty-seven east; north one mile to the southeast corner of section four, township twenty-four north, range twenty-seven east; east one mile to the southeast corner of section three, township twenty-four, range twenty-seven east; north one mile to the northeast corner of section three, township twenty-four,

range twenty-seven east; east three miles to the southeast corner of section thirty-one, township twenty-five north, range twenty-eight east; north one mile to the southeast corner of section thirty, township twenty-five north, range twenty-eight east; east one mile to the southeast corner of section twenty-nine, township twenty-five north, range twenty-eight east; north three miles to the southeast corner of section eight, township twenty-five north, range twenty-eight east; east one mile to the southeast corner of section nine, township twenty-five north, range twenty-eight east; north four miles to the southeast corner of section twenty-one, township twenty-six north, range twenty-eight east; east one mile to the southeast corner of section twenty-two, township twenty-six north, range twenty-eight east; north one mile to the southeast corner of section fifteen, township twenty-six north, range twenty-eight east; east one mile to the southeast corner of section fourteen, township twenty-six north, range twenty-eight east; north two miles to the southeast corner of section two, township twenty-six north, range twenty-eight east; east one mile to the southeast corner of section one, township twenty-six north, range twenty-eight east; north two miles to the southeast corner of section twenty-five, township twenty-seven north, range twenty-eight east; east one mile to the southeast corner of section thirty, township twenty-seven north, range twenty-nine east; north six miles to the southeast corner of section thirty, township twenty-eight north, range twenty-nine east; east one mile to the southeast corner of section twenty-nine, township twenty-eight north, range twenty-nine east; north one mile to the southeast corner of section twenty, township twenty-eight north, range twenty-nine east; east two miles to the southeast corner of section twenty-two, township twenty-eight north, range twenty-nine east; north one mile to the southeast corner of section fifteen, township twenty-eight north, range twenty-nine east; east one mile to the southeast corner of section fourteen, township twenty-eight north, range twenty-nine east; north two miles to the southeast corner of section two, township twenty-eight north, range twenty-nine east; east one mile to the southeast corner of section one, township twenty-eight north, range twenty-nine east; north one mile to the northeast corner of section one, township twenty-eight north, range twenty-nine east; thence east along township line between townships twenty-eight and twenty-nine to the midchannel of the Columbia river; thence up said channel of said river to the point where the Columbia Guide Meridian intersects said channel; thence running south on said Columbia Guide Meridian to the place of beginning. [1909 c 17 § 1; RRS § 3937.]

36.04.140 Grays Harbor county. Grays Harbor county shall consist of the territory bounded as follows, to wit: Commencing at the northeast corner of Pacific county; thence west to the west boundary of the state in the Pacific Ocean; thence northerly along said boundary, including Gray's Harbor, to a point opposite the mouth of Queets river; thence east to the west boundary line of Mason county; thence south to the northeast corner of township eighteen north, range seven west; thence east fourteen miles to the southeast corner of section thirty-two, township nineteen north, range four west; thence south six miles to the southeast corner of section thirty-two in township eighteen north, range four west; thence east two miles to the southeast corner of section thirty-

four in the same township; thence south to a point due east of the northeast corner of Pacific county; thence west to the place of beginning. [(i) 1 H.C. §3; 1873 p 482 § 1; 1869 p 296 § 1; RRS § 3927. (ii) 1915 c 77 § 1; RRS § 3938. (iii) 1925 ex.s. c 40 § 1; RRS § 3963-1.]

36.04.150 Island county. Island county shall consist of all of the islands known as Whidbey, Camano, Smith, Deception, Strawberry, Baby, Minor, Kalamut, and Ben Ure and shall extend into the adjacent channels to connect with the boundaries of adjoining counties as defined by statute. [2006 c 146 § 1; 1891 c 119 p 217 § 1; 1877 p 425 §§ 1, 2; 1869 p 292 § 1; 1868 p 68 § 1; 1867 p 46 § 1; RRS § 3939.]

36.04.160 Jefferson county. Jefferson county shall consist of the territory bounded as follows, to wit: Commencing at the middle of the channel of Admiralty Inlet due north of Point Wilson; thence westerly along the Strait of Juan de Fuca to the north of Protection Island, to a point opposite the middle of the channel between Protection Island and Diamond Point on the west of Port Discovery Bay; thence following up the middle of said channel to a point direct east of the mouth of Eagle creek; thence west to the mouth of Eagle creek; thence one mile west from the mouth of said creek; thence south to the summit of the Olympic range of mountains, it being the southeast corner of Clallam county, on the north boundary line of township twenty-seven north, range two west; thence west to the west boundary of the state in the Pacific Ocean; thence southerly along said west boundary to a point opposite the mouth of the Queets river; thence east to the range line dividing ranges six and seven west; thence north on said range line to the sixth standard parallel; thence east to the middle of the channel of Hood Canal; thence northerly along said channel to the middle of the channel of Admiralty Inlet; thence northerly following the channel of said inlet to a point due north of Point Wilson and place of beginning. [(i) 1 H.C. §12; 1877 p 406 § 1; 1869 p 292 § 1; RRS § 3940. (ii) 1925 ex.s. c 40 § 1; RRS § 3963-1.]

36.04.170 King county. King county shall consist of the territory bounded as follows, to wit: Beginning at the point of intersection of the center of East Passage (also known as Admiralty Inlet) on Puget Sound and the northerly line of the Puyallup Indian Reservation (projected northwesterly); thence southeasterly in a straight line along said northerly line of Puyallup Indian Reservation and same extended to a point on the east line of section thirty-one, township twenty-one, north, range four east, Willamette Meridian; thence south along said east line of section thirty-one, township twenty-one, range four east, Willamette Meridian, to the township line between township twenty north and township twenty-one north (being the fifth standard parallel north); thence east along said township line between township twenty north and township twenty-one north to the middle of the main channel of White river, near the northeast corner of section three, township twenty north, range five east, Willamette Meridian; thence upstream along the middle of the main channel of White river to the forks of White river and Greenwater river; thence upstream along the middle of the main channel of the Greenwater river to the forks of the Greenwater river and Meadow creek; thence upstream along the

middle of the main channel of Meadow creek to the summit of the Cascade mountains, at a point known as Naches Pass, said point lying in the southwest quarter of section thirty-five, township nineteen north, range eleven east, Willamette Meridian; thence northerly along the summit of the Cascade mountains to a point on the township line between township twenty-six north and township twenty-seven north, said point lying near the north quarter-corner of section three, township twenty-six north, range thirteen east, Willamette Meridian; thence west along said township line between township twenty-six north and twenty-seven north to the middle of the channel known as Admiralty Inlet on Puget Sound; thence southerly along said middle of channel known as Admiralty Inlet through Colvo's Passage (West Passage) on the west side of Vashon Island to a point due north of Point Defiance; thence southeasterly along middle of channel between Vashon Island and Point Defiance (Dalcos Passage) to a point due south of Quartermaster Harbor; thence northeasterly along middle of channel known as Admiralty Inlet to point of beginning. King county is renamed in honor of the Reverend Doctor Martin Luther King, Jr. [2005 c 90 § 1; 1 H.C. § 13; 1869 p 293 § 1; 1867 p 46 § 1; 1854 p 470 § 1; RRS § 3941.]

Reviser's note: Change in boundary by virtue of election in 1901 under chapter 36.08 RCW incorporated herein.

36.04.180 Kitsap county. Kitsap county shall consist of the territory bounded as follows, to wit: Commencing in the middle of Colvo's Passage at a point due east of the meander post between sections nine and sixteen, on west side of Colvo's Passage, in township twenty-two north, range two east; thence west on the north boundary line of sections sixteen, seventeen and eighteen, to the head of Case's Inlet; thence north along the east boundary of Mason county through the center of townships twenty-two and twenty-three, range one west, to the north line of said township twenty-three; thence due west to the middle of the channel of Hood Canal; thence along said channel to the middle of the main channel of Admiralty Inlet; thence following the main channels of said inlet and Puget Sound up to the middle of Colvo's Passage; thence following the channel of said passage to the place of beginning. [1877 p 406 § 1; 1869 p 293 § 1; 1867 p 46 § 1; 1858 p 51 § 1; RRS § 3942.]

36.04.190 Kittitas county. Kittitas county shall consist of the territory bounded as follows, to wit: Commencing at a point where the main channel of the Columbia river crosses the township line between township fourteen and fifteen north, range twenty-three east of the Willamette Meridian, and running thence west on said township line to the range line between ranges eighteen and nineteen east; thence north on said range line six miles, or to the township line between the townships fifteen and sixteen north; thence west on said township line to the range line between ranges seventeen and eighteen east; thence north to the township line between townships sixteen and seventeen north; thence west along said township line and a line prolonged due west to the Naches river; and thence northerly along the main channel of the Naches river to the summit of the Cascade mountains, or to the eastern boundary of King county; thence north along the eastern boundary of King county to the point where such

boundary intersects the summit of the main divide between the waters flowing northerly and easterly into the Wenatchee and Columbia rivers and the water flowing southerly and westerly into the Yakima river; thence in a general southeasterly direction along the summit of such main divide between the waters flowing northerly and easterly into the Wenatchee and Columbia rivers and the waters flowing southerly and westerly into the Yakima river, following the course of the center of the summit of the watershed dividing such respective waters, to the fifth standard parallel north; thence east along the fifth standard parallel north to the middle of the main channel of the Columbia river; thence down the main channel of the Columbia to the place of beginning. [1899 c 95 § 1; 1886 p 168 § 1; 1883 p 90 § 1; RRS § 3943.]

36.04.200 Klickitat county. Klickitat county shall consist of the territory bounded as follows, to wit: Commencing at a point in the midchannel of the Columbia river opposite the mouth of the White Salmon river; thence up the channel of the White Salmon river as far north as the southern boundary of township four north, range ten east of Willamette Meridian; thence due west on the township line to range nine east of Willamette Meridian; thence north following said range line to where it intersects the south boundary of Yakima county projected; thence east along the north boundary of township six north until that line intersects the range line between range twenty-three east and range twenty-four east; thence south along such range line to the Columbia river; thence down the Columbia river, midchannel, to the place of beginning. [1905 c 89 § 1; 1 H.C. §17; 1881 p 187 § 1; 1873 p 571 § 1; 1869 p 296 § 1; 1868 p 60 § 1; 1867 p 49 § 1; 1861 p 59 § 1; 1859 p 420 § 1; RRS § 3944.]

36.04.210 Lewis county. Lewis county shall consist of the territory bounded as follows, to wit: Beginning at the northwest corner of section eighteen, township fifteen north, range five west; thence south along the west boundary of range five west to the southwest corner of township eleven north, range five west; thence east along the south boundary of township eleven north to the summit of the Cascade mountains; thence northerly along said summit to a point due east of the head of Nisqually river; thence west to the head of the Nisqually river; thence westerly down the channel of the river to a point two miles north of the line between townships fourteen and fifteen north; thence west to the northwest corner of section twenty-six, township fifteen north, range four west; thence north two miles to the northwest corner of section fourteen, township fifteen north, range four west; thence west to place of beginning. [1 H.C. §§18, 19; 1888 p 73 § 1; 1879 p 213 § 1; 1869 p 295 § 1; 1867 p 48 § 1; 1861 p 33 § 1; RRS § 3945.]

36.04.220 Lincoln county. Lincoln county shall consist of the territory bounded as follows, to wit: Beginning at the point in township twenty-seven north, where the Colville Guide Meridian between ranges thirty-nine and forty east, Willamette Meridian, intersects the Spokane river, and running thence south along said meridian line to the township line between townships twenty and twenty-one north; thence west along said township line to its intersection with the Columbia Guide Meridian between ranges thirty and thirty-

one east, Willamette Meridian; thence north along said meridian line to a point where it intersects the midchannel of the Columbia river; thence up said river in the middle of the channel thereof to the mouth of the Spokane river; thence up the Spokane river, in the middle of the channel thereof, to the place of beginning. [1883 p 89 § 1; 1883 p 95 § 1; RRS § 3946.]

36.04.230 Mason county. Mason county shall consist of the territory bounded as follows, to wit: Commencing in middle of the main channel of Puget Sound where it is intersected in the midchannel of Case's Inlet; thence westerly along the midchannel of Puget Sound, via Dana's Passage, into Totten's Inlet, and up said inlet to its intersection by section line between sections twenty-eight and twenty-nine, township nineteen north, range three west of the Willamette Meridian; thence south to the southwest corner of section thirty-three in township nineteen north, range three west; thence west along the township line dividing townships eighteen and nineteen, twenty miles, to the township line dividing ranges six and seven west, of the Willamette Meridian, which constitutes a part of the east boundary line of Grays Harbor county; thence north along said township line to the sixth standard parallel; thence east along said parallel line to the middle of the channel of Hood Canal; thence southerly along said midchannel to a point due west of the intersection of the shore line of said Hood Canal by the township line between townships twenty-three and twenty-four; thence east along said township line to the line dividing sections three and four in said township twenty-three north, range one west of the Willamette Meridian; thence south along said section line to the head of Case's Inlet; thence south by the midchannel of said inlet to the place of beginning. [1877 p 406 § 1; 1869 p 293 § 1; 1867 p 45 § 1; 1864 p 71 § 1; 1863 p 7 (local laws portion) § 1; 1861 p 56 § 1; 1861 p 30 § 1; 1860 p 458 § 1; 1854 p 474 § 1; 1854 p 470 § 1; RRS § 3947.]

36.04.240 Okanogan county. Okanogan county shall consist of the territory bounded as follows, to wit: Beginning at the intersection of the forty-ninth parallel with the range line between ranges thirty-one and thirty-two east, and from thence running in a southerly direction on said range line to the intersection of the said range line with the Columbia river, and thence down the river to the seventh standard parallel north; thence west along the seventh standard parallel north to the watershed between the waters flowing northerly and easterly into the Methow river and the waters flowing southerly and westerly into Lake Chelan; thence in a general northwesterly direction along the summit of the main divide between the waters flowing northerly and easterly into the Methow river and the waters flowing westerly and southerly into Lake Chelan and its tributaries; following the course of the center of the summit of the watershed dividing said respective waters to the point where the same intersects the east boundary of Skagit county and the summit of the Cascade mountains; thence northerly with said summit to the forty-ninth parallel, and thence on the said parallel to the place of beginning. [1899 c 95 § 1; 1888 p 70 § 1; RRS § 3948.]

36.04.250 Pacific county. Pacific county shall consist of the territory bounded as follows, to wit: Commencing at the midchannel of the Columbia river at the point of intersection of the line between ranges eight and nine west; thence north along said line to the north boundary of township ten north; thence east along said boundary to the line between ranges five and six west; thence north along the west boundary of range five west to the northwest corner of section eighteen in township fifteen north, range five west; thence west to the west boundary of the state in the Pacific Ocean; thence southerly along said boundary, including Shoalwater Bay, to a point opposite Cape Disappointment; thence up midchannel of the Columbia river to the place of beginning. [(i) 1879 p 213 § 1; 1873 p 538 § 1; 1867 p 49 § 1; 1860 p 429 § 1; 1854 p 471 § 1; RRS § 3949. (ii) 1925 ex.s. c 40 § 1; RRS § 3963-1.]

36.04.260 Pend Oreille county. Pend Oreille county shall consist of the territory bounded and described as follows, to wit: Beginning at the southeast corner of section thirty-six in township thirty north, range forty-two east of the Willamette Meridian; thence running north, along the east line of said township thirty north, range forty-two east of the Willamette Meridian, to the northeast corner of section one, in said township thirty; thence west to the southwest corner of section thirty-four in township thirty-one north, range forty-two east of Willamette Meridian; thence north, along the west line of sections thirty-four, twenty-seven and twenty-two of said township thirty-one north, range forty-two east of Willamette Meridian; thence north on a line from the northwest corner of section twenty-two in township thirty-one to a point on the north line of township thirty-one, midway between the northeast corner and the northwest corner of said township thirty-one, which line will be the west line of sections fifteen, ten and three of said township thirty-one, when the same are surveyed; thence to the center point on the south line of township thirty-two north, range forty-two east of Willamette Meridian; thence north on the north and south center line of said township thirty-two, which line will be the west line of sections thirty-four, twenty-seven, twenty-two, fifteen, ten, and three of township thirty-two when the same is surveyed, to the north line of said township thirty-two; thence to the center point on the south line of township thirty-three north, range forty-two east of Willamette Meridian; thence north, on the north and south center line of township thirty-three north of range forty-two east of Willamette Meridian, which line will be the west line of sections thirty-four, twenty-seven, twenty-two, fifteen, ten and three of said township thirty-three, when the same is surveyed, to the north line of said township thirty-three; thence to the center point on the south line of township thirty-four north, range forty-two east of Willamette Meridian; thence north on the north and south center line of said township thirty-four, which line will be the west line of sections thirty-four, twenty-seven, twenty-two, fifteen, ten and three of said township thirty-four when the same are surveyed, to the north line of said township; thence to the center point on the south line of township thirty-five north, range forty-two east of Willamette Meridian; thence north, on the north and south center line of township thirty-five north, range forty-two east of Willamette Meridian, which line will be the west line of sections thirty-four,

twenty-seven, twenty-two, fifteen, ten and three of said township thirty-five when the same are surveyed to the north line of said township thirty-five; thence to the southwest corner of section thirty-four in township thirty-six north, range forty-two east of Willamette Meridian; thence north, along the west line of sections thirty-four, twenty-seven, twenty-two, fifteen, ten and three to the northwest corner of section three of said township thirty-six; thence west along the south line of township thirty-seven north, range forty-two, and township thirty-seven north, range forty-one east of the Willamette Meridian, to the center point on the south line of said township thirty-seven north, range forty-one east of the Willamette Meridian, which point will be the southwest corner of section thirty-four in said township thirty-seven north, range forty-one east of the Willamette Meridian, when the same are surveyed; thence north along the north and south center line of said township thirty-seven north, range forty-one east of the Willamette Meridian, which line will be the west line of sections thirty-four, twenty-seven, twenty-two, fifteen, ten and three of said township when the same are surveyed, to the north line of said township thirty-seven; thence east, along the south line of township thirty-eight north, range forty-one east of Willamette Meridian to the southeast corner of said township thirty-eight north, range forty-one east of the Willamette Meridian; thence to the southwest corner of section thirty-one in township thirty-eight north, range forty-two east of Willamette Meridian; thence north, along the west line of said township thirty-eight, to the northwest corner of said township thirty-eight; thence east along the north line of township thirty-eight, to the center point on the south line of township thirty-nine north, range forty-two east of Willamette Meridian, which point will be the southwest corner of section thirty-four of said township thirty-nine when the same are surveyed; thence north along the north and south center line of said township thirty-nine, which line will be the west line of sections thirty-four, twenty-seven, twenty-two, fifteen, ten and three of said township thirty-nine, when the same are surveyed, to the north line of said township thirty-nine; thence east along the south line of township forty north, range forty-two east, of Willamette Meridian to the southeast corner of said township forty; thence north, along the east line of said township forty, to the international boundary line; thence east along the international boundary line, to the intersection of the state line between the states of Washington and Idaho with said international boundary line; thence south along said state line, to the southeast corner of section thirty-one, township thirty north, range forty-six east of Willamette Meridian; thence due west to the southeast corner of section thirty-six, township thirty north, range forty-two east of Willamette Meridian, to the place of beginning. [1911 c 28 § 1; RRS § 3950.]

36.04.270 Pierce county. Pierce county shall consist of the territory bounded as follows, to wit: Commencing at the mouth, midchannel, of the Nisqually river; thence following the main channel of said river to its head; thence due east to the summit of the Cascade mountains; thence northerly along the summit to the head of the Green Water; thence westerly down said river to its confluence with White river; thence down the main channel of White river to the intersection of the fifth standard parallel; thence west along said line to the

southeast corner of section thirty-one, township twenty-one north, range four east of Willamette Meridian; thence north along the east line of said section thirty-one to its intersection with the northerly line of the Puyallup Indian reservation; thence northwesterly on said line of the Puyallup Indian reservation, projected northwesterly in a straight line, to its intersection with the center line of Puget Sound; thence southwestly and westerly following the channel of Dalco Passage to the south entrance of Colvo's Passage; thence down the channel of said passage to the northeast corner of section sixteen, in township twenty-two north, range two east; thence west to the northeast corner of section sixteen, in township twenty-two north, range one west; thence southerly along the channels of Case's Inlet and Puget Sound, to the middle of the mouth of the Nisqually river and place of beginning. [1869 p 294 § 1; 1867 p 47 § 1; 1859 p 59 § 1; 1855 p 43 § 1; RRS § 3951.]

36.04.280 San Juan county. San Juan county shall consist of the territory bounded as follows, to wit: Commencing in the Gulf of Georgia at the place where the boundary line between the United States and the British possessions deflects from the forty-ninth parallel of north latitude; thence following said boundary line through the Gulf of Georgia and Haro Strait to the middle of the Strait of Fuca; thence easterly through Fuca Straits along the center of the main channel between Blunt's Island and San Juan and Lopez Islands to a point easterly from the west entrance of Deception Pass, until opposite the middle of the entrance to the Rosario Straits; thence northerly through the middle of Rosario Straits and through the Gulf of Georgia to the place of beginning. [1877 p 425 § 1; 1873 p 461 § 1; RRS § 3952.]

36.04.290 Skagit county. Skagit county shall consist of the territory bounded as follows, to wit: Commencing at mid-channel of Rosario Strait where the dividing line between townships thirty-six and thirty-seven intersects the same; thence east on said township line to the summit of the Cascade mountains; thence south along the summit of said mountain range to the eighth standard parallel; thence west along the parallel to the center of the channel or deepest channel of the nearest arm of Puget Sound and extending along said channel to the east entrance of Deception Pass; thence through said pass to the center of the channel of Rosario Strait; thence northerly along said channel to the place of beginning. [1883 p 97 § 1; RRS § 3953.]

36.04.300 Skamania county. Skamania county shall consist of the territory bounded as follows, to wit: Commencing on the Columbia river at a point where range line four east strikes said river; thence north to the north boundary of township ten north; thence east to a point due north of the mouth of White Salmon; thence south to the township line dividing townships six and seven; thence west to the northwest corner of Klickitat county; thence south along the west boundary of said county to the Columbia river; thence along the midchannel of said river to the place of beginning. [1881 p 187 § 1; 1879 p 213 § 1; 1867 p 49 § 1; 1854 p 472 § 1; RRS § 3954.]

36.04.310 Snohomish county. Snohomish county shall consist of the territory bounded as follows, to wit: Commenc-

ing at the southwest corner of Skagit county; thence east along the eighth standard parallel to the summit of the Cascade mountains; thence southerly along the summit of the Cascade mountains to the northeast corner of King county, it being a point due east of the northeast corner of township twenty-six north, range four east; thence due west along the north boundary of King county to Puget Sound; thence northerly along the channel of Puget Sound and Possession Sound to the entrance of Port Susan, including Gedney Island; thence up the main channel of Port Susan to the mouth of the Stillaguamish river; thence northwesterly through the channel of the slough at the head of Camano Island, known as Davis Slough; thence northerly to the place of beginning. [1877 p 426 § 3; 1869 p 291 § 1; 1867 p 44 § 1; 1862 p 107 § 1; 1861 p 19 § 1; RRS § 3955.]

36.04.320 Spokane county. Spokane county shall consist of the territory bounded as follows, to wit: Commencing at the northeast corner of Lincoln county; thence up the mid-channel of the Spokane river to the Little Spokane river; thence north to the township line between townships twenty-nine and thirty; thence east to the boundary line between Washington and Idaho; thence south on said boundary line to the fifth standard parallel; thence west on said parallel to the Colville Guide Meridian; thence north on said meridian to the place of beginning. [1879 p 203; 1864 p 70; 1860 p 436; 1858 p 51; RRS § 3956.]

36.04.330 Stevens county. Stevens county shall consist of the territory bounded as follows, to wit: Commencing at the southeast corner of township thirty north, range forty-two east of the Willamette Meridian; thence north to the northeast corner of said township; thence west to the southwest corner of section thirty-four, township thirty-one north, range forty-two east; thence north along the center line of townships thirty-one, thirty-two, thirty-three, thirty-four, thirty-five and thirty-six in said range forty-two east to the northwest corner of section three in township thirty-six north; thence west to the northwest corner of section three, township thirty-six north, range forty-one east; thence north along the center line of township thirty-seven to the northwest corner of section three in said township; thence east to the northeast corner of said township; thence north to the northwest corner of township thirty-eight, range forty-two east; thence east to the northwest corner of section three of said township; thence north along the center line of township thirty-nine to the northwest corner of section three in said township; thence east to the northeast corner of said township; thence north to the northern boundary line of the state; thence west to where said boundary line intersects the middle of the channel of the Kettle river; thence south along said channel to its confluence with the Columbia river; thence continuing south along the middle of the channel of the Columbia river to its confluence with the Spokane river; thence easterly along the channel of the Spokane to the Little Spokane river; thence north to the township line separating townships twenty-nine and thirty; thence east to the place of beginning. [(i) 1 H.C. §30; 1888 p 70; 1879 p 203; 1869 p 297; 1867 p 50; 1864 p 70; 1863 p 6; RRS § 3957. (ii) 1899 c 18 § 1; RRS § 3934.]

36.04.340 Thurston county. Thurston county shall consist of the territory bounded as follows, to wit: Commencing at the southeast corner of section thirty-two in township nineteen north, range four west; thence east on the township line to the southeast corner of section thirty-two in township nineteen north, range three west; thence north to the middle of the channel of Totten's Inlet; thence along said channel to the waters of Puget Sound, intersecting the line in the channel of Puget Sound west of the southern portion of Squaxen Reservation; thence following said channel to the mouth of the Nisqually river; thence up midchannel of said river to a point where it strikes the north boundary of Lewis county; thence due west to the northwest corner of section twenty-six, township fifteen north, range four west; thence north to the southeast corner of section thirty-four in township eighteen north, range four west; thence west on the township line to the southeast corner of section thirty-two; thence north on the section line to the place of beginning. [1 H.C. §31; 1873 p 482; 1869 p 294; 1867 p 47; 1863 p 7; 1860 p 458; RRS § 3958.]

36.04.350 Wahkiakum county. Wahkiakum county shall consist of the territory bounded as follows, to wit: Commencing at the southeast corner of Pacific county, on the Columbia river; thence up midchannel of said river to the southwest corner of Cowlitz county; thence north to the northwest corner of Cowlitz county; thence west on the northern boundary of township ten north to the line between ranges eight and nine west; thence south to the place of beginning. [1879 p 213; 1869 p 295; 1867 p 48; 1854 p 474; RRS § 3959.]

36.04.360 Walla Walla county. Walla Walla county shall consist of the territory bounded as follows, to wit: Commencing at a point where the boundary line between Washington and Oregon intersects the Columbia river; thence up the main channel of the Columbia to the mouth of the Snake river; thence up the main channel of said river to where the range line between ranges thirty-six and thirty-seven intersects said point; thence south on said range line to the northwest corner of township nine north, range thirty-seven east; thence east on the north boundary line of township nine north, range thirty-seven east, to the northeast corner of said township; thence south on the line between ranges thirty-seven and thirty-eight east, of the Willamette Meridian, to the northwest corner of township eight north, range thirty-eight east; thence along the north boundary line of township eight north, range thirty-eight east, to the northeast corner of said township; thence due south to the line dividing the state of Washington from the state of Oregon; thence due west on said dividing line to the place of beginning. [(i) 1 H.C. §33; 1879 p 226; 1875 p 133; 1869 p 397; 1868 p 60; 1867 p 50; 1858 p 51; 1854 p 472; RRS § 3960. (ii) 1879 p 226; RRS § 3960-1.]

36.04.370 Whatcom county. Whatcom county shall consist of the territory bounded as follows, to wit: Commencing on the forty-ninth parallel at the point dividing the American and British possessions in the Gulf of Georgia; thence along said boundary line to where it deflects at the north entrance to the Haro Strait; thence along the northeasterly

boundary of San Juan county to the ninth standard parallel, or the northwest corner of Skagit county; thence due east along said parallel to the summit of the Cascade mountains; thence northerly along the summit of said mountains to the forty-ninth parallel of north latitude; thence west along said parallel to the place of beginning. [1 H.C. §34; 1877 p 426; 1869 p 291; 1867 p 44; 1859 p 60; 1854 p 475; RRS § 3961.]

36.04.380 Whitman county. Whitman county shall consist of the territory bounded as follows, to wit: Commencing at a point where the range line between ranges thirty-eight and thirty-nine east intersects the fifth standard parallel, being the northeast corner of Adams county; thence east on said parallel to the boundary line between Idaho and Washington; thence south on said boundary line to the midchannel of the Snake river; thence down the midchannel of the Snake river to its intersection with the midchannel of the Palouse river; thence north along the midchannel of the Palouse river to the point where the same intersects the range line between ranges thirty-eight and thirty-nine east; thence north along said range line to the place of beginning. [(i) 1 H.C. §35; 1875 p 189; 1871 p 134; RRS § 3962. (ii) 1883 p 87; RRS § 3935. (iii) 1883 p 93; RRS § 3924.]

36.04.390 Yakima county. Yakima county shall consist of the territory bounded as follows, to wit: Commencing at the northwest corner of township six north of range twelve east; thence east along the north boundary of township six north until said line intersects the range line between range twenty-three east and range twenty-four east; thence north along said range line to the Columbia river; thence north up the midchannel of said river to the southeast corner of Kittitas county; thence along the southern boundary of Kittitas county to the summit of the Cascade mountains; thence southerly to the southeast corner of Lewis county; thence west along the line of said county to the northeast corner of Skamania county; thence along the east line of Skamania county to the line between townships six and seven north; thence east along said line to the place of beginning. [1905 c 89 § 1; 1886 p 168; 1873 p 571; 1869 p 296; 1868 p 60; 1867 p 50; RRS § 3963.]

36.04.400 Survey of county boundaries. All common boundaries and common corners of counties not adequately marked by natural objects or lines, or by surveys lawfully made, must be definitely established by surveys jointly made by all the counties affected thereby, and approved by the board of county commissioners of such counties. The cost of making such surveys shall be apportioned equally among the counties interested, and the board of county commissioners shall audit the same, and the amounts shall be paid out of the county current expense fund. [Code 1881 § 2661; RRS § 3990.]

Chapter 36.05 RCW

ACTIONS TO ESTABLISH BOUNDARIES

Sections

- 36.05.010 Suit in equity authorized—Grounds.
- 36.05.020 Noninterested judge to sit.
- 36.05.030 Residents of area may intervene.

- 36.05.040 Questions of fact to be determined.
- 36.05.050 Court may establish boundary line.
- 36.05.060 Practice in civil actions to prevail.
- 36.05.070 Copies of decree to be filed and recorded.
- 36.05.080 "Territory" defined.

Lines not to be changed by special act: State Constitution Art. 2 § 28(18).

36.05.010 Suit in equity authorized—Grounds. Whenever the boundary line between two or more adjoining counties in this state are in dispute, or have been lost by time, accident or any other cause, or have become obscure or uncertain, one or more of the counties, in its corporate name, may bring and maintain suit against such other adjoining county or counties, in equity, in the superior court, to establish the location of the boundary line or lines. [1963 c 4 § 36.05.010. Prior: 1897 c 76 § 1; RRS § 3964.]

36.05.020 Noninterested judge to sit. A suit to establish county boundary lines shall be tried before a judge of the superior court who is not a resident of a county which is a party to such suit, or of a judicial district embracing any such county. [1963 c 4 § 36.05.020. Prior: 1897 c 76 § 2; RRS § 3965.]

36.05.030 Residents of area may intervene. A majority of the voters living in the territory embracing such disputed, lost, obscure, or uncertain boundary line may, by petition, duly verified by one or more of them, intervene in the suit, and thereupon the court shall have jurisdiction and power, in locating and establishing the boundary line or lines, to strike or transfer from one county to another a strip or portion of such territory not exceeding two miles in width. [1963 c 4 § 36.05.030. Prior: 1897 c 76 § 3; RRS § 3966.]

36.05.040 Questions of fact to be determined. The boundaries of such territory, the number of voters living therein, and the sufficiency of such petition are questions of fact to be determined by the court. [1963 c 4 § 36.05.040. Prior: 1897 c 76 § 5; RRS § 3968.]

36.05.050 Court may establish boundary line. The court shall have power to move or establish such boundary line on any government section line or subdivisional line thereof, of the section in or through which said disputed, lost, obscure or uncertain boundary line may be located, or if such boundary line is in unsurveyed territory, then the court shall have power to move or establish such boundary line so it will conform to extensions of government section lines already surveyed in that vicinity. [1963 c 4 § 36.05.050. Prior: 1897 c 76 § 6; RRS § 3969.]

36.05.060 Practice in civil actions to prevail. The practice, procedure, rules of evidence, and appeals to the supreme court or the court of appeals applicable to civil actions, are preserved under this chapter. [1971 c 81 § 96; 1963 c 4 § 36.05.060. Prior: 1897 c 76 § 7; RRS § 3970.]

36.05.070 Copies of decree to be filed and recorded. The clerk of the court in whose office a decree is entered under the provisions of this chapter, shall forthwith furnish certified copies thereof to the secretary of state, and to the auditors of the counties, which are parties to said suit. The

secretary of state, and the county auditors, shall file and record said copies of the decree in their respective offices. [1963 c 4 § 36.05.070. Prior: 1897 c 76 § 8; RRS § 3971.]

36.05.080 "Territory" defined. The term "territory," as used in this chapter, means that portion of counties lying along the boundary line and within one mile on either side thereof. [1963 c 4 § 36.05.080. Prior: 1897 c 76 § 4; RRS § 3967.]

Chapter 36.08 RCW

TRANSFER OF TERRITORY WHERE CITY'S HARBOR LIES IN TWO COUNTIES

Sections

36.08.010	Petition and notice of election.
36.08.020	Conduct of election—Proclamation of change.
36.08.030	Official proceedings not disturbed by transfer.
36.08.040	Local officers to serve out terms.
36.08.050	Transferee county liable for existing debts—Exception.
36.08.060	Adjustment of indebtedness.
36.08.070	Arbitration of differences.
36.08.080	Expense of proceedings.
36.08.090	Transcript of records by county auditor.
36.08.100	Construction—Limitations.

36.08.010 Petition and notice of election. If a harbor, inlet, bay, or mouth of river is embraced within two adjoining counties, and an incorporated city is located upon the shore of such harbor, bay, inlet, or mouth of river and it is desired to embrace within the limits of one county, the full extent of the shore line of the harbor, port, or bay, and the waters thereof, together with a strip of the adjacent and contiguous upland territory not exceeding three miles in width, to be measured back from highwater mark, and six miles in length, and not being at a greater distance in any part of said strip from the courthouse in the county seat of the county to which the territory is proposed to be annexed, as such county seat and courthouse are now situated, than ten miles, a majority of the qualified electors living in such territory may petition to have the territory stricken from the county of which it shall then be a part, and added to and made a part of the county contiguous thereto.

The petition shall describe with certainty the bounds and area of the territory, with the reasons for making the change and shall be presented to the board of county commissioners of the county in which the territory is located, which shall proceed to ascertain if the petition contains the requisite number of petitioners, who must be bona fide residents of the territory sought to be stricken off and transferred to the contiguous county.

If satisfied that the petition is signed by a majority of the bona fide electors of the territory, and that there will remain in the county from which it is taken more than four thousand inhabitants, the board shall make an order that a special election be held within the limits of the territory described in the petition, on a date to be named in the order.

Notices of the election shall contain a description of the territory proposed to be transferred and the names of the counties from and to which the transfer is intended to be made, and shall be posted and published as required for general elections. [1963 c 4 § 36.08.010. Prior: 1891 c 144 § 1; RRS § 3972.]

36.08.020 Conduct of election—Proclamation of change. The election shall be conducted in all respects as general elections are conducted under the laws governing general elections, in so far as they may be applicable, except that there shall be triplicate returns made, one to each of the respective county auditors and another to the office of the secretary of state. The ballots used at such election shall contain the words "for transferring territory," or "against transferring territory." The votes shall be canvassed, as by law required, within twenty days, and if three-fifths of the votes cast in the territory at such election are "for transferring territory," the territory described in the petition shall become a part of and be added to and made a part of the county contiguous thereto, and within thirty days after the canvass of the returns of the election, the governor shall issue his or her proclamation of the change of county lines. [2009 c 549 § 4001; 1963 c 4 § 36.08.020. Prior: 1891 c 144 § 2; RRS § 3973.]

36.08.030 Official proceedings not disturbed by transfer. All assessments and collection of taxes, and all judicial or other official proceedings commenced prior to the governor's proclamation transferring territory to a contiguous county, shall be continued, prosecuted, and completed in the same manner as if no such transfer had been made. [1963 c 4 § 36.08.030. Prior: 1891 c 144 § 3; RRS § 3974.]

36.08.040 Local officers to serve out terms. All township, precinct, school, and road district officers within the transferred territory shall continue to hold their respective offices within the county to which they may be transferred until their respective terms of office expire, and until their successors are elected and qualified. [1963 c 4 § 36.08.040. Prior: 1891 c 144 § 4; RRS § 3975.]

36.08.050 Transferee county liable for existing debts—Exception. Every county which is thus enlarged by territory taken from another county shall be liable for a just proportion of the existing debts of the county from which such territory is stricken, which proportion shall be paid by the county to which such territory is transferred at such time and in such manner as may be agreed upon by the boards of county commissioners of both counties: PROVIDED, That the county to which the territory is transferred shall not be liable for any portion of the debt of the county from which the territory is taken, incurred in the purchase of any county property, or the construction of any county building then in use or under construction, which shall fall within and be retained by the county from which the territory is taken. [1963 c 4 § 36.08.050. Prior: 1891 c 144 § 5; RRS § 3976.]

36.08.060 Adjustment of indebtedness. The county auditors of the respective counties interested in the transfer of territory, as in this chapter provided, are constituted a board of appraisers and adjusters, to appraise the property, both real and personal, owned by the county from which the territory is taken, and to adjust the indebtedness of such county with the county to which such territory is transferred, in proportion to the amount of taxable property within the territory taken from the one county and transferred to the other. [1963 c 4 § 36.08.060. Prior: 1891 c 144 § 6; RRS § 3977.]

36.08.070 Arbitration of differences. If the board of appraisers and adjusters do not agree on any subject, value, or settlement, they shall choose a third person from an adjoining county to settle their differences, and the decision thus arrived at shall be final. [2009 c 549 § 4002; 1963 c 4 § 36.08.070. Prior: 1891 c 144 § 7; RRS § 3978.]

36.08.080 Expense of proceedings. The expense of the proceedings and election provided for in this chapter shall be paid by the county to which the territory is attached. [1963 c 4 § 36.08.080. Prior: 1891 c 144 § 8; RRS § 3979.]

36.08.090 Transcript of records by county auditor. The county auditor of the county to which any territory may be transferred may take transcripts of all records, books, papers, etc., on file in the office of the county auditor of the county from which the territory has been transferred, which may be necessary to perfect the records of his or her county, and for this purpose he or she shall have access to the records of the county from which such territory is stricken, free of cost. [2009 c 549 § 4003; 1963 c 4 § 36.08.090. Prior: 1891 c 144 § 9; RRS § 3980.]

36.08.100 Construction—Limitations. Nothing in this chapter shall be construed to authorize the annexing of territory of one county to a neighboring county, where the territory proposed to be annexed, or any part thereof, is at a greater distance than ten miles from the courthouse in the county seat of the county to which said territory is proposed to be annexed, as said courthouse is now located, nor to authorize the annexation of any territory at a greater distance than three miles from high water mark of tide water, but such annexation shall be strictly confined within said limits. [1963 c 4 § 36.08.100. Prior: 1891 c 144 § 10; RRS § 3981.]

Chapter 36.09 RCW

NEW COUNTY—LIABILITY FOR DEBTS

(Formerly: Division of county)

Sections

36.09.010	Debts and property to be apportioned.
36.09.020	Procedure to settle amount charged new county—Basis of apportionment.
36.09.035	Procedure to settle amount charged new county—Disagreement between auditors—Determination by third person.
36.09.040	Payment of indebtedness—Transfer of property.
36.09.050	Collection of taxes levied—Apportionment.

Combined city and county municipal corporations: State Constitution Art. 11 § 16 (Amendment 58).

New county

formation by special act allowed: State Constitution Art. 2 § 28(18).

restrictions on formation: State Constitution Art. 11 § 3.

36.09.010 Debts and property to be apportioned. Whenever a new county shall be or shall have been organized out of the territory which was included within the limits of any other county or counties, the new county shall be liable for a reasonable proportion of the debts of the county from which it was taken, and entitled to its proportion of the property of the county. [1963 c 4 § 36.09.010. Prior: Code 1881 § 2657; 1863 p 538 § 3; 1854 p 330 § 1; RRS § 3986.]

(2014 Ed.)

36.09.020 Procedure to settle amount charged new county—Basis of apportionment. The auditor of the old county shall give the auditor of the new county reasonable notice to meet him or her on a certain day at the county seat of the old county, or at some other convenient place, to settle upon and fix the amount which the new county shall pay. In doing so, they shall not charge either county with any share of debts arising from the erection of public buildings, or out of the construction of roads or bridges which shall be and remain, after the division, within the limits of the other county, and of the other debts they shall apportion to each county such a share of the indebtedness as may be just and equitable, taking into consideration the population of such portion of territory so forming a part of the said counties while so united, and also the relative advantages, derived from the old county organization. [2009 c 549 § 4004; 1963 c 4 § 36.09.020. Prior: (i) Code 1881 § 2658; 1863 p 538 § 4; 1854 p 330 § 2; RRS § 3987. FORMER PART OF SECTION: 1909 c 79 § 1, part; Code 1881 § 2662, part; RRS § 3991, part. Now codified in RCW 36.09.050.]

36.09.035 Procedure to settle amount charged new county—Disagreement between auditors—Determination by third person. In case the two auditors cannot agree, they shall call a third person, not a citizen of either county, or in any other manner interested, whose decision shall be binding. In case they cannot agree upon such third person, they shall each name one and decide by lot which it shall be. [1963 c 4 § 36.09.035. Prior: Code 1881 § 2659; 1863 p 539 § 5; 1854 p 330 § 3; RRS § 3988.]

36.09.040 Payment of indebtedness—Transfer of property. The auditor of the county indebted upon such decision shall give to the auditor of the other county his or her order upon the treasurer for the amount to be paid out of the proper fund, as in other cases, and also make out a transfer of such property as shall be assigned to either county. [2009 c 549 § 4005; 1963 c 4 § 36.09.040. Prior: Code 1881 § 2660; 1863 p 539 § 6; 1854 p 330 § 4; RRS § 3989.]

36.09.050 Collection of taxes levied—Apportionment. When a county is divided or the boundary is altered, all taxes levied before the division was made or boundaries changed, must be collected by the officers of the county in which the territory was situated before the division or change. And the auditor or auditors of the county or counties so divided or having boundaries changed, shall apportion the amount of the real property taxes so collected after division or change of boundary to the old county or counties and the new county or counties, in the ratio of the assessed value of such property situated in the territory of each county or counties respectively, and the old county that may have been divided or whose boundaries may have been changed, shall retain all of the personal property taxes on the said tax rolls, as compensation for cost of collection of the entire taxes: PROVIDED, That in such accounting neither county shall be charged with any debt or liability then existing incurred in the purchase of any county property, or in the purchase or construction of any county buildings then in use or under construction, which shall fall within and be retained by the county: PROVIDED FURTHER, That this shall not be con-

strued to affect the rights of creditors: AND PROVIDED FURTHER, That any such county property or buildings shall be the property of and owned by the county wherein the same is situated. In case the auditors of the interested counties are not able to agree upon the proportion to be awarded to each county, the same shall be determined by the judge of the superior court of the district in which all of the interested counties are situated, if they be in one district, and have one common judge, and if not, by the judges sitting en banc of the superior courts of the counties involved. Said auditors shall make said apportionment within sixty days after the creation of any new county or the changing of boundaries of any old county, and if they do not, within said time, agree upon said apportionment, thereafter either or any county affected may petition the judge or judges of any court given jurisdiction by this section, and upon ten days' notice to any other county affected, the same may be brought on for hearing and summarily disposed of by said judge or judges, after allowing each side an opportunity to be heard. [1963 c 4 § 36.09.050. Prior: 1909 c 79 § 1; Code 1881 § 2662; RRS § 3991. Formerly RCW 36.09.020, part, 36.09.030 and 36.09.050.]

Chapter 36.12 RCW REMOVAL OF COUNTY SEATS

Sections

36.12.010	Petition for removal—Financial impact statement.
36.12.020	Requisites of petition—Submission to electors.
36.12.030	Notice of election—Election, how held.
36.12.040	Manner of voting.
36.12.050	Vote required—Notice of result.
36.12.060	Time of removal.
36.12.070	Notice to county clerk and secretary of state.
36.12.080	Failure of election—Limitation on subsequent removal election.
36.12.090	Limitation on successive removal elections.

County seats

*location and removal: State Constitution Art. 11 § 2.
not to be changed by special act: State Constitution Art. 2 § 28(18).*

36.12.010 Petition for removal—Financial impact statement. Whenever the inhabitants of any county desire to remove the county seat of the county from the place where it is fixed by law or otherwise, they shall present a petition to the board of county commissioners of their county praying such removal, and that an election be held to determine to what place such removal must be made. The petition shall set forth the names of the towns or cities to which the county seat is proposed to be removed and shall be filed at least six months before the election. The county shall issue a statement analyzing the financial impact of the proposed removal at least sixty days before the election. The financial impact statement shall include, but not be limited to, an analysis of the: (1) Probable costs to the county government involved in relocating the county seat; (2) probable costs to county employees as a result of relocating the county seat; and (3) probable impact on the city or town from which the county seat is proposed to be removed, and on the city or town where the county seat is proposed to be relocated. [1985 c 145 § 1; 1963 c 4 § 36.12.010. Prior: 1890 p 318 § 1; RRS § 3998.]

36.12.020 Requisites of petition—Submission to electors. If the petition is signed by qualified voters of the county

equal in number to at least one-third of all the votes cast in the county at the last preceding general election the board must, at the next general election of county officers, submit the question of removal to the electors of the county. [1963 c 4 § 36.12.020. Prior: 1890 p 318 § 2; RRS § 3999.]

36.12.030 Notice of election—Election, how held. Notice of the election, clearly stating the object, shall be given, and the election must be held and conducted, and the returns made, in all respects in the manner prescribed by law in regard to elections for county officers. [1963 c 4 § 36.12.030. Prior: 1890 p 318 § 3; RRS § 4000.]

36.12.040 Manner of voting. In voting on the question, each voter must vote for or against the place named in the petition. [1963 c 4 § 36.12.040. Prior: 1890 p 318 § 4; RRS § 4001.]

36.12.050 Vote required—Notice of result. When the returns have been received and compared, and the results ascertained by the board, if three-fifths of the legal votes cast by those voting on the proposition are in favor of any particular place the proposition has been adopted. The board of county commissioners must give notice of the result by posting notices thereof in all the election precincts in the county. [1963 c 4 § 36.12.050. Prior: 1890 p 318 § 5; RRS § 4002.]

36.12.060 Time of removal. In the notice provided for in RCW 36.12.050, the place selected to be the county seat of the county must be so declared upon a day not more than ninety days after the election. After the day named the place chosen is the seat of the county; and the several county officers, whose offices are required by law to be kept at the county seat, shall remove their respective offices, files, records, office fixtures, furniture, and all public property pertaining to their respective offices to the new county seat. [1963 c 4 § 36.12.060. Prior: 1890 p 318 § 6; RRS § 4003.]

36.12.070 Notice to county clerk and secretary of state. Whenever any election has been held for change of county seat, the notice given by the board of county commissioners showing the result thereof must be deposited in the office of the county clerk, and a certified copy thereof transmitted to the secretary of state. [1963 c 4 § 36.12.070. Prior: 1890 p 319 § 7; RRS § 4004.]

36.12.080 Failure of election—Limitation on subsequent removal election. When an election has been held and no one place receives three-fifths of all the votes cast, the former county seat shall remain the county seat, and no second election may be held within eight years thereafter. [1985 c 145 § 2; 1963 c 4 § 36.12.080. Prior: 1890 p 319 § 8; RRS § 4005.]

36.12.090 Limitation on successive removal elections. When the county seat of a county has been removed by a popular vote of the people of the county, it may be again removed, from time to time, in the manner provided by this chapter, but no two elections to effect such removal may be held within eight years. [1985 c 145 § 3; 1963 c 4 § 36.12.090. Prior: 1890 p 319 § 9; RRS § 4006.]

Chapter 36.13 RCW
CLASSIFICATION OF COUNTIES

Sections

36.13.020	County census authorized.
36.13.030	County census authorized—Personnel—How conducted.
36.13.040	County census authorized—Information to be given enumerators.
36.13.050	County census authorized—Classification to be based on census.
36.13.070	County census authorized—Penalty.
36.13.100	Determination of population.

Combined city and county municipal corporations: State Constitution Art. 11 § 16 (Amendment 58).

36.13.020 County census authorized. The legislative authority of any county may order a county census to be taken of all the inhabitants of the county. The expense of such census enumeration shall be paid from the county current expense fund. [1991 c 363 § 44; 1977 ex.s. c 110 § 6; 1963 c 4 § 36.13.020. Prior: (i) 1923 c 177 § 1; RRS § 4200-6. (ii) 1923 c 177 § 5; RRS § 4200-10.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.13.030 County census authorized—Personnel—How conducted. For the purpose of making a county census, the legislative authority of any county may employ one or more suitable persons. The census shall be conducted in accordance with standard census definitions and procedures as specified by the office of financial management. [1979 c 151 § 37; 1977 ex.s. c 110 § 1; 1963 c 4 § 36.13.030. Prior: 1923 c 177 § 2; RRS § 4200-7.]

Population determinations, office of financial management: Chapter 43.62 RCW.

36.13.040 County census authorized—Information to be given enumerators. All persons resident in the county, having knowledge of the facts, shall give the information required herein to any duly authorized census enumerator when requested by him or her. [2009 c 549 § 4006; 1963 c 4 § 36.13.040. Prior: 1923 c 177 § 4; RRS § 4200-9.]

36.13.050 County census authorized—Classification to be based on census. The board of county commissioners shall determine the population of the county based upon such special county census. Based upon such census, it shall enter an order declaring and fixing the population of the county in accordance with such determination, and from and after the entry of the order the county shall be considered and classified for all purposes according to the population thus determined. [1963 c 4 § 36.13.050. Prior: 1923 c 177 § 3; RRS § 4200-8.]

36.13.070 County census authorized—Penalty. Any person violating any of the provisions of RCW 36.13.020, 36.13.030, 36.13.040, and 36.13.050, or any officer or enumerator making, assisting, or permitting any duplication of names or making, permitting, or assisting in the enumeration of any fictitious names or persons in taking the census, shall be guilty of a gross misdemeanor. [1963 c 4 § 36.13.070. Prior: 1923 c 177 § 6; RRS § 4200-11.]

(2014 Ed.)

36.13.100 Determination of population. Whenever any provision of law refers to the population of a county for purposes of distributing funds or for any other purpose, the population of the respective counties shall be determined by the most recent census, population estimate by the office of financial management, or special county census as certified by the office of financial management. [1991 c 363 § 45; 1963 c 4 § 36.13.100. Prior: 1949 c 92 § 1; Rem. Supp. 1949 § 4200-6a.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Population determinations, office of financial management: Chapter 43.62 RCW.

Chapter 36.16 RCW
COUNTY OFFICERS—GENERAL

Sections

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 Moneys, use by, of official, a felony: State Constitution Art. 11 § 14.
 Moneys to be deposited with treasurer: State Constitution Art. 11 § 15.
 Oaths, who may administer: RCW 5.28.010.
 Officers, elections, duties, terms, compensation: State Constitution Art. 11 § 5 (Amendment 57).
 Payroll deductions for: RCW 41.04.020 through 41.04.036.
 Probation counselors: Chapter 13.04 RCW.
 Probation officer, family court, officer's duties: RCW 26.12.070.
 Property tax advisor: RCW 84.48.140.
 Public bodies, meetings: Chapter 42.30 RCW.
 Public hospital district superintendent: Chapter 70.44 RCW.
 Public officers, terms when vacancies filled: RCW 42.12.030.
 P.U.D. taxes certified to and collected by county officials: RCW 54.16.080.
 Recall of: State Constitution Art. 1 §§ 33, 34 (Amendment 8).
 Registration of public officer, how effectuated: RCW 42.12.020.
 Retirement systems, retention of rights: Chapter 41.04 RCW.
 Review board, county officers to assist: RCW 35.13.173.
 Salaried officers not to receive witness fees: RCW 42.16.020, 42.16.030.

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 Social security, federal, coverage includes county employees: Chapter 41.48 RCW.
 Special commissioner (flood control by counties jointly): RCW 86.13.060.
 State board of health measures, officers to enforce: RCW 43.20.050.
 Supervisor of elections, duties relating to
 hospital district elections: Chapter 70.44 RCW.
 P.U.D. elections: RCW 54.04.060.
 Support of dependent children, officials to charge no fees in connection with: RCW 74.20.300.
 Surveyor to determine town boundaries: RCW 35.27.040.
 Unclaimed money and property in hands of public authority, disposition: RCW 63.29.130.
 Vacancies in county offices, how filled: State Constitution Art. 11 § 6 (Amendment 52).

36.16.010 Time of election. The election of county and precinct officers shall be held on the Tuesday next following the first Monday in November, 1922; and every four years thereafter on the Tuesday next following the first Monday in November, and all such elective county and precinct officers shall after midnight, June 11, 1919, be elected at the time herein specified: PROVIDED, That if a vacancy occur during the first biennium after any such election, an election to fill such vacancy for the unexpired term shall be held at the next succeeding general election. [1963 c 4 § 36.16.010. Prior: 1919 c 175 § 2; RRS § 4030.]

36.16.020 Term of county and precinct officers. The term of office of all county and precinct officers shall be four years and until their successors are elected and qualified and assume office in accordance with *RCW 29.04.170: PROVIDED, That this section and RCW 36.16.010 shall not apply to county commissioners. [1979 ex.s. c 126 § 26; 1963 c 4 § 36.16.020. Prior: 1959 c 216 § 2; 1919 c 175 § 1; 1886 p 101 § 2; Code 1881 § 3153; 1877 p 330 § 2; 1871 p 35 § 3; 1867 p 7 § 4; RRS § 4029.]

*Reviser's note: RCW 29.04.170 was recodified as RCW 29A.20.040 pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.20.040 was subsequently recodified as RCW 29A.60.280 pursuant to 2013 c 11 § 93.

Purpose—1979 ex.s. c 126: See RCW 29A.60.280(1).

36.16.030 Elective county officers enumerated. Except as provided elsewhere in this section, in every county there shall be elected from among the qualified voters of the county a county assessor, a county auditor, a county clerk, a county coroner, three county commissioners, a county prosecuting attorney, a county sheriff and a county treasurer, except that in each county with a population of less than forty thousand no coroner shall be elected and the prosecuting attorney shall be ex officio coroner. Whenever the population of a county increases to forty thousand or more, the prosecuting attorney shall continue as ex officio coroner until a coroner is elected, at the next general election at which the office of prosecuting attorney normally would be elected, and assumes office as provided in *RCW 29.04.170. In any county where the population has once attained forty thousand people and a current coroner is in office and a subsequent census indicates less than forty thousand people, the county legislative authority may maintain the office of coroner by resolution or ordinance. If the county legislative authority has not passed a resolution or enacted an ordinance to maintain

the office of coroner, the elected coroner shall remain in office for the remainder of the term for which he or she was elected, but no coroner shall be elected at the next election at which that office would otherwise be filled and the prosecuting attorney shall be the ex officio coroner. In a county with a population of two hundred fifty thousand or more, the county legislative authority may replace the office of coroner with a medical examiner system and appoint a medical examiner as specified in RCW 36.24.190. A noncharter county may have five county commissioners as provided in RCW 36.32.010 and 36.32.055 through 36.32.0558. [1996 c 108 § 1; 1991 c 363 §§ 46, 47; 1990 c 252 § 8; 1963 c 4 § 36.16.030. Prior: 1955 c 157 § 5; prior: (i) Code 1881 § 2707; 1869 p 310 §§ 1-3; 1863 p 549 §§ 1-3; 1854 p 424 §§ 1-3; RRS § 4083. (ii) Code 1881 § 2738; 1863 p 552 § 1; 1854 p 426 § 1; RRS § 4106. (iii) 1891 c 5 § 1; RRS § 4127. (iv) 1890 p 478 § 1; 1886 p 164 § 1; 1883 p 39 § 1; Code 1881 § 2752; 1869 p 402 § 1; 1854 p 428 § 1; RRS § 4140. (v) 1943 c 139 § 1; Code 1881 § 2766; 1863 p 557 § 1; 1854 p 434 § 1; Rem. Supp. 1949 § 4155. (vi) Code 1881 § 2775, part; 1863 p 559 § 1, part; 1854 p 436 § 1, part; RRS § 4176, part. (vii) 1933 c 136 § 2; 1925 ex.s. c 148 § 2; RRS § 4200-2a. (viii) 1937 c 197 § 1; 1933 c 136 § 3; 1925 ex.s. c 148 § 3; RRS § 4200-3a. (ix) 1937 c 197 § 2; 1933 c 136 § 4; 1925 ex.s. c 148 § 4; RRS § 4200-4a. (x) 1927 c 37 § 1; 1890 p 304 § 2; RRS § 4205-1.]

***Reviser's note:** RCW 29.04.170 was recodified as RCW 29A.20.040 pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.20.040 was subsequently recodified as RCW 29A.60.280 pursuant to 2013 c 11 § 93.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Additional notes found at www.leg.wa.gov

36.16.032 Offices of auditor and clerk may be combined in counties with populations of less than five thousand—Salary. The office of county auditor may be combined with the office of county clerk in each county with a population of less than five thousand by unanimous resolution of the county legislative authority passed thirty days or more prior to the first day of filing for the primary election for county offices. The salary of such office of county clerk combined with the office of county auditor, and the salary of the office of county auditor that is not combined with the office of county clerk, shall be not less than ten thousand three hundred dollars. The county legislative authority of such county is authorized to increase or decrease the salary of such office: PROVIDED, That the legislative authority of the county shall not reduce the salary of any official below the amount which such official was receiving on January 1, 1973. [1991 c 363 § 48; 1973 1st ex.s. c 88 § 1; 1972 ex.s. c 97 § 1; 1967 ex.s. c 77 § 1; 1963 c 164 § 2; 1963 c 4 § 36.16.032. Prior: 1957 c 219 § 4.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.16.040 Oath of office. Every person elected to county office shall before he or she enters upon the duties of his or her office take and subscribe an oath or affirmation that he or she will faithfully and impartially discharge the duties of his or her office to the best of his or her ability. This oath, or affirmation, shall be administered and certified by an officer authorized to administer oaths, without charge therefor.

[2009 c 549 § 4007; 1963 c 4 § 36.16.040. Prior: 1955 c 157 § 6; prior: (i) Code 1881 § 2666; 1869 p 303 § 4; 1863 p 541 § 4; 1854 p 420 § 4; RRS § 4045. (ii) Code 1881 § 2708, part; 1869 p 310 § 4, part; 1863 p 549 § 4, part; 1854 p 424 § 4, part; RRS § 4084, part. (iii) 1943 c 249 § 1; Code 1881 § 2739; 1863 p 553 § 2, part; 1854 p 426 § 2; Rem. Supp. 1943 § 4107. (iv) 1886 p 61 § 4, part; 1883 p 73 § 9, part; Code 1881 § 2163, part; 1877 p 246 § 5, part; 1863 p 408 § 3, part; 1860 p 334 § 3, part; 1858 p 12 § 3, part; 1854 p 417 § 3, part; RRS § 4129, part. (v) 1897 c 71 § 44; 1893 c 124 § 46; Code 1881 § 2753; 1854 p 428 § 2; RRS § 4141. (vi) Code 1881 § 2774; 1863 p 558 § 9; 1854 p 435 § 9; RRS § 4156. (vii) Code 1881 § 2775, part; 1863 p 559 § 1, part; 1854 p 436 § 1, part; RRS § 4176, part. (viii) Code 1881 § 2096; 1869 p 374 § 18; RRS § 4231. (ix) 1909 c 97 p 280 § 1, part; 1903 c 104 § 13, part; 1899 c 142 § 5, part; 1897 c 118 § 30, part; 1890 p 355 § 10, part; Code 1881 § 3170, part; RRS § 4767, part. (x) 1925 ex.s. c 130 § 55; 1891 c 140 § 46; 1890 p 548 § 50; RRS § 11138.]

Examiner of titles, oath of: RCW 65.12.090.

36.16.050 Official bonds. Every county official before he or she enters upon the duties of his or her office shall furnish a bond conditioned that he or she will faithfully perform the duties of his or her office and account for and pay over all money which may come into his or her hands by virtue of his or her office, and that he or she, or his or her executors or administrators, will deliver to his or her successor safe and undefaced all books, records, papers, seals, equipment, and furniture belonging to his or her office. Bonds of elective county officers shall be as follows:

(1) Assessor: Amount to be fixed and sureties to be approved by proper county legislative authority;

(2) Auditor: Amount to be fixed at not less than ten thousand dollars and sureties to be approved by the proper county legislative authority;

(3) Clerk: Amount to be fixed in a penal sum not less than double the amount of money liable to come into his or her hands and sureties to be approved by the judge or a majority of the judges presiding over the court of which he or she is clerk: PROVIDED, That the maximum bond fixed for the clerk shall not exceed in amount that required for the treasurer in the same county;

(4) Coroner: Amount to be fixed at not less than five thousand dollars with sureties to be approved by the proper county legislative authority;

(5) Members of the proper county legislative authority: Sureties to be approved by the county clerk and the amounts to be:

(a) In each county with a population of one hundred twenty-five thousand or more, twenty-five thousand dollars;

(b) In each county with a population of from seventy thousand to less than one hundred twenty-five thousand, twenty-two thousand five hundred dollars;

(c) In each county with a population of from forty thousand to less than seventy thousand, twenty thousand dollars;

(d) In each county with a population of from eighteen thousand to less than forty thousand, fifteen thousand dollars;

(e) In each county with a population of from twelve thousand to less than eighteen thousand, ten thousand dollars;

(f) In each county with a population of from eight thousand to less than twelve thousand, seven thousand five hundred dollars;

(g) In all other counties, five thousand dollars;

(6) Prosecuting attorney: In the amount of five thousand dollars with sureties to be approved by the proper county legislative authority;

(7) Sheriff: Amount to be fixed and bond approved by the proper county legislative authority at not less than five thousand nor more than fifty thousand dollars; surety to be a surety company authorized to do business in this state;

(8) Treasurer: Sureties to be approved by the proper county legislative authority and the amounts to be fixed by the proper county legislative authority at double the amount liable to come into the treasurer's hands during his or her term, the maximum amount of the bond, however, not to exceed:

(a) In each county with a population of two hundred ten thousand or more, two hundred fifty thousand dollars;

(b) In each county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand, two hundred thousand dollars;

(c) In each county with a population of from eighteen thousand to less than one hundred twenty-five thousand, one hundred fifty thousand dollars;

(d) In all other counties, one hundred thousand dollars.

The treasurer's bond shall be conditioned that all moneys received by him or her for the use of the county shall be paid as the proper county legislative authority shall from time to time direct, except where special provision is made by law for the payment of such moneys, by order of any court, or otherwise, and for the faithful discharge of his or her duties.

Bonds for other than elective officials, if deemed necessary by the proper county legislative authority, shall be in such amount and form as such legislative authority shall determine.

In the approval of official bonds, the chair may act for the county legislative authority if it is not in session. [2010 1st sp.s. c 26 § 5; 1991 c 363 § 49; 1971 c 71 § 1; 1969 ex.s. c 176 § 91; 1963 c 4 § 36.16.050. Prior: 1955 c 157 § 7; prior: (i) 1895 c 53 § 1; RRS § 70. (ii) 1895 c 53 § 2, part; RRS § 71, part. (iii) 1921 c 132 § 1, part; 1893 c 75 § 7, part; RRS § 4046, part. (iv) Code 1881 § 2708, part; 1869 p 310 § 4, part; 1863 p 549 § 4, part; 1854 p 424 § 4, part; RRS § 4084, part. (v) 1943 c 249 § 1, part; Code 1881 § 2739, part; 1863 p 553 § 2, part; 1854 p 426 § 2, part; Rem. Supp. 1943 § 4107, part. (vi) 1886 p 61 § 4, part; 1883 p 73 § 9, part; Code 1881 § 2163, part; 1877 p 246 § 5, part; 1863 p 408 § 3, part; 1860 p 334 § 3, part; 1858 p 12 § 3, part; 1854 p 417 § 3, part; RRS 4129, part. (vii) 1897 c 71 § 44, part; 1893 p 124 § 46, part; Code 1881 § 2753, part; 1854 p 428 § 2, part; RRS § 4141, part. (viii) 1943 c 139 § 1, part; Code 1881 § 2766, part; 1863 p 557 § 1, part; 1854 p 434 § 1, part; Rem. Supp. 1943 § 4155, part. (ix) Code 1881 § 2775, part; 1863 p 559 § 1, part; 1854 p 436 § 1, part; RRS § 4176, part. (x) 1909 c 97 p 280 § 1, part; 1903 c 104 § 13, part; 1899 c 142 § 5, part; 1897 c 118 § 30, part; 1890 p 355 § 10, part; Code 1881 § 3170, part; RRS § 4767, part. (xi) 1890 p 35 § 5, part; RRS § 9934, part. (xii) 1925 ex.s. c 130 § 55, part; 1891 c 140 § 46, part; 1890 p 548 § 50, part; RRS § 11138, part.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Auditor as registrar of titles, bond for: RCW 65.12.055.

Examiner of titles, bond: RCW 65.12.090.

Public officers, official bonds

Code of 1881, county application: RCW 42.08.010 through 42.08.050.

1890 act, county application: RCW 42.08.060 through 42.08.170.

36.16.060 Place of filing oaths and bonds. Every county officer, before entering upon the duties of his or her office, shall file his or her oath of office in the office of the county auditor and his or her official bond in the office of the county clerk: PROVIDED, That the official bond of the county clerk, after first being recorded by the county auditor, shall be filed in the office of the county treasurer.

Oaths and bonds of deputies shall be filed in the offices in which the oaths and bonds of their principals are required to be filed. [2009 c 549 § 4008; 1963 c 4 § 36.16.060. Prior: 1955 c 157 § 8; prior: (i) 1895 c 53 § 2, part; RRS § 71, part. (ii) 1890 p 35 § 5, part; RRS § 9934, part.]

36.16.070 Deputies and employees. In all cases where the duties of any county office are greater than can be performed by the person elected to fill it, the officer may employ deputies and other necessary employees with the consent of the board of county commissioners. The board shall fix their compensation and shall require what deputies shall give bond and the amount of bond required from each. The sureties on deputies' bonds must be approved by the board and the premium therefor is a county expense.

A deputy may perform any act which his or her principal is authorized to perform. The officer appointing a deputy or other employee shall be responsible for the acts of his or her appointees upon his or her official bond and may revoke each appointment at pleasure. [2009 c 549 § 4009; 1969 ex.s. c 176 § 92; 1963 c 4 § 36.16.070. Prior: 1959 c 216 § 3; 1957 c 219 § 2; prior: (i) Code 1881 § 2716; 1869 p 312 § 10; 1863 p 550 § 7; 1854 p 425 § 7; RRS § 4093. (ii) Code 1881 § 2741; 1863 p 553 § 4; 1854 p 427 § 4; RRS § 4108. (iii) Code 1881 § 2767, part; 1871 p 110 § 1, part; 1863 p 557 § 2, part; 1854 p 434 § 2, part; RRS § 4160, part. (iv) 1905 c 60 § 1; RRS § 4177. (v) 1905 c 60 § 2; RRS § 4178. (vi) 1905 c 60 § 3; RRS § 4179. (vii) 1949 c 200 § 1, part; 1945 c 87 § 1, part; 1937 c 197 § 3, part; 1925 ex.s. c 148 § 6, part; Rem. Supp. 1949 § 4200-5a, part. (viii) 1943 c 260 § 1; Rem. Supp. 1943 § 4200-5b.]

County clerk, deputies of: Chapter 2.32 RCW.

36.16.087 Deputies and employees—County treasurer—Prior deeds validated. In all cases in which the county treasurer of any county in the state of Washington shall have executed a tax deed or deeds prior to February 21, 1903, either to his or her county or to any private person or persons or corporation whomsoever, said deed or deeds shall not be deemed invalid by reason of the county treasurer who executed the same not having affixed a seal of office to the same, or having affixed a seal not an official seal; nor shall said deed or deeds be deemed invalid by reason of the fact that at the date of the execution of said deed or deeds there was in the state of Washington no statute providing for an official seal for the office of county treasurer. [2009 c 549 §

4010; 1963 c 4 § 36.16.087. Prior: 1903 c 15 § 2; RRS § 4126. Formerly RCW 36.16.080.]

36.16.090 Office space. The boards of county commissioners of the several counties of the state shall provide a suitable furnished office for each of the county officers in their respective courthouses and may provide additional offices elsewhere for the officers at the board's discretion. [2009 c 105 § 1; 1963 c 4 § 36.16.090. Prior: 1893 c 82 § 1; Code 1881 § 2677; 1869 p 306 § 15; 1854 p 422 § 15; RRS § 4032. SLC-RO-14.]

36.16.100 Offices to be open certain days and hours. All county and precinct offices shall be kept open for the transaction of business during such days and hours as the board of county commissioners shall by resolution prescribe. [1963 c 4 § 36.16.100. Prior: 1955 ex.s. c 9 § 2; prior: 1951 c 100 § 1; 1941 c 113 § 1, part; Rem. Supp. 1941 § 9963-1, part.]

36.16.110 Vacancies in office. (1) The county legislative authority in each county shall, at its next regular or special meeting after being appraised of any vacancy in any county, township, precinct, or road district office of the county, fill the vacancy by the appointment of some person qualified to hold such office, and the officers thus appointed shall hold office until the next general election, and until their successors are elected and qualified.

(2) If a vacancy occurs in a partisan county office after the general election in a year that the position appears on the ballot and before the start of the next term, the term of the successor who is of the same party as the incumbent may commence once he or she has qualified as defined in RCW 29A.04.133 and shall continue through the term for which he or she was elected.

(3) If a vacancy occurs in a nonpartisan county board of commissioners elective office or nonpartisan county council elective office, the person appointed to fill the vacancy must be from the same legislative district, county, or county commissioner or council district as the county elective officer whose office was vacated, and must be one of three persons who must be nominated by the nonpartisan executive or nonpartisan chair of the board of commissioners for the county. In case a majority of the members of the county legislative authority do not agree upon the appointment within sixty days after the vacancy occurs, the governor shall within thirty days thereafter, and from the list of nominees provided for in this section, appoint someone to fill the vacancy.

(4) If a vacancy occurs in a nonpartisan county board of commissioners elective office or nonpartisan county council elective office after the general election in a year that the position appears on the ballot and before the start of the next term, the term of the successor may commence once he or she has qualified as defined in RCW 29A.04.133 and shall continue through the term for which he or she was elected. [2010 c 207 § 2; 2003 c 238 § 1; 1963 c 4 § 36.16.110. Prior: 1927 c 163 § 1; RRS § 4059; prior: Code 1881 § 2689; 1867 p 57 § 28.]

Findings—Intent—2010 c 207: "The legislature finds that a number of counties have moved to designate certain countywide elective offices as nonpartisan. Because the creation of these nonpartisan offices is a relatively new (2014 Ed.)

occurrence, there is not a mechanism in the state Constitution or statutory laws to fill vacancies in these offices. The legislature also finds that many local governments have not created a mechanism for expeditiously filling the vacancies. The legislature further finds the following: Political representation is an important and fundamental aspect of elective government; vacancies in elective office effectively disenfranchise portions of the state's citizenry; vacancies in elective office can hamper or completely stall the efficient administration of all aspects of governance, including the appointment of inferior officeholders responsible for the administration of health, public safety, and a myriad of social services; and that all of these governing functions represent public policy considerations of broad concern. Therefore, it is the responsibility and intent of the legislature to provide a mechanism for filling vacancies in these offices that is in keeping with the state Constitution and current statute." [2010 c 207 § 1.]

Additional notes found at www.leg.wa.gov

36.16.115 Vacancy in partisan elective office—Appointment of acting official. Where a vacancy occurs in any partisan county elective office, other than a member of the county legislative authority, the county legislative authority may appoint an employee that was serving as a deputy or assistant in such office at the time the vacancy occurred as an acting official to perform all necessary duties to continue normal office operations. The acting official will serve until a successor is either elected or appointed as required by law. This section does not apply to any vacancy occurring in a charter county which has charter provisions inconsistent with this section. [1981 c 180 § 3.]

Reviser's note: 1981 c 180 § 3 directed that this section be added to chapter 29.18 RCW. Since this placement appears inappropriate, this section has been codified as part of chapter 36.16 RCW.

Election of successor: RCW 42.12.040.

Additional notes found at www.leg.wa.gov

36.16.120 Officers must complete business. All county officers shall complete the business of their offices, to the time of the expiration of their respective terms, and in case any officer, at the close of his or her term, leaves to his or her successor official labor to be performed, which it was his or her duty to perform, he or she shall be liable to his or her successor for the full value of such services. [2009 c 549 § 4011; 1963 c 4 § 36.16.120. Prior: 1890 p 315 § 43; RRS § 4031.]

36.16.125 Elected officials—Abandonment of responsibilities—Declaratory judgment—Compensation denied during abandonment. The county legislative authority of a county may cause an action to be filed in the superior court of that county for a declaratory judgment finding that a county elected official has abandoned his or her responsibilities by being absent from the county and failing to perform his or her official duties for a period of at least thirty consecutive days, but not including: (1) Absences approved by the county legislative authority; or (2) absences arising from leave taken for legitimate medical or disability purposes. If such a declaratory judgment is issued, the county official is no longer eligible to receive compensation from the date the declaratory judgment is issued until the court issues a subsequent declaratory judgment finding that the county official has commenced performing his or her responsibilities. [1999 c 71 § 1.]

36.16.130 Group false arrest insurance for law enforcement personnel. Any county may contract with an

insurance company authorized to do business in this state to provide group false arrest insurance for its law enforcement personnel and pursuant thereto may use such portion of its revenues to pay the premiums therefor as the county may determine. [1963 c 127 § 2.]

36.16.136 Liability insurance for officers and employees. The board of county commissioners of each county may purchase liability insurance with such limits as they may deem reasonable for the purpose of protecting their officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1969 ex.s. c 59 § 1.]

36.16.138 Liability insurance for officers and employees of municipal corporations and political subdivisions authorized. Any board of commissioners, council, or board of directors or other governing board of any county, city, town, school district, port district, public utility district, water-sewer district, irrigation district, or other municipal corporation or political subdivision is authorized to purchase insurance to protect and hold personally harmless any of its commissioners, councilmembers, directors, or other governing board members, and any of its other officers, employees, and agents from any action, claim, or proceeding instituted against the foregoing individuals arising out of the performance, purported performance, or failure of performance, in good faith of duties for, or employment with, such institutions and to hold these individuals harmless from any expenses connected with the defense, settlement, or monetary judgments from such actions, claims, or proceedings. The purchase of such insurance for any of the foregoing individuals and the policy limits shall be discretionary with the municipal corporation or political subdivision, and such insurance shall not be considered to be compensation for these individuals.

The provisions of this section are cumulative and in addition to any other provision of law authorizing any municipal corporation or political subdivision to purchase liability insurance. [1999 c 153 § 43; 1975 c 16 § 1.]

Liability insurance for officers and employees authorized: RCW 28A.400.360, 28B.10.660, 35.21.205, 52.12.071, 53.08.205, 54.16.095, 57.08.105, and 87.03.162.

Additional notes found at www.leg.wa.gov

36.16.139 Insurance and workers' compensation for offenders performing community restitution. The legislative authority of a county may purchase liability insurance in an amount it deems reasonable to protect the county, its officers, and employees against liability for the wrongful acts of offenders or injury or damage incurred by offenders in the course of community restitution imposed by court order or pursuant to RCW 13.40.080. The legislative authority of a county may elect to treat offenders as employees and/or workers under Title 51 RCW. [2002 c 175 § 32; 1984 c 24 § 3.]

Workers' compensation coverage of offenders performing community restitution: RCW 51.12.045.

Additional notes found at www.leg.wa.gov

36.16.140 Public auction sales, where held. Public auction sales of property conducted by or for the county shall be held at such places as the county legislative authority may direct. [1991 c 363 § 50; 1991 c 245 § 3; 1965 ex.s. c 23 § 6.]

Reviser's note: This section was amended by 1991 c 245 § 3 and by 1991 c 363 § 50, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Building permit—County must require payroll estimate under industrial insurance act: RCW 51.12.070.

Public lands—Advertisement—Hours: RCW 79.11.165.

Sales of county property, where held: RCW 36.34.080.

Tax sales, where held: RCW 84.64.080, 36.35.120.

Chapter 36.17 RCW

SALARIES OF COUNTY OFFICERS

Sections

- 36.17.010 Salary full compensation—Compensation denied, when.
- 36.17.020 Schedule of salaries.
- 36.17.024 County commissioner and councilmember salary commissions.
- 36.17.031 Reimbursement for travel allowances and allowances in lieu of actual expenses.
- 36.17.040 Payment of salaries of officers and employees.
- 36.17.042 Weekly or biweekly pay periods.
- 36.17.045 Deductions for contributions, payments, and dues authorized.
- 36.17.050 Salary withheld, when authorized.
- 36.17.055 Salary adjustment for county legislative authority office—Ratification and validation of preelection action.
- 36.17.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Cemetery and morgue employees, salary of: RCW 68.52.020.

Compensation of county officials: State Constitution Art. 11 § 5 (Amendment 57).

County commissioners, compensation and/or expenses determining towns boundaries: RCW 35.27.060.

flood control by counties jointly, duties: RCW 86.13.060.

metropolitan councilmember: RCW 35.58.160.

pest exterminator: RCW 17.12.060.

Department of personnel to study salaries of elective county officials: RCW 43.03.028.

36.17.010 Salary full compensation—Compensation denied, when. The county officers of the counties of this state shall receive a salary for the services required of them by law, or by virtue of their office, which salary shall be full compensation for all services of every kind and description rendered by them. However, if the superior court issues a declaratory judgment under RCW 36.16.125 finding that a county officer has abandoned his or her duties, the county officer may not be paid compensation. [1999 c 71 § 2; 1991 c 363 § 51; 1963 c 4 § 36.17.010. Prior: 1890 p 312 § 32; RRS § 4210.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.17.020 Schedule of salaries. The county legislative authority of each county or a county commissioner or councilmember salary commission which conforms with RCW 36.17.024 is authorized to establish the salaries of the elected officials of the county. The state and county shall contribute to the costs of the salary of the elected prosecuting attorney as set forth in subsection (11) of this section. The annual salary

of a county elected official shall not be less than the following:

(1) In each county with a population of one million or more: Auditor, clerk, treasurer, sheriff, members of the county legislative authority, and coroner, eighteen thousand dollars; and assessor, nineteen thousand dollars;

(2) In each county with a population of from two hundred ten thousand to less than one million: Auditor, seventeen thousand six hundred dollars; clerk, seventeen thousand six hundred dollars; treasurer, seventeen thousand six hundred dollars; sheriff, nineteen thousand five hundred dollars; assessor, seventeen thousand six hundred dollars; members of the county legislative authority, nineteen thousand five hundred dollars; and coroner, seventeen thousand six hundred dollars;

(3) In each county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand: Auditor, sixteen thousand dollars; clerk, sixteen thousand dollars; treasurer, sixteen thousand dollars; sheriff, seventeen thousand six hundred dollars; assessor, sixteen thousand dollars; members of the county legislative authority, seventeen thousand six hundred dollars; and coroner, sixteen thousand dollars;

(4) In each county with a population of from seventy thousand to less than one hundred twenty-five thousand: Auditor, fourteen thousand nine hundred dollars; clerk, fourteen thousand nine hundred dollars; treasurer, fourteen thousand nine hundred dollars; assessor, fourteen thousand nine hundred dollars; sheriff, fourteen thousand nine hundred dollars; members of the county legislative authority, fourteen thousand nine hundred dollars; and coroner, fourteen thousand nine hundred dollars;

(5) In each county with a population of from forty thousand to less than seventy thousand: Auditor, thirteen thousand eight hundred dollars; clerk, thirteen thousand eight hundred dollars; treasurer, thirteen thousand eight hundred dollars; assessor, thirteen thousand eight hundred dollars; sheriff, thirteen thousand eight hundred dollars; members of the county legislative authority, thirteen thousand eight hundred dollars; and coroner, thirteen thousand eight hundred dollars;

(6) In each county with a population of from eighteen thousand to less than forty thousand: Auditor, twelve thousand one hundred dollars; clerk, twelve thousand one hundred dollars; treasurer, twelve thousand one hundred dollars; sheriff, twelve thousand one hundred dollars; assessor, twelve thousand one hundred dollars; and members of the county legislative authority, eleven thousand dollars;

(7) In each county with a population of from twelve thousand to less than eighteen thousand: Auditor, ten thousand one hundred dollars; clerk, ten thousand one hundred dollars; treasurer, ten thousand one hundred dollars; assessor, ten thousand one hundred dollars; sheriff, eleven thousand two hundred dollars; and members of the county legislative authority, nine thousand four hundred dollars;

(8) In each county with a population of from eight thousand to less than twelve thousand: Auditor, ten thousand one hundred dollars; clerk, ten thousand one hundred dollars; treasurer, ten thousand one hundred dollars; assessor, ten thousand one hundred dollars; sheriff, eleven thousand two

hundred dollars; and members of the county legislative authority, seven thousand dollars;

(9) In each county with a population of from five thousand to less than eight thousand: Auditor, nine thousand one hundred dollars; clerk, nine thousand one hundred dollars; treasurer, nine thousand one hundred dollars; assessor, nine thousand one hundred dollars; sheriff, ten thousand five hundred dollars; and members of the county legislative authority, six thousand five hundred dollars;

(10) In each other county: Auditor, nine thousand one hundred dollars; clerk, nine thousand one hundred dollars; treasurer, nine thousand one hundred dollars; sheriff, ten thousand five hundred dollars; assessor, nine thousand one hundred dollars; and members of the county legislative authority, six thousand five hundred dollars;

(11) The state of Washington shall contribute an amount equal to one-half the salary of a superior court judge towards the salary of the elected prosecuting attorney. Upon receipt of the state contribution, a county shall continue to contribute towards the salary of the elected prosecuting attorney in an amount that equals or exceeds that contributed by the county in 2008. [2008 c 309 § 2; 2001 c 73 § 3; 1994 sp.s. c 4 § 1; 1991 c 363 § 52; 1973 1st ex.s. c 88 § 2; 1971 ex.s. c 237 § 1; 1969 ex.s. c 226 § 1; 1967 ex.s. c 77 § 2; 1967 c 218 § 3; 1963 c 164 § 1; 1963 c 4 § 36.17.020. Prior: 1957 c 219 § 3; prior: (i) 1953 c 264 § 1; 1949 c 200 § 1, part; 1945 c 87 § 1, part; 1937 c 197 § 3, part; 1933 c 136 § 6, part; 1925 ex.s. c 148 § 6, part; 1919 c 168 § 2, part; Rem. Supp. 1949 § 4200-5a, part. (ii) 1921 c 184 § 2; RRS § 4203.]

Findings—2008 c 309: "The legislature finds that an elected county prosecuting attorney functions as both a state officer in pursuing criminal cases on behalf of the state of Washington, and as a county officer who acts as civil counsel for the county, and provides services to school districts and lesser taxing districts by statute.

The elected prosecuting attorney's dual role as a state officer and a county officer is reflected in various provisions of the state Constitution and within state statute.

The legislature finds that the responsibilities and decisions required of the elected prosecuting attorney are essentially the same in every county within Washington state, from a decision to seek the death penalty in an aggravated murder case, to the decision not to prosecute but refer an offender to drug court; from a decision to pursue child rape charges based solely upon the testimony of the child, to a decision to divert juvenile offenders out of the justice system. Therefore, the legislature finds that elected prosecuting attorneys need to exercise the same level of skill and expertise in the least populous county as in the most populous county.

The legislature finds that the salary of the elected county prosecuting attorney should be tied to that of a superior court judge. This furthers the state's interests and responsibilities under the state Constitution, and is consistent with the current practice of several counties in Washington state, the practices of several other states, and the national district attorneys' association national standards." [2008 c 309 § 1.]

Effective date—2008 c 309: "This act takes effect July 1, 2008." [2008 c 309 § 3.]

Findings—Intent—Severability—2001 c 73: See notes following RCW 35.21.015.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Counties with populations of less than five thousand, combined office of auditor and clerk, salary: RCW 36.16.032.

Additional notes found at www.leg.wa.gov

36.17.024 County commissioner and councilmember salary commissions. (1) Salaries for county commissioners and councilmembers may be set by county commissioner and councilmember salary commissions established by ordinance

or resolution of the county legislative authority and in conformity with this section.

(2) Commissions established under subsection (1) of this section shall be known as the (Insert name of county) county citizens' commission on salaries for elected officials. Each commission shall consist of ten members appointed by the county commissioner or executive with the approval of the county legislative authority, or by a majority vote of the county legislative authority if there is no single county commissioner or executive, as provided in this section.

(a) Six of the ten commission members shall be selected by lot by the county auditor from among those registered voters eligible to vote at the time persons are selected for appointment to full terms on the commission under (c) of this subsection. In noncharter counties, the county auditor shall select two commission members living in each commissioner's district. The county auditor shall establish policies and procedures for conducting the selection by lot. The policies and procedures shall include, but not be limited to, those for notifying persons selected and for providing a new selection from a commissioner's district if a person selected from the district declines appointment to the commission or if, following the person's appointment, the person's position on the commission becomes vacant before the end of the person's term of office.

(b) The remaining four of the ten commission members must be residents of the county and shall be appointed by the county commissioner or executive with approval of the county legislative authority, or by a majority vote of the county legislative authority if there is no single county commissioner or executive. The persons selected under this subsection shall have had experience in the field of personnel management. Of these four members, one shall be selected from each of the following four sectors in the county: Business, professional personnel management, legal profession, and organized labor.

(c) If there is a single county commissioner or executive, the county auditor shall forward the names of persons selected under (a) of this subsection to the county commissioner or executive who shall appoint these persons to the commission.

(d) No person may be appointed to more than two terms. No member of the commission may be removed by the county commissioner or executive, or county legislative authority if there is no single county commissioner or executive, during his or her term of office unless for cause of incapacity, incompetence, neglect of duty, or malfeasance in office, or for a disqualifying change of residence.

(e) The members of the commission may not include any officer, official, or employee of the county or any of their immediate family members. "Immediate family member" as used in this subsection means the parents, spouse, siblings, children, or dependent relatives of the officer, official, or employee, whether or not living in the household of the officer, official, or employee.

(f) Upon a vacancy in any position on the commission, a successor shall be selected and appointed to fill the unexpired term. The selection and appointment shall be concluded within thirty days of the date the position becomes vacant and shall be conducted in the same manner as for the original appointment.

(3) Any change in salary shall be filed by the commission with the county auditor and shall become effective and incorporated into the county budget without further action of the county legislative authority or salary commission.

(4) Salary increases established by the commission shall be effective as to county commissioners and all members of the county legislative authority, regardless of their terms of office.

(5) Salary decreases established by the commission shall become effective as to incumbent county commissioners and councilmembers at the commencement of their next subsequent terms of office.

(6) Salary increases and decreases shall be subject to referendum petition by the people of the county in the same manner as a county ordinance upon filing of such petition with the county auditor within thirty days after filing of the salary schedule. In the event of the filing of a valid referendum petition, the salary increase or decrease shall not go into effect until approved by vote of the people.

(7) Referendum measures under this section shall be submitted to the voters of the county at the next following general or municipal election occurring thirty days or more after the petition is filed, and shall be otherwise governed by the provisions of the state Constitution and laws generally applicable to referendum measures.

(8) The action fixing the salary of a county commissioner or councilmember by a commission established in conformity with this section shall supersede any other provision of state statute or county ordinance related to municipal budgets or to the fixing of salaries of county commissioners and councilmembers.

(9) Salaries for county commissioners and councilmembers established under an ordinance or resolution of the county legislative authority in existence on July 22, 2001, that substantially complies with this section shall remain in effect unless and until changed in accordance with such charter provision or ordinance. [2001 c 73 § 5.]

Findings—Intent—Severability—2001 c 73: See notes following RCW 35.21.015.

36.17.031 Reimbursement for travel allowances and allowances in lieu of actual expenses. See RCW 42.24.090.

36.17.040 Payment of salaries of officers and employees. The salaries of county officers and employees of counties other than counties with a population of less than five thousand may be paid twice monthly out of the county treasury, and the county auditor, for services rendered from the first to the fifteenth day, inclusive, may, not later than the last day of the month, draw a warrant upon the county treasurer in favor of each of such officers and employees for the amount of salary due him or her, and such auditor, for services rendered from the sixteenth to the last day, inclusive, may similarly draw a warrant, not later than the fifteenth day of the following month, and the county legislative authority, with the concurrence of the county auditor, may enter an order on the record journal empowering him or her so to do: PROVIDED, That if the county legislative authority does not adopt the semimonthly pay plan, it, by resolution, shall designate the first pay period as a draw day. Not more than forty percent of

said earned monthly salary of each such county officer or employee shall be paid to him or her on the draw day and the payroll deductions of such officer or employee shall not be deducted from the salary to be paid on the draw day. If officers and employees are paid once a month, the draw day shall not be later than the last day of each month. The balance of the earned monthly salary of each such officer or employee shall be paid not later than the fifteenth day of the following month.

In counties with a population of less than five thousand salaries shall be paid monthly unless the county legislative authority by resolution adopts the foregoing draw day procedure. [1991 c 363 § 53; 1988 c 281 § 9; 1963 c 4 § 36.17.040. Prior: 1959 c 300 § 1; 1953 c 37 § 1; 1890 p 314 § 37; RRS § 4220.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Additional notes found at www.leg.wa.gov

36.17.042 Weekly or biweekly pay periods. In addition to the pay periods permitted under RCW 36.17.040, counties may pay county officers and employees using the following methods:

(1) The legislative authority of any county may establish a weekly or biweekly pay period where county officers and employees receive their compensation not later than seven days following the end of each pay period for services rendered during that pay period, except as authorized under subsection (3) of this section.

(2) In a county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW, the county legislative authority may establish a weekly or biweekly pay period where the county officers and employees receive their compensation not later than thirteen days following the end of each pay period for services rendered during that pay period.

(3) The legislative authority of any county that currently uses a semimonthly pay period under RCW 36.17.040 may adopt a biweekly pay period. In such counties, county officers and employees shall receive their compensation not later than thirteen days following the end of each pay period for services rendered during that pay period. [2009 c 239 § 1; 1995 c 38 § 3; 1994 c 301 § 5; 1977 c 42 § 1.]

Additional notes found at www.leg.wa.gov

36.17.045 Deductions for contributions, payments, and dues authorized. Employees of the counties shall have the right to voluntarily authorize the monthly deduction of their pledges to the United Good Neighbor or its successor, monthly payment to a credit union as defined in RCW 31.12.005, and monthly dues to a labor union, from their salaries or wages. When such written authorization is received by the county auditor, he or she shall make such monthly deduction. [2009 c 337 § 1; 1963 c 164 § 3.]

36.17.050 Salary withheld, when authorized. If the superior court issues a declaratory judgment under RCW 36.16.125 finding that a county officer has abandoned his or her duties, the county officer may not be paid a salary. [2009 c 337 § 2; 1999 c 71 § 3; 1963 c 4 § 36.17.050. Prior: 1890 p 314 § 38; RRS § 4221.]

(2014 Ed.)

36.17.055 Salary adjustment for county legislative authority office—Ratification and validation of preelection action. See RCW 36.40.205.

36.17.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 81.]

Chapter 36.18 RCW FEES OF COUNTY OFFICERS

Sections

36.18.005	Definitions.
36.18.010	Auditor's fees.
36.18.012	Various fees collected—Division with state.
36.18.014	Fees—Division with county law library—Petition for emancipation for minors.
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36.18.018	Fees to state court, administrative office of the courts—Appellate review fee and surcharge—Variable fee for copies and reports.
36.18.020	Clerk's fees, surcharges.
36.18.022	Filing fees may be waived—When.
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36.18.030	Coroner's fees.
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36.18.060	Fees payable in advance—Exception.
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36.18.080	Fee schedule to be kept posted.
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36.18.160	Penalty for taking illegal fees.
36.18.170	Penalty for failure to pay over fees.
36.18.180	Office to be declared vacant on conviction.
36.18.190	Collection of unpaid financial obligations—Collection contracts—Interest to collection agencies authorized.

36.18.005 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Recording officer" means the county auditor, or in charter counties the county official charged with the responsibility for recording instruments in the county records.

(2) "File," "filed," or "filing" means the act of delivering an instrument to the auditor or recording officer for recording into the official public records.

(3) "Record," "recorded," or "recording" means the process, such as electronic, mechanical, optical, magnetic, or microfilm storage used by the auditor or recording officer after filing to incorporate the instrument into the public records.

(4) "Multiple transactions" means a document that contains two or more titles and/or two or more transactions requiring multiple indexing. [1999 c 233 § 2; 1991 c 26 § 1.]

Additional notes found at www.leg.wa.gov

36.18.010 Auditor's fees. County auditors or recording officers shall collect the following fees for their official services:

(1) For recording instruments, for the first page eight and one-half by fourteen inches or less, five dollars; for each additional page eight and one-half by fourteen inches or less, one dollar. The fee for recording multiple transactions contained in one instrument will be calculated for each transaction requiring separate indexing as required under RCW 65.04.050 as follows: The fee for each title or transaction is the same fee as the first page of any additional recorded document; the fee for additional pages is the same fee as for any additional pages for any recorded document; the fee for the additional pages may be collected only once and may not be collected for each title or transaction;

(2) For preparing and certifying copies, for the first page eight and one-half by fourteen inches or less, three dollars; for each additional page eight and one-half by fourteen inches or less, one dollar;

(3) For preparing noncertified copies, for each page eight and one-half by fourteen inches or less, one dollar;

(4) For administering an oath or taking an affidavit, with or without seal, two dollars;

(5) For issuing a marriage license, eight dollars, (this fee includes taking necessary affidavits, filing returns, indexing, and transmittal of a record of the marriage to the state registrar of vital statistics) plus an additional five dollar fee for use and support of the prevention of child abuse and neglect activities to be transmitted monthly to the state treasurer and deposited in the state general fund plus an additional ten dollar fee to be transmitted monthly to the state treasurer and deposited in the state general fund. The legislature intends to appropriate an amount at least equal to the revenue generated by this fee for the purposes of the displaced homemaker act, chapter 28B.04 RCW;

(6) For searching records per hour, eight dollars;

(7) For recording plats, fifty cents for each lot except cemetery plats for which the charge shall be twenty-five cents per lot; also one dollar for each acknowledgment, dedication, and description: PROVIDED, That there shall be a minimum fee of twenty-five dollars per plat;

(8) For recording of miscellaneous records not listed above, for the first page eight and one-half by fourteen inches or less, five dollars; for each additional page eight and one-half by fourteen inches or less, one dollar;

(9) For modernization and improvement of the recording and indexing system, a surcharge as provided in RCW 36.22.170;

(10) For recording an emergency nonstandard document as provided in RCW 65.04.047, fifty dollars, in addition to all other applicable recording fees;

(11) For recording instruments, a two-dollar surcharge to be deposited into the Washington state heritage center account created in RCW 43.07.129;

(12) For recording instruments, a surcharge as provided in RCW 36.22.178; and

(13) For recording instruments, except for documents recording a birth, marriage, divorce, or death or any documents otherwise exempted from a recording fee under state

law, a surcharge as provided in RCW 36.22.179. [2007 c 523 § 2. Prior: 2005 c 484 § 19; 2005 c 374 § 1; 2002 c 294 § 3; 1999 c 233 § 3; 1996 c 143 § 1; 1995 c 246 § 37; 1991 c 26 § 2; prior: 1989 c 304 § 1; 1989 c 204 § 6; 1987 c 230 § 1; 1985 c 44 § 2; 1984 c 261 § 4; 1982 1st ex.s. c 15 § 7; 1982 c 4 § 12; 1977 ex.s. c 56 § 1; 1967 c 26 § 8; 1963 c 4 § 36.18.010; prior: 1959 c 263 § 6; 1953 c 214 § 2; 1951 c 51 § 4; 1907 c 56 § 1, part, p 92; 1903 c 151 § 1, part, p 295; 1893 c 130 § 1, part, p 423; Code 1881 § 2086, part, p 358; 1869 p 369 § 3; 1865 p 94 § 1; part; 1863 p 391 § 1, part, p 394; 1861 p 34 § 1, part, p 37; 1854 p 368 § 1, part, p 371; RRS §§ 497, part, 4105.]

Effective date—2007 c 523 § 2: "Section 2 of this act takes effect January 1, 2008." [2007 c 523 § 8.]

Contingency—2007 c 523: See note following RCW 43.07.128.

Findings—Conflict with federal requirements—Effective date—2005 c 484: See RCW 43.185C.005, 43.185C.901, and 43.185C.902.

Findings—2002 c 294: See note following RCW 36.22.178.

Findings—1989 c 204: See note following RCW 36.22.160.

Family court funding, marriage license fee increase authorized: RCW 26.12.220.

Additional notes found at www.leg.wa.gov

36.18.012 Various fees collected—Division with state. (1) Revenue collected under this section is subject to division with the state.

(2) The party filing a transcript or abstract of judgment or verdict from a United States court held in this state, or from the superior court of another county or from a district court in the county of issuance, shall pay at the time of filing a fee of twenty dollars.

(3) The clerk shall collect a fee of twenty dollars for: Filing a document not related to or a part of a proceeding, civil or criminal, or a probate matter, required or permitted to be filed in the clerk's office for which no other charge is provided by law.

(4) If the defendant serves or files an answer to an unlawful detainer complaint under chapter 59.18 or 59.20 RCW, the plaintiff shall pay before proceeding with the unlawful detainer action one hundred twelve dollars.

(5) Any party filing a counterclaim, cross-claim, or third-party claim in an unlawful detainer action under chapter 59.18 or 59.20 RCW shall pay the equivalent to the total filing fee of an unlawful detainer action pursuant to RCW 36.18.020, including the fee for an unlawful detainer answer pursuant to subsection (4) of this section.

(6) For a restrictive covenant for filing a petition to strike discriminatory provisions in real estate under RCW 49.60.227 a fee of twenty dollars must be charged.

(7) A fee of twenty dollars must be charged for filing a will only, when no probate of the will is contemplated.

(8) A fee of twenty dollars must be charged for filing a petition, written agreement, or written memorandum in a nonjudicial probate dispute under RCW 11.96A.220, if it is filed within an existing case in the same court.

(9) A fee of thirty-five dollars must be charged for filing a petition regarding a common law lien under RCW 60.70.060.

(10) For the filing of a tax warrant for unpaid taxes or overpayment of benefits by any agency of the state of Washington, a fee of five dollars on or after July 22, 2001, and for

the filing of such a tax warrant or overpayment of benefits on or after July 1, 2003, a fee of twenty dollars, of which forty-six percent of the first five dollars is directed to the state general fund. [2009 c 479 § 20; 2009 c 417 § 1; 2006 c 192 § 1; 2005 c 457 § 17; 2001 c 146 § 1; 1999 c 42 § 634; 1996 c 211 § 1; 1995 c 292 § 12.]

Reviser's note: This section was amended by 2009 c 417 § 1 and by 2009 c 479 § 20, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

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

Additional notes found at www.leg.wa.gov

36.18.014 Fees—Division with county law library—Petition for emancipation for minors. (1) Revenue collected under this section is subject to division with the county law library under RCW 27.24.070.

(2) For filing a petition for emancipation for minors as required under RCW 13.64.020 a fee up to fifty dollars must be collected. [1995 c 292 § 13.]

36.18.016 Various fees collected—Not subject to division. (1) Revenue collected under this section is not subject to division under RCW 36.18.025 or 27.24.070.

(2)(a) For the filing of a petition for modification of a decree of dissolution or paternity, within the same case as the original action, and any party filing a counterclaim, cross-claim, or third-party claim in any such action, a fee of thirty-six dollars must be paid.

(b) The party filing the first or initial petition for dissolution, legal separation, or declaration concerning the validity of marriage shall pay, at the time and in addition to the filing fee required under RCW 36.18.020, a fee of thirty dollars. The clerk of the superior court shall transmit monthly twenty-four dollars of the thirty dollar fee collected under this subsection to the state treasury for deposit in the domestic violence prevention account. The remaining six dollars shall be retained by the county for the purpose of supporting community-based services within the county for victims of domestic violence, except for five percent of the six dollars, which may be retained by the court for administrative purposes.

(3)(a) The party making a demand for a jury of six in a civil action shall pay, at the time, a fee of one hundred twenty-five dollars; if the demand is for a jury of twelve, a fee of two hundred fifty dollars. If, after the party demands a jury of six and pays the required fee, any other party to the action requests a jury of twelve, an additional one hundred twenty-five dollar fee will be required of the party demanding the increased number of jurors.

(b) Upon conviction in criminal cases a jury demand charge of one hundred twenty-five dollars for a jury of six, or two hundred fifty dollars for a jury of twelve may be imposed as costs under RCW 10.46.190.

(4) For preparing a certified copy of an instrument on file or of record in the clerk's office, for the first page or portion of the first page, a fee of five dollars, and for each additional page or portion of a page, a fee of one dollar must be charged. For authenticating or exemplifying an instrument, a fee of two dollars for each additional seal affixed must be charged. For preparing a copy of an instrument on file or of record in

the clerk's office without a seal, a fee of fifty cents per page must be charged. When copying a document without a seal or file that is in an electronic format, a fee of twenty-five cents per page must be charged. For copies made on a compact disc, an additional fee of twenty dollars for each compact disc must be charged.

(5) For executing a certificate, with or without a seal, a fee of two dollars must be charged.

(6) For a garnishee defendant named in an affidavit for garnishment and for a writ of attachment, a fee of twenty dollars must be charged.

(7) For filing a supplemental proceeding, a fee of twenty dollars must be charged.

(8) For approving a bond, including justification on the bond, in other than civil actions and probate proceedings, a fee of two dollars must be charged.

(9) For the issuance of a certificate of qualification and a certified copy of letters of administration, letters testamentary, or letters of guardianship, there must be a fee of five dollars.

(10) For the preparation of a passport application, the clerk may collect an execution fee as authorized by the federal government.

(11) For clerk's services such as performing historical searches, compiling statistical reports, and conducting exceptional record searches, the clerk may collect a fee not to exceed thirty dollars per hour.

(12) For processing ex parte orders, the clerk may collect a fee of thirty dollars.

(13) For duplicated recordings of court's proceedings there must be a fee of ten dollars for each audio tape and twenty-five dollars for each video tape or other electronic storage medium.

(14) For registration of land titles, Torrens Act, under RCW 65.12.780, a fee of twenty dollars must be charged.

(15) For the issuance of extension of judgment under RCW 6.17.020 and chapter 9.94A RCW, a fee of two hundred dollars must be charged. When the extension of judgment is at the request of the clerk, the two hundred dollar charge may be imposed as court costs under RCW 10.46.190.

(16) A facilitator surcharge of up to twenty dollars must be charged as authorized under RCW 26.12.240.

(17) For filing a water rights statement under RCW 90.03.180, a fee of twenty-five dollars must be charged.

(18) For filing a claim of frivolous lien under RCW 60.04.081, a fee of thirty-five dollars must be charged.

(19) For preparation of a change of venue, a fee of twenty dollars must be charged by the originating court in addition to the per page charges in subsection (4) of this section.

(20) A service fee of five dollars for the first page and one dollar for each additional page must be charged for receiving faxed documents, pursuant to Washington state rules of court, general rule 17.

(21) For preparation of clerk's papers under RAP 9.7, a fee of fifty cents per page must be charged.

(22) For copies and reports produced at the local level as permitted by RCW 2.68.020 and supreme court policy, a variable fee must be charged.

(23) Investment service charge and earnings under RCW 36.48.090 must be charged.

(24) Costs for nonstatutory services rendered by clerk by authority of local ordinance or policy must be charged.

(25) For filing a request for mandatory arbitration, a filing fee may be assessed against the party filing a statement of arbitrability not to exceed two hundred twenty dollars as established by authority of local ordinance. This charge shall be used solely to offset the cost of the mandatory arbitration program.

(26) For filing a request for trial de novo of an arbitration award, a fee not to exceed two hundred fifty dollars as established by authority of local ordinance must be charged.

(27) A public agency may not charge a fee to a law enforcement agency, for preparation, copying, or mailing of certified copies of the judgment and sentence, information, affidavit of probable cause, and/or the notice of requirement to register, of a sex offender convicted in a Washington court, when such records are necessary for risk assessment, preparation of a case for failure to register, or maintenance of a sex offender's registration file.

(28) For the filing of a will or codicil under the provisions of chapter 11.12 RCW, a fee of twenty dollars must be charged.

(29) For the collection of unpaid legal financial obligations, the clerk may impose an annual fee of up to one hundred dollars, pursuant to RCW 9.94A.780.

(30) A surcharge of up to twenty dollars may be charged in dissolution and legal separation actions as authorized by RCW 26.12.260.

The revenue to counties from the fees established in this section shall be deemed to be complete reimbursement from the state for the state's share of benefits paid to the superior court judges of the state prior to July 24, 2005, and no claim shall lie against the state for such benefits. [2009 c 417 § 2; 2007 c 496 § 204; 2006 c 192 § 2. Prior: 2005 c 457 § 18; 2005 c 374 § 2; 2005 c 202 § 1; 2002 c 338 § 2; 2001 c 146 § 2; 2000 c 170 § 1; 1999 c 397 § 8; 1996 c 56 § 5; 1995 c 292 § 14.]

Effective dates—2007 c 496 §§ 201, 202, 204, and 501: See note following RCW 26.12.260.

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

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

36.18.018 Fees to state court, administrative office of the courts—Appellate review fee and surcharge—Variable fee for copies and reports. (1) State revenue collected by county clerks under subsection (2) of this section must be transmitted to the appropriate state court. The administrative office of the courts shall retain fees collected under subsection (3) of this section.

(2) For appellate review under RAP 5.1(b), two hundred fifty dollars must be charged.

(3) For all copies and reports produced by the administrative office of the courts as permitted under RCW 2.68.020 and supreme court policy, a variable fee must be charged.

(4) Until July 1, 2017, in addition to the fee established under subsection (2) of this section, a surcharge of forty dollars is established for appellate review. The county clerk shall transmit seventy-five percent of this surcharge to the state treasurer for deposit in the judicial stabilization trust account and twenty-five percent must be retained by the county.

[2013 2nd sp.s. c 7 § 2; 2012 c 199 § 2; 2011 1st sp.s. c 44 § 3; 2009 c 572 § 3; 2005 c 282 § 43; 1995 c 292 § 15.]

Effective date—2013 2nd sp.s. c 7: See note following RCW 3.62.060.

Effective date—2011 1st sp.s. c 44: See note following RCW 3.62.020.

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

36.18.020 Clerk's fees, surcharges. (1) Revenue collected under this section is subject to division with the state under RCW 36.18.025 and with the county or regional law library fund under RCW 27.24.070, except as provided in subsection (5) of this section.

(2) Clerks of superior courts shall collect the following fees for their official services:

(a) In addition to any other fee required by law, the party filing the first or initial document in any civil action, including, but not limited to an action for restitution, adoption, or change of name, and any party filing a counterclaim, cross-claim, or third-party claim in any such civil action, shall pay, at the time the document is filed, a fee of two hundred dollars except, in an unlawful detainer action under chapter 59.18 or 59.20 RCW for which the plaintiff shall pay a case initiating filing fee of forty-five dollars, or in proceedings filed under RCW 28A.225.030 alleging a violation of the compulsory attendance laws where the petitioner shall not pay a filing fee. The forty-five dollar filing fee under this subsection for an unlawful detainer action shall not include an order to show cause or any other order or judgment except a default order or default judgment in an unlawful detainer action.

(b) Any party, except a defendant in a criminal case, filing the first or initial document on an appeal from a court of limited jurisdiction or any party on any civil appeal, shall pay, when the document is filed, a fee of two hundred dollars.

(c) For filing of a petition for judicial review as required under RCW 34.05.514 a filing fee of two hundred dollars.

(d) For filing of a petition for unlawful harassment under RCW 10.14.040 a filing fee of fifty-three dollars.

(e) For filing the notice of debt due for the compensation of a crime victim under RCW 7.68.120(2)(a) a fee of two hundred dollars.

(f) In probate proceedings, the party instituting such proceedings, shall pay at the time of filing the first document therein, a fee of two hundred dollars.

(g) For filing any petition to contest a will admitted to probate or a petition to admit a will which has been rejected, or a petition objecting to a written agreement or memorandum as provided in RCW 11.96A.220, there shall be paid a fee of two hundred dollars.

(h) Upon conviction or plea of guilty, upon failure to prosecute an appeal from a court of limited jurisdiction as provided by law, or upon affirmance of a conviction by a court of limited jurisdiction, a defendant in a criminal case shall be liable for a fee of two hundred dollars.

(i) With the exception of demands for jury hereafter made and garnishments hereafter issued, civil actions and probate proceedings filed prior to midnight, July 1, 1972, shall be completed and governed by the fee schedule in effect as of January 1, 1972. However, no fee shall be assessed if an order of dismissal on the clerk's record be filed as provided by rule of the supreme court.

(3) No fee shall be collected when a petition for relinquishment of parental rights is filed pursuant to RCW

26.33.080 or for forms and instructional brochures provided under RCW 26.50.030.

(4) No fee shall be collected when an abstract of judgment is filed by the county clerk of another county for the purposes of collection of legal financial obligations.

(5)(a) Until July 1, 2017, in addition to the fees required to be collected under this section, clerks of the superior courts must collect surcharges as provided in this subsection (5) of which seventy-five percent must be remitted to the state treasurer for deposit in the judicial stabilization trust account and twenty-five percent must be retained by the county.

(b) On filing fees required to be collected under subsection (2)(b) of this section, a surcharge of thirty dollars must be collected.

(c) On all filing fees required to be collected under this section, except for fees required under subsection (2)(b), (d), and (h) of this section, a surcharge of forty dollars must be collected. [2013 2nd sp.s. c 7 § 3; 2012 c 199 § 3; 2011 1st sp.s. c 44 § 5. Prior: 2009 c 572 § 4; 2009 c 479 § 21; 2009 c 417 § 3; prior: 2005 c 457 § 19; 2005 c 374 § 5; 2000 c 9 § 1; 1999 c 42 § 635; 1996 c 211 § 2; prior: 1995 c 312 § 70; 1995 c 292 § 10; 1993 c 435 § 1; 1992 c 54 § 1; 1989 c 342 § 1; prior: 1987 c 382 § 3; 1987 c 202 § 201; 1987 c 56 § 3; prior: 1985 c 24 § 1; 1985 c 7 § 104; 1984 c 263 § 29; 1981 c 330 § 5; 1980 c 70 § 1; 1977 ex.s. c 107 § 1; 1975 c 30 § 1; 1973 c 16 § 1; 1973 c 38 § 1; prior: 1972 ex.s. c 57 § 5; 1972 ex.s. c 20 § 1; 1970 ex.s. c 32 § 1; 1967 c 26 § 9; 1963 c 4 § 36.18.020; prior: 1961 c 304 § 1; 1961 c 41 § 1; 1951 c 51 § 5; 1907 c 56 § 1, part, p 89; 1903 c 151 § 1, part, p 294; 1893 c 130 § 1, part, p 421; Code 1881 § 2086, part, p 355; 1869 p 364 § 1, part; 1863 p 391 § 1, part; 1861 p 34 § 1, part; 1854 p 368 § 1, part; RRS § 497, part.]

Rules of court: Cf. *RAP 14.3, 18.22.*

Effective date—2013 2nd sp.s. c 7: See note following RCW 3.62.060.

Effective date—2011 1st sp.s. c 44: See note following RCW 3.62.020.

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

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

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

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

Additional notes found at www.leg.wa.gov

36.18.022 Filing fees may be waived—When. The court may waive the filing fees provided for under RCW 36.18.016(2)(b) and 36.18.020(2) (a) and (b) upon affidavit by a party that the party is unable to pay the fee due to financial hardship. [2005 c 374 § 6; 1995 c 292 § 16; 1992 c 54 § 5.]

Additional notes found at www.leg.wa.gov

36.18.025 Portion of filing fees to be remitted to state treasurer. Forty-six percent of the money received from filing fees paid pursuant to RCW 36.18.020, except those collected for the filing of warrants for unpaid taxes or overpayments by state agencies as outlined in RCW 36.18.012(10), shall be transmitted by the county treasurer each month to the state treasurer for deposit in the state general fund. [2009 c 479 § 22; 2001 c 146 § 3; 1992 c 54 § 2; 1985 c 389 § 9; 1984 c 258 § 322; 1972 ex.s. c 20 § 2.]

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

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

(2014 Ed.)

Additional notes found at www.leg.wa.gov

36.18.030 Coroner's fees. Coroners shall collect for their official services, the following fees:

For each inquest held, besides mileage, twenty dollars.

For issuing a venire, two dollars.

For drawing all necessary writings, two dollars for first page and one dollar for each page thereafter.

For mileage each way, per mile, ten cents.

For performing the duties of a sheriff, he or she shall receive the same fees as a sheriff would receive for the same service. [2009 c 549 § 4014; 1963 c 4 § 36.18.030. Prior: 1959 c 263 § 7; 1907 c 56 § 1, part, p 93; 1903 c 151 § 1, part, p 296; 1893 c 130 § 1, part, p 424; Code 1881 § 2086, part, p 360; 1869 p 372 § 7, part; 1863 p 391 § 1, part, p 396; 1861 p 34 § 1, part, p 39; 1854 p 368 § 1, part, p 373; RRS §§ 497, part, 4185.]

36.18.040 Sheriff's fees. (1) Sheriffs shall collect the following fees for their official services:

(a) For service of each summons and complaint, notice and complaint, summons and petition, and notice of small claim on one defendant at any location, ten dollars, and on two or more defendants at the same residence, twelve dollars, besides mileage;

(b) For making a return, besides mileage actually traveled, seven dollars;

(c) For levying each writ of attachment or writ of execution upon real or personal property, besides mileage, thirty dollars per hour;

(d) For filing copy of writ of attachment or writ of execution with auditor, ten dollars plus auditor's filing fee;

(e) For serving writ of possession or restitution without aid of the county, besides mileage, twenty-five dollars;

(f) For serving writ of possession or restitution with aid of the county, besides mileage, forty dollars plus thirty dollars for each hour after one hour;

(g) For serving an arrest warrant in any action or proceeding, besides mileage, thirty dollars;

(h) For executing any other writ or process in a civil action or proceeding, besides mileage, thirty dollars per hour;

(i) For each mile actually and necessarily traveled in going to or returning from any place of service, or attempted service, thirty-five cents;

(j) For making a deed to lands sold upon execution or order of sale or other decree of court, to be paid by the purchaser, thirty dollars;

(k) For making copies of papers when sufficient copies are not furnished, one dollar for first page and fifty cents per each additional page;

(l) For the service of any other document and supporting papers for which no other fee is provided for herein, twelve dollars;

(m) For posting a notice of sale, or postponement, ten dollars besides mileage;

(n) For certificate or bill of sale of property, or certificate of redemption, thirty dollars;

(o) For conducting a sale of property, thirty dollars per hour spent at a sheriff's sale;

(p) For notarizing documents, five dollars for each document;

(q) For fingerprinting for noncriminal purposes, ten dollars for each person for up to two sets, three dollars for each additional set;

(r) For mailing required by statute, whether regular, certified, or registered, the actual cost of postage;

(s) For an internal criminal history records check, ten dollars;

(t) For the reproduction of audio, visual, or photographic material, to include magnetic microfilming, the actual cost including personnel time.

(2) Fees allowable under this section may be recovered by the prevailing party incurring the same as court costs. Nothing contained in this section permits the expenditure of public funds to defray costs of private litigation. Such costs shall be borne by the party seeking action by the sheriff, and may be recovered from the proceeds of any subsequent judicial sale, or may be added to any judgment upon proper application to the court entering the judgment.

(3) Notwithstanding subsection (1) of this section, a county legislative authority may set the amounts of fees that shall be collected by the sheriff under subsection (1) of this section to cover the costs of administration and operation. [1992 c 164 § 1; 1981 c 194 § 1; 1975 1st ex.s. c 94 § 1; 1963 c 4 § 36.18.040. Prior: 1959 c 263 § 8; 1951 c 51 § 6; 1907 c 56 § 1, part, p 91; 1903 c 151 § 1, part, p 294; 1893 c 130 § 1, p 422; Code 1881 § 2086, part, p 356; 1869 p 364 § 1, part, p 365; 1865 p 94 § 1, part, p 97; 1863 p 391 § 1, part, p 392; 1861 p 34 § 1, part, p 35; 1854 p 368 § 1, part, p 369; RRS § 497, part.]

Additional notes found at www.leg.wa.gov

36.18.045 Treasurer's fees. County treasurers shall collect the following fees for their official services:

For preparing and certifying copies, with or without seal for the first legal size page, two dollars, for each additional legal size page, one dollar. [1963 c 4 § 36.18.045. Prior: 1959 c 263 § 10.]

36.18.050 Fees in special cases. Every officer who shall be called on or required to perform service for which no fees or compensation are provided for in this chapter shall be allowed fees similar and equal to those allowed him or her for services of the same kind for which allowance is made herein. [2009 c 549 § 4015; 1963 c 4 § 36.18.050. Prior: Code 1881 § 2098; 1869 p 374 § 20; 1863 p 398 § 5; 1861 p 41 § 5; 1854 p 375 § 4; RRS § 4234.]

36.18.060 Fees payable in advance—Exception. The officers mentioned in this chapter except the county sheriff shall not, in any case, except for the state or county, perform any official services unless the fees prescribed therefor are paid in advance, and on such payment the officer must perform the services required. The county sheriff may allow payment to be made after official services have been performed as the sheriff deems appropriate. For every failure or refusal to perform official duty when the fees are tendered, the officer is liable on his or her official bond. [2009 c 549 § 4016; 1981 c 194 § 2; 1963 c 4 § 36.18.060. Prior: 1890 p 315 § 39; RRS § 506.]

Additional notes found at www.leg.wa.gov

36.18.070 Single mileage chargeable when. When any sheriff, constable or coroner serves more than one process in the same cause or on the same person not requiring more than one journey from his or her office, he or she shall receive mileage only for the most distant service. [2009 c 549 § 4017; 1963 c 4 § 36.18.070. Prior: Code 1881 § 2094; 1869 p 373 § 16; RRS § 501.]

36.18.080 Fee schedule to be kept posted. Every county officer entitled to collect fees from the public shall keep posted in his or her office a plain and legible statement of the fees allowed by law and failure so to do shall subject the officer to a fine of one hundred dollars and costs, to be recovered in any court of competent jurisdiction. [2009 c 549 § 4018; 1963 c 4 § 36.18.080. Prior: 1890 p 315 § 41; RRS § 4223. Cf. Code 1881 § 2091; 1869 p 373 § 13.]

36.18.090 Itemized receipt to be given. Every officer, when requested so to do, shall make out a bill of his or her fees in every case, and for any services, specifying each particular item thereof, and receipt the same when it is paid, which bill of fees shall always be subject to examination and correction by the courts. Any officer who fails to comply with the requirements of this section shall be liable to the person paying the fees in treble the amount so paid. [2009 c 549 § 4019; 1963 c 4 § 36.18.090. Prior: (i) 1890 p 315 § 40; RRS § 4222. (ii) Code 1881 § 2102; 1869 p 374 § 24; 1863 p 398 § 3; 1861 p 41 § 3; 1854 p 376 § 6; RRS § 4235.]

36.18.160 Penalty for taking illegal fees. If any officer takes more or greater fees than are allowed by law he or she shall be subject to prosecution, and on conviction, shall be removed from office and fined in a sum not exceeding one thousand dollars. [2009 c 549 § 4021; 1963 c 4 § 36.18.160. Prior: Code 1881 § 2090; 1869 p 373 § 12; RRS § 4225. Cf. RCW 9.33.040.]

36.18.170 Penalty for failure to pay over fees. Any salaried county or precinct officer, who fails to pay to the county treasury all sums that have come into the officer's hands for fees and charges for the county, or by virtue of the officer's office, whether under the laws of this state or of the United States, is guilty of a class C felony, and upon conviction thereof shall be punished by imprisonment in a state correctional facility not less than one year nor more than three years: PROVIDED, That upon conviction, his or her office shall be declared to be vacant by the court pronouncing sentence. [2003 c 53 § 201; 1992 c 7 § 33; 1963 c 4 § 36.18.170. Prior: 1893 c 81 § 2; RRS § 4226. Cf. RCW 42.20.070.]

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

36.18.180 Office to be declared vacant on conviction. The board of county commissioners of any county in this state, upon receiving a certified copy of the record of conviction of any officer for receiving illegal fees, or where the officer collects fees and fails to account for the same, upon proof thereof must declare his or her office vacant and appoint his or her successor. [2009 c 549 § 4022; 1963 c 4 § 36.18.180. Prior: 1890 p 315 § 42; RRS § 4224.]

36.18.190 Collection of unpaid financial obligations—Collection contracts—Interest to collection agencies authorized. Superior court clerks may contract with collection agencies under chapter 19.16 RCW or may use county collection services for the collection of unpaid court-ordered legal financial obligations as enumerated in RCW 9.94A.030 that are ordered pursuant to a felony or misdemeanor conviction and of unpaid financial obligations imposed under Title 13 RCW. The costs for the agencies or county services shall be paid by the debtor. The superior court may, at sentencing or at any time within ten years, assess as court costs the moneys paid for remuneration for services or charges paid to collection agencies or for collection services. By agreement, clerks may authorize collection agencies to retain all or any portion of the interest collected on these accounts. Collection may not be initiated with respect to a criminal offender who is under the supervision of the department of corrections without the prior agreement of the department. Superior court clerks are encouraged to initiate collection action with respect to a criminal offender who is under the supervision of the department of corrections, with the department's approval.

Any contract with a collection agency shall be awarded only after competitive bidding. Factors that a court clerk shall consider in awarding a collection contract include but are not limited to: (1) A collection agency's history and reputation in the community; and (2) the agency's access to a local database that may increase the efficiency of its collections. Contracts may specify the scope of work, remuneration for services, and other charges deemed appropriate.

The servicing of an unpaid court obligation does not constitute assignment of a debt, and no contract with a collection agency may remove the court's control over unpaid obligations owed to the court.

The county clerk may collect civil judgments where the county is the creditor. [1997 c 24 § 1. Prior: 1995 c 291 § 8; 1995 c 262 § 1; 1994 c 185 § 9.]

Chapter 36.21 RCW COUNTY ASSESSOR

Sections

- 36.21.011 Appointment of deputies and assistants—Engaging expert appraisers—Employment and classification plans for appraisers.
- 36.21.015 Qualifications for persons assessing real property—Examination—Examination waiver—Continuing education requirement.
- 36.21.070 New construction building permits—Appraisal of building.
- 36.21.080 New construction building permits—When property placed on assessment rolls.
- 36.21.090 Initial placement of mobile home on assessment roll.
- 36.21.100 Annual report to department of revenue on property tax levies and related matters.

Assessor's plats: Chapter 58.18 RCW.

Duties relating to

- cemetery district organization: Chapter 68.52 RCW.*
- drainage district revenue act: Chapter 85.32 RCW.*
- drainage districts: Chapter 85.06 RCW.*
- fire protection district, resolution creating: RCW 52.02.150.*
- flood control districts: Chapter 86.09 RCW.*
- forest insect and disease control: Chapter 76.06 RCW.*
- forest rehabilitation: Chapter 76.14 RCW.*
- irrigation districts*
 - dissolution of districts with bonds: Chapter 87.53 RCW.*
 - dissolution of insolvent districts: Chapter 87.56 RCW.*

- generally: Chapter 87.03 RCW.*
- joint control of: RCW 87.80.090.*
- metropolitan municipal corporation: Chapter 35.58 RCW.*
- mosquito control districts: Chapter 17.28 RCW.*
- pest districts: Chapter 17.12 RCW.*
- reforestation: RCW 79.22.010.*
- school district organization: Chapter 28A.315 RCW.*
- school districts, appeals from boundary changes, decisions: RCW 28A.645.040.*
- section and corner lines, establishment of: Chapter 58.04 RCW.*
- taxes, property*
 - certification of on operating property of private car companies: RCW 84.16.130.*
 - certification of on operating property of public utilities: RCW 84.12.370.*
 - collection of: Chapter 84.56 RCW.*
 - equalization of assessments: Chapter 84.48 RCW.*
 - exemptions: Chapter 84.36 RCW.*
 - levy of: Chapter 84.52 RCW.*
 - lien on: Chapter 84.60 RCW.*
 - listing of: Chapter 84.40 RCW.*
 - nonoperating property of private car companies: RCW 84.16.140.*
 - nonoperating property of public utilities: RCW 84.12.380.*
 - revaluation: Chapter 84.41 RCW.*
 - taxable situs: Chapter 84.44 RCW.*
 - weed district assessments: Chapter 17.04 RCW.*
- Lands lying in both a fire protection district and forest protection assessment area, assessment by: RCW 52.16.170.*
- Mobile home or park model trailer movement permits: RCW 46.44.173.*
- Property tax advisor: RCW 84.48.140.*
- Public lands, harbor areas, re-lease of, rental based on assessor's valuation: RCW 79.115.120.*
- Revenue, department of, to test work of, advise: RCW 84.08.020, 84.08.030, 84.08.190.*
- Taxes, property, penalty for nonperformance of duty: RCW 84.09.040.*
- Taxes for city and town purposes: State Constitution Art. 11 § 12.*
- Transfer of ownership of manufactured home, county assessor notified: RCW 46.12.700(5).*
- Washington Clean Air Act, assessors' duties under: RCW 70.94.095.*

36.21.011 Appointment of deputies and assistants—Engaging expert appraisers—Employment and classification plans for appraisers. Any assessor who deems it necessary in order to complete the listing and the valuation of the property of the county within the time prescribed by law, (1) may appoint one or more well qualified persons to act as assistants or deputies who shall not engage in the private practice of appraising within the county in which he or she is employed without the written permission of the assessor filed with the auditor; and each such assistant or deputy so appointed shall, under the direction of the assessor, after taking the required oath, perform all the duties enjoined upon, vested in or imposed upon assessors, and (2) may contract with any persons, firms or corporations, who are expert appraisers, to assist in the valuation of property.

To assist each assessor in obtaining adequate and well qualified assistants or deputies, the office of financial management, after consultation with the Washington state association of county assessors, the Washington state association of counties, and the department of revenue, shall establish by July 1, 1967, and shall thereafter maintain, a classification and salary plan for those employees of an assessor who act as appraisers. The plan shall recommend the salary range and employment qualifications for each position encompassed by it, and shall, to the fullest extent practicable, conform to the classification plan, salary schedules and employment qualifi-

cations for state employees performing similar appraisal functions.

An assessor who intends to put such plan into effect shall inform the department of revenue and the county legislative authority of this intent in writing. The department of revenue and the county legislative authority may thereupon each designate a representative, and such representative or representatives as may be designated by the department of revenue or the county legislative authority, or both, shall form with the assessor a committee. The committee so formed may, by unanimous vote only, determine the required number of certified appraiser positions and their salaries necessary to enable the assessor to carry out the requirements relating to revaluation of property in chapter 84.41 RCW. The determination of the committee shall be certified to the county legislative authority. The committee may be formed only once in a period of four calendar years.

After such determination, the assessor may provide, in each of the four next succeeding annual budget estimates, for as many positions as are established in such determination. Each county legislative authority to which such a budget estimate is submitted shall allow sufficient funds for such positions. An employee may be appointed to a position covered by the plan only if the employee meets the employment qualifications established by the plan. [2011 1st sp.s. c 43 § 470; 1995 c 134 § 12. Prior: 1994 c 301 § 6; 1994 c 124 § 1; 1973 1st ex.s. c 11 § 1; 1971 ex.s. c 85 § 2; 1967 ex.s. c 146 § 7; 1963 c 4 § 36.21.011; prior: 1955 c 251 § 10.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

36.21.015 Qualifications for persons assessing real property—Examination—Examination waiver—Continuing education requirement. (1) Any person having the responsibility of valuing real property for purposes of taxation including persons acting as assistants or deputies to a county assessor under RCW 36.21.011 shall have first:

(a) Had at least one year of experience in transactions involving real property, in appraisal of real property, or in assessment of real property, or at least one year of experience in a combination of the three;

(b) Become knowledgeable in repair and remodeling of buildings and improvement of land, and in the significance of locality and area to the value of real property;

(c) Become knowledgeable in the standards for appraising property set forth by the department of revenue; and

(d) Met other minimum requirements specified by department of revenue rule.

(2) The department of revenue shall prepare and administer an examination on subjects related to the valuation of real property. No person shall assess real property for purposes of taxation without having passed said examination or having received an examination waiver from the department of revenue upon showing education or experience determined by the department to be equivalent to passing the examination. A person passing said examination or receiving an examination waiver shall be accredited accordingly by the department of revenue.

(3) The department of revenue may by rule establish continuing education requirements for persons assessing real property for purposes of taxation. The department shall pro-

vide accreditation of completion of requirements imposed under this section. No person shall assess real property for purposes of taxation without complying with requirements imposed under this subsection.

(4) To the extent practical, the department of revenue shall coordinate accreditation requirements under this section with the requirements for certified real estate appraisers under chapter 18.140 RCW.

(5) The examination requirements of subsection (2) of this section shall not apply to any person who shall have either:

(a) Been certified as a real property appraiser by the department of personnel prior to July 1, 1992; or

(b) Attended and satisfactorily completed the assessor's school operated jointly by the department of revenue and the Washington state assessors association prior to August 9, 1971. [1991 c 218 § 3; 1977 c 75 § 30; 1971 ex.s. c 288 § 17; 1971 ex.s. c 27 § 1.]

Additional notes found at www.leg.wa.gov

36.21.070 New construction building permits—Appraisal of building. Upon receipt of a copy of a building permit, the county assessor shall, within twelve months of the date of issue of such permit, proceed to make a physical appraisal of the building or buildings covered by the permit. [1989 c 246 § 3; 1987 c 134 § 1; 1963 c 4 § 36.21.070. Prior: 1955 c 129 § 4.]

36.21.080 New construction building permits—When property placed on assessment rolls. The county assessor is authorized to place any property that is increased in value due to construction or alteration for which a building permit was issued, or should have been issued, under chapter 19.27, 19.27A, or 19.28 RCW or other laws providing for building permits on the assessment rolls for the purposes of tax levy up to August 31st of each year. The assessed valuation of the property shall be considered as of July 31st of that year. [1989 c 246 § 4; 1987 c 319 § 5; 1985 c 220 § 1; 1982 1st ex.s. c 46 § 4; 1981 c 274 § 3; 1975 1st ex.s. c 120 § 1; 1974 ex.s. c 196 § 7; 1963 c 4 § 36.21.080. Prior: 1955 c 129 § 5.]

Destroyed property, reduction in value, abatement or refund of taxes: Chapter 84.70 RCW.

Additional notes found at www.leg.wa.gov

36.21.090 Initial placement of mobile home on assessment roll. When any mobile home first becomes subject to assessment for property taxes in this state, the county assessor is authorized to place the mobile home on the assessment rolls for purposes of tax levy up to August 31st of each year. The assessed valuation of the mobile home shall be considered as of the July 31st immediately preceding the date that the mobile home is placed on the assessment roll. [1987 c 134 § 2; 1977 ex.s. c 22 § 7.]

Additional notes found at www.leg.wa.gov

36.21.100 Annual report to department of revenue on property tax levies and related matters. Every county assessor shall report to the department of revenue on the property tax levies and related matters within the county annually at a date and in a form prescribed by the department

of revenue. The report shall include, but need not be limited to, the results of sales-assessment ratio studies performed by the assessor. The ratio studies shall be based on use classes of real property and shall be performed under a plan approved by the department of revenue. [1991 c 218 § 4; 1987 c 138 § 8.]

Additional notes found at www.leg.wa.gov

Chapter 36.22 RCW COUNTY AUDITOR

Sections

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- 36.22.020 Publisher of legislative authority proceedings—Custodian of commissioners' seal.
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County accounts, expense for examination of, auditor to issue warrant for: RCW 43.09.280.

County canvassing board, auditor as member: RCW 29A.60.160.

Custodian of records, auditor as: RCW 65.04.140.

Department of revenue to advise: RCW 84.08.020.

Diking district, auditor as agent of county commissioners in signing petition for: RCW 85.05.083.

Dissolution of inactive port districts: Chapter 53.47 RCW.

District court districting committee, auditor as member of: RCW 3.38.010.

Duties relating to

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dances, licensing of: Chapter 67.12 RCW.

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generally: Chapter 85.08 RCW.

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diking, drainage district benefits to roads, how paid: RCW 85.07.040, 85.07.050.

diking districts: Chapter 85.05 RCW.

levy for continuous benefits: Chapter 85.18 RCW.

reorganization of (1917 act): Chapter 85.20 RCW.

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disinfection of horticultural premises: Chapter 15.08 RCW.

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doctors, nurses and hospital services, lien for: Chapter 60.44 RCW.

drainage district revenue act: Chapter 85.32 RCW.

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reorganization of (1917 act): Chapter 85.20 RCW.

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elections

ballots: Chapter 29A.36 RCW.

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ceremonial certificate of, auditor to issue: RCW 29A.52.360.

change of precinct boundaries: RCW 29A.16.070.

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initiative and referendum: Chapter 29A.72 RCW.

nonpartisan primaries, elections: Chapter 29A.52 RCW.

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registration of voters for: Chapter 29A.08 RCW.

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voting centers

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electric franchises and rights-of-way: RCW 80.32.010.

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employee contributions to benefit plans lien claim: RCW 60.76.020.

employee payroll deductions: RCW 41.04.020 through 41.04.036.

execution of judgment: Chapter 6.17 RCW.

fire protection districts: Chapters 52.04, 52.16 RCW.

merger of: Chapter 52.06 RCW.

flood control by counties jointly: Chapter 86.13 RCW.

flood control districts (1937 act): Chapter 86.09 RCW.

flood control zone districts: Chapter 86.15 RCW.

*food fish and shellfish**fishways for: RCW 77.57.030.**guards: RCW 77.57.010.**forest fire protection assessments: RCW 76.04.610.**forest protection, claims for damages, services: Chapter 76.04 RCW.**franchises on state highways: Chapter 47.44 RCW.**funding indebtedness of counties: Chapter 39.52 RCW.**health districts: Chapter 70.46 RCW.**homesteads: Chapter 6.13 RCW.**horizontal property regimes (condominiums), declarations and survey**maps of: RCW 64.32.100, 64.32.140.**hospital districts: Chapter 70.44 RCW.**housing authority act: Chapter 35.82 RCW.**insurance, mergers and insolvencies: Chapter 48.31 RCW.**intercounty rural library district: Chapter 27.12 RCW.**intercounty weed districts: Chapter 17.06 RCW.**irregular instruments, recording of: RCW 65.08.030.**irrigation districts**director divisions: RCW 87.04.070.**dissolution of districts with bonds: Chapter 87.53 RCW.**dissolution of insolvent districts: Chapter 87.56 RCW.**generally: Chapter 87.03 RCW.**joint control of: Chapter 87.80 RCW.**under contract with United States: Chapter 87.68 RCW.**juries, drawing of: Chapter 2.36 RCW.**labor, materials and taxes on public works, liens for: Chapter 60.28 RCW.**labor and services on timber and lumber, lien for: Chapter 60.24 RCW.**labor lien on restaurant, tavern, hotel, etc.: Chapter 60.34 RCW.**labor liens on franchises, earnings and property of certain companies: Chapter 60.32 RCW.**land office receipts, recording of: RCW 65.08.050.**lease of personal property with conditional right to purchase: Article 62A.9A RCW.**letters patent, recording of: RCW 65.08.090.**licenses to practice dentistry: Chapter 18.32 RCW.**lien of employees for contributions to benefit plans: Chapter 60.76 RCW.**liquor**billiard tables, bowling alleys, licensing of, use, sale of: Chapter 67.14 RCW.**retail license: RCW 67.14.040.**sales, local option on: Chapter 66.40 RCW.**wholesale license: RCW 67.14.050.**marriages: Chapter 26.04 RCW.**mechanics' and materialmen's liens: Chapter 60.04 RCW.**metropolitan municipal corporations: Chapter 35.58 RCW.**mining claims**location of: Chapter 78.08 RCW.**survey reports: Chapter 78.06 RCW.**mosquito control districts: Chapter 17.28 RCW.**motor vehicle registration: RCW 46.01.130, 46.01.140, 46.01.270.**municipal court elections: Chapter 35.20 RCW.**municipal water and sewer facilities act: Chapter 35.91 RCW.**new or limited access highway routes: RCW 47.28.025.**notice of lis pendens: RCW 4.28.160, 4.28.320.**orchard labor liens: Chapter 60.16 RCW.**order discharging attachment: RCW 6.25.160.**park and recreation district commissioner elections: RCW 36.69.090.**partnership ditches, lien claim for labor done: RCW 90.03.450.**partnerships, uniform limited partnerships act: Chapters 25.10, 25.12 RCW.**pendency of action in United States court: RCW 4.28.325.**pest districts: Chapter 17.12 RCW.**planning commission: Chapter 35.63 RCW.**plats, subdivisions and dedications: Chapter 58.17 RCW.**port district L.I.D.'s: RCW 53.20.050.**port districts**annexation of land to: Chapter 53.04 RCW.**budget of: Chapter 53.35 RCW.**commissioner elections: Chapter 53.12 RCW.**consolidation of: Chapter 53.46 RCW.**formation of: Chapter 53.04 RCW.**precinct committee officer: Chapter 29A.80 RCW.**public assistance lien claim: RCW 74.04.300.**public lands**lease of: Chapter 79.13 RCW.**leasing on share crop basis: RCW 79.13.320 through 79.13.360.**materials on, sale of: Chapter 79.15 RCW.**tidelands and shorelands plats: RCW 79.125.040.**public records and evidence: Chapter 5.44 RCW.**public utility districts: Chapters 54.08, 54.12, 54.24, 54.40 RCW.**public waterway districts: Chapter 91.08 RCW.**eminent domain by: RCW 91.08.150.**real property conveyances, recording of: RCW 65.08.070.**reclamation and irrigation districts in United States reclamation areas: Chapter 89.12 RCW.**reclamation districts of one million acres: Chapter 89.30 RCW.**recording, generally: Chapters 65.04, 65.08 RCW.**liability of auditor for damages: RCW 65.04.110.**recording of town plats: Chapter 58.08 RCW.**registration of land titles: Chapter 65.12 RCW.**river and harbor improvement districts: Chapter 88.32 RCW.**river and harbor improvements by counties jointly: RCW 88.32.180 through 88.32.220.**sales under execution and redemption: Chapter 6.21 RCW.**school district directors, superintendents, signatures of: RCW 28A.400.020.**school district organization: Chapter 28A.315 RCW.**sires, services of, lien for: Chapter 60.52 RCW.**street railways: Chapter 81.64 RCW.**superior court, expenses of visiting judge: RCW 2.08.170.**superior court, judges salary: RCW 2.08.100 through 2.08.110.**taxes**excise on real estate sales: RCW 82.45.090.**internal revenue, liens for: Chapter 60.68 RCW.**motor vehicle fuel: RCW 82.36.110.**property**collection of: Chapter 84.56 RCW.**equalization of assessments: Chapter 84.48 RCW.**recovery: Chapter 84.68 RCW.**vehicle use tax: RCW 82.12.045.**townsites on United States lands, acquisition of lands by inhabitants: Chapter 58.28 RCW.**unemployment compensation contributions, lien for: RCW 50.24.050.**vehicle registration: RCW 46.01.130, 46.01.140, 46.01.270.**veterans' meeting place, rent by county: RCW 73.04.080.**veterans' relief: Chapter 73.08 RCW.**voting by mail: Chapter 29A.40 RCW.**water-sewer districts**annexation of property to: Chapter 57.24 RCW.**consolidation of: Chapter 57.32 RCW.**funds of: Chapter 57.20 RCW.**generally: Title 57 RCW.**merger of: Chapter 57.36 RCW.**transfer of part: RCW 57.32.160.**withdrawal of territory from: Chapter 57.28 RCW.**water rights certificates: RCW 90.03.330.**water rights, United States: Chapter 90.40 RCW.**weed districts: Chapter 17.04 RCW.**workers' compensation contributions, liens for: RCW 51.16.170.**Eminent domain by**cities of county land, auditor served: RCW 8.12.080.**state, decree of appropriation filed with auditor: RCW 8.04.120.**state of county land, notice of served on auditor: RCW 8.04.020.**Motor vehicle registration: RCW 46.01.130, 46.01.140, 46.01.270.**Plats, validation of defective city or town plats in office of: Chapter 58.10 RCW.**Public lands, sales and lease of, duties of auditor in certain counties transferred to treasurer: RCW 79.02.090.**Public lands and materials on, sale of, auditor as auctioneer: RCW 79.11.150.**Reclamation district commission, auditor as clerk of: RCW 89.30.058.**Registrar of titles**auditor as: RCW 65.12.050.**not to practice law, when: RCW 65.12.065.**Summons for claim against county served on auditor: RCW 4.28.080.**Support of dependent children, auditor to charge no fees in connection with: RCW 74.20.300.**Taxes, property, penalty for nonperformance of duty: RCW 84.09.040.*

Television reception improvement districts, auditor's duties: Chapter 36.95 RCW.

Temporary gate across highways, auditor to grant permit for, when: RCW 16.60.085.

Veterans, auditor to furnish documents for free: RCW 73.04.120.

Veterans' discharge, auditor to record without fee: RCW 73.04.030 through 73.04.042.

Veterans' pension papers, auditor to charge no fee: RCW 73.04.010.

36.22.010 Duties of auditor. The county auditor:

(1) Shall be recorder of deeds and other instruments in writing which by law are to be filed and recorded in and for the county for which he or she is elected;

(2) Shall keep an account current with the county treasurer, charge all money received as shown by receipts issued and credit all disbursements paid out according to the record of settlement of the treasurer with the legislative authority;

(3) Shall make out and transmit to the state auditor a statement of the state fund account with the county in accordance with standards developed by the state auditor. The statement must be available to the public;

(4) Shall make available a complete exhibit of the prior-year finances of the county including, but not limited to, a statement of financial condition and financial operation in accordance with standards developed by the state auditor. This exhibit shall be made available after the financial records are closed for the prior year;

(5) Shall make out a register of all warrants legally authorized and directed to be issued by the legislative body at any regular or special meeting. The auditor shall make the data available to the county treasurer. The auditor shall retain the original of the register of warrants for future reference;

(6) As clerk of the board of county commissioners, shall:
Record all of the proceedings of the legislative authority;
Make full entries of all of their resolutions and decisions on all questions concerning the raising of money for and the allowance of accounts against the county;

Record the vote of each member on any question upon which there is a division or at the request of any member present;

Sign all orders made and warrants issued by order of the legislative authority for the payment of money;

Record the reports of the county treasurer of the receipts and disbursements of the county;

Preserve and file all accounts acted upon by the legislative authority;

Preserve and file all petitions and applications for franchises and record the action of the legislative authority thereon;

Record all orders levying taxes;

Perform all other duties required by any rule or order of the legislative authority. [2009 c 337 § 3; 1995 c 194 § 1; 1984 c 128 § 2; 1963 c 4 § 36.22.010. Prior: 1955 c 157 § 9; prior: (i) Code 1881 § 2707; 1869 p 310 §§ 1, 2, 3; 1863 p 549 §§ 1, 2, 3; 1854 p 424 §§ 1, 2, 3; RRS § 4083. (ii) Code 1881 § 2709; RRS § 4085. (iii) Code 1881 § 2711; RRS § 4088. (iv) 1893 c 119 § 2; Code 1881 § 2712; 1869 p 311 § 6; 1863 p 550 § 6; 1854 p 425 § 6; RRS § 4089. (v) 1893 c 119 § 3; Code 1881 § 2571; RRS § 4090. (vi) 1893 c 119 § 4; Code 1881 § 2713; 1869 p 311 § 7; 1867 p 130 § 1; RRS § 4091. (vii) 1893 c 119 § 5; Code 1881 § 2714; 1869 p 311 § 8; 1867

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p 131 § 2; RRS § 4092. (viii) 1893 c 119 § 7; Code 1881 § 2718; 1869 p 312 § 13; RRS § 4095. (ix) Code 1881 § 2719; RRS § 4098. (x) 1893 c 119 § 8; Code 1881 § 2720; RRS § 4099.]

36.22.020 Publisher of legislative authority proceedings—Custodian of commissioners' seal. It shall be the duty of the county auditor of each county, within fifteen days after the adjournment of each regular session, to publish a summary of the proceedings of the legislative authority at such term, in any newspaper published in the county or having a general circulation therein, or the auditor may post copies of such proceedings in three of the most public places in the county. The seal of the county commissioners for each county, used by the county auditor as clerk to attest the proceedings of the legislative authority, shall be and remain in the custody of the county auditor, and the auditor is hereby authorized to use such seal in attestation of all official acts, whether as clerk of the legislative authority, as auditor or recorder of deeds; and all certificates, exemplifications of records, or other acts performed as county auditor, certified under the seal of the county commissioners, pursuant to this section, in this state, shall be as valid and legally binding as though attested by a seal of office of the county auditor. [1995 c 194 § 2; 1963 c 4 § 36.22.020. Prior: Code 1881 § 2724; 1869 p 313 § 17; RRS §§ 4102, 4103. Formerly RCW 36.16.080, 36.22.020, and 36.22.130.]

36.22.030 May administer oaths. Auditors and their deputies may administer oaths necessary in the performance of their duties and in all other cases where oaths are required by law to be administered and take acknowledgments of deeds and other instruments in writing: PROVIDED, That any deputy county auditor, in administering such oath or taking such acknowledgment, shall certify to the same in his or her own name as deputy, and not in the name of his or her principal, and shall attach thereto the seal of the office: PROVIDED, That all oaths administered or acknowledgments taken by any deputy of any county auditor certifying to the same in the name of his or her principal by himself or herself as such deputy, prior to the taking effect of chapter 119, Laws of 1893 be and the same are hereby legalized and made valid and binding. [2009 c 549 § 4023; 1963 c 4 § 36.22.030. Prior: 1893 c 119 § 6; Code 1881 § 2717; 1869 p 312 § 11; 1863 p 550 § 8; 1854 p 425 § 8; RRS § 4094.]

36.22.040 Duty to audit claims against county. The county auditor shall audit all claims, demands, and accounts against the county which by law are chargeable to the county, except such cost or fee bills as are by law to be examined or approved by some other judicial tribunal or officer. Such claims as it is his or her duty to audit shall be presented to the board of county commissioners for their examination and allowance. [2009 c 549 § 4024; 1963 c 4 § 36.22.040. Prior: 1893 c 119 § 1, part; Code 1881 § 2710, part; 1869 p 310 § 5, part; 1863 p 549 § 5, part; 1854 p 425 § 5, part; RRS § 4086, part.]

36.22.050 Issuance of warrants—Multiple warrants. For claims allowed by the county commissioners, and also for cost bills and other lawful claims duly approved by the

competent tribunal designated by law for their allowance, he or she shall draw a warrant on the county treasurer, made payable to the claimant or his or her order, bearing date from the time of and regularly numbered in the order of their issue. If there is not sufficient cash in the county treasury to cover such claims or cost bills, or if a claimant requests, the auditor may issue a number of smaller warrants, the total principal amounts of which shall equal the amount of said claim or cost bill. [2009 c 549 § 4025; 1975 c 31 § 1; 1969 ex.s. c 87 § 1; 1963 c 4 § 36.22.050. Prior: (i) 1893 c 119 § 1, part; Code 1881 § 2710, part; 1869 p 310 § 5, part; 1863 p 549 § 5, part; 1854 p 425 § 5, part; RRS § 4086, part. (ii) 1893 c 48 § 2; RRS § 4087.]

36.22.060 Record of warrants. The auditor shall maintain a record of when a warrant is issued. The record shall include the warrant number, date, name of payee, amount, nature of claims, or services provided. [1995 c 194 § 3; 1963 c 4 § 36.22.060. Prior: 1893 c 119 § 1, part; Code 1881 § 2710, part; 1869 p 310 § 5, part; 1863 p 549 § 5, part; 1854 p 425 § 5, part; RRS § 4086, part.]

36.22.070 Original claims to be retained. (1) The auditor shall also retain all original bills and indorse thereon claimant's name, nature of claim, the action had, and if a warrant was issued, date and number the voucher or claim the same as the warrant.

(2) The auditor may retain all claims, bills, and associated records referenced in subsection (1) of this section in an electronic format sufficient for the conduct of official business.

(3) For the purposes of this section, "claims" shall exclude claims filed against the county in accordance with the provisions of chapter 4.96 RCW. [2003 c 72 § 1; 1963 c 4 § 36.22.070. Prior: 1893 c 119 § 1, part; Code 1881 § 2710, part; 1869 p 310 § 5, part; 1863 p 549 § 5, part; 1854 p 425 § 5, part; RRS § 4086, part.]

36.22.080 Claims of auditor. All claims of the county auditor against the county for services shall be audited and allowed by the board of county commissioners as other claims are audited and allowed. Such warrants shall in all respects be audited, approved, issued, numbered, registered, and paid the same as any other county warrant. [1963 c 4 § 36.22.080. Prior: 1893 c 119 § 1, part; Code 1881 § 2710, part; 1869 p 310 § 5, part; 1863 p 549 § 5, part; 1854 p 425 § 5, part; RRS § 4086, part.]

36.22.090 Warrants of political subdivisions. All warrants for the payment of claims against diking, ditch, drainage and irrigation districts and school districts of the second class, who do not issue their own warrants, as well as political subdivisions within the county for which no other provision is made by law, shall be drawn and issued by the county auditor of the county wherein such subdivision is located, upon proper approval by the governing body thereof. [2009 c 337 § 4; 1975 c 43 § 31; 1973 c 111 § 4; 1963 c 4 § 36.22.090. Prior: 1915 c 74 § 1; RRS § 4096.]

Additional notes found at www.leg.wa.gov

36.22.100 Cancellation of unclaimed warrants. Registered or interest bearing county warrants not presented within one year of the date of their call, and all other county warrants not presented within one year of the date of their issue shall be canceled by the legislative authority of the county and the auditor and treasurer of the county shall cancel all record of such warrants, so as to leave the funds as if such warrants had never been drawn. [1971 ex.s. c 120 § 1; 1963 c 4 § 36.22.100. Prior: 1909 c 170 § 1; 1886 p 161 § 1; RRS § 4097.]

36.22.110 Auditor cannot act as attorney or lobbyist. The person holding the office of county auditor, or deputy, or performing its duties, shall not practice as an attorney or represent any person who is making any claim against the county, or who is seeking to procure any legislative or other action by the board of county commissioners. [2002 c 141 § 1; 1963 c 4 § 36.22.110. Prior: Code 1881 § 2722; 1869 p 312 § 12; 1863 p 550 § 9; 1854 p 425 § 9; RRS § 4100.]

36.22.120 Temporary clerk may be appointed. In case the auditor is unable to attend to the duties of his or her office during any session of the board of county commissioners, and has no deputy by him or her appointed in attendance, the board may temporarily appoint a suitable person not by law disqualified from acting as such to perform the auditor's duties. [2009 c 549 § 4026; 1963 c 4 § 36.22.120. Prior: Code 1881 § 2723; 1869 p 313 § 15; 1863 p 550 § 12; 1854 p 425 § 11; RRS § 4101.]

36.22.140 Auditor or charter county financial officer—Ex officio deputy state auditor. Each county auditor or financial officer designated in a charter county shall be ex officio deputy of the state auditor for the purpose of accounting and reporting on municipal corporations and in such capacity shall be under the direction of the state auditor, but he or she shall receive no additional salary or compensation by virtue thereof and shall perform no duties as such, except in connection with county business. [2006 c 280 § 1; 1995 c 301 § 61; 1963 c 4 § 36.22.140. Prior: 1909 c 76 § 12; RRS § 9962.]

36.22.150 Duty of retiring auditor or his or her representative in case of death. Each auditor, on retiring from office, shall deliver to his or her successor the seal of office and all the books, records, and instruments of writing belonging to the office, and take his or her receipt therefor. In case of the death of the auditor, his or her legal representatives shall deliver over the seal, books, records and papers. [2009 c 549 § 4027; 1963 c 4 § 36.22.150. Prior: Code 1881 § 2725; 1869 p 314 § 22; RRS § 4104.]

36.22.160 Copying, preserving, and indexing documents. Each county auditor is hereby authorized to provide for the installation and thereafter for the maintenance of an improved system for copying, preserving, and indexing documents recorded in the county. Such a system may utilize the latest technology including, but not limited to, photomicrographic and computerized electronic digital storage methodology. The initial installation of the improved system shall include the following:

(1) The acquisition, installation, operation, and maintenance of the equipment provided for in the definition above; and

(2) The establishment of procedures for the continued preservation, indexing, and filing of all instruments and records that will, after the effective installation date, constitute a part of the improved system. [1989 c 204 § 2.]

Reviser's note: 1989 c 204 § 7 directed that this section be added to chapter 36.18 RCW. This placement appears inappropriate and the section has been codified as a part of chapter 36.22 RCW.

Findings—1989 c 204: "The legislature, finding in this centennial year that many old documents recorded or filed with county officials are deteriorating due to age and environmental degradation and that such documents require preservation in the public interest before they are irreparably damaged, enacts the centennial document preservation act of 1989." [1989 c 204 § 1.]

36.22.170 Surcharge for preservation of historical documents—Distribution of revenue to county and state treasurer—Creation of account. (1)(a) Except as provided in (b) of this subsection, a surcharge of five dollars per instrument shall be charged by the county auditor for each document recorded, which will be in addition to any other charge authorized by law. One dollar of the surcharge shall be used at the discretion of the county commissioners to promote historical preservation or historical programs, which may include preservation of historic documents.

(b) A surcharge of two dollars per instrument shall be charged by the county auditor for each document presented for recording by the employment security department, which will be in addition to any other charge authorized by law.

(2) Of the remaining revenue generated through the surcharges under subsection (1) of this section:

(a) Fifty percent shall be transmitted monthly to the state treasurer who shall distribute such funds to each county treasurer within the state in July of each year in accordance with the formula described in RCW 36.22.190. The county treasurer shall place the funds received in a special account titled the auditor's centennial document preservation and modernization account to be used solely for ongoing preservation of historical documents of all county offices and departments and shall not be added to the county current expense fund; and

(b) Fifty percent shall be retained by the county and deposited in the auditor's operation and maintenance fund for ongoing preservation of historical documents of all county offices and departments.

(3) The centennial document preservation and modernization account is hereby created in the custody of the state treasurer and shall be classified as a treasury trust account. State distributions from the centennial document preservation and modernization account shall be made without appropriation. [2009 c 337 § 5; 2005 c 442 § 1; 1993 c 37 § 1; 1989 c 204 § 3.]

Findings—1989 c 204: See note following RCW 36.22.160.

36.22.175 Surcharge for local government archives and records management—Records management training—Eastern Washington regional facility. (1)(a) In addition to any other charge authorized by law, the county auditor shall charge a surcharge of one dollar per instrument for each document recorded. Revenue generated through this sur-

charge shall be transmitted monthly to the state treasurer for deposit in the local government archives account under RCW 40.14.024. These funds shall be used solely for providing records scheduling, security microfilm inspection and storage, archival preservation, cataloging, and indexing for local government records and digital data and access to those records and data through the regional branch archives of the division of archives and records management.

(b) The division of archives and records management within the office of the secretary of state shall provide records management training for local governments and shall establish a competitive grant program to solicit and prioritize project proposals from local governments for potential funding to be paid for by funds from the auditor surcharge and tax warrant surcharge revenues. Application for specific projects may be made by local government agencies only. The state archivist in consultation with the advisory committee established under RCW 40.14.027 shall adopt rules governing project eligibility, evaluation, awarding of grants, and other criteria including requirements for records management training for grant recipients.

(2) The advisory committee established under RCW 40.14.027 shall review grant proposals and establish a prioritized list of projects to be considered for funding by January 1st of each even-numbered year, beginning in 2002. The evaluation of proposals and development of the prioritized list must be developed through open public meetings. Funding for projects shall be granted according to the ranking of each application on the prioritized list and projects will be funded only to the extent that funds are available. A grant award may have an effective date other than the date the project is placed on the prioritized list.

(3)(a) In addition to any other surcharge authorized by law, the county auditor shall charge a surcharge of one dollar per instrument for every document recorded after January 1, 2002. Revenue generated through this surcharge shall be transmitted to the state treasurer monthly for deposit in the local government archives account under RCW 40.14.024 to be used exclusively for: (i) The construction and improvement of a specialized regional facility located in eastern Washington designed to serve the archives, records management, and digital data management needs of local government; and (ii) payment of the certificate of participation issued for the Washington state heritage center to the extent there is an excess fund balance in the account and fees generated under RCW 36.18.010 and 43.07.128 are insufficient to meet debt service payments on the certificate of participation.

(b) To the extent the facilities are used for the storage and retrieval of state agency records and digital data, that portion of the construction of such facilities used for state government records and data shall be supported by other charges and fees paid by state agencies and shall not be supported by the surcharge authorized in this subsection, except that to the extent there is an excess fund balance in the account and fees generated under RCW 36.18.010 and 43.07.128 are insufficient to meet debt service payments for the Washington state heritage center, the local government archives account under RCW 40.14.024 may be used for the Washington state heritage center.

(c) At such time that all debt service from construction of the specialized regional archive facility located in eastern

Washington has been paid, fifty percent of the surcharge authorized by this subsection shall be reverted to the centennial document preservation and modernization account as prescribed in RCW 36.22.170 and fifty percent of the surcharge authorized by this section shall be reverted to the state treasurer for deposit in the public records efficiency, preservation, and access account to serve the archives, records management, and digital data management needs of local government, except that the state treasurer shall not revert funds to the centennial document preservation and modernization account and to the public records efficiency, preservation, and access account if fees generated under RCW 36.18.010 and 43.07.128 are insufficient to meet debt service payments on the Washington state heritage center. [2011 1st sp.s. c 50 § 931; 2008 c 328 § 6006; 2003 c 163 § 5; 2001 2nd sp.s. c 13 § 1; 1996 c 245 § 1.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Part headings not law—Severability—Effective date—2008 c 328: See notes following RCW 43.155.050.

Additional notes found at www.leg.wa.gov

36.22.178 Affordable housing for all surcharge—Permissible uses. The surcharge provided for in this section shall be named the affordable housing for all surcharge.

(1) Except as provided in subsection (3) of this section, a surcharge of ten dollars per instrument shall be charged by the county auditor for each document recorded, which will be in addition to any other charge authorized by law. The county may retain up to five percent of these funds collected solely for the collection, administration, and local distribution of these funds. Of the remaining funds, forty percent of the revenue generated through this surcharge will be transmitted monthly to the state treasurer who will deposit the funds into the affordable housing for all account created in RCW 43.185C.190. The department of commerce must use these funds to provide housing and shelter for extremely low-income households, including but not limited to housing for victims of human trafficking and their families and grants for building operation and maintenance costs of housing projects or units within housing projects that are affordable to extremely low-income households with incomes at or below thirty percent of the area median income, and that require a supplement to rent income to cover ongoing operating expenses.

(2) All of the remaining funds generated by this surcharge will be retained by the county and be deposited into a fund that must be used by the county and its cities and towns for eligible housing activities as described in this subsection that serve very low-income households with incomes at or below fifty percent of the area median income. The portion of the surcharge retained by a county shall be allocated to eligible housing activities that serve extremely low and very low-income households in the county and the cities within a county according to an interlocal agreement between the county and the cities within the county consistent with countywide and local housing needs and policies. A priority must be given to eligible housing activities that serve extremely low-income households with incomes at or below thirty percent of the area median income. Eligible housing activities to be funded by these county funds are limited to:

(a) Acquisition, construction, or rehabilitation of housing projects or units within housing projects that are affordable to very low-income households with incomes at or below fifty percent of the area median income, including units for homeownership, rental units, seasonal and permanent farmworker housing units, units reserved for victims of human trafficking and their families, and single room occupancy units;

(b) Supporting building operation and maintenance costs of housing projects or units within housing projects eligible to receive housing trust funds, that are affordable to very low-income households with incomes at or below fifty percent of the area median income, and that require a supplement to rent income to cover ongoing operating expenses;

(c) Rental assistance vouchers for housing units that are affordable to very low-income households with incomes at or below fifty percent of the area median income, including rental housing vouchers for victims of human trafficking and their families, to be administered by a local public housing authority or other local organization that has an existing rental assistance voucher program, consistent with or similar to the United States department of housing and urban development's section 8 rental assistance voucher program standards; and

(d) Operating costs for emergency shelters and licensed overnight youth shelters.

(3) The surcharge imposed in this section does not apply to assignments or substitutions of previously recorded deeds of trust. [2011 c 110 § 1; 2007 c 427 § 1; 2005 c 484 § 18; 2002 c 294 § 2.]

Findings—Conflict with federal requirements—Effective date—2005 c 484: See RCW 43.185C.005, 43.185C.901, and 43.185C.902.

Findings—2002 c 294: "The legislature recognizes housing affordability has become a significant problem for a large portion of society in many parts of Washington state in recent years. The state has traditionally focused its resources on housing for low-income populations. Additional funding resources are needed for building operation and maintenance activities for housing projects affordable to extremely low-income people, for example farmworkers or people with developmental disabilities. Affordable rents for extremely low-income people are not sufficient to cover the cost of building operations and maintenance. In addition resources are needed at the local level to assist in development and preservation of affordable low-income housing to address critical local housing needs." [2002 c 294 § 1.]

36.22.179 Surcharge for local homeless housing and assistance—Use. (1) In addition to the surcharge authorized in RCW 36.22.178, and except as provided in subsection (2) of this section, an additional surcharge of ten dollars shall be charged by the county auditor for each document recorded, which will be in addition to any other charge allowed by law. From September 1, 2012, through June 30, 2019, the surcharge shall be forty dollars. The funds collected pursuant to this section are to be distributed and used as follows:

(a) The auditor shall retain two percent for collection of the fee, and of the remainder shall remit sixty percent to the county to be deposited into a fund that must be used by the county and its cities and towns to accomplish the purposes of chapter 484, Laws of 2005, six percent of which may be used by the county for administrative costs related to its homeless housing plan, and the remainder for programs which directly accomplish the goals of the county's local homeless housing plan, except that for each city in the county which elects as authorized in RCW 43.185C.080 to operate its own local

homeless housing program, a percentage of the surcharge assessed under this section equal to the percentage of the city's local portion of the real estate excise tax collected by the county shall be transmitted at least quarterly to the city treasurer, without any deduction for county administrative costs, for use by the city for program costs which directly contribute to the goals of the city's local homeless housing plan; of the funds received by the city, it may use six percent for administrative costs for its homeless housing program.

(b) The auditor shall remit the remaining funds to the state treasurer for deposit in the home security fund account. The department may use twelve and one-half percent of this amount for administration of the program established in RCW 43.185C.020, including the costs of creating the statewide homeless housing strategic plan, measuring performance, providing technical assistance to local governments, and managing the homeless housing grant program. Of the remaining eighty-seven and one-half percent, at least forty-five percent must be set aside for the use of private rental housing payments, and the remainder is to be used by the department to:

(i) Provide housing and shelter for homeless people including, but not limited to: Grants to operate, repair, and staff shelters; grants to operate transitional housing; partial payments for rental assistance; consolidated emergency assistance; overnight youth shelters; grants and vouchers designated for victims of human trafficking and their families; and emergency shelter assistance; and

(ii) Fund the homeless housing grant program.

(2) The surcharge imposed in this section does not apply to (a) assignments or substitutions of previously recorded deeds of trust, (b) documents recording a birth, marriage, divorce, or death, (c) any recorded documents otherwise exempted from a recording fee or additional surcharges under state law, (d) marriage licenses issued by the county auditor, or (e) documents recording a state, county, or city lien or satisfaction of lien. [2014 c 200 § 1; 2012 c 90 § 1; 2011 c 110 § 2; 2009 c 462 § 1; 2007 c 427 § 4; 2005 c 484 § 9.]

Findings—Conflict with federal requirements—Effective date—2005 c 484: See RCW 43.185C.005, 43.185C.901, and 43.185C.902.

36.22.1791 Additional surcharge for local homeless housing and assistance—Use. (1) In addition to the surcharges authorized in RCW 36.22.178 and 36.22.179, and except as provided in subsection (2) of this section, the county auditor shall charge an additional surcharge of eight dollars for each document recorded, which is in addition to any other charge allowed by law. The funds collected under this section are to be distributed and used as follows:

(a) The auditor shall remit ninety percent to the county to be deposited into a fund six percent of which may be used by the county for administrative costs related to its homeless housing plan, and the remainder for programs that directly accomplish the goals of the county's local homeless housing plan, except that for each city in the county that elects, as authorized in RCW 43.185C.080, to operate its own local homeless housing program, a percentage of the surcharge assessed under this section equal to the percentage of the city's local portion of the real estate excise tax collected by the county must be transmitted at least quarterly to the city treasurer for use by the city for program costs that directly

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contribute to the goals of the city's local homeless housing plan.

(b) The auditor shall remit the remaining funds to the state treasurer for deposit in the home security fund account. The department may use the funds for administering the program established in RCW 43.185C.020, including the costs of creating and updating the statewide homeless housing strategic plan, measuring performance, providing technical assistance to local governments, and managing the homeless housing grant program. Remaining funds may also be used to:

(i) Provide housing and shelter for homeless people including, but not limited to: Grants to operate, repair, and staff shelters; grants to operate transitional housing; partial payments for rental assistance; consolidated emergency assistance; overnight youth shelters; grants and vouchers designated for victims of human trafficking and their families; and emergency shelter assistance; and

(ii) Fund the homeless housing grant program.

(2) The surcharge imposed in this section does not apply to assignments or substitutions of previously recorded deeds of trust. [2011 c 110 § 3; 2007 c 427 § 5.]

36.22.181 Surcharge for prosecution of mortgage lending fraud—Transmittal to state treasurer. (Expires June 30, 2016.) (1) Except as provided in subsection (2) of this section, a surcharge of one dollar shall be charged by the county auditor at the time of recording of each deed of trust, which will be in addition to any other charge authorized by law. The auditor may retain up to five percent of the funds collected to administer collection. The remaining funds shall be transmitted monthly to the state treasurer who will deposit the funds into the mortgage lending fraud prosecution account created in RCW 43.320.140. The department of financial institutions is responsible for the distribution of the funds in the account and shall, in consultation with the attorney general and local prosecutors, develop rules for the use of these funds to pursue criminal prosecution of fraudulent activities within the mortgage lending process.

(2) The surcharge imposed in this section does not apply to assignments or substitutions of previously recorded deeds of trust.

(3) This section expires June 30, 2016. [2011 c 129 § 2; 2006 c 21 § 1; 2003 c 289 § 1.]

Effective date—2011 c 129: See note following RCW 43.320.140.

36.22.190 Distribution of funds. After deduction of those costs of the state treasurer that are described under *RCW 36.22.180, the balance of the funds will be distributed to the counties according to the following formula: One-half of the funds available shall be equally distributed among the thirty-nine counties; and the balance will be distributed among the counties in direct proportion to their population as it relates to the total state's population based on the most recent population statistics. [1989 c 204 § 5.]

Reviser's note: (1) 1989 c 204 § 7 directed that this section be added to chapter 36.18 RCW. This placement appears inappropriate and the section has been codified as a part of chapter 36.22 RCW.

* (2) RCW 36.22.180 was repealed by 1991 sp.s. c 13 § 122, effective July 1, 1991.

Findings—1989 c 204: See note following RCW 36.22.160.

36.22.200 Action for change of name—Filing and recording. Upon receipt of the fee and the name change order from the district court as provided in RCW 4.24.130, the county auditor shall file and record the name change order. [1992 c 30 § 2.]

36.22.210 Process servers—Registration—Fees. (1) Each county auditor shall develop a registration process to register process servers required to register under RCW 18.180.010.

(2) The county auditor may collect an annual registration fee from the process server not to exceed ten dollars.

(3) The county auditor shall use a form in the registration process for the purpose of identifying and locating the registrant, including the process server's name, birthdate, and social security number, and the process server's business name, business address, and business telephone number.

(4) The county auditor shall maintain a register of process servers and assign a number to each registrant. Upon renewal of the registration as required in RCW 18.180.020, the auditor shall continue to assign the same registration number. A successor entity composed of one or more registrants shall be permitted to transfer one or more registration numbers to the new entity. [1997 c 41 § 8; 1992 c 125 § 2.]

Additional notes found at www.leg.wa.gov

36.22.220 Election assistants, deputies—Appointment, qualifications. The county auditor of each county, as ex officio supervisor of all primaries and elections, general or special, within the county under *Title 29 RCW, may appoint one or more well-qualified persons to act as assistants or deputies; however, not less than two persons of the auditor's office who conduct primaries and elections in the county shall be certified under **chapter 29.60 RCW as elections administrators. [1992 c 163 § 12.]

Reviser's note: *(1) Title 29 RCW was repealed and/or recodified pursuant to 2003 c 111, effective July 1, 2004.

** (2) Chapter 29.60 RCW was recodified as chapter 29A.04 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Additional notes found at www.leg.wa.gov

36.22.230 Election assistants, deputies—Additional qualifications. Each deputy or assistant appointed under RCW 36.22.220 shall have been graduated from an accredited high school or shall have passed a high school equivalency examination. Each shall be knowledgeable in the rules and laws of conducting elections. [1992 c 163 § 13.]

Additional notes found at www.leg.wa.gov

Chapter 36.23 RCW COUNTY CLERK

Sections

36.23.020	New bond may be required.
36.23.030	Records to be kept.
36.23.040	Custody and delivery of records.
36.23.065	Destruction and reproduction of court records—Destruction of receipts for expenses under probate proceedings.
36.23.067	Reproduced court records have same force and effect as original.
36.23.070	Destruction of court exhibits—Preservation for historical purposes.
36.23.080	Office at county seat.
36.23.090	Search for birth parents—County clerk's duty.

36.23.100 Electronic payment of court fees and other financial obligations—Authorized.

36.23.110 Legal financial obligations—Report on collections.

Civil actions, generally, clerk's duties: Title 4 RCW.

County clerk

as clerk of superior court: State Constitution Art. 4 § 26.

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powers and duties: RCW 2.32.050.

Dissolution of inactive port districts: Chapter 53.47 RCW.

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Lien foreclosure, clerk's duties: Chapter 84.64 RCW.

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Tax warrants, clerk's duties: Chapter 82.32 RCW.

Veterans, clerk to furnish documents for free: RCW 73.04.120.

Witness fees and expenses, civil proceedings, clerk's duties: Chapter 2.40 RCW, RCW 5.56.010.

36.23.020 New bond may be required. When the judge or judges of any court, or a majority of them, believe that the clerk of the court does not have a good and sufficient bond on file, or that the bond is not large enough in amount, such judge or judges shall enter an order requiring him or her, within such time as may be specified in the order, to execute and present to them a good and sufficient bond, in such sum as may be fixed by the order. In case of his or her failure to file the bond within ten days from the expiration of the date fixed the judge or judges shall declare the office vacant. [2009 c 549 § 4028; 1963 c 4 § 36.23.020. Prior: 1895 c 53 § 3; RRS § 72.]

36.23.030 Records to be kept. The clerk of the superior court at the expense of the county shall keep the following records:

(1) A record in which he or she shall enter all appearances and the time of filing all pleadings in any cause;

(2) A docket in which before every session, he or she shall enter the titles of all causes pending before the court at that session in the order in which they were commenced, beginning with criminal cases, noting in separate columns the names of the attorneys, the character of the action, the pleadings on which it stands at the commencement of the session. One copy of this docket shall be furnished for the use of the court and another for the use of the members of the bar;

(3) A record for each session in which he or she shall enter the names of witnesses and jurors, with time of attendance, distance of travel, and whatever else is necessary to enable him or her to make out a complete cost bill;

(4) A record in which he or she shall record the daily proceedings of the court, and enter all verdicts, orders, judgments, and decisions thereof, which may, as provided by local court rule, be signed by the judge; but the court shall have full control of all entries in the record at any time during the session in which they were made;

(5) An execution docket and also one for a final record in which he or she shall make a full and perfect record of all criminal cases in which a final judgment is rendered, and all

civil cases in which by any order or final judgment the title to real estate, or any interest therein, is in any way affected, and such other final judgments, orders, or decisions as the court may require;

(6) A record in which shall be entered all orders, decrees, and judgments made by the court and the minutes of the court in probate proceedings;

(7) A record of wills and bonds shall be maintained. Originals shall be placed in the original file and shall be preserved or duplicated pursuant to RCW 36.23.065;

(8) A record of letters testamentary, administration, and guardianship in which all letters testamentary, administration, and guardianship shall be recorded;

(9) A record of claims shall be entered in the appearance docket under the title of each estate or case, stating the name of each claimant, the amount of his or her claim and the date of filing of such;

(10) A memorandum of the files, in which at least one page shall be given to each estate or case, wherein shall be noted each paper filed in the case, and the date of filing each paper;

(11) A record of the number of petitions filed for restoration of the right to possess a firearm under chapter 9.41 RCW and the outcome of the petitions;

(12) Such other records as are prescribed by law and required in the discharge of the duties of his or her office. [2011 c 193 § 3; 2002 c 30 § 1; 1987 c 363 § 3; 1967 ex.s. c 34 § 2; 1963 c 4 § 36.23.030. Prior: (i) 1923 c 130 § 1; Code 1881 § 2179; 1863 p 417 § 6; 1854 p 366 § 6; RRS § 75. (ii) 1917 c 156 § 2; RRS § 1372. (iii) 1917 c 156 § 57; Code 1881 § 1384; 1863 p 219 § 118; 1860 p 181 § 85; RRS § 1427. (iv) 1917 c 156 § 72; Code 1881 § 1411; 1863 p 221 § 130; 1860 p 183 § 97; RRS § 1442.]

36.23.040 Custody and delivery of records. The clerk shall be responsible for the safe custody and delivery to his or her successor of all books and papers belonging to his or her office. [2009 c 549 § 4029; 1963 c 4 § 36.23.040. Prior: Code 1881 § 2181; 1863 p 418 § 8; 1854 p 367 § 8; RRS § 76.]

36.23.065 Destruction and reproduction of court records—Destruction of receipts for expenses under probate proceedings. Notwithstanding any other law relating to the destruction of court records, the county clerk may cause to be destroyed all documents, records, instruments, books, papers, depositions, and transcripts, in any action or proceeding in the superior court, or otherwise filed in his or her office pursuant to law, if all of the following conditions exist:

(1) The county clerk maintains for the use of the public a photographic film, microphotographic, photostatic, electronic, or similar reproduction of each document, record, instrument, book, paper, deposition, or transcript so destroyed: PROVIDED, That all receipts and canceled checks filed by a personal representative pursuant to RCW 11.76.100 may be removed from the file by order of the court and destroyed the same as an exhibit pursuant to RCW 36.23.070.

(2) At the time of the taking of the photographic film, microphotographic, photostatic, electronic, or similar reproduction, the county clerk or other person under whose direction and control the same was taken, attached thereto, or to

the sealed container in which the same was placed and has been kept, or incorporated in the photographic film, microphotographic, photostatic, electronic, or similar reproduction, a certification that the copy is a correct copy of the original, or of a specified part thereof, as the case may be, the date on which taken, and the fact it was taken under the clerk's direction and control. The certificate must be under the official seal of the certifying officer, if there be any, or if the certifying officer is the clerk of a court having a seal, under the seal of such court.

(3) The county clerk promptly seals and stores at least one original or negative of each such photographic film, microphotographic, photostatic, electronic, or similar reproduction in such manner and place as reasonably to assure its preservation indefinitely against loss, theft, defacement, or destruction. Electronic reproductions are acceptable media for this purpose if one of the following conditions exists:

(a) The electronic reproductions are continuously updated and, if necessary, transferred to another medium to ensure that they are accessible through contemporary and supported electronic or computerized systems; or

(b) The electronic reproductions are scheduled to be reproduced on photographic film, microphotographic, photostatic, or similar media for indefinite preservation.

(4) When copies of public records of the county clerk are transferred to the state archives for security storage, the state archives may only provide certified copies of those records with the written permission of the county clerk who is custodian of those records. When so transferred and authorized, the copies of the public records concerned shall be made by the state archives, which certification shall have the same force and effect as though made by the county clerk who is custodian of the record. If there is a statutory fee for the reproduction of the document, contracts can be made between the county clerk and the state archives for reproduction and certification of the copies, however no certification authority may be transferred except as provided in this subsection and for records of abolished or discontinued offices or agencies under chapter 40.14 RCW. [1998 c 226 § 1; 1981 c 277 § 10; 1973 c 14 § 1; 1971 c 29 § 1; 1963 c 4 § 36.23.065. Prior: 1957 c 201 § 1.]

36.23.067 Reproduced court records have same force and effect as original. Any print, whether enlarged or not, from any photographic film, including any photographic plate, microphotographic film, or photostatic negative or similar reproduction, or from any electronic record, of any original record, document, instrument, book, paper, deposition, or transcript which has been processed in accordance with the provisions of RCW 36.23.065, and has been certified by the county clerk under his or her official seal as a true copy, may be used in all instances, including introduction in evidence in any judicial or administrative proceeding, that the original record, document, instrument, book, paper, deposition, or transcript might have been used, and shall have the full force and effect of the original for all purposes. [1998 c 226 § 2; 1963 c 4 § 36.23.067. Prior: 1957 c 201 § 2.]

36.23.070 Destruction of court exhibits—Preservation for historical purposes. A county clerk may at any time more than six years after the entry of final judgment in any

action apply to the superior court for an authorizing order and, upon such order being signed and entered, turn such exhibits of possible value over to the sheriff for disposal in accordance with the provisions of chapter 63.40 RCW, and destroy any other exhibits, unopened depositions, and reporters' notes which have theretofore been filed in such cause: PROVIDED, That reporters' notes in criminal cases must be preserved for at least fifteen years: PROVIDED FURTHER, That any exhibits which are deemed to possess historical value may be directed to be delivered by the clerk to libraries or historical societies. [1981 c 154 § 1; 1973 c 14 § 2; 1967 ex.s. c 34 § 3; 1963 c 4 § 36.23.070. Prior: 1957 c 201 § 3; 1947 c 277 § 1; Rem. Supp. 1947 § 81-1.]

36.23.080 Office at county seat. The clerk of the superior court shall keep an office at the county seat of the county of which he or she is clerk. [2009 c 105 § 2; 1963 c 4 § 36.23.080. Prior: 1891 c 57 § 1; RRS § 73, part. Cf. Code 1881 § 2125.]

36.23.090 Search for birth parents—County clerk's duty. The county clerk shall provide the name and telephone number of at least one resource to assist adopted persons who are searching for birth parents, or birth parents who are searching for children they have relinquished, if these resources have contacted the clerk's office and requested that their name be made available to persons making inquiry. [1990 c 146 § 10.]

36.23.100 Electronic payment of court fees and other financial obligations—Authorized. County clerks are authorized to accept credit cards, charge cards, debit cards, smart cards, stored value cards, federal wire, and automatic clearinghouse system transactions, or other electronic communication, for payment of all fees and moneys due the court under RCW 36.18.012 through 36.18.020, and for the payment of court-ordered legal financial obligations of criminal defendants which include, but are not limited to, fines, fees, assessments, restitution, and crime victims' compensation, consistent with RCW 36.48.010, 36.48.080, and 36.48.090. A payer desiring to pay by credit card, charge card, debit card, smart card, stored value card, federal wire, and automatic clearinghouse system transactions, or other electronic communication shall bear the cost of processing the transaction. [2000 c 202 § 1.]

36.23.110 Legal financial obligations—Report on collections. The Washington association of county officials, in consultation with county clerks, shall determine a funding formula for allocation of moneys to counties for purposes of collecting legal financial obligations, and report this formula to the legislature and the administrative office of the courts by September 1, 2003. The Washington association of county officials shall report on the amounts of legal financial obligations collected by the county clerks to the appropriate committees of the legislature no later than December 1, 2004, and annually thereafter. [2003 c 379 § 20.]

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Additional notes found at www.leg.wa.gov

Chapter 36.24 RCW COUNTY CORONER

Sections

36.24.010	To act as sheriff under certain conditions.
36.24.020	Inquests.
36.24.030	Penalty for nonattendance of juror.
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36.24.160	District judge may act as coroner.
36.24.170	Coroner not to practice law.
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36.24.190	Medical examiner—When authorized—Election—Qualifications for appointment.

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Dead bodies

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Duties relating to

execution of judgment: Chapter 6.17 RCW.

human remains, generally: Chapter 68.50 RCW.

public cemetery and morgue, management: RCW 68.52.020.

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successors, delivery of documents and property to: RCW 36.28.120.

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Labor disputes, arbitration of, service of process by: RCW 49.08.030.

State hospitals for individuals with mental illness, report of death of patient in, given coroner: RCW 72.23.190.

Vehicle of as emergency vehicle: RCW 46.04.040.

36.24.010 To act as sheriff under certain conditions.

The coroner shall perform the duties of the sheriff in all cases where the sheriff is interested or otherwise incapacitated from serving; and whenever the coroner acts as sheriff he or she shall possess the powers and perform all the duties of sheriff, and shall be liable on his or her official bond in like manner as the sheriff would be, and shall be entitled to the same fees as are allowed by law to the sheriff for similar services: PROVIDED, That nothing herein contained shall prevent the court from appointing a suitable person to discharge such duties, as provided by RCW 36.28.090. [2009 c 549 § 4031; 1963 c 4 § 36.24.010. Prior: 1897 c 21 § 1; Code 1881 § 2776; 1863 p 559 § 2; 1854 p 436 § 2; RRS § 4180.]

36.24.020 Inquests. Any coroner, in his or her discretion, may hold an inquest if the coroner suspects that the death of a person was unnatural, or violent, or resulted from unlawful means, or from suspicious circumstances, or was of such a nature as to indicate the possibility of death by the hand of the deceased or through the instrumentality of some other person: PROVIDED, That, except under suspicious circumstances, no inquest shall be held following a traffic death.

The coroner in the county where an inquest is to be convened pursuant to this chapter shall notify the superior court to provide persons to serve as a jury of inquest to hear all the evidence concerning the death and to inquire into and render a true verdict on the cause of death. Jurors shall be selected and summoned in the same manner and shall have the same qualifications as specified in chapter 2.36 RCW. The prosecuting attorney having jurisdiction shall be notified in advance of any such inquest to be held, and at his or her discretion may be present at and assist the coroner in the conduct of the same. The coroner may adjourn the inquest from time to time as he or she may deem necessary.

The costs of inquests shall be borne by the county in which the inquest is held. [2009 c 549 § 4032; 1988 c 188 § 18; 1963 c 4 § 36.24.020. Prior: 1953 c 188 § 3; Code 1881 § 2777; 1863 p 560 § 3; 1854 p 436 § 3; RRS § 4181.]

Legislative findings—Severability—Effective date—1988 c 188: See notes following RCW 2.36.010.

36.24.030 Penalty for nonattendance of juror. Every person summoned as a juror who fails to appear without having a reasonable excuse shall forfeit a sum not exceeding twenty dollars, to be recovered by the coroner, in the name of the state, before any district judge of the county. The penalty when collected shall be paid over to the county treasurer for the use of the county. [1987 c 202 § 202; 1963 c 4 § 36.24.030. Prior: Code 1881 § 2778; 1863 p 560 § 4; 1854 p 436 § 4; RRS § 4182.]

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

36.24.040 Duty of coroner's jury—Oath. When four or more of the jurors attend, they shall be sworn by the coroner to inquire who the person was, and when, where, and by what means he or she came to his or her death, and into the circumstances attending his or her death, and to render a true verdict therein, according to the evidence afforded them, or arising from the inspection of the body. [2009 c 549 § 4033; 1963 c 4 § 36.24.040. Prior: Code 1881 § 2779; 1863 p 560 § 5; 1854 p 436 § 5; RRS § 4183.]

36.24.050 Power to summon witnesses—Subpoenas. The coroner may issue subpoenas for witnesses returnable forthwith or at such time and place as the coroner may appoint, which may be served by any competent person. The coroner must summon and examine as witnesses, on oath administered by the coroner, every person, who, in his or her opinion or that of any of the jury, has any knowledge of the facts. A witness served with a subpoena may be compelled to attend and testify, or be punished by the coroner for disobedience, in like manner as upon a subpoena issued by a district judge. [1987 c 202 § 203; 1963 c 4 § 36.24.050. Prior: (i) 1901 c 131 § 1, part; Code 1881 § 2780, part; 1863 p 560 § 6, part; 1854 p 436 § 6, part; RRS § 4184, part. (ii) Code 1881 § 2781; 1863 p 560 § 7; 1854 p 437 § 7; RRS § 4186.]

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

36.24.060 Power to employ physician or surgeon—Compensation. The coroner may summon a surgeon or physician to inspect the body and give under oath a professional opinion as to the cause of death. The fees for the coroner's physician or surgeon shall not be less than ten dollars. [1963

c 4 § 36.24.060. Prior: (i) 1901 c 131 § 1, part; Code 1881 § 2780, part; 1863 p 560 § 6, part; 1854 p 436 § 6, part; RRS § 4184, part.]

36.24.070 Verdict of jury. After hearing the testimony, the jury shall render its verdict and certify the same in writing signed by the jurors, and setting forth who the person killed is, if known, and when, where and by what means he or she came to his or her death; or if he or she was killed, or his or her death was occasioned by the act of another by criminal means, who is guilty thereof, if known. [2009 c 549 § 4034; 1963 c 4 § 36.24.070. Prior: 1953 c 188 § 4; Code 1881 § 2782; 1863 p 560 § 8; 1854 p 437 § 8; RRS § 4187.]

36.24.080 Testimony reduced to writing in certain cases and witnesses recognized. In all cases where murder or manslaughter is supposed to have been committed, the testimony of witnesses taken before the coroner's jury shall be reduced to writing by the coroner, or under his or her direction, and he or she shall also recognize such witnesses to appear and testify in the superior court of the county, and shall forthwith file the written testimony, inquisition, and recognizance with the clerk of such court. [2009 c 549 § 4035; 1963 c 4 § 36.24.080. Prior: Code 1881 § 2783; 1863 p 561 § 9; 1854 p 437 § 9; RRS § 4188.]

36.24.090 Procedure where accused is under arrest. If the person charged with the commission of the offense has been arrested before the inquisition has been filed, the coroner shall deliver the recognizance and the inquisition, with the testimony taken, to the magistrate before whom such person may be brought, who shall return the same, with the depositions and statements taken before him or her to the clerk of the superior court of the county. [2009 c 549 § 4036; 1963 c 4 § 36.24.090. Prior: Code 1881 § 2784; 1863 p 561 § 10; 1854 p 437 § 10; RRS § 4189.]

36.24.100 Procedure where accused is at large—Warrant of arrest. If the jury finds that the person was killed and the party committing the homicide is ascertained by the inquisition, but is not in custody, the coroner shall issue a warrant for the arrest of the person charged, returnable forthwith to the nearest magistrate. [1963 c 4 § 36.24.100. Prior: Code 1881 § 2785; 1863 p 561 § 11; 1854 p 437 § 11; RRS § 4190.]

36.24.110 Form of warrant. The coroner's warrant shall be in substantially the following form:

State of Washington, }
County of } ss.
To any sheriff or constable of the county.

An inquisition having been this day found by the coroner's jury, before me, stating that A B has come to his or her death by the act of C D, by criminal means (or as the case may be, as found by the inquisition), you are therefore commanded, in the name of the state of Washington, forthwith to arrest the above named C D, and take him or her before the nearest or most accessible magistrate in this county.

Given under my hand this day of, A.D. 19. . .

E F, coroner of the county of

[2009 c 549 § 4037; 1963 c 4 § 36.24.110. Prior: Code 1881 § 2786; 1863 p 561 § 12; 1854 p 437 § 12; RRS § 4191.]

36.24.120 Service of warrant. The coroner's warrant may be served in any county, and the officers serving it shall proceed thereon, in all respects, as upon a warrant of arrest. [1963 c 4 § 36.24.120. Prior: Code 1881 § 2787; 1863 p 561 § 13; 1854 p 438 § 13; RRS § 4192.]

36.24.130 Property of deceased. The coroner or medical examiner must, within thirty days after the investigation of the death, deliver to the county treasurer any money which may be found upon the body, unless claimed in the meantime by the legal representatives of the deceased. If there is personal property, other than money, found upon the body, unless claimed in the meantime by a legal representative of the deceased, the coroner or medical examiner shall, within one hundred eighty days of the investigation, be authorized to dispose of any property of no resale value and forward any other property to the applicable county agency to be sold at the next county surplus sale. Any proceeds from the sale shall be forwarded to the county treasurer. If the coroner or medical examiner fails to do so, the treasurer may proceed against the coroner or medical examiner to recover the same by a civil action in the name of the county. [2004 c 79 § 1; 1963 c 4 § 36.24.130. Prior: Code 1881 § 2789; 1863 p 562 § 15; 1854 p 438 § 15; RRS § 4194.]

36.24.140 Duty of treasurer. Upon the delivery of money to the treasurer, the treasurer shall place it to the credit of the county. [2004 c 79 § 2; 1963 c 4 § 36.24.140. Prior: Code 1881 § 2790; 1863 p 562 § 16; 1854 p 438 § 16; RRS § 4195.]

36.24.150 Delivery to representatives. If the money in the treasury is demanded within six years by the legal representatives of the deceased, the treasurer shall pay it to them after deducting the fees and expenses of the coroner and of the county in relation to the matter, or the same may be so paid at any time thereafter, upon the order of the board of county commissioners of the county. [1963 c 4 § 36.24.150. Prior: Code 1881 § 2791; 1863 p 562 § 17; 1854 p 438 § 17; RRS § 4196.]

36.24.155 Undisposed of remains—Entrusting to funeral homes or mortuaries. Whenever anyone shall die within a county without making prior plans for the disposition of his or her body and there is no other person willing to provide for the disposition of the body, the county coroner

shall cause such body to be entrusted to a funeral home in the county where the body is found. Except in counties where the county coroner or medical examiner has established a preferred funeral home using a qualified bidding process, disposition shall be on a rotation basis, which shall treat equally all funeral homes or mortuaries desiring to participate, such rotation to be established by the coroner after consultation with representatives of the funeral homes or mortuaries in the county or counties involved. [2011 c 16 § 1; 2009 c 549 § 4038; 1969 ex.s. c 259 § 2.]

Human remains that have not been disposed: RCW 68.50.230.

36.24.160 District judge may act as coroner. If the office of coroner is vacant, or the coroner is absent or unable to attend, the duties of the coroner's office may be performed by any district judge in the county with the like authority and subject to the same obligations and penalties as the coroner. For such service a district judge shall be entitled to the same fees, payable in the same manner. [1987 c 202 § 204; 1963 c 4 § 36.24.160. Prior: (i) Code 1881 § 2793; 1863 p 562 § 19; 1854 p 438 § 19; RRS § 4198. (ii) Code 1881 § 2795; 1863 p 562 § 21; 1854 p 438 § 21; RRS § 4199.]

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

36.24.170 Coroner not to practice law. The coroner shall not appear or practice as attorney in any court, except in defense of himself or herself or his or her deputies. [2009 c 549 § 4039; 1963 c 4 § 36.24.170. Prior: 1891 c 45 § 4, part; Code 1881 § 2770, part; 1863 p 558 § 5, part; 1854 p 434 § 5, part; RRS § 4171, part.]

36.24.175 Coroner not to be owner or employee of funeral home or mortuary—Counties with populations of forty thousand or more. In each county with a population of forty thousand or more, no person shall be qualified for the office of county coroner as provided for in RCW 36.16.030 who is an owner or employee of any funeral home or mortuary. [1991 c 363 § 54; 1969 ex.s. c 259 § 3.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.24.180 Audit of coroner's account. Before auditing and allowing the account of the coroner the board of county commissioners shall require from him or her a verified statement in writing, accounting for all money or other property found upon persons on whom inquests have been held by him or her, and that the money or property mentioned in it has been delivered to the legal representatives of the deceased, or to the county treasurer. [2009 c 549 § 4040; 1963 c 4 § 36.24.180. Prior: Code 1881 § 2792; 1863 p 562 § 18; 1854 p 438 § 18; RRS § 4197.]

36.24.190 Medical examiner—When authorized—Election—Qualifications for appointment. In a county with a population of two hundred fifty thousand or more, the county legislative authority may, upon majority vote at an election called by the county legislative authority, adopt a system under which a medical examiner may be appointed to replace the office of the coroner. The county legislative authority must adopt a resolution or ordinance that creates the office of medical examiner at least thirty days prior to the

first day of filing for the primary election for county offices. If a county adopts such a resolution or ordinance, the resolution or ordinance shall be referred to the voters for confirmation or rejection at the next date for a special election according to RCW 29A.04.321. If the resolution or ordinance is approved by majority vote, no election shall be held for the position of coroner and the coroner's position is abolished following the expiration of the coroner's term of office or upon vacating of the office of the coroner for any reason. The county legislative authority shall appoint a medical examiner to assume the statutory duties performed by the county coroner and the appointment shall become effective following the expiration of the coroner's term of office or upon the vacating of the office of the coroner. To be appointed as a medical examiner pursuant to this section, a person must either be: (1) Certified as a forensic pathologist by the American board of pathology; or (2) a qualified physician eligible to take the American board of pathology exam in forensic pathology within one year of being appointed. A physician specializing in pathology who is appointed to the position of medical examiner and who is not certified as a forensic pathologist must pass the pathology exam within three years of the appointment. [2006 c 344 § 27; 1996 c 108 § 2.]

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

Chapter 36.26 RCW PUBLIC DEFENDER

Sections

36.26.010	Definitions.
36.26.020	Public defender district—Creation—Office of public defender.
36.26.030	Selection committee.
36.26.040	Public defender—Qualifications—Term.
36.26.050	Reports—Records—Costs and expenses.
36.26.060	Compensation—Office—Assistants, clerks, investigators, etc.
36.26.070	Duty to represent indigent defendants.
36.26.080	Duty to counsel, defend, and prosecute appeals.
36.26.090	Appointment of attorney other than public defender.
36.26.900	Chapter cumulative and nonexclusive.

36.26.010 Definitions.

As used in this chapter:
(1) "County commissioners" or "board of county commissioners" means and includes:

(a) Any single board of county commissioners, county council, or other governing body of any county which has neither a board of county commissioners nor a county council denominated as such; and

(b) The governing bodies, including any combination or mixture of more than one board of county commissioners, county council, or otherwise denominated governing body of a county, of any two or more contiguous counties electing to participate jointly in the support of any intercounty public defender.

(2) "District" or "public defender district" means any one or more entire counties electing to employ a public defender; and no county shall be divided in the creation of any public defender district. [1969 c 94 § 1.]

36.26.020 Public defender district—Creation—Office of public defender. The board of county commissioners of any single county or of any two or more territorially contiguous counties or acting in cooperation with the

governing authority of any city located within the county or counties may, by resolution or by ordinance, or by concurrent resolutions or concurrent ordinances, constitute such county or counties or counties and cities as a public defender district, and may establish an office of public defender for such district. [1969 c 94 § 2.]

36.26.030 Selection committee. The board of county commissioners of every county electing to become or to join in a public defender district shall appoint a selection committee for the purpose of selecting a full or part time public defender for the public defender district. Such selection committee shall consist of one member of each board of county commissioners, one member of the superior court from each county, and one practicing attorney from each county within the district. [1969 c 94 § 3.]

36.26.040 Public defender—Qualifications—Term.

Every public defender and every assistant public defender must be a qualified attorney licensed to practice law in this state; and the term of the public defender shall coincide with the elected term of the prosecuting attorney. [1969 c 94 § 4.]

36.26.050 Reports—Records—Costs and expenses.

The public defender shall make an annual report to each board of county commissioners within his or her district. If any public defender district embraces more than one county or a cooperating city, the public defender shall maintain records of expenses allocable to each county or city within the district, and shall charge such expenses only against the county or city for which the services were rendered or the costs incurred. The boards of county commissioners of counties and the governing authority of any city participating jointly in a public defender district are authorized to provide for the sharing of the costs of the district by mutual agreement, for any costs which cannot be specifically apportioned to any particular county or city within the district.

Expenditures by the public defender shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties or cities. [2009 c 549 § 4041; 1969 c 94 § 5.]

36.26.060 Compensation—Office—Assistants, clerks, investigators, etc. (1) The board of county commissioners shall:

(a) Fix the compensation of the public defender and of any staff appointed to assist him or her in the discharge of his or her duties: PROVIDED, That the compensation of the public defender shall not exceed that of the county prosecutor in those districts which comprise only one county;

(b) Provide office space, furniture, equipment and supplies for the use of the public defender suitable for the conduct of his or her office in the discharge of his or her duties, or provide an allowance in lieu of facilities and supplies.

(2) The public defender may appoint as many assistant attorney public defenders, clerks, investigators, stenographers and other employees as the board of county commissioners considers necessary in the discharge of his or her duties as a public defender. [2009 c 549 § 4042; 1969 c 94 § 6.]

36.26.070 Duty to represent indigent defendants.

The public defender must represent, without charge to any accused, every indigent person who is or has been arrested or charged with a crime for which court appointed counsel for indigent defendants is required either under the Constitution of the United States or under the Constitution and laws of the state of Washington:

(1) If such arrested person or accused, having been apprised of his or her constitutional and statutory rights to counsel, requests the appointment of counsel to represent him or her; and

(2) If a court, on its own motion or otherwise, does not appoint counsel to represent the accused; and

(3) Unless the arrested person or accused, having been apprised of his or her right to counsel in open court, affirmatively rejects or intelligently repudiates his or her constitutional and statutory rights to be represented by counsel. [2009 c 549 § 4043; 1984 c 76 § 18; 1969 c 94 § 7.]

36.26.080 Duty to counsel, defend, and prosecute appeals. Whenever the public defender represents any indigent person held in custody without commitment or charged with any criminal offense, he or she must (1) counsel and defend such person, and (2) prosecute any appeals and other remedies, whether before or after conviction, which he or she considers to be in the interests of justice. [2009 c 549 § 4044; 1969 c 94 § 8.]

36.26.090 Appointment of attorney other than public defender. For good cause shown, or in any case involving a crime of widespread notoriety, the court may, upon its own motion or upon application of either the public defender or of the indigent accused, appoint an attorney other than the public defender to represent the accused at any stage of the proceedings or on appeal: PROVIDED, That the public defender may represent an accused, not an indigent, in any case of public notoriety where the court may find that adequate retained counsel is not available. The court shall award, and the county in which the offense is alleged to have been committed shall pay, such attorney reasonable compensation and reimbursement for any expenses reasonably and necessarily incurred in the presentation of the accused's defense or appeal, in accordance with RCW 4.88.330. [1984 c 76 § 19; 1983 c 3 § 76; 1969 c 94 § 9.]

36.26.900 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy, particularly in counties electing not to create the office of public defender: PROVIDED, That nothing herein shall be construed to prevent the appointment of a full time or part time assigned-counsel administrator for the purpose of maintaining a centrally administered system for the assignment of counsel to represent indigent persons. [1969 c 94 § 10.]

Chapter 36.27 RCW PROSECUTING ATTORNEY

Sections

36.27.005	Defined.
36.27.010	Eligibility to office.
36.27.020	Duties.

36.27.030	Disability of prosecuting attorney.
36.27.040	Appointment of deputies—Special and temporary deputies.
36.27.045	Employment of legal interns.
36.27.050	Special emoluments prohibited.
36.27.060	Private practice prohibited in certain counties—Deputy prosecutors.
36.27.070	Office at county seat.
36.27.100	Statewide drug prosecution assistance program—Created.
36.27.110	Statewide drug prosecution assistance program—Advisory committee—Selection of project director.
36.27.120	Statewide drug prosecution assistance program—Personnel—Review of assignments—Supervision of special deputies.

Attorney general to act if prosecuting attorney defaults: RCW 43.10.090.

Attorney general to assist: RCW 43.10.030(4).

Autopsy reports, prosecuting attorney may know contents of: RCW 68.50.105.

Charitable solicitors, prosecuting attorney's powers and duties relating to: Chapter 19.09 RCW.

County canvassing board, prosecuting attorney as member: RCW 29A.60.160, 39.40.030.

Defined for diking, drainage or sewerage improvement district purposes: RCW 85.08.010.

Dissolution of inactive port districts: Chapter 53.47 RCW.

District court districting committee, as member of: RCW 3.38.010.

Duties relating to

air pollution control regulations: Chapter 70.94 RCW.

apple commission law: RCW 15.24.180.

baseball contracts with minors: RCW 67.04.110, 67.04.120.

basic juvenile court act: Chapter 13.04 RCW.

camping resorts: RCW 19.105.470, 19.105.490.

cigarette excise tax forfeiture proceeding: RCW 82.24.135.

cities and towns, proceedings attacking validity of consolidation or annexation: RCW 35.23.545.

civil service for sheriff's office: RCW 41.14.170.

crime victims and witnesses, comprehensive programs: RCW 7.68.035.

dairy products commission law: RCW 15.44.160.

degree-granting institutions: Chapter 28B.85 RCW.

dental hygienists, licensing of: RCW 18.29.100.

department of natural resources: RCW 78.52.035.

diking, drainage and sewerage improvement districts: Chapter 85.08 RCW.

diseased apiaries as nuisance: Chapter 15.60 RCW.

elections, initiative and referendum: Chapter 29A.72 RCW.

elevators, escalators, like conveyances: RCW 70.87.140.

eminent domain by counties: Chapter 8.08 RCW.

food, drug and cosmetic act: RCW 69.04.160.

grain and terminal warehouses, commodity inspection violations: Chapter 22.09 RCW.

homestead property, application to alienate upon grounds of insanity of one spouse: Chapter 6.13 RCW.

hotels, safety inspection violations: Chapter 70.62 RCW.

housing authority act: RCW 35.82.040.

individuals with mental illness, alcoholics, detention of in private hospitals: Chapter 71.12 RCW.

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liquor violations: RCW 66.44.010.

abatement proceedings: Chapter 66.36 RCW.

mental illness: Chapter 71.05 RCW.

pharmacists, regulations of: Chapter 18.64 RCW.

physical therapy, practice of: RCW 18.74.090, 18.74.095.

pilotage act, violations: Chapter 88.16 RCW.

plats, subdivisions and dedications, failure to file: Chapter 58.17 RCW.

private vocational schools: Chapter 28C.10 RCW.

public lands, tidelands and shorelands, appraisal of: RCW 79.125.070.

railroad grade crossings as nuisance, abatement of: RCW 81.53.190.

real estate brokers and salespersons licensing provisions: RCW 18.85.430.

retail installment transaction act: RCW 63.14.190.

river and harbor improvement districts: Chapter 88.32 RCW.

school districts, violations applicable to: Chapter 28A.635 RCW.

securities act: RCW 21.20.410.

seeds: Chapter 15.49 RCW.

sexual psychopaths and psychopathic delinquents: Chapter 71.06 RCW.

soft tree fruits commission law: RCW 15.28.290.

standards, grades and packs violations: RCW 15.17.260.
support of dependent children: Chapter 74.20 RCW.
taxes, property
lien foreclosure: Chapter 84.64 RCW.
recovery: Chapter 84.68 RCW.
term papers, theses, dissertations, sale of prohibited: RCW 28B.10.584.
uniform reciprocal enforcement of support act: Chapter 26.21A RCW.
veterans, employment, reemployment rights: RCW 73.16.061.
vital statistics: Chapter 70.58 RCW.
wages, payment and collection of: RCW 49.48.050.
Washington commercial feed law: Chapter 15.53 RCW.
Washington fertilizer act: RCW 15.54.470.
Washington pesticide act: Chapter 15.58 RCW.
Washington state agricultural enabling act of 1961: RCW 15.65.550.
water code: RCW 90.03.100, 90.03.350.
weed districts: Chapter 17.04 RCW.
wharves, eminent domain of county to provide: RCW 88.24.070.

Gambling activities, as affecting: Chapter 9.46 RCW.
Governor may request action by: RCW 43.06.010(6).
Juvenile justice act, duties of prosecuting attorney: Chapter 13.40 RCW.
Pawnbroker's and secondhand dealers' records open to inspection: RCW 19.60.020.

Support of dependent children, records available for use in proceedings relating to: RCW 74.20.280.

Uniform interstate family support act, prosecuting attorney may enter into agreement where attorney general will carry out duties under: RCW 74.20.210.

Vehicle of is emergency vehicle: RCW 46.04.040.

Washington habitual traffic offenders act, prosecuting attorney's duties: Chapter 46.65 RCW.

36.27.005 Defined. Prosecuting attorneys are attorneys authorized by law to appear for and represent the state and the counties thereof in actions and proceedings before the courts and judicial officers. [1963 c 4 § 36.27.005. Prior: 1891 c 55 § 3; RRS § 113.]

36.27.010 Eligibility to office. No person shall be eligible to the office of prosecuting attorney in any county of this state, unless he or she is a qualified elector therein, and has been admitted as an attorney and counselor of the courts of this state. [2009 c 549 § 4045; 1963 c 4 § 36.27.010. Prior: 1891 c 55 § 4; RRS § 4128. Cf. 1883 p 72 § 7.]

36.27.020 Duties. The prosecuting attorney shall:

(1) Be legal adviser of the legislative authority, giving it his or her written opinion when required by the legislative authority or the chairperson thereof touching any subject which the legislative authority may be called or required to act upon relating to the management of county affairs;

(2) Be legal adviser to all county and precinct officers and school directors in all matters relating to their official business, and when required draw up all instruments of an official nature for the use of said officers;

(3) Appear for and represent the state, county, and all school districts subject to the supervisory control and direction of the attorney general in all criminal and civil proceedings in which the state or the county or any school district in the county may be a party;

(4) Prosecute all criminal and civil actions in which the state or the county may be a party, defend all suits brought against the state or the county, and prosecute actions upon forfeited recognizances and bonds and actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or the county;

(5) Attend and appear before and give advice to the grand jury when cases are presented to it for consideration and draw all indictments when required by the grand jury;

(6) Institute and prosecute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of felonies when the prosecuting attorney has information that any such offense has been committed and the prosecuting attorney shall for that purpose attend when required by them if the prosecuting attorney is not then in attendance upon the superior court;

(7) Carefully tax all cost bills in criminal cases and take care that no useless witness fees are taxed as part of the costs and that the officers authorized to execute process tax no other or greater fees than the fees allowed by law;

(8) Receive all cost bills in criminal cases before district judges at the trial of which the prosecuting attorney was not present, before they are lodged with the legislative authority for payment, whereupon the prosecuting attorney may retax the same and the prosecuting attorney must do so if the legislative authority deems any bill exorbitant or improperly taxed;

(9) Present all violations of the election laws which may come to the prosecuting attorney's knowledge to the special consideration of the proper jury;

(10) Examine once in each year the official bonds of all county and precinct officers and report to the legislative authority any defect in the bonds of any such officer;

(11) Seek to reform and improve the administration of criminal justice and stimulate efforts to remedy inadequacies or injustice in substantive or procedural law. [2012 1st sp.s. c 5 § 2; 1995 c 194 § 4; 1987 c 202 § 205; 1975 1st ex.s. c 19 § 1; 1963 c 4 § 36.27.020. Prior: (i) 1911 c 75 § 1; 1891 c 55 § 7; RRS § 116. (ii) 1886 p 65 § 5; 1883 p 73 § 10; Code 1881 § 2171; 1879 p 93 § 6; 1877 p 246 § 6; 1863 p 408 § 4; 1860 p 335 § 3; 1858 p 12 § 4; 1854 p 416 § 4; RRS § 4130. (iii) 1886 p 61 § 7; 1883 p 73 § 12; Code 1881 § 2168; 1879 p 94 § 8; 1877 p 247 § 8; RRS § 4131. (iv) 1886 p 61 § 8; 1883 p 74 § 13; Code 1881 § 2169; 1879 p 94 § 8; 1877 p 247 § 9; RRS § 4132. (v) 1886 p 61 § 9; 1883 p 74 § 14; Code 1881 § 2170; 1879 p 94 § 9; 1877 p 247 § 10; RRS § 4133. (vi) 1886 p 62 § 13; 1883 p 74 § 18; Code 1881 § 2165; 1879 p 95 § 13; 1877 p 248 § 14; 1863 p 409 § 5; 1860 p 334 § 4; 1858 p 12 § 5; 1854 p 417 § 5; RRS § 4134. (vii) Referendum No. 24; 1941 c 191 § 1; 1886 p 63 § 18; 1883 p 76 § 24; Code 1881 § 2146; 1879 p 96 § 18; RRS § 4136. (viii) Code 1881 § 3150; 1866 p 52 § 10; RRS § 4137. (ix) 1933 ex.s. c 62 § 81, part; RRS § 7306-81, part.]

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

Annual report to include number of child abuse reports and cases: RCW 26.44.075.

36.27.030 Disability of prosecuting attorney. When from illness or other cause the prosecuting attorney is temporarily unable to perform his or her duties, the court or judge may appoint some qualified person to discharge the duties of such officer in court until the disability is removed.

When any prosecuting attorney fails, from sickness or other cause, to attend a session of the superior court of his or her county, or is unable to perform his or her duties at such session, the court or judge may appoint some qualified person to discharge the duties of such session, and the appointee

shall receive a compensation to be fixed by the court, to be deducted from the stated salary of the prosecuting attorney, not exceeding, however, one-fourth of the quarterly salary of the prosecuting attorney: PROVIDED, That in counties wherein there is no person qualified for the position of prosecuting attorney, or wherein no qualified person will consent to perform the duties of that office, the judge of the superior court shall appoint some suitable person, a duly admitted and practicing attorney-at-law and resident of the state to perform the duties of prosecuting attorney for such county, and he or she shall receive such reasonable compensation for his or her services as shall be fixed and ordered by the court, to be paid by the county for which the services are performed. [2009 c 549 § 4046; 1963 c 4 § 36.27.030. Prior: (i) 1891 c 55 § 5; RRS § 114. (ii) 1893 c 52 § 1; 1886 p 62 § 14; 1883 p 74 § 19; Code 1881 § 2166; 1879 p 95 § 14; 1877 p 248 § 15; 1863 p 409 § 6; 1860 p 335 § 5; 1858 p 13 § 6; 1854 p 417 § 6; RRS § 4135.]

36.27.040 Appointment of deputies—Special and temporary deputies. The prosecuting attorney may appoint one or more deputies who shall have the same power in all respects as their principal. Each appointment shall be in writing, signed by the prosecuting attorney, and filed in the county auditor's office. Each deputy thus appointed shall have the same qualifications required of the prosecuting attorney, except that such deputy need not be a resident of the county in which he or she serves. The prosecuting attorney may appoint one or more special deputy prosecuting attorneys upon a contract or fee basis whose authority shall be limited to the purposes stated in the writing signed by the prosecuting attorney and filed in the county auditor's office. Such special deputy prosecuting attorney shall be admitted to practice as an attorney before the courts of this state but need not be a resident of the county in which he or she serves and shall not be under the legal disabilities attendant upon prosecuting attorneys or their deputies except to avoid any conflict of interest with the purpose for which he or she has been engaged by the prosecuting attorney. The prosecuting attorney shall be responsible for the acts of his or her deputies and may revoke appointments at will.

Two or more prosecuting attorneys may agree that one or more deputies for any one of them may serve temporarily as deputy for any other of them on terms respecting compensation which are acceptable to said prosecuting attorneys. Any such deputy thus serving shall have the same power in all respects as if he or she were serving permanently.

The provisions of chapter 39.34 RCW shall not apply to such agreements.

The provisions of *RCW 41.56.030(2) shall not be interpreted to permit a prosecuting attorney to alter the at-will relationship established between the prosecuting attorney and his or her appointed deputies by this section for a period of time exceeding his or her term of office. Neither shall the provisions of *RCW 41.56.030(2) require a prosecuting attorney to alter the at-will relationship established by this section. [2009 c 549 § 4047; 2000 c 23 § 2; 1975 1st ex.s. c 19 § 2; 1963 c 4 § 36.27.040. Prior: 1959 c 30 § 1; 1943 c 35 § 1; 1903 c 7 § 1; 1891 c 55 § 6; 1886 p 63 § 17; 1883 p 76 § 23; Code 1881 § 2142; 1879 p 95 § 16; Rem. Supp. 1943 § 115.]

*Reviser's note: RCW 41.56.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (2) to subsection (12). RCW 41.56.030 was subsequently amended by 2011 1st sp.s. c 21 § 11, changing subsection (12) to subsection (11).

36.27.045 Employment of legal interns. Notwithstanding any other provision of this chapter, nothing in this chapter shall be deemed to prevent a prosecuting attorney from employing legal interns as otherwise authorized by statute or court rule. [1974 ex.s. c 6 § 1.]

36.27.050 Special emoluments prohibited. No prosecuting attorney shall receive any fee or reward from any person, on behalf of any prosecution, or for any of his or her official services, except as provided in this title, nor shall he or she be engaged as attorney or counsel for any party in any action depending upon the same facts involved in any criminal proceeding. [2009 c 549 § 4048; 1963 c 4 § 36.27.050. Prior: 1888 p 189 § 1; 1886 p 62 § 12; 1883 p 74 § 17; Code 1881 § 2164; 1879 p 94 § 12; 1877 p 248 § 13; 1863 p 409 § 8; 1860 p 335 § 7; 1858 p 13 § 8; 1854 p 417 § 7; RRS § 4138.]

36.27.060 Private practice prohibited in certain counties—Deputy prosecutors. (1) The prosecuting attorney, and deputy prosecuting attorneys, of each county with a population of eighteen thousand or more shall serve full time and except as otherwise provided for in this section shall not engage in the private practice of law.

(2) Deputy prosecuting attorneys in a county with a population of from eighteen thousand to less than one hundred twenty-five thousand may serve part time and engage in the private practice of law if the county legislative authority so provides.

(3) Except as provided in subsection (4) of this section, nothing in this section prohibits a prosecuting attorney or deputy prosecuting attorney in any county from:

(a) Performing legal services for himself or herself or his or her immediate family; or

(b) Performing legal services of a charitable nature.

(4) The legal services identified in subsection (3) of this section may not be performed if they would interfere with the duties of a prosecuting attorney, or deputy prosecuting attorney and no services that are performed shall be deemed within the scope of employment of a prosecutor or deputy prosecutor. [1991 c 363 § 55; 1989 c 39 § 1; 1973 1st ex.s. c 86 § 1; 1971 ex.s. c 237 § 2; 1969 ex.s. c 226 § 2; 1963 c 4 § 36.27.060. Prior: 1941 c 46 § 2; Rem. Supp. 1941 § 4139-1.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Additional notes found at www.leg.wa.gov

36.27.070 Office at county seat. The prosecuting attorney of each county in the state of Washington must keep an office at the county seat of the county of which he or she is prosecuting attorney. [2009 c 549 § 4049; 1963 c 4 § 36.27.070. Prior: 1909 c 122 § 1; RRS § 4139.]

36.27.100 Statewide drug prosecution assistance program—Created. The legislature recognizes that, due to the magnitude or volume of offenses in a given area of the state, there is a recurring need for supplemental assistance in the

prosecuting of drug and drug-related offenses that can be directed to the area of the state with the greatest need for short-term assistance. A statewide drug prosecution assistance program is created within the criminal justice training commission to assist county prosecuting attorneys in the prosecution of drug and drug-related offenses. [2010 c 271 § 501; 1995 c 399 § 41; 1989 c 271 § 236.]

Purpose—Effective date—2010 c 271: See notes following RCW 43.330.005.

Additional notes found at www.leg.wa.gov

36.27.110 Statewide drug prosecution assistance program—Advisory committee—Selection of project director. There is established a statewide advisory committee comprised of the attorney general, the chief of the Washington state patrol, both United States attorneys whose offices are located in Washington state, and three county prosecuting attorneys appointed by the Washington association of prosecuting attorneys, who will also act as supervising attorneys. The statewide advisory committee shall select one of the supervising attorneys to act as project director of the drug prosecution assistance program. [1989 c 271 § 237.]

Additional notes found at www.leg.wa.gov

36.27.120 Statewide drug prosecution assistance program—Personnel—Review of assignments—Supervision of special deputies. The project director of the drug prosecution assistance program shall employ up to five attorneys to act as special deputy prosecuting attorneys. A county or counties may request the assistance of one or more of the special deputy prosecuting attorneys. The project director after consultation with the advisory committee shall determine the assignment of the special deputy prosecutors. Within funds appropriated for this purpose, the project director may also employ necessary support staff and purchase necessary supplies and equipment.

The advisory committee shall regularly review the assignment of the special deputy prosecuting attorneys to ensure that the program's impact on the drug abuse problem is maximized.

During the time a special deputy prosecuting attorney is assigned to a county, the special deputy is under the direct supervision of the county prosecuting attorney for that county. The advisory committee may reassign a special deputy at any time: PROVIDED, That adequate notice must be given to the county prosecuting attorney if the special deputy is involved in a case scheduled for trial. [1989 c 271 § 238.]

Additional notes found at www.leg.wa.gov

Chapter 36.28 RCW COUNTY SHERIFF

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Counties may engage in probation and parole services: RCW 36.01.070.

Court rooms, court may order sheriff to provide: RCW 2.28.140.

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agister and trainer liens: Chapter 60.56 RCW.

apple advertising regulations: RCW 15.24.180.

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cities and towns

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civil actions

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diking, drainage district, dissolution of: Chapter 85.07 RCW.

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prevention of cruelty to animals: Chapter 16.52 RCW.

*proceedings supplemental to execution: Chapter 6.32 RCW.
real estate mortgages, foreclosure of: Chapter 61.12 RCW.
regional jail camps: RCW 72.64.100.
sales under execution and redemption: Chapter 6.21 RCW.
search and seizure, cigarette excise tax: RCW 82.24.190.
soft tree fruits commission law: RCW 15.28.290.
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generally: Chapter 82.32 RCW.
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taxes, property
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unclaimed property in hands of sheriff: Chapter 63.40 RCW.
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uniform code of military justice: RCW 38.38.080 through 38.38.092,
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*Gambling activities, as affecting: Chapter 9.46 RCW.
Law enforcement chaplains authorized: Chapter 41.22 RCW.
Money in hands of sheriff under attachment may be garnished: RCW
6.27.050.
Motor vehicle accidents, reports made to sheriff: Chapter 46.52 RCW.
Names of amateur radio vehicle licensees to be furnished to: RCW
46.18.205(6).
Registry of persons allowed property access during forest fires and wildfires,
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Reports of motor vehicle repairs made to: RCW 46.52.090.
Sheriff's deed: RCW 6.21.120.
Support of dependent children, sheriff to charge no fees in connection with:
RCW 74.20.300.
Surety, sheriff ineligible as: RCW 19.72.020.
Vehicle of as emergency vehicle: RCW 46.04.040.
Vehicle wreckers (licensed) records, sheriff may inspect: RCW 46.80.080.*

36.28.010 General duties. The sheriff is the chief executive officer and conservator of the peace of the county. In the execution of his or her office, he or she and his or her deputies:

- (1) Shall arrest and commit to prison all persons who break the peace, or attempt to break it, and all persons guilty of public offenses;
- (2) Shall defend the county against those who, by riot or otherwise, endanger the public peace or safety;
- (3) Shall execute the process and orders of the courts of justice or judicial officers, when delivered for that purpose, according to law;
- (4) Shall execute all warrants delivered for that purpose by other public officers, according to the provisions of particular statutes;
- (5) Shall attend the sessions of the courts of record held within the county, and obey their lawful orders or directions;
- (6) Shall keep and preserve the peace in their respective counties, and quiet and suppress all affrays, riots, unlawful assemblies and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they may call to their aid such persons, or power of their county as they may deem necessary. [2009 c 549 § 4050; 1965 c 92 § 1; 1963 c 4 § 36.28.010. Prior: (i) 1891 c 45 § 1; RRS § 4157. (ii) Code 1881 § 2769; 1863 p 557 § 4; 1854 p 434 § 4; RRS § 4168.]

36.28.011 Duty to make complaint. In addition to the duties contained in RCW 36.28.010, it shall be the duty of all sheriffs to make complaint of all violations of the criminal law, which shall come to their knowledge, within their respective jurisdictions. [1963 c 4 § 36.28.011. Prior: 1955 c 10 § 1. Cf. Code 1881 § 2801, part; 1869 p 264 § 311, part; RRS § 4173, part.]

36.28.020 Powers of deputies, regular and special. Every deputy sheriff shall possess all the power, and may perform any of the duties, prescribed by law to be performed by the sheriff, and shall serve or execute, according to law, all process, writs, precepts, and orders, issued by lawful authority.

Persons may also be deputed by the sheriff in writing to do particular acts; including the service of process in civil or criminal cases, and the sheriff shall be responsible on his or her official bond for their default or misconduct. [2009 c 549 § 4051; 1963 c 4 § 36.28.020. Prior: 1961 c 35 § 2; prior: (i) Code 1881 § 2767, part; 1871 p 110 § 1, part; 1863 p 557 § 2, part; 1854 p 434 § 2, part; RRS § 4160, part. (ii) 1886 p 174 § 1; Code 1881 § 2768; 1863 p 557 § 3; 1854 p 434 § 3; RRS § 4167.]

36.28.025 Qualifications. A person who files a declaration of candidacy for the office of sheriff after September 1, 1979, shall have, within twelve months of assuming office, a certificate of completion of a basic law enforcement training program which complies with standards adopted by the criminal justice training commission pursuant to RCW 43.101.080 and *43.101.160.

This requirement does not apply to persons holding the office of sheriff in any county on September 1, 1979. [1979 ex.s. c 153 § 6.]

*Reviser's note: RCW 43.101.160 was repealed by 1983 c 197 § 55, effective June 30, 1987.

36.28.030 New or additional bond of sheriff. Whenever the company acting as surety on the official bond of a sheriff is disqualified, insolvent, or the penalty of the bond becomes insufficient on account of recovery had thereon, or otherwise, the sheriff shall submit a new or additional bond for approval to the board of county commissioners, if in session, or, if not in session, for the approval of the chair of such board, and file the same, when approved, in the office of the county clerk of his or her county, and such new or additional bond shall be in a penal sum sufficient in amount to equal the sum specified in the original bond when added to the penalty of any existing bond, so that under one or more bonds there shall always be an enforceable obligation of the surety on the official bond or bonds of the sheriff in a penal sum of not less than the amount of the bond as originally approved. [2009 c 549 § 4052; 1963 c 4 § 36.28.030. Prior: 1943 c 139 § 2; Rem. Supp. 1943 § 4155-1.]

36.28.040 May demand fees in advance. No sheriff, deputy sheriff, or coroner shall be liable for any damages for neglecting or refusing to serve any civil process unless his or her legal fees are first tendered him or her. [2009 c 549 § 4053; 1963 c 4 § 36.28.040. Prior: 1941 c 237 § 1, part; 1935 c 33 § 1, part; Code 1881 § 2772, part; 1863 p 558 § 7, part; 1854 p 434 § 7, part; Rem. Supp. 1941 § 4172, part.]

36.28.050 May demand indemnifying bond. If any property levied upon by virtue of any writ of attachment or execution or other order issued to the sheriff out of any court in this state is claimed by any person other than the defendant, and such person or his or her agent or attorney makes affidavit of his or her title thereto or his or her right to possession thereof, stating the value thereof and the basis of such right or title, the sheriff may release such levy, unless the plaintiff on demand indemnifies the sheriff against such claim by an undertaking executed by a sufficient surety.

No claim to such property by any person other than the defendant shall be valid against the sheriff, unless the supporting affidavit is made. Notwithstanding receipt of a proper claim the sheriff shall retain such property under levy a reasonable time to demand such indemnity.

Any sheriff, or other levying officer, may require an indemnifying bond of the plaintiff in all cases where he or she has to take possession of personal property. [2009 c 549 § 4054; 1963 c 4 § 36.28.050. Prior: 1941 c 237 § 1, part; 1935 c 33 § 1, part; Code 1881 § 2772, part; 1863 p 558 § 7, part; 1854 p 434 § 7, part; Rem. Supp. 1941 § 4172, part.]

36.28.060 Duplicate receipts—Penalties. (1) The sheriff shall make duplicate receipts for all payments for his or her services specifying the particular items thereof, at the time of payment, whether paid by virtue of the laws of this state or of the United States. Such duplicate receipts shall be numbered consecutively for each month commencing with number one. One of such receipts shall have written or printed upon it the word "original"; and the other shall have written or printed upon it the word "duplicate."

(2) At the time of payment of any fees, the sheriff shall deliver to the person making payment, either personally or by mail, the copy of the receipt designated "duplicate."

(3) The receipts designated "original" for each month shall be attached to the verified statement of fees for the corresponding month and the sheriff shall file with the county treasurer of his or her county all original receipts for each month with such verified statement.

(4) A sheriff shall not receive his or her salary for the preceding month until the provisions of this section have been complied with.

(5) Any sheriff violating this section, or failing to perform any of the duties required thereby, is guilty of a misdemeanor and shall be fined in any sum not less than ten dollars nor more than fifty dollars for each offense. [2003 c 53 § 202; 1963 c 4 § 36.28.060. Prior: (i) 1909 c 105 § 1; RRS § 4161. (ii) 1909 c 105 § 2; RRS § 4162.]

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

36.28.090 Service of process when sheriff disqualified. When there is no sheriff of a county, or he or she is disqualified from any cause from discharging any particular duty, it shall be lawful for the officer or person commanding or desiring the discharge of that duty to appoint some suitable person, a citizen of the county, to execute the same: PROVIDED, That final process shall in no case be executed by any person other than the legally authorized officer; or in case he or she is disqualified, some suitable person appointed by the court, or judge thereof, out of which the process issues,

(2014 Ed.)

who shall make such appointment in writing; and before such appointment shall take effect, the person appointed shall give security to the party interested for the faithful performance of his or her duties, which bond of suretyship shall be in writing, approved by the court or judge appointing him or her, and be placed on file with the papers in the case. [2009 c 549 § 4055; 1963 c 4 § 36.28.090. Prior: Code 1881 § 745; 1869 p 172 § 687; RRS § 4170.]

36.28.100 Employment of prisoners. The sheriff or director of public safety shall employ all able bodied persons sentenced to imprisonment in the county jail in such manner and at such places within the county as may be directed by the legislative authority of the county. [1973 1st ex.s. c 154 § 54; 1963 c 4 § 36.28.100. Prior: 1909 c 249 § 27; RRS § 2279.]

Additional notes found at www.leg.wa.gov

36.28.110 Sheriff not to practice law. No sheriff shall appear or practice as attorney in any court, except in their own defense. [1992 c 225 § 2; 1963 c 4 § 36.28.110. Prior: 1891 c 45 § 4, part; Code 1881 § 2770, part; 1863 p 558 § 5, part; 1854 p 434 § 5, part; RRS § 4171, part.]

36.28.120 Duty of retiring sheriffs, constables, and coroners—Successors' duties. All sheriffs, constables and coroners, upon the completion of their term of office and the qualification of their successors, shall deliver and turn over to their successors all writs and other processes in their possession not wholly executed, and all personal property in their possession or under their control held under such writs or processes, and take receipts therefor in duplicate, one of which shall be filed in the office from which such writ or process issued as a paper in the action, which receipt shall be good and sufficient discharge to such officer of and from further charge of the execution of such writs and processes; and they shall also deliver to their successors all official papers and property in their possession or under their control. The successors shall execute or complete the execution of all such writs and processes, and finish and complete all business turned over to them. [1963 c 4 § 36.28.120. Prior: 1895 c 17 § 1; RRS § 4174.]

36.28.130 Actions by successors and by officials after expiration of term of office validated. In all cases where any sheriff, constable or coroner has executed any writ or other process delivered to him or her by his or her predecessor, or has completed any business commenced by his or her predecessor under any writ or process, and has completed any other business commenced by his or her predecessor, and in all cases where any sheriff, constable or coroner has executed any writ or other process, or completed any business connected with his or her office after the expiration of his or her term of office, which writ or process he or she had commenced to execute, or which business he or she had commenced to perform, prior to the expiration of his or her term of office, such action shall be valid and effectual for all purposes. [2009 c 549 § 4056; 1963 c 4 § 36.28.130. Prior: 1895 c 17 § 2; RRS § 4175.]

36.28.150 Liability for fault or misconduct. Whenever any sheriff neglects to make due return of any writ or

other process delivered to him or her to be executed, or is guilty of any default or misconduct in relation thereto, he or she shall be liable to fine or attachment, or both, at the discretion of the court, subject to appeal, such fine, however, not to exceed two hundred dollars; and also to an action for damages to the party aggrieved. [2009 c 549 § 4057; 1963 c 4 § 36.28.150. Prior: Code 1881 § 2771; 1863 p 558 § 6; 1854 p 434 § 6; RRS § 4169.]

36.28.160 Office at county seat. The sheriff must keep an office at the county seat of the county of which he or she is sheriff. [2009 c 105 § 3; 1963 c 4 § 36.28.160. Prior: 1891 c 45 § 2; RRS § 4158. SLC-RO-14.]

36.28.170 Standard uniform for sheriffs and deputies. The executive secretary of the Washington state association of elected county officials, upon written approval of a majority of the sheriffs in the state, shall file with the secretary of state a description of a standard uniform which may be withdrawn or modified by re-filing in the same manner as originally filed. A uniform of the description so filed shall thereafter be reserved exclusively for the use of sheriffs and their deputies: PROVIDED, That the filing of a standard uniform description shall not make mandatory the adoption of said uniform by any county sheriff or his or her deputies. [2009 c 549 § 4059; 1963 c 50 § 1.]

36.28.180 Allowance for clothing and other incidentals. A county may from available funds provide for an allowance for clothing and other incidentals necessary to the performance of official duties for the sheriff and his or her deputies. [2009 c 549 § 4060; 1979 c 132 § 1; 1963 c 50 § 2.]

36.28.190 City contracts to obtain sheriff's office law enforcement services. See RCW 41.14.250 through 41.14.280.

Chapter 36.28A RCW

ASSOCIATION OF SHERIFFS AND POLICE CHIEFS

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36.28A.010 Declarations. The Washington association of sheriffs and police chiefs is hereby declared to be a combination of units of local government: PROVIDED, That such association shall not be considered an "employer" within the meaning of RCW *41.26.030(2) or **41.40.010(4): PROVIDED FURTHER, That no compensation received as an employee of the association shall be considered salary for purposes of the provisions of any retirement system created pursuant to the general laws of this state: PROVIDED FURTHER, That such association shall not qualify for inclusion under the unallocated two mills of the property tax of any political subdivision: PROVIDED FURTHER, That the association shall not have the authority to assess any excess levy or bond measure. [1975 1st ex. s. c 172 § 1.]

Reviser's note: *(1) RCW 41.26.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (2) to subsection (14).

** (2) RCW 41.40.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (4) to subsection (13).

36.28A.020 Local law and justice plan assistance. The Washington association of sheriffs and police chiefs may, upon request of a county's legislative authority, assist the county in developing and implementing its local law and justice plan. In doing so, the association shall consult with the office of financial management and the department of corrections. [1991 c 363 § 56.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.28A.030 Malicious harassment—Information reporting and dissemination. (1) The Washington association of sheriffs and police chiefs shall establish and maintain a central repository for the collection and classification of information regarding violations of RCW 9A.36.080. Upon establishing such a repository, the association shall develop a procedure to monitor, record, and classify information relating to violations of RCW 9A.36.080 and any other crimes of bigotry or bias apparently directed against other persons because the people committing the crimes perceived that their victims were of a particular race, color, religion, ancestry, national origin, gender, sexual orientation, or had a mental, physical, or sensory handicap.

(2) All local law enforcement agencies shall report monthly to the association concerning all violations of RCW 9A.36.080 and any other crimes of bigotry or bias in such form and in such manner as prescribed by rules adopted by the association. Agency participation in the association's reporting programs, with regard to the specific data requirements associated with violations of RCW 9A.36.080 and any other crimes of bigotry or bias, shall be deemed to meet agency reporting requirements. The association must summarize the information received and file an annual report with the governor and the senate law and justice committee and the house of representatives judiciary committee.

(3) The association shall disseminate the information according to the provisions of chapters 10.97 and 10.98 RCW, and all other confidentiality requirements imposed by federal or Washington law. [1993 c 127 § 4.]

Additional notes found at www.leg.wa.gov

36.28A.040 Statewide city and county jail booking and reporting system—Standards committee—Statewide automated victim information and notification system—Statewide unified sex offender notification and registration program—Liability immunity. (1) No later than July 1, 2002, the Washington association of sheriffs and police chiefs shall implement and operate an electronic statewide city and county jail booking and reporting system. The system shall serve as a central repository and instant information source for offender information and jail statistical data. The system may be placed on the Washington state justice information network and be capable of communicating electronically with every Washington state city and county jail and with all other Washington state criminal justice agencies as defined in RCW 10.97.030.

(2) After the Washington association of sheriffs and police chiefs has implemented an electronic jail booking system as described in subsection (1) of this section, if a city or county jail or law enforcement agency receives state or federal funding to cover the entire cost of implementing or reconfiguring an electronic jail booking system, the city or county jail or law enforcement agency shall implement or reconfigure an electronic jail booking system that is in compliance with the jail booking system standards developed pursuant to subsection (4) of this section.

(3) After the Washington association of sheriffs and police chiefs has implemented an electronic jail booking system as described in subsection (1) of this section, city or county jails, or law enforcement agencies that operate electronic jail booking systems, but choose not to accept state or federal money to implement or reconfigure electronic jail booking systems, shall electronically forward jail booking information to the Washington association of sheriffs and police chiefs. At a minimum the information forwarded shall include the name of the offender, vital statistics, the date the offender was arrested, the offenses arrested for, the date and time an offender is released or transferred from a city or county jail, and if available, the mug shot. The electronic format in which the information is sent shall be at the discretion of the city or county jail, or law enforcement agency forwarding the information. City and county jails or law enforcement agencies that forward jail booking information under this

subsection are not required to comply with the standards developed under subsection (4)(b) of this section.

(4) The Washington association of sheriffs and police chiefs shall appoint, convene, and manage a statewide jail booking and reporting system standards committee. The committee shall include representatives from the Washington association of sheriffs and police chiefs correction committee, the information service board's justice information committee, the judicial information system, at least two individuals who serve as jailers in a city or county jail, and other individuals that the Washington association of sheriffs and police chiefs places on the committee. The committee shall have the authority to:

(a) Develop and amend as needed standards for the statewide jail booking and reporting system and for the information that must be contained within the system. At a minimum, the system shall contain:

(i) The offenses the individual has been charged with;

(ii) Descriptive and personal information about each offender booked into a city or county jail. At a minimum, this information shall contain the offender's name, vital statistics, address, and mugshot;

(iii) Information about the offender while in jail, which could be used to protect criminal justice officials that have future contact with the offender, such as medical conditions, acts of violence, and other behavior problems;

(iv) Statistical data indicating the current capacity of each jail and the quantity and category of offenses charged;

(v) The ability to communicate directly and immediately with the city and county jails and other criminal justice entities; and

(vi) The date and time that an offender was released or transferred from a local jail;

(b) Develop and amend as needed operational standards for city and county jail booking systems, which at a minimum shall include the type of information collected and transmitted, and the technical requirements needed for the city and county jail booking system to communicate with the statewide jail booking and reporting system;

(c) Develop and amend as needed standards for allocating grants to city and county jails or law enforcement agencies that will be implementing or reconfiguring electronic jail booking systems.

(5)(a) A statewide automated victim information and notification system shall be added to the city and county jail booking and reporting system. The system shall:

(i) Automatically notify a registered victim via the victim's choice of telephone, letter, or e-mail when any of the following events affect an offender housed in any Washington state city or county jail or department of corrections facility:

(A) Is transferred or assigned to another facility;

(B) Is transferred to the custody of another agency outside the state;

(C) Is given a different security classification;

(D) Is released on temporary leave or otherwise;

(E) Is discharged;

(F) Has escaped; or

(G) Has been served with a protective order that was requested by the victim;

(ii) Automatically notify a registered victim via the victim's choice of telephone, letter, or e-mail when an offender has:

(A) An upcoming court event where the victim is entitled to be present, if the court information is made available to the statewide automated victim information and notification system administrator at the Washington association of sheriffs and police chiefs;

(B) An upcoming parole, pardon, or community supervision hearing; or

(C) A change in the offender's parole, probation, or community supervision status including:

(I) A change in the offender's supervision status; or

(II) A change in the offender's address;

(iii) Automatically notify a registered victim via the victim's choice of telephone, letter, or e-mail when a sex offender has:

(A) Updated his or her profile information with the state sex offender registry; or

(B) Become noncompliant with the state sex offender registry;

(iv) Permit a registered victim to receive the most recent status report for an offender in any Washington state city and county jail, department of corrections, or sex offender registry by calling the statewide automated victim information and notification system on a toll-free telephone number or by accessing the statewide automated victim information and notification system via a public web site. All registered victims calling the statewide automated victim information and notification system will be given the option to have live operator assistance to help use the program on a twenty-four hour, three hundred sixty-five day per year basis;

(v) Permit a crime victim to register, or registered victim to update, the victim's registration information for the statewide automated victim information and notification system by calling a toll-free telephone number or by accessing a public web site; and

(vi) Ensure that the offender information contained within the statewide automated victim information and notification system is updated frequently to timely notify a crime victim that an offender has been released or discharged or has escaped. However, the failure of the statewide automated victim information and notification system to provide notice to the victim does not establish a separate cause of action by the victim against state officials, local officials, law enforcement officers, or any related correctional authorities.

(b) Participation in the statewide automated victim information and notification program satisfies any obligation to notify the crime victim of an offender's custody status and the status of the offender's upcoming court events so long as:

(i) Information making offender and case data available is provided on a timely basis to the statewide automated victim information and notification program; and

(ii) Information a victim submits to register and participate in the victim notification system is only used for the sole purpose of victim notification.

(c) Automated victim information and notification systems in existence and operational as of July 22, 2007, shall not be required to participate in the statewide system.

(6) When funded, the Washington association of sheriffs and police chiefs shall implement and operate an electronic

statewide unified sex offender notification and registration program. Information submitted to the program by a person for the purpose of receiving notification regarding a registered sex offender, including the person's name, residential address, and e-mail address, are exempt from public inspection and copying under chapter 42.56 RCW.

(7) An appointed or elected official, public employee, or public agency as defined in RCW 4.24.470, or combination of units of government and its employees, as provided in RCW 36.28A.010, are immune from civil liability for damages for any release of information or the failure to release information related to the statewide automated victim information and notification system, the electronic statewide unified sex offender notification and registration program, and the jail booking and reporting system as described in this section, so long as the release was without gross negligence. The immunity provided under this subsection applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the general public. [2010 c 266 § 1; 2009 c 31 § 1; 2007 c 204 § 1; 2001 c 169 § 3; 2000 c 3 § 1.]

Additional notes found at www.leg.wa.gov

36.28A.0401 Statewide automated victim information and notification system—Vendor services. In Washington any vendor contracted to provide a statewide automated victim notification service must deliver the service with a minimum of 99.95-percent availability and with less than an average of one-percent notification errors as a result of the vendor's technology. [2007 c 204 § 2.]

36.28A.0402 Statewide automated victim information and notification system—Department of corrections data. The department of corrections is not required to provide any data to the Washington association of sheriffs and police chiefs for the statewide automated victim information and notification system as stated in RCW 36.28A.040, until January 1, 2010. [2007 c 204 § 3.]

36.28A.050 Statewide city and county jail booking and reporting system—Grant fund. (1) The Washington association of sheriffs and police chiefs shall establish and manage a local jail booking system grant fund. All federal or state money collected to offset the costs associated with RCW 36.28A.040(2) shall be processed through the grant fund established by this section. The statewide jail booking and reporting system standards committee established under RCW 36.28A.040(4) shall distribute the grants in accordance with any standards it develops.

(2) The Washington association of sheriffs and police chiefs shall pursue federal funding to be placed into the local jail booking system grant fund. [2000 c 3 § 2.]

Additional notes found at www.leg.wa.gov

36.28A.060 Statewide first responder building mapping information system—Creation—Data must be available to law enforcement, military, and fire safety agencies—Standards—Public disclosure exemption. (1) When funded, the Washington association of sheriffs and police chiefs shall create and operate a statewide first responder building mapping information system.

(2) All state agencies and local governments must utilize building mapping software that complies with the building mapping software standards established under RCW 36.28A.070 for any building mapped for this purpose after the statewide first responder building mapping information system is operational. If, prior to creation of the statewide building mapping information system, a local government has utilized building mapping software standards established under RCW 36.28A.070, the local government may continue to use its own building mapping system unless the Washington association of sheriffs and police chiefs provides funding to bring the local government's system in compliance with the standards established under RCW 36.28A.070.

(3) All state and local government-owned buildings that are occupied by state or local government employees must be mapped when funding is provided by the Washington association of sheriffs and police chiefs, or from other sources. Nothing in chapter 102, Laws of 2003 requires any state agency or local government to map a building unless the entire cost of mapping the building is provided by the Washington association of sheriffs and police chiefs, or from other sources.

(4) Once the statewide first responder building mapping information system is operational, all state and local government buildings that are mapped must forward their building mapping information data to the Washington association of sheriffs and police chiefs. All participating privately, federally, and tribally owned buildings may voluntarily forward their mapping and emergency information data to the Washington association of sheriffs and police chiefs. The Washington association of sheriffs and police chiefs may refuse any building mapping information that does not comply with the specifications described in RCW 36.28A.070.

(5) Consistent with the guidelines developed under RCW 36.28A.070, the Washington association of sheriffs and police chiefs shall electronically make the building mapping information available to all state, local, federal, and tribal law enforcement agencies, the military department of Washington state, and fire departments.

(6) Consistent with the guidelines developed under RCW 36.28A.070, the Washington association of sheriffs and police chiefs shall develop building mapping software standards that must be used to participate in the statewide first responder building mapping information system.

(7) The Washington association of sheriffs and police chiefs shall pursue federal funds to:

(a) Create the statewide first responder building mapping information system; and

(b) Develop grants for the mapping of all state and local government buildings in the order determined under RCW 36.28A.070.

(8) All tactical and intelligence information provided to the Washington association of sheriffs and police chiefs under chapter 102, Laws of 2003 is exempt from public disclosure as provided in RCW 42.56.240. [2005 c 274 § 269; 2003 c 102 § 2.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Intent—2003 c 102: "The legislature recognizes the extreme dangers present when the safety of our citizens requires first responders such as police and firefighters to evacuate and secure a building. In an effort to pre-

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pare for responding to unintended disasters, criminal acts, and acts of terrorism, the legislature intends to create a statewide first responder building mapping information system that will provide all first responders with the information they need to be successful when disaster strikes. The first responder building mapping system in this act is to be developed for a limited and specific purpose and is in no way to be construed as imposing standards or system requirements on any other mapping systems developed and used for any other local government purposes." [2003 c 102 § 1.]

36.28A.070 Statewide first responder building mapping information system—Committee established—Development of guidelines. (1) The Washington association of sheriffs and police chiefs in consultation with the Washington state emergency management office, the Washington association of county officials, the Washington association of cities, the *information services board, the Washington state fire chiefs' association, and the Washington state patrol shall convene a committee to establish guidelines related to the statewide first responder building mapping information system. The committee shall have the following responsibilities:

(a) Develop the type of information to be included in the statewide first responder building mapping information system. The information shall include, but is not limited to: Floor plans, fire protection information, evacuation plans, utility information, known hazards, and text and digital images showing emergency personnel contact information;

(b) Develop building mapping software standards that must be utilized by all entities participating in the statewide first responder building mapping information system;

(c) Determine the order in which buildings shall be mapped when funding is received;

(d) Develop guidelines on how the information shall be made available. These guidelines shall include detailed procedures and security systems to ensure that the information is only made available to the government entity that either owns the building or is responding to an incident at the building;

(e) Recommend training guidelines regarding using the statewide first responder building mapping information system to the criminal justice training commission and the Washington state patrol fire protection bureau.

(2)(a) Nothing in this section supersedes the authority of the *information services board under chapter 43.105 RCW.

(b) Nothing in this section supersedes the authority of state agencies and local governments to control and maintain access to information within their independent systems. [2003 c 102 § 3.]

***Reviser's note:** RCW 43.105.032, which created the "information services board," was repealed by 2011 1st sp.s. c 43 § 1013.

Intent—2003 c 102: See note following RCW 36.28A.060.

36.28A.080 Immunity from liability. Units of local government and their employees, as provided in RCW 36.28A.010, are immune from civil liability for damages arising out of the creation and use of the statewide first responder building mapping information system, unless it is shown that an employee acted with gross negligence or bad faith. [2003 c 102 § 4.]

Intent—2003 c 102: See note following RCW 36.28A.060.

36.28A.090 Firearms certificates for qualified retired law enforcement officers. (1) The purpose of this section is to establish a process for issuing firearms certificates to resi-

dents of Washington who are otherwise qualified retired law enforcement officers under the federal law enforcement officers safety act of 2004 (118 Stat. 865; 18 U.S.C. Sec. 926B and 926C) for the purpose of satisfying the certification requirements contained in that act.

(2) A retired law enforcement officer satisfies the federal certification requirements if he or she possesses a valid firearms qualification certificate that:

(a) Uses the model certificate created under subsection (4) of this section;

(b) Provides that either a law enforcement agency or an individual or entity certified to provide firearms training acknowledges that the bearer has been found qualified or otherwise found to meet the standards established by the criminal justice training commission for firearms qualification for the basic law enforcement training academy in the state; and

(c) Complies with the time restrictions provided under subsection (3) of this section.

(3) The firearms certificate is valid for a period of one year from the date that the law enforcement agency or individual or entity certified to provide firearms training determines that the bearer has been found qualified or otherwise found to meet the standards established by the criminal justice training commission for firearms qualification for the basic law enforcement training academy in the state, and the certificate shall state the date the determination was made.

(4) The Washington association of sheriffs and police chiefs shall develop a model certificate that shall serve as the required firearms qualification certificate once the certificate is valid pursuant to subsection (2) of this section. The association shall make the model certificate accessible on its web site. The model certificate shall state that the retired law enforcement officer bearing the certificate has been qualified or otherwise found to meet the standards established by the criminal justice training commission for firearms qualification for the basic law enforcement training academy in the state.

(5) The retired law enforcement officer is responsible for paying the costs of the firearms qualification required under subsection (2) of this section.

(6) Nothing in this section shall be deemed to require a local law enforcement agency to complete the certificate. [2010 c 264 § 1; 2006 c 40 § 1.]

36.28A.100 Committee to improve administration of missing person information—Protocol endorsement. The Washington association of county officials, in consultation with the Washington association of sheriffs and police chiefs, the Washington association of coroners and medical examiners, the forensic investigations council, the Washington state patrol, and other interested agencies and individuals, shall convene a committee to coordinate the use of the latest technology and available science to improve reporting of missing persons, to improve the communication within the state and with national databases, to enhance the dissemination of information to other agencies and the public, and to improve reporting for missing persons and the collection and preservation of evidence.

Protocols for the investigation of reported missing persons, identification of human remains, and recommended protocols for the reporting and identification of persons miss-

ing as the result of major events not limited to tsunami, earthquake, or acts of terrorism shall be endorsed by the groups named in this section who shall then seek the voluntary adoption of the same by all local law enforcement agencies, coroners, medical examiners, and others charged with locating missing persons or identifying human remains. [2006 c 102 § 2.]

Finding—Intent—2006 c 102: "The legislature finds that there were over forty-six thousand reports of persons missing nationwide and over five hundred missing persons in the state of Washington. Major catastrophic events in other parts of the United States this year have also emphasized that identifying victims in mass disasters is often impossible, due to the deficiency in planning by communities and governments. It is the intent of this act to build upon the research and findings of the Washington state missing persons task force, assembled by the state attorney general in 2003, the United States department of justice, and others to aid in recovery of missing persons and the identification of human remains." [2006 c 102 § 1.]

36.28A.110 Missing persons information web site creation. The Washington association of sheriffs and police chiefs shall create and maintain a statewide web site, which shall be available to the public. The web site shall post relevant information concerning persons reported missing in the state of Washington. For missing persons, the web site shall contain, but is not limited to: The person's name, physical description, photograph, and other information that is deemed necessary according to the adopted protocols. This web site shall allow citizens to more broadly disseminate information regarding missing persons for at least thirty days. [2007 c 10 § 3; 2006 c 102 § 4.]

Intent—2007 c 10: See note following RCW 43.103.110.

Finding—Intent—2006 c 102: See note following RCW 36.28A.100.

36.28A.120 State patrol involvement with missing persons systems—Local law enforcement procedures for missing persons information. The Washington state patrol shall establish an interface with local law enforcement and the Washington association of sheriffs and police chiefs missing persons web site, the toll-free twenty-four hour hotline, and national and other statewide missing persons systems or clearinghouses.

Local law enforcement agencies shall file an official missing persons report and enter biographical information into the state missing persons computerized network without delay after notification of a missing person's report is received under this chapter. [2007 c 10 § 4; 2006 c 102 § 5.]

Intent—2007 c 10: See note following RCW 43.103.110.

Finding—Intent—2006 c 102: See note following RCW 36.28A.100.

36.28A.130 Washington auto theft prevention authority—Created. There is hereby created in the Washington association of sheriffs and police chiefs the Washington auto theft prevention authority which shall be under the direction of the executive director of the Washington association of sheriffs and police chiefs. [2007 c 199 § 19.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

36.28A.140 Development of model policy to address property access during forest fires and wildfires. (1) The Washington association of sheriffs and police chiefs shall convene a model policy work group to develop a model pol-

icy for sheriffs regarding residents, landowners, and others in lawful possession and control of land in the state during a forest fire or wildfire. The model policy must be designed in a way that, first and foremost, protects life and safety during a forest fire or wildfire. The model policy must include guidance on allowing access, when safe and appropriate, to residents, landowners, and others in lawful possession and control of land in the state during a wildfire or forest fire. The model policy must specifically address procedures to allow, when safe and appropriate, residents, landowners, and others in lawful possession and control of land in the state access to their residences and land to:

- (a) Conduct fire prevention or suppression activities;
- (b) Protect or retrieve any property located in their residences or on their land, including equipment, livestock, or any other belongings; or
- (c) Undertake activities under both (a) and (b) of this subsection.

(2) In developing the policy under subsection (1) of this section, the association shall consult with appropriate stakeholders and government agencies. [2007 c 252 § 1.]

36.28A.200 Gang crime enforcement grant program.

(1) When funded, the Washington association of sheriffs and police chiefs shall establish a grant program to assist local law enforcement agencies in the support of special enforcement emphasis targeting gang crime. Grant applications shall be reviewed and awarded through peer review panels. Grant applicants are encouraged to utilize multijurisdictional efforts.

(2) Each grant applicant shall:

- (a) Show a significant gang problem in the jurisdiction or jurisdictions receiving the grant;
- (b) Verify that grant awards are sufficient to cover increased investigation, prosecution, and jail costs;
- (c) Design an enforcement program that best suits the specific gang problem in the jurisdiction or jurisdictions receiving the grant;
- (d) Demonstrate community coordination focusing on prevention, intervention, and suppression; and
- (e) Collect data on performance pursuant to RCW 36.28A.220.

(3) The cost of administering the grants shall not exceed sixty thousand dollars, or four percent of appropriated funding, whichever is greater. [2008 c 276 § 101.]

Severability—2008 c 276: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2008 c 276 § 701.]

Part headings, subheadings not law—2008 c 276: "Part headings and subheadings used in this act are not any part of the law." [2008 c 276 § 702.]

36.28A.210 Graffiti and tagging abatement grant program. (1) When funded, the Washington association of sheriffs and police chiefs shall establish a grant program to assist local law enforcement agencies in the support of graffiti and tagging abatement programs located in local communities. Grant applicants are encouraged to utilize multijurisdictional efforts.

(2) Each graffiti or tagging abatement grant applicant shall:

(a) Demonstrate that a significant gang problem exists in the jurisdiction or jurisdictions receiving the grant;

(b) Show how the funds will be used to dispose or eliminate any current or ongoing tagging or graffiti within a specified time period;

(c) Specify how the funds will be used to reduce gang-related graffiti or tagging within its community;

(d) Show how the local citizens and business owners of the community will benefit from the proposed graffiti or tagging abatement process being presented in the grant application; and

(e) Collect data on performance pursuant to RCW 36.28A.220.

(3) The cost of administering the grants shall not exceed twenty-five thousand dollars, or four percent of funding, whichever is greater. [2008 c 276 § 102.]

Severability—Part headings, subheadings not law—2008 c 276: See notes following RCW 36.28A.200.

36.28A.220 Grant programs—Effectiveness evaluations. For the grant programs created in RCW 36.28A.200 and 36.28A.210 and within the funds provided for these programs, the Washington association of sheriffs and police chiefs shall, upon consultation with the Washington state institute for public policy, identify performance measures, periodic reporting requirements, data needs, and a framework for evaluating the effectiveness of grant programs in graffiti and tagging abatement and reducing gang crime. [2008 c 276 § 103.]

Severability—Part headings, subheadings not law—2008 c 276: See notes following RCW 36.28A.200.

36.28A.230 Registered sex offender and kidnapping offender address and residency verification grant program.

(1) When funded, the Washington association of sheriffs and police chiefs shall administer a grant program to local governments for the purpose of verifying the address and residency of sex offenders and kidnapping offenders registered under RCW 9A.44.130 who reside within the county sheriff's jurisdiction. The Washington association of sheriffs and police chiefs shall:

(a) Enter into performance-based agreements with local governments to ensure that registered offender address and residency are verified:

- (i) For level I offenders, every twelve months;
- (ii) For level II offenders, every six months; and
- (iii) For level III offenders, every three months;

(b) Collect performance data from all participating jurisdictions sufficient to evaluate the efficiency and effectiveness of the address and residency verification program; and

(c) Submit a report on the effectiveness of the address and residency verification program to the governor and the appropriate committees of the house of representatives and senate by December 31st each year.

(2) The Washington association of sheriffs and police chiefs may retain up to three percent of the amounts provided pursuant to this section for the cost of administration. Any funds not disbursed for address and residency verification or retained for administration may be allocated to local prosecutors for the prosecution costs associated with failing to register offenses.

(3) For the purposes of this section, unclassified offenders and kidnapping offenders shall be considered at risk level I unless in the opinion of the local jurisdiction a higher classification is in the interest of public safety.

(4) County sheriffs and police chiefs or town marshals may enter into agreements for the purposes of delegating the authority and obligation to fulfill the requirements of this section. [2010 c 265 § 3.]

36.28A.240 Metal theft grant program. (1) When funded, the Washington association of sheriffs and police chiefs shall establish a grant program to assist local law enforcement agencies in the support of special enforcement emphasis targeting metal theft. Grant applications shall be reviewed and awarded through peer review panels. Grant applicants are encouraged to utilize multijurisdictional efforts.

(2) Each grant applicant shall:

(a) Show a significant metal theft problem in the jurisdiction or jurisdictions receiving the grant;

(b) Verify that grant awards are sufficient to cover increased investigation, prosecution, and jail costs;

(c) Design an enforcement program that best suits the specific metal theft problem in the jurisdiction or jurisdictions receiving the grant;

(d) Demonstrate community coordination focusing on prevention, intervention, and suppression; and

(e) Collect data on performance.

(3) The cost of administering the grants shall not exceed sixty thousand dollars, or three percent of appropriated funding, whichever is greater.

(4) Grant awards may not be used to supplant preexisting funding sources for special enforcement targeting metal theft. [2013 c 322 § 24.]

36.28A.300 24/7 sobriety program. There is created a 24/7 sobriety program to be administered by the criminal justice training commission in conjunction with the Washington association of sheriffs and police chiefs. The program shall coordinate efforts among various local government entities for the purpose of implementing alternatives to incarceration for offenders convicted under RCW 46.61.502 or 46.61.504 with one or more prior convictions under RCW 46.61.502 or 46.61.504. [2014 c 221 § 912; 2013 2nd sp.s. c 35 § 23.]

Effective date—2014 c 221: See note following RCW 28A.710.260.

36.28A.310 24/7 sobriety program pilot project. The Washington association of sheriffs and police chiefs shall conduct a 24/7 sobriety program pilot project.

(1) Pilot project sites shall be established in no more than three counties and two cities. Local jurisdictions outside of the pilot project sites are encouraged to establish a 24/7 sobriety program as soon as practicable.

(2) The Washington association of sheriffs and police chiefs must, to the greatest extent possible, select pilot project sites from diverse geographic areas. The cities selected for participation in the project must not be from within a county selected for the program.

(3) The Washington association of sheriffs and police chiefs shall develop criteria for participation in the 24/7 sobriety program pilot project including, but not limited to:

(a) Geographic diversity;

(b) Sufficient volume of eligible participants to provide useable data for the pilot;

(c) County or city commitment to administration of the program; and

(d) Capability of the county or city law enforcement agency to effectively accommodate and administer the program.

(4) The Washington association of sheriffs and police chiefs shall provide a study of the 24/7 sobriety program project measuring changes in recidivism and related county or city savings or costs.

(5) The Washington association of sheriffs and police chiefs shall report preliminary findings and final results of the study to the governor and the legislature on an annual basis. It is the intent of the legislature that the 24/7 sobriety program shall achieve the goal of implementation statewide by January 1, 2017. [2013 2nd sp.s. c 35 § 24.]

36.28A.320 24/7 sobriety account. There is hereby established in the state treasury the 24/7 sobriety account. The account shall be maintained and administered by the criminal justice training commission to reimburse the state for costs associated with establishing the program and the Washington association of sheriffs and police chiefs for ongoing program administration costs. [The] criminal justice training commission may accept for deposit in the account money from donations, gifts, grants, participation fees, and user fees or payments. Expenditures from the account shall be budgeted through the normal budget process. [2014 c 221 § 913; 2013 2nd sp.s. c 35 § 25.]

Effective date—2014 c 221: See note following RCW 28A.710.260.

36.28A.330 24/7 sobriety program definitions. The definitions in this section apply throughout RCW 36.28A.300 through 36.28A.390 unless the context clearly requires otherwise.

(1) "24/7 electronic alcohol/drug monitoring" means the monitoring by the use of any electronic instrument that is capable of determining and monitoring the presence of alcohol or drugs in a person's body and includes any associated equipment a participant needs in order for the device to properly perform. Monitoring may also include mandatory urine analysis tests as ordered by the court.

(2) "Participant" means a person who has one or more prior convictions for a violation of RCW 46.61.502 or 46.61.504 and who has been ordered by a court to participate in the 24/7 sobriety program.

(3) "Participating agency" means a sheriff's office or a designated entity named by a sheriff that has agreed to participate in the 24/7 sobriety program by enrolling participants, administering one or more of the tests, and submitting reports to the Washington association of sheriffs and police chiefs.

(4) "Participation agreement" means a written document executed by a participant agreeing to participate in the 24/7 sobriety program in a form approved by the Washington association of sheriffs and police chiefs that contains the following information:

(a) The type, frequency, and time period of testing;

(b) The location of testing;

(c) The fees and payment procedures required for testing; and

(d) The responsibilities and obligations of the participant under the 24/7 sobriety program.

(5) "24/7 sobriety program" means a twenty-four hour and seven day a week sobriety program in which a participant submits to the testing of the participant's blood, breath, urine, or other bodily substances in order to determine the presence of alcohol, marijuana, or any controlled substance in the participant's body. [2013 2nd sp.s. c 35 § 26.]

36.28A.340 24/7 sobriety program—Counties or cities may participate. Each county or city, through its sheriff or chief, may participate in the 24/7 sobriety program. If a sheriff or chief is unwilling or unable to participate in the 24/7 sobriety program, the sheriff or chief may designate an entity willing to provide the service. [2013 2nd sp.s. c 35 § 27.]

Effective date—2013 2nd sp.s. c 35 §§ 27, 28, and 30-32: "Sections 27, 28, and 30 through 32 of this act take effect January 1, 2014." [2013 2nd sp.s. c 35 § 44.]

36.28A.350 24/7 sobriety program—Bond or pretrial release. The court may condition any bond or pretrial release upon participation in the 24/7 sobriety program and payment of associated costs and expenses, if available. [2013 2nd sp.s. c 35 § 28.]

Effective date—2013 2nd sp.s. c 35 §§ 27, 28, and 30-32: See note following RCW 36.28A.340.

36.28A.360 24/7 sobriety program—Washington association of sheriffs and police chiefs may adopt policies and procedures. The Washington association of sheriffs and police chiefs may adopt policies and procedures for the administration of the 24/7 sobriety program to:

- (1) Provide for procedures and apparatus for testing;
- (2) Establish fees and costs for participation in the program to be paid by the participants;
- (3) Require the submission of reports and information by law enforcement agencies within this state. [2013 2nd sp.s. c 35 § 29.]

36.28A.370 24/7 sobriety account—Distribution of funds. (1) Funds in the 24/7 sobriety account shall be distributed as follows:

(a) Any daily user fee, installation fee, deactivation fee, enrollment fee, or monitoring fee collected under the 24/7 sobriety program shall be collected by the sheriff or chief, or an entity designated by the sheriff or chief, and deposited with the county or city treasurer of the proper county or city, the proceeds of which shall be applied and used only to defray the recurring costs of the 24/7 sobriety program including maintaining equipment, funding support services, and ensuring compliance; and

(b) Any participation fee collected in the administration of testing under the 24/7 sobriety program to cover program administration costs incurred by the Washington association of sheriffs and police chiefs shall be collected by the sheriff or chief, or an entity designated by the sheriff or chief, and deposited in the 24/7 sobriety account.

(2014 Ed.)

(2) All applicable fees shall be paid by the participant contemporaneously or in advance of the time when the fee becomes due. [2013 2nd sp.s. c 35 § 30.]

Effective date—2013 2nd sp.s. c 35 §§ 27, 28, and 30-32: See note following RCW 36.28A.340.

36.28A.380 24/7 sobriety program—No waiver or reduction of fees. The court shall not waive or reduce fees or associated costs charged for participation in the 24/7 sobriety program. [2013 2nd sp.s. c 35 § 31.]

Effective date—2013 2nd sp.s. c 35 §§ 27, 28, and 30-32: See note following RCW 36.28A.340.

36.28A.390 24/7 sobriety program—Violation of terms—Penalties. (1) A participant who violates the terms of participation in the 24/7 sobriety program or does not pay the required fees or associated costs shall:

- (a) Receive a written warning notice for a first violation;
- (b) Serve a term of two days imprisonment for a second violation;
- (c) Serve a term of up to five days imprisonment for a third violation;
- (d) Serve a term of up to ten days imprisonment for a fourth violation; and
- (e) For a fifth violation, the participant shall serve the entire remaining sentence imposed by the court.

(2) A sheriff or chief, or the designee of a sheriff or chief, who has probable cause to believe that a participant has violated the terms of participation in the 24/7 sobriety program or has not paid the required fees or associated costs shall immediately take the participant into custody and cause him or her to be held until an appearance before a judge on the next judicial day. [2013 2nd sp.s. c 35 § 32.]

Effective date—2013 2nd sp.s. c 35 §§ 27, 28, and 30-32: See note following RCW 36.28A.340.

Chapter 36.29 RCW COUNTY TREASURER

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townsites on United States lands, acquisition of land by inhabitants: Chapter 58.28 RCW.

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Flood control districts (1937 act), treasurer as ex officio district treasurer: RCW 86.09.313.

Intercounty weed district, treasurer as ex officio treasurer of: RCW 17.06.060.

Irrigation districts

generally, treasurer as ex officio treasurer: RCW 87.03.440.

refunding bonds (1929 act), payable at office of: RCW 87.22.165.

Misappropriation by: RCW 42.20.090.

Public depositaries—Deposit and investment of public funds: Chapter 39.58 RCW.

Public utility districts, treasurer as ex officio treasurer of: RCW 54.24.010.

Reclamation districts of one million acres

treasurer as ex officio treasurer: RCW 89.30.310.

treasurer may act as district secretary: RCW 89.30.625.

treasurer's liability: RCW 89.30.313.

Recording of town plats, proceedings for violations brought in name of treasurer: RCW 58.08.035.

School districts, treasurer as ex officio treasurer of: RCW 28A.510.270.

Taxes, property, penalty for nonperformance of duty: RCW 84.09.040.

Taxes and assessments, prepayment and deposit of: RCW 36.32.120.

Unclaimed money and property in hands of public authority, disposition: RCW 63.29.130.

Vehicle registration filing fee to go to: RCW 46.68.400.

Violations bureau moneys remitted to: RCW 3.30.090.

Water-sewer districts, bonds, payment of interest: RCW 57.20.130.

Weed district, treasurer as ex officio treasurer of: RCW 17.04.250.

36.29.010 General duties. The county treasurer:

(1) Shall receive all money due the county and disburse it on warrants issued and attested by the county auditor and electronic funds transfer under RCW 39.58.750 as attested by the county auditor;

(2) Shall issue a receipt in duplicate for all money received other than taxes; the treasurer shall deliver immediately to the person making the payment the original receipt and the duplicate shall be retained by the treasurer;

(3) Shall affix on the face of all paid warrants the date of redemption or, in the case of proper contract between the treasurer and a qualified public depository, the treasurer may consider the date affixed by the financial institution as the date of redemption;

(4) Shall endorse, before the date of issue by the county or by any taxing district for whom the county treasurer acts as treasurer, on the face of all warrants for which there are not sufficient funds for payment, "interest bearing warrant." When there are funds to redeem outstanding warrants, the county treasurer shall give notice:

(a) By publication in a legal newspaper published or circulated in the county; or

(b) By posting at three public places in the county if there is no such newspaper; or

(c) By notification to the financial institution holding the warrant;

(5) Shall pay interest on all interest-bearing warrants from the date of issue to the date of notification;

(6) Shall maintain financial records reflecting receipts and disbursement by fund in accordance with generally accepted accounting principles;

(7) Shall account for and pay all bonded indebtedness for the county and all special districts for which the county treasurer acts as treasurer;

(8) Shall invest all funds of the county or any special district in the treasurer's custody, not needed for immediate expenditure, in a manner consistent with appropriate statutes. If cash is needed to redeem warrants issued from any fund in the custody of the treasurer, the treasurer shall liquidate investments in an amount sufficient to cover such warrant redemptions; and

(9) May provide certain collection services for county departments.

The treasurer, at the expiration of the term of office, shall make a complete settlement with the county legislative authority, and shall deliver to the successor all public money, books, and papers in the treasurer's possession.

Money received by all entities for whom the county treasurer serves as treasurer must be deposited within twenty-four hours in an account designated by the county treasurer unless a waiver is granted by the county treasurer in accordance with RCW 43.09.240. [2005 c 502 § 2; 2002 c 168 § 4; 2001 c 299 § 4; 1998 c 106 § 3; 1995 c 38 § 4; 1994 c 301 § 7; 1991 c 245 § 4; 1963 c 4 § 36.29.010. Prior: (i) 1893 c

104 § 1; Code 1881 § 2740; 1863 p 553 § 3; 1854 p 427 § 3; RRS § 4109. (ii) Code 1881 § 2742; 1863 p 553 § 5; 1854 p 427 § 5; RRS § 4110. (iii) Code 1881 § 2743; 1863 p 553 § 6; 1854 p 427 § 6; RRS § 4111. (iv) 1895 c 73 § 4; Code 1881 § 2744; 1863 p 553 § 7; 1854 p 427 § 7; RRS § 4113. (v) Code 1881 § 2745; 1863 p 553 § 8; RRS § 4114. (vi) 1893 c 104 § 3; Code 1881 § 2748; 1863 p 554 § 11; 1854 p 428 § 11; RRS § 4120. (vii) Code 1881 § 2750; 1863 p 554 § 13; 1854 p 428 § 13; RRS § 4121. (viii) 1895 c 73 § 3; RRS § 4122.]

Effective date—2005 c 502: See note following RCW 1.12.070.

Additional notes found at www.leg.wa.gov

36.29.020 Custodian of moneys—Investment of funds not required for immediate expenditures—Service fee.

The county treasurer shall keep all moneys belonging to the state, or to any county, in his or her own possession until disbursed according to law. The county treasurer shall not place the same in the possession of any person to be used for any purpose; nor shall he or she loan or in any manner use or permit any person to use the same; but it shall be lawful for a county treasurer to deposit any such moneys in any regularly designated qualified public depository. Any municipal corporation may by action of its governing body authorize any of its funds which are not required for immediate expenditure, and which are in the custody of the county treasurer or other municipal corporation treasurer, to be invested by such treasurer. The county treasurer may invest in savings or time accounts in designated qualified public depositories or in certificates, notes, or bonds of the United States, or other obligations of the United States or its agencies, or of any corporation wholly owned by the government of the United States; in bankers' acceptances purchased on the secondary market, in federal home loan bank notes and bonds, federal land bank bonds and federal national mortgage association notes, debentures and guaranteed certificates of participation, or the obligations of any other government sponsored corporation whose obligations are or may become eligible as collateral for advances to member banks as determined by the board of governors of the federal reserve system or deposit such funds or any portion thereof in investment deposits as defined in RCW 39.58.010 secured by collateral in accordance with the provisions of chapters 39.58 and 39.59 RCW: PROVIDED, Five percent of the earnings, with an annual maximum of fifty dollars, on each transaction authorized by the governing body shall be paid as an investment service fee to the office of the county treasurer or other municipal corporation treasurer when the earnings become available to the governing body: PROVIDED FURTHER, That if such investment service fee amounts to five dollars or less the county treasurer or other municipal corporation treasurer may waive such fee.

If in the judgment of the governing body of the municipal corporation or the county treasurer it is necessary to redeem or to sell any of the purchased securities before their ultimate maturity date, the governing body may, by resolution, direct the county treasurer pursuant to RCW 36.29.010(8) to cause such redemption to be had at the redemption value of the securities or to sell the securities at not less than market value and accrued interest.

Whenever the funds of any municipal corporation which are not required for immediate expenditure are in the custody or control of the county treasurer, and the governing body of

such municipal corporation has not taken any action pertaining to the investment of any such funds, the county finance committee shall direct the county treasurer, under the investment policy of the county finance committee, to invest, to the maximum prudent extent, such funds or any portion thereof in savings or time accounts in designated qualified public depositaries or in certificates, notes, or bonds of the United States, or other obligations of the United States or its agencies, or of any corporation wholly owned by the government of the United States, in bankers' acceptances purchased on the secondary market, in federal home loan bank notes and bonds, federal land bank bonds and federal national mortgage association notes, debentures and guaranteed certificates of participation, or the obligations of any other government sponsored corporation whose obligations are or may become eligible as collateral for advances to member banks as determined by the board of governors of the federal reserve system or deposit such funds or any portion thereof in investment deposits as defined in RCW 39.58.010 secured by collateral in accordance with the provisions of chapters 39.58 and 39.59 RCW: PROVIDED, That the county treasurer shall have the power to select the specific qualified financial institution in which the funds may be invested. The interest or other earnings from such investments or deposits shall be deposited in the current expense fund of the county and may be used for general county purposes. The investment or deposit and disposition of the interest or other earnings therefrom authorized by this paragraph shall not apply to such funds as may be prohibited by the state Constitution from being so invested or deposited. [1999 c 18 § 4; 1997 c 393 § 4; 1991 c 245 § 5; 1984 c 177 § 7; 1982 c 73 § 1; 1980 c 56 § 1; 1979 c 57 § 1; 1973 1st ex.s. c 140 § 1; 1969 ex.s. c 193 § 26; 1967 c 173 § 1; 1965 c 111 § 2; 1963 c 4 § 36.29.020. Prior: 1961 c 254 § 1; 1895 c 73 § 1; RRS § 4112.]

Liability of treasurers and state treasurer for losses on public deposits: RCW 39.58.140.

Public depositaries: Chapter 39.58 RCW.

Additional notes found at www.leg.wa.gov

36.29.022 Combining of moneys for investment.

Upon the request of one or several units of local government that invest their money with the county under the provisions of RCW 36.29.020, the treasurer of that county may combine those units' moneys for the purposes of investment. [1986 c 294 § 11.]

36.29.024 Investment expenses. The county treasurer may deduct the amounts necessary to reimburse the treasurer's office for the actual expenses the office incurs and to repay any county funds appropriated and expended for the initial administrative costs of establishing a county investment pool provided in RCW 36.29.022. These funds shall be used by the county treasurer as a revolving fund to defray the cost of administering the pool without regard to budget limitations. Any credits or payments to political subdivisions shall be calculated and made in a manner which equitably reflects the differing amounts of the political subdivision's respective deposits in the county investment pool and the differing periods of time for which the amounts were placed in the county investment pool. A county investment pool must be available for investment of funds of any local government

that invests its money with the county under the provisions of RCW 36.29.020, and a county treasurer shall follow the request from the local government to invest its funds in the pool. As used in this section "actual expenses" include only the county treasurer's direct and out-of-pocket costs and do not include indirect or loss of opportunity costs. As used in this section, "direct costs" means those costs that can be identified specifically with the administration of the county investment pool. Direct costs include: (1) Compensation of employees for the time devoted and identified specifically to administering the pool; and (2) the cost of materials, services, or equipment acquired, consumed, or expended specifically for the purpose of administering the pool. [2009 c 553 § 1; 2004 c 79 § 3; 1988 c 281 § 5.]

Additional notes found at www.leg.wa.gov

36.29.025 Official seal. The county treasurer in each of the organized counties of the state of Washington, shall be by his or her county provided with a seal of office for the authentication of all tax deeds, papers, writing and documents required by law to be certified or authenticated by him or her. Such seal shall bear the device of crosskeys and the words: Official Seal Treasurer County, Washington; and an imprint of such seal, together with the certificate of the county treasurer that such seal has been regularly adopted, shall be filed in the office of the county auditor of such county. [2009 c 549 § 4061; 1963 c 4 § 36.29.025. Prior: 1903 c 15 § 1; RRS § 4125.]

36.29.040 Interest on unpaid warrants. All county, school, city and town warrants, and taxing district warrants when not otherwise provided for by law, shall be paid according to their number, date and issue, and when not paid upon presentation shall draw interest from the date of their presentation to the proper treasurers or from the date the warrants were originally issued, as determined by the proper treasurer. No compound interest shall be paid directly or indirectly on any such warrants. [1980 c 100 § 3; 1963 c 4 § 36.29.040. Prior: 1893 c 48 § 1, part; RRS § 4116, part.]

36.29.050 Interest to be entered on warrant register. When the county treasurer redeems any warrant on which interest is due, the treasurer shall enter on the warrant register account the amount of interest paid, distinct from the principal. [2001 c 299 § 5; 1969 ex.s. c 48 § 1; 1963 c 4 § 36.29.050. Prior: Code 1881 § 2746; 1863 p 554 § 9; 1854 p 427 § 9; RRS § 4117.]

36.29.060 Warrant calls—Penalty for failure to call.

(1) Whenever the county treasurer has funds belonging to any fund upon which "interest-bearing" warrants are outstanding, the treasurer shall have the discretion to call warrants. The county treasurer shall give notice as provided for in RCW 36.29.010(4). The treasurer shall pay on demand, in the order of their issue, any warrants when there shall be in the treasury sufficient funds applicable to such payment.

(2) Any treasurer who knowingly fails to call for or pay any warrant in accordance with this section is guilty of a misdemeanor and shall be fined not less than twenty-five dollars nor more than five hundred dollars, and such conviction shall be sufficient cause for removal from office. [2003 c 53 §

203; 1991 c 245 § 6; 1985 c 469 § 44; 1980 c 100 § 4; 1963 c 4 § 36.29.060. Prior: 1895 c 152 § 1, part; RRS § 4118, part.]

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

36.29.090 Suspension of treasurer. Whenever an action based upon official misconduct is commenced against any county treasurer the county commissioners may suspend the treasurer from office until such suit is determined, and may appoint some person to fill the vacancy. [2001 c 299 § 6; 1963 c 4 § 36.29.090. Prior: 1895 c 73 § 2; Code 1881 § 2749; 1863 p 554 § 12; 1854 p 428 § 12; RRS § 4124.]

36.29.100 Ex officio collector of first-class city taxes. The county treasurer of each county in which there is a city of the first class is ex officio collector of city taxes of such city, and before entering upon the duties of office the treasurer shall execute in favor of the city and file with the clerk thereof a good and sufficient bond, the penal sum to be fixed by the city council, such bond to be approved by the mayor of such city or other authority thereof by whom the bond of the city treasurer is required to be approved. All special assessments and special taxation for local improvements assessed on property benefited shall be collected by the city treasurer. [2001 c 299 § 7; 1963 c 4 § 36.29.100. Prior: 1895 c 160 § 1; 1893 c 71 § 4; RRS § 11321.]

36.29.110 City taxes. All city taxes and earnings on such taxes, as provided for in RCW 36.29.020, collected during the month shall be remitted to the city by the county treasurer on or before the tenth day of the following month. The county treasurer shall submit a statement of taxes collected with such remittance. To facilitate the investment of collected taxes, the treasurer may invest as provided for in RCW 36.29.020 without the necessity of the cities specifically requesting combining funds for the purposes of investment. [1991 c 245 § 7; 1963 c 4 § 36.29.110. Prior: 1905 c 157 § 1; 1895 c 160 § 2; 1893 c 71 § 5; RRS § 11322.]

36.29.120 Ex officio collector of other city taxes. For the purpose of collection of all taxes levied for cities and towns of other than the first class, the county treasurer of the county wherein such city or town is situated shall be ex officio tax collector. [1963 c 4 § 36.29.120. Prior: 1893 c 72 § 3; RRS § 11330.]

36.29.130 Duty to collect taxes. The county treasurer, upon receipt of the tax roll, shall proceed to collect and receipt for the municipal taxes extended thereon at the same time and in the same manner as he or she proceeds in the collection of other taxes on such roll. [2009 c 549 § 4062; 1963 c 4 § 36.29.130. Prior: 1893 c 72 § 7; RRS § 11334.]

36.29.160 Segregation and collection of specified assessments and charges made by public utility districts, water-sewer districts, or the county—Fee. The county treasurer shall make segregation, collect, and receive from any owner or owners of any subdivision or portion of any lot, tract or parcel of land upon which assessments or charges have been made or may be made by public utility districts, water-sewer districts, or the county, under the terms of Title

54 RCW, Title 57 RCW, or chapter 36.88, 36.89, or 36.94 RCW, such portion of the assessments or charges levied or to be levied against such lot, tract or parcel of land in payment of such assessment or charges as the board of commissioners of the public utility district, the water-sewer district commissioners or the board of county commissioners, respectively, shall certify to be chargeable to such subdivision, which certificate shall state that such property as segregated is sufficient security for the assessment or charges. Upon making collection upon any such subdivision the county treasurer shall note such payment upon the records of the office of the treasurer and give receipt therefor. When a segregation is required, a certified copy of the resolution shall be delivered to the treasurer of the county in which the real property is located who shall proceed to make the segregation ordered upon being tendered a fee of three dollars for each tract of land for which a segregation is to be made. [2001 c 299 § 8; 1998 c 106 § 4; 1996 c 230 § 1607; 1963 c 4 § 36.29.160. Prior: 1959 c 142 § 2; 1953 c 210 § 1.]

Additional notes found at www.leg.wa.gov

36.29.170 Office at county seat. The county treasurer shall keep an office at the county seat, and shall keep the same open for transaction of business during business hours; and the treasurer and the treasurer's deputy are authorized to administer all oaths necessary in the discharge of the duties of the office. [2009 c 105 § 4; 2001 c 299 § 9; 1963 c 4 § 36.29.170. Prior: Code 1881 § 2742; 1863 p 553 § 5; 1854 p 427 § 5; RRS § 4110.]

36.29.180 Fees for handling, collecting, dispersing, and accounting for special assessments, fees, rates, or charges. The county treasurer, in all instances where required by law to handle, collect, disburse, and account for special assessments, fees, rates, or charges within the county, may charge and collect a fee for services not to exceed four dollars per parcel for each year in which the funds are collected. Such charges for services shall be based upon costs incurred by the treasurer in handling, collecting, disbursing, and accounting for the funds.

Such fees shall be a charge against the district and shall be credited to the county current expense fund by the county treasurer. [1991 c 245 § 8; 1963 c 4 § 36.29.180. Prior: 1961 c 270 § 1.]

36.29.190 Acceptance of payment by credit cards, charge cards, and other electronic communications authorized—Costs borne by payer—Exception. County treasurers are authorized to accept credit cards, charge cards, debit cards, smart cards, stored value cards, federal wire, and automatic clearinghouse system transactions, or other electronic communication, for any payment of any kind including, but not limited to, taxes, fines, interest, penalties, special assessments, fees, rates, charges, or moneys due counties. A payer desiring to pay by a credit card, charge card, debit card, smart card, stored value card, federal wire, automatic clearinghouse system, or other electronic communication shall bear the cost of processing the transaction in an amount determined by the treasurer, unless the county legislative authority or the legislative authority of a district where the county treasurer serves as ex officio treasurer finds that it is in the best

interests of the county or district to not charge transaction processing costs for all payment transactions made for a specific category of nontax payments received by the county treasurer, including, but not limited to, fines, interest not associated with taxes, penalties not associated with taxes, special assessments, fees, rates, and charges. The treasurer's cost determination shall be based upon costs incurred by the treasurer and may not, in any event, exceed the additional direct costs incurred by the county to accept the specific form of payment utilized by the payer. [2003 c 23 § 8; 1997 c 393 § 19; 1996 c 153 § 3.]

Additional notes found at www.leg.wa.gov

36.29.200 Collection of sales and use taxes for zoo and aquarium advisory authority. The county treasurer or, in the case of a home rule county, the county official designated by county charter and ordinance as the official with custody over the collection of countywide tax revenues, shall receive all money representing revenues from taxes authorized under RCW 82.14.400, and shall disburse such money to the authority established in RCW 36.01.190. [1999 c 104 § 2.]

Chapter 36.32 RCW COUNTY COMMISSIONERS

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36.32.005 "County commissioners" defined. The term "county commissioners" when used in this title or any other provision of law shall include the governmental author-

ity empowered to so act under the provisions of a charter adopted by any county of the state. [1971 ex.s. c 117 § 1.]

36.32.010 Board of commissioners established—Quorum. There is established in each county in this state a board of county commissioners. Except as provided in RCW 36.32.055 and 36.32.0552, each board of county commissioners shall consist of three qualified electors, two of whom shall constitute a quorum to do business. [1990 c 252 § 1; 1963 c 4 § 36.32.010. Prior: Code 1881 § 2663; 1869 p 303 § 1; 1867 p 52 § 1; 1863 p 540 § 1; 1854 p 420 § 1; RRS § 4036.]

36.32.020 Commissioner districts. The board of county commissioners of each county shall divide their county into three commissioner districts so that each district shall comprise as nearly as possible one-third of the population of the county: PROVIDED, That the territory comprised in any voting precincts of such districts shall remain compact, and shall not be divided by the lines of said districts.

However, the commissioners of any county composed entirely of islands and with a population of less than thirty-five thousand may divide their county into three commissioner districts without regard to population, except that if any single island is included in more than one district, the districts on such island shall comprise, as nearly as possible, equal populations.

The lines of the districts shall not be changed oftener than once in four years and only when a full board of commissioners is present. The districts shall be designated as districts numbered one, two and three. [1982 c 226 § 4; 1970 ex.s. c 58 § 1; 1963 c 4 § 36.32.020. Prior: 1893 c 39 § 2; 1890 p 317 §§ 1, 2; RRS § 4037.]

Additional notes found at www.leg.wa.gov

36.32.030 Terms of commissioners. The terms of office of county commissioners shall be four years and until their successors are elected and qualified and assume office in accordance with *RCW 29.04.170: PROVIDED, That the terms shall be staggered so that either one or two commissioners are elected at a general election held in an even-numbered year. [1979 ex.s. c 126 § 27; 1963 c 4 § 36.32.030. Prior: 1951 c 89 § 1. Formerly: (i) 1891 c 97 §§ 1, 2; RRS § 4038. (ii) 1891 c 67 § 3; RRS § 4039. (iii) 1891 c 89 § 4; RRS § 4040. (iv) 1891 c 67 § 5; RRS § 4041.]

*Reviser's note: RCW 29.04.170 was recodified as RCW 29A.20.040 pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.20.040 was subsequently recodified as RCW 29A.60.280 pursuant to 2013 c 11 § 93.

Purpose—1979 ex.s. c 126: See RCW 29A.60.280(1).

36.32.040 Nomination by districts. (1) Except as provided in subsection (2) of this section, the qualified electors of each county commissioner district, and they only, shall nominate from among their own number, candidates for the office of county commissioner of such commissioner district to be voted for at the following general election. Such candidates shall be nominated in the same manner as candidates for other county and district offices are nominated in all other respects.

(2) Where the commissioners of a county composed entirely of islands with a population of less than thirty-five

thousand have chosen to divide the county into unequal-sized commissioner districts pursuant to the exception provided in RCW 36.32.020, the qualified electors of the entire county shall nominate from among their own number who reside within a commissioner district, candidates for the office of county commissioner of such commissioner district to be voted for at the following general election. Such candidates shall be nominated in the same manner as candidates for other county offices are nominated in all other respects. [1982 c 226 § 5; 1963 c 4 § 36.32.040. Prior: 1909 c 232 § 1; RRS § 4043.]

Additional notes found at www.leg.wa.gov

36.32.050 Elected by entire county. County commissioners shall be elected by the qualified voters of the county and the person receiving the highest number of votes for the office of commissioner for the district in which he or she resides shall be declared duly elected from that district. [2009 c 549 § 4063; 1963 c 4 § 36.32.050. Prior: 1895 c 110 § 1; 1893 c 39 § 1; 1891 c 67 § 6; 1890 p 317 § 3; RRS § 4042.]

36.32.055 Five-member commission—When authorized—Ballot proposition—Petition—Procedures. (1) The board of commissioners of any noncharter county with a population of three hundred thousand or more may cause a ballot proposition to be submitted at a general election to the voters of the county authorizing the board of commissioners to be increased to five members.

(2) As an alternative procedure, a ballot proposition shall be submitted to the voters of a noncharter county authorizing the board of commissioners to be increased to five members, upon petition of the county voters equal to at least ten percent of the voters voting at the last county general election. At least twenty percent of the signatures on the petition shall come from each of the existing commissioner districts.

Any petition requesting that such an election be held shall be submitted to the county auditor for verification of the signatures thereon. Within no more than thirty days after the submission of the petition, the auditor shall determine if the petition contains the requisite number of valid signatures. The auditor shall certify whether or not the petition has been signed by the requisite number of county voters and forward such petition to the board of county commissioners. If the petition has been signed by the requisite number of county voters, the board of county commissioners shall submit such a proposition to the voters for their approval or rejection at the next general election held at least sixty days after the proposition has been certified by the auditor. [1990 c 252 § 2.]

36.32.0552 Five-member commission—Newly created positions—How filled—County divided into five districts. If the ballot proposition receives majority voter approval, the size of the board of county commissioners shall be increased to five members as provided in this section.

The two newly created positions shall be filled at elections to be held in the next year. The county shall, as provided in this section, be divided into five commissioner districts, so that each district shall comprise as nearly as possible one-fifth of the population of the county. No two members of the

existing board of county commissioners may, at the time of the designation of such districts, permanently reside in one of the five districts. The division of the county into five districts shall be accomplished as follows:

(1) The board of county commissioners shall, by the second Monday of March of the year following the election, adopt a resolution creating the districts;

(2) If by the second Tuesday of March of the year following the election the board of county commissioners has failed to create the districts, the prosecuting attorney of the county shall petition the superior court of the county to appoint a referee to designate the five commissioner districts. The referee shall designate such districts by no later than June 1st of the year following the election. The two commissioner districts within which no existing member of the board of county commissioners permanently resides shall be designated as districts four and five. [1990 c 252 § 3.]

36.32.0554 Five-member commission—Newly created positions—Terms of initially elected commissioners. The terms of the persons who are initially elected to positions four and five under RCW 36.32.0552 shall be as follows:

(1) If the year in which the primary and general elections are held is an even-numbered year, the person elected to position four shall be elected for a two-year term, and the person elected to position five shall be elected for a four-year term; or

(2) If the year in which the primary and general elections are held is an odd-numbered year, the person elected to position four shall be elected for a one-year term, and the person elected to position five shall be elected for a three-year term. The length of the terms shall be calculated from the first day of January in the year following the election. Each person elected pursuant to subsection (1) or (2) of this section shall take office immediately upon the issuance of a certificate of his or her election.

Thereafter, persons elected to commissioner positions four and five shall be elected for four-year terms and shall take office at the same time the other members of the board of county commissioners take office. [1990 c 252 § 4.]

36.32.0556 Five-member commissions—Four-year terms—Nominations by districts—Elected by entire county—Quorum. The commissioners in a five-member board of county commissioners shall be elected to four-year staggered terms. Each commissioner shall reside in a separate commissioner district. Each commissioner shall be nominated from a separate commissioner district by the voters of that district. Each shall be elected by the voters of the entire county. Three members of a five-member board of commissioners shall constitute a quorum to do business. [1990 c 252 § 5.]

36.32.0558 Five-member commissions—Vacancies. Vacancies on a board of county commissioners consisting of five members shall be filled as provided in RCW 36.32.070, except that:

(1) Whenever there are three or more vacancies, the governor shall appoint one or more commissioners until there are a total of three commissioners;

(2) Whenever there are two vacancies, the three commissioners shall fill one of the vacancies;

(3) Whenever there is one vacancy, the four commissioners shall fill the single vacancy; and

(4) Whenever there is a vacancy after the general election in a year that the position appears on the ballot and before the start of the next term, the term of the successor who is of the same party as the incumbent may commence once he or she has qualified as defined in *RCW 29.01.135 and shall continue through the term for which he or she was elected. [2003 c 238 § 2; 1990 c 252 § 6.]

*Reviser's note: RCW 29.01.135 was recodified as RCW 29A.04.133 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Additional notes found at www.leg.wa.gov

36.32.060 Conditions of official bond. The bond of each county commissioner shall be payable to the county, and it shall be conditioned that the commissioner shall well and faithfully discharge the duties of his or her office, and not approve, audit, or order paid any illegal, unwarranted, or unjust claim against the county for personal services. [2009 c 549 § 4064; 1963 c 4 § 36.32.060. Prior: 1955 c 157 § 10; prior: 1921 c 132 § 1, part; 1893 c 75 § 7, part; RRS § 4046, part.]

36.32.070 Vacancies on board. Whenever there is a vacancy in the board of county commissioners, except as provided in RCW 36.32.0558, it shall be filled as follows:

(1) If there are three vacancies, the governor of the state shall appoint two of the officers. The two commissioners thus appointed shall then meet and select the third commissioner. If the two appointed commissioners fail to agree upon selection of the third after the expiration of five days from the day they were appointed, the governor shall appoint the remaining commissioner.

(2) Whenever there are two vacancies in the office of county commissioner, the governor shall appoint one commissioner, and the two commissioners then in office shall appoint the third commissioner. If they fail to agree upon a selection after the expiration of five days from the day of the governor's appointment, the governor shall appoint the third commissioner.

(3) Whenever there is one vacancy in the office of county commissioner, the two remaining commissioners shall fill the vacancy. If the two commissioners fail to agree upon a selection after the expiration of five days from the day the vacancy occurred, the governor shall appoint the third commissioner.

(4) Whenever there is a vacancy in the office of county commissioner after the general election in a year that the position appears on the ballot and before the start of the next term, the term of the successor who is of the same party as the incumbent may commence once he or she has qualified as defined in *RCW 29.01.135 and shall continue through the term for which he or she was elected. [2003 c 238 § 3; 1990 c 252 § 7; 1963 c 4 § 36.32.070. Prior: 1933 c 100 § 1; RRS § 4038-1.]

*Reviser's note: RCW 29.01.135 was recodified as RCW 29A.04.133 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Additional notes found at www.leg.wa.gov

36.32.080 Regular meetings. The county legislative authority of each county shall hold regular meetings at the

county seat to transact any business required or permitted by law. [1989 c 16 § 1; 1963 c 4 § 36.32.080. Prior: 1893 c 105 § 1; Code 1881 § 2667; 1869 p 303 § 5; 1867 p 53 § 5; 1863 p 541 § 5; 1854 p 420 § 5; RRS § 4047. Cf. 1893 c 75 § 1; RRS § 4048.]

36.32.090 Special meetings. The county legislative authority of each county may hold special meetings to transact the business of the county. Notice of a special meeting shall be made as provided in RCW 42.30.080. A special meeting may be held outside of the county seat at any location within the county if the agenda item or items are of unique interest or concern to the citizens of the portion of the county in which the special meeting is to be held. [1989 c 16 § 2; 1963 c 4 § 36.32.090. Prior: Code 1881 § 2669; 1869 p 304 § 7; 1867 p 53 § 7; 1863 p 541 § 7; 1854 p 420 § 7; RRS § 4049. Cf. 1893 c 75 § 2; RRS § 4050.]

36.32.100 Chair of board—Election, powers. The board of county commissioners at their first session after the general election shall elect one of its number to preside at its meetings. He or she shall sign all documents requiring the signature of the board, and his or her signature as chair of the board shall be as legal and binding as if all members had affixed their names. In case the chair is absent at any meeting of the board, all documents requiring the signature of the board shall be signed by both members present. [2009 c 549 § 4065; 1963 c 4 § 36.32.100. Prior: Code 1881 § 2676; 1869 p 305 § 14; 1867 p 55 § 14; 1863 p 542 § 14; 1854 p 421 § 14; RRS § 4051.]

36.32.110 Clerk of board. The county auditor shall be the clerk of the board of county commissioners unless the board of county commissioners designates one of its employees to serve as clerk who shall attend its meetings and keep a record of its proceedings. [1981 c 240 § 1; 1963 c 4 § 36.32.110. Prior: Code 1881 § 2668; 1869 p 304 § 6; 1867 p 53 § 6; 1863 p 541 § 6; 1854 p 420 § 6; RRS § 4052.]

36.32.120 Powers of legislative authorities. The legislative authorities of the several counties shall:

(1) Provide for the erection and repairing of courthouses, jails, and other necessary public buildings for the use of the county;

(2) Lay out, discontinue, or alter county roads and highways within their respective counties, and do all other necessary acts relating thereto according to law, except within cities and towns which have jurisdiction over the roads within their limits;

(3) License and fix the rates of ferriage; grant grocery and other licenses authorized by law to be by them granted at fees set by the legislative authorities which shall not exceed the costs of administration and operation of such licensed activities;

(4) Fix the amount of county taxes to be assessed according to the provisions of law, and cause the same to be collected as prescribed by law;

(5) Allow all accounts legally chargeable against the county not otherwise provided for, and audit the accounts of all officers having the care, management, collection, or dis-

bursement of any money belonging to the county or appropriated to its benefit;

(6) Have the care of the county property and the management of the county funds and business and in the name of the county prosecute and defend all actions for and against the county, and such other powers as are or may be conferred by law;

(7) Make and enforce, by appropriate resolutions or ordinances, all such police and sanitary regulations as are not in conflict with state law, and within the unincorporated area of the county may adopt by reference Washington state statutes and recognized codes and/or compilations printed in book form relating to the construction of buildings, the installation of plumbing, the installation of electric wiring, health, or other subjects, and may adopt such codes and/or compilations or portions thereof, together with amendments thereto, or additions thereto: PROVIDED, That except for Washington state statutes, there shall be filed in the county auditor's office one copy of such codes and compilations ten days prior to their adoption by reference, and additional copies may also be filed in library or city offices within the county as deemed necessary by the county legislative authority: PROVIDED FURTHER, That no such regulation, code, compilation, and/or statute shall be effective unless before its adoption, a public hearing has been held thereon by the county legislative authority of which at least ten days' notice has been given. Any violation of such regulations, ordinances, codes, compilations, and/or statutes or resolutions shall constitute a misdemeanor or a civil violation subject to a monetary penalty: PROVIDED FURTHER, That violation of a regulation, ordinance, code, compilation, and/or statute relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction, except that violation of a regulation, ordinance, code, compilation, and/or statute equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor. However, the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime and no act that is a state crime may be made a civil violation. The notice must set out a copy of the proposed regulations or summarize the content of each proposed regulation; or if a code is adopted by reference the notice shall set forth the full official title and a statement describing the general purpose of such code. For purposes of this subsection, a summary shall mean a brief description which succinctly describes the main points of the proposed regulation. When the county publishes a summary, the publication shall include a statement that the full text of the proposed regulation will be mailed upon request. An inadvertent mistake or omission in publishing the text or a summary of the content of a proposed regulation shall not render the regulation invalid if it is adopted. The notice shall also include the day, hour, and place of hearing and must be given by publication in the newspaper in which legal notices of the county are printed;

(8) Have power to compound and release in whole or in part any debt due to the county when in their opinion the interest of their county will not be prejudiced thereby, except in cases where they or any of them are personally interested;

(9) Have power to administer oaths or affirmations necessary in the discharge of their duties and commit for con-

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tempt any witness refusing to testify before them with the same power as district judges;

(10) Have power to declare by ordinance what shall be deemed a nuisance within the county, including but not limited to "litter" and "potentially dangerous litter" as defined in RCW 70.93.030; to prevent, remove, and abate a nuisance at the expense of the parties creating, causing, or committing the nuisance; and to levy a special assessment on the land or premises on which the nuisance is situated to defray the cost, or to reimburse the county for the cost of abating it. This assessment shall constitute a lien against the property which shall be of equal rank with state, county, and municipal taxes. [2003 c 337 § 6; 1994 c 301 § 8; 1993 c 83 § 9; 1989 c 378 § 39; 1988 c 168 § 8; 1987 c 202 § 206; 1986 c 278 § 2; 1985 c 91 § 1; 1982 c 226 § 3; 1979 ex.s. c 136 § 35; 1975 1st ex.s. c 216 § 1; 1967 ex.s. c 59 § 1; 1963 c 4 § 36.32.120. Prior: 1961 c 27 § 2; prior: (i) 1947 c 61 § 1; 1943 c 199 § 1; Code 1881 § 2673; 1869 p 305 § 11; 1867 p 54 § 11; 1863 p 542 § 11; 1854 p 421 § 11; Rem. Supp. 1947 § 4056. (ii) Code 1881 § 2681; 1869 p 307 § 20; 1867 p 56 § 20; 1863 p 543 § 20; 1854 p 422 § 20; RRS § 4061. (iii) Code 1881 § 2687; 1869 p 308 § 26; 1867 p 57 § 26; 1863 p 545 § 28; 1854 p 423 § 22; RRS § 4071.]

Findings—2003 c 337: See note following RCW 70.93.060.

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

Additional notes found at www.leg.wa.gov

36.32.121 Community revitalization financing—Public improvements. In addition to other authority that a county possesses, a county may provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a county to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 13.]

Additional notes found at www.leg.wa.gov

36.32.122 Authority to regulate massage practitioners—Limitations. (1) A state licensed massage practitioner seeking a county license to operate a massage business must provide verification of his or her state massage license as provided for in RCW 18.108.030.

(2) The county may charge a licensing or operating fee, but the fee charged a state licensed massage practitioner shall not exceed the licensing or operating fee imposed on similar health care providers, such as physical therapists or occupational therapists, operating within the same county.

(3) A state licensed massage practitioner is not subject to additional licensing requirements not currently imposed on similar health care providers, such as physical therapists or occupational therapists. [1991 c 182 § 3.]

36.32.125 Adoption of certain regulations proscribed. Nothing in this chapter shall permit the counties to adopt, by reference or by ordinance, regulations relating to the subject matter contained in chapters 19.28, 43.22, 70.79, or 70.87 RCW. [1971 ex.s. c 117 § 2.]

Adoption of provisions relating to electricians and electrical installations by ordinance proscribed: RCW 19.28.101.

36.32.127 Driving while under the influence of liquor or drugs—Minimum penalties. No county may establish a penalty for an act that constitutes the crime of driving while under the influence of intoxicating liquor or any drug, as provided for in RCW 46.61.502, or the crime of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, as provided in RCW 46.61.504, that is less than the penalties prescribed for those crimes in RCW 46.61.5055. [1995 c 332 § 9; 1994 c 275 § 37; 1983 c 165 § 41.]

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

Additional notes found at www.leg.wa.gov

36.32.130 Postponement of action. When only two members are present at a meeting of the board, and a division takes place on any question, the matter under consideration shall be postponed to the next subsequent meeting. [1963 c 4 § 36.32.130. Prior: Code 1881 § 2671; 1869 p 304 § 9; 1867 p 53 § 9; 1863 p 541 § 9; 1854 p 421 § 9; RRS § 4055.]

36.32.135 Official seal. The county commissioners of each county shall have and use a seal for the purpose of sealing their proceedings, and copies of the same when signed and sealed by the said county commissioners, and attested by their clerk, shall be admitted as evidence of such proceedings in the trial of any cause in any court in this state; and until such seal shall be provided, the private seal of the chair of such board of county commissioners shall be adopted as a seal. [2009 c 549 § 4066; 1963 c 4 § 36.32.135. Prior: Code 1881 § 2672; 1854 p 421 § 10; RRS § 4069. Formerly RCW 36.16.080.]

36.32.140 Record of proceedings. The board of county commissioners shall cause to be recorded, in a book kept for that purpose, all their proceedings and determinations touching all matters properly cognizable before it; and all books, accounts, vouchers, and papers, touching the business or property of the county shall be carefully kept by the clerk, and be open to public inspection. [1963 c 4 § 36.32.140. Prior: Code 1881 § 2675; 1869 p 305 § 13; 1867 p 54 § 13; 1863 p 542 § 13; 1854 p 421 § 13; RRS § 4072.]

36.32.150 Transcribing mutilated records. The county commissioners shall, when any of the county records become so mutilated that their handling becomes dangerous to the safety of such records, and when in the judgment of the county commissioners it may become necessary to, order the transcribing of said records at a sum not exceeding eight cents per folio of one hundred words, in books to be provided for that purpose by the county. [1963 c 4 § 36.32.150. Prior: 1893 c 14 § 1; RRS § 4065.]

36.32.155 Transcribing mutilated records—Prior transcribing validated. All records transcribed by order of any board of county commissioners in this state prior to the effective date of chapter 14, Laws of 1893, shall be and are hereby declared the legal records of said county the same as if transcribed under the provisions of RCW 36.32.150 through 36.32.170. [1963 c 4 § 36.32.155. Prior: 1893 c 14 § 4; RRS § 4068.]

36.32.160 Transcribing mutilated records—Auditor to direct transcribing, certify. The books containing the transcribed records shall be certified by the county auditor, under whose direction the transcribing was done, as being true copies of the original. [1963 c 4 § 36.32.160. Prior: 1893 c 14 § 2; RRS § 4066.]

36.32.170 Transcribing mutilated records—Original records to be preserved. All the original record books, after the transcribing thereof, shall be filed away in the auditor's office and only be used in case of contest on the correctness of the transcribed records. [1963 c 4 § 36.32.170. Prior: 1893 c 14 § 3; RRS § 4067.]

36.32.200 Special attorneys, employment of. It shall be unlawful for a county legislative authority to employ or contract with any attorney or counsel to perform any duty which any prosecuting attorney is authorized or required by law to perform, unless the contract of employment of such attorney or counsel has been first reduced to writing and approved by the presiding superior court judge of the county in writing endorsed thereon. This section shall not prohibit the appointment of deputy prosecuting attorneys in the manner provided by law.

Any contract written pursuant to this section shall be limited to two years in duration. [1983 c 129 § 1; 1963 c 4 § 36.32.200. Prior: 1905 c 25 § 1; RRS § 4075.]

36.32.210 Inventory of county capitalized assets—County commission inventory statement—Filing and public inspection—Penalty—Prosecutions—Taxpayer's action. (1) Each board of county commissioners of the several counties of the state of Washington shall, on the first Monday of March of each year, file with the auditor of the county a statement verified by oath showing for the twelve months period ending December 31st of the preceding year, the following:

(a) A full and complete inventory of all capitalized assets shall be kept in accordance with standards established by the state auditor. This inventory shall be segregated to show the following subheads:

(i) The assets, including equipment, on hand, together with a statement of the date when acquired, the amount paid therefor, the estimated life thereof and a sufficient description to fully identify such property;

(ii) All equipment of every kind or nature sold or disposed of in any manner during such preceding twelve months period, together with the name of the purchaser, the amount paid therefor, whether or not the same was sold at public or private sale, the reason for such disposal and a sufficient description to fully identify the same; and

(iii) All the equipment purchased during the period, together with the date of purchase, the amount paid therefor, whether or not the same was bought under competitive bidding, the price paid therefor and the probable life thereof, the reason for making the purchase and a sufficient description to fully identify such property; and

(b) The person to whom such money or any part thereof was paid and why so paid and the date of such payment.

(2) Inventories shall be filed with the county auditor as a public record and shall be open to the inspection of the public.

(3) Any county commissioner failing to file such statement or willfully making any false or incorrect statement therein or aiding or abetting in the making of any false or incorrect statement is guilty of a gross misdemeanor.

(4) It is the duty of the prosecuting attorney of each county to within three days from the calling to his or her attention of any violation to institute proceedings against such offending official and in addition thereto to prosecute appropriate action to remove such commissioner from office.

(5) Any taxpayer of such county is hereby authorized to institute the action in conjunction with or independent of the action of the prosecuting attorney. [2003 c 53 § 204; 1997 c 245 § 3; 1995 c 194 § 5; 1969 ex.s. c 182 § 2; 1963 c 108 § 1; 1963 c 4 § 36.32.210. Prior: 1931 c 95 § 1; RRS § 4056-1. FORMER PARTS OF SECTION: (i) 1931 c 95 § 2; RRS § 4056-2, now codified as RCW 36.32.213. (ii) 1931 c 95 § 3; RRS § 4056-3, now codified as RCW 36.32.215.]

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

State building code: Chapter 19.27 RCW.

36.32.235 Competitive bids—Purchasing department—Counties with a population of four hundred thousand or more—Public works procedures—Exceptions.

(1) In each county with a population of four hundred thousand or more which by resolution establishes a county purchasing department, the purchasing department shall enter into leases of personal property on a competitive basis and purchase all supplies, materials, and equipment on a competitive basis, for all departments of the county, as provided in this chapter and chapter 39.04 RCW, except that the county purchasing department is not required to make purchases that are paid from the county road fund or equipment rental and revolving fund.

(2) As used in this section, "public works" has the same definition as in RCW 39.04.010.

(3) Except as otherwise specified in this chapter or in chapter 36.77 RCW, all counties subject to these provisions shall contract on a competitive basis for all public works after bids have been submitted to the county upon specifications therefor. Such specifications shall be in writing and shall be filed with the clerk of the county legislative authority for public inspection.

(4) An advertisement shall be published in the county official newspaper stating the time and place where bids will be opened, the time after which bids will not be received, the character of the work to be done, the materials and equipment to be furnished, and that specifications therefor may be seen at the office of the clerk of the county legislative authority. An advertisement shall also be published in a legal newspaper of general circulation in or as near as possible to that part of the county in which such work is to be done. If the county official newspaper is a newspaper of general circulation covering at least forty percent of the residences in that part of the county in which such public works are to be done, then the publication of an advertisement of the applicable specifications in the county official newspaper is sufficient. Such advertisements shall be published at least once at least thir-

teen days prior to the last date upon which bids will be received.

(5) The bids shall be in writing, shall be filed with the clerk, shall be opened and read in public at the time and place named therefor in the advertisements, and after being opened, shall be filed for public inspection. No bid may be considered for public work unless it is accompanied by a bid deposit in the form of a surety bond, postal money order, cash, cashier's check, or certified check in an amount equal to five percent of the amount of the bid proposed.

(6) The contract for the public work shall be awarded to the lowest responsible bidder. Any or all bids may be rejected for good cause. The county legislative authority shall require from the successful bidder for such public work a contractor's bond in the amount and with the conditions imposed by law.

(7) If the bidder to whom the contract is awarded fails to enter into the contract and furnish the contractor's bond as required within ten days after notice of the award, exclusive of the day of notice, the amount of the bid deposit shall be forfeited to the county and the contract awarded to the next lowest and best bidder. The bid deposit of all unsuccessful bidders shall be returned after the contract is awarded and the required contractor's bond given by the successful bidder is accepted by the county legislative authority. Immediately after the award is made, the bid quotations obtained shall be recorded and open to public inspection and shall be available by telephone inquiry.

(8) As limited by subsection (10) of this section, a county subject to these provisions may have public works performed by county employees in any annual or biennial budget period equal to a dollar value not exceeding ten percent of the public works construction budget, including any amount in a supplemental public works construction budget, over the budget period.

Whenever a county subject to these provisions has had public works performed in any budget period up to the maximum permitted amount for that budget period, all remaining public works except emergency work under subsection (12) of this section within that budget period shall be done by contract pursuant to public notice and call for competitive bids as specified in subsection (3) of this section. The state auditor shall report to the state treasurer any county subject to these provisions that exceeds this amount and the extent to which the county has or has not reduced the amount of public works it has performed by public employees in subsequent years.

(9) If a county subject to these provisions has public works performed by public employees in any budget period that are in excess of this ten percent limitation, the amount in excess of the permitted amount shall be reduced from the otherwise permitted amount of public works that may be performed by public employees for that county in its next budget period. Ten percent of the motor vehicle fuel tax distributions to that county shall be withheld if two years after the year in which the excess amount of work occurred, the county has failed to so reduce the amount of public works that it has performed by public employees. The amount withheld shall be distributed to the county when it has demonstrated in its reports to the state auditor that the amount of public works it has performed by public employees has been reduced as required.

(10) In addition to the percentage limitation provided in subsection (8) of this section, counties subject to these provisions containing a population of four hundred thousand or more shall not have public employees perform a public works project in excess of ninety thousand dollars if more than a single craft or trade is involved with the public works project, or a public works project in excess of forty-five thousand dollars if only a single craft or trade is involved with the public works project. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by public employees on a single project.

The cost of a separate public works project shall be the costs of materials, supplies, equipment, and labor on the construction of that project. The value of the public works budget shall be the value of all the separate public works projects within the budget.

(11) In addition to the accounting and recordkeeping requirements contained in chapter 39.04 RCW, any county which uses public employees to perform public works projects under RCW 36.32.240(1) shall prepare a year-end report to be submitted to the state auditor indicating the total dollar amount of the county's public works construction budget and the total dollar amount for public works projects performed by public employees for that year.

The year-end report submitted pursuant to this subsection to the state auditor shall be in accordance with the standard form required by RCW 43.09.205.

(12) Notwithstanding any other provision in this section, counties may use public employees without any limitation for emergency work performed under an emergency declared pursuant to RCW 36.32.270, and any such emergency work shall not be subject to the limitations of this section. Publication of the description and estimate of costs relating to correcting the emergency may be made within seven days after the commencement of the work. Within two weeks of the finding that such an emergency existed, the county legislative authority shall adopt a resolution certifying the damage to public facilities and costs incurred or anticipated relating to correcting the emergency. Additionally this section shall not apply to architectural and engineering or other technical or professional services performed by public employees in connection with a public works project.

(13) In lieu of the procedures of subsections (3) through (11) of this section, a county may let contracts using the small works roster process provided in RCW 39.04.155.

Whenever possible, the county shall invite at least one proposal from a minority or woman contractor who shall otherwise qualify under this section.

(14) The allocation of public works projects to be performed by county employees shall not be subject to a collective bargaining agreement.

(15) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(4), that are negotiated under chapter 39.35A RCW.

(16) Nothing in this section prohibits any county from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

(17) This section does not apply to contracts between the public stadium authority and a team affiliate under RCW 36.102.060(4), or development agreements between the public stadium authority and a team affiliate under RCW 36.102.060(7) or leases entered into under RCW 36.102.060(8). [2009 c 229 § 6; 2000 c 138 § 206; 1997 c 220 § 401 (Referendum Bill No. 48, approved June 17, 1997); 1996 c 219 § 2.]

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.155.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

36.32.240 Competitive bids—Purchasing department—Counties with a population of less than four hundred thousand. (1) In any county the county legislative authority may by resolution establish a county purchasing department.

(2) In each county with a population of less than four hundred thousand which exercises this option, the purchasing department shall contract on a competitive basis for all public works, enter into leases of personal property on a competitive basis, and purchase all supplies, materials, and equipment, on a competitive basis, for all departments of the county, as provided in this chapter and chapter 39.04 RCW, except that the county purchasing department is not required to make purchases for the county hospital, or make purchases that are paid from the county road fund or equipment rental and revolving fund. [2009 c 229 § 7; 1996 c 219 § 1; 1993 c 198 § 5; 1991 c 363 § 57; 1985 c 169 § 8; 1983 c 3 § 77; 1974 ex.s. c 52 § 1; 1967 ex.s. c 144 § 15; 1963 c 4 § 36.32.240. Prior: 1961 c 169 § 1; 1949 c 33 § 1; 1945 c 61 § 1; Rem. Supp. 1949 § 10322-15.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Additional notes found at www.leg.wa.gov

36.32.245 Competitive bids—Requirements—Advertisements—Exceptions. (1) No contract for the purchase of materials, equipment, or supplies may be entered into by the county legislative authority or by any elected or appointed officer of the county until after bids have been submitted to the county. Bid specifications shall be in writing and shall be filed with the clerk of the county legislative authority for public inspection. An advertisement shall be published in the official newspaper of the county stating the time and place where bids will be opened, the time after which bids will not be received, the materials, equipment, supplies, or services to be purchased, and that the specifications may be seen at the office of the clerk of the county legislative authority. The advertisement shall be published at least once at least thirteen days prior to the last date upon which bids will be received.

(2) The bids shall be in writing and filed with the clerk. The bids shall be opened and read in public at the time and place named in the advertisement. Contracts requiring competitive bidding under this section may be awarded only to the lowest responsible bidder. Immediately after the award is made, the bid quotations shall be recorded and open to public

inspection and shall be available by telephone inquiry. Any or all bids may be rejected for good cause.

(3) For advertisement and formal sealed bidding to be dispensed with as to purchases between five thousand and twenty-five thousand dollars, the county legislative authority must use the uniform process to award contracts as provided in RCW 39.04.190. Advertisement and formal sealed bidding may be dispensed with as to purchases of less than five thousand dollars upon the order of the county legislative authority.

(4) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(4), that are negotiated under chapter 39.35A RCW; or contracts and purchases for the printing of election ballots, voting machine labels, and all other election material containing the names of candidates and ballot titles.

(5) Nothing in this section shall prohibit the legislative authority of any county from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

(6) This section does not apply to contracting for public defender services by a county. [2007 c 88 § 1. Prior: 1993 c 233 § 1; 1993 c 198 § 7; 1991 c 363 § 62.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.32.250 Competitive bids—Contract procedure—Contracts under forty thousand dollars—Small works roster process. No contract for public works may be entered into by the county legislative authority or by any elected or appointed officer of the county until after bids have been submitted to the county upon specifications therefor. Such specifications shall be in writing and shall be filed with the clerk of the county legislative authority for public inspection. An advertisement shall be published in the county official newspaper stating the time and place where bids will be opened, the time after which bids will not be received, the character of the work to be done, the materials and equipment to be furnished, and that specifications therefor may be seen at the office of the clerk of the county legislative authority. An advertisement shall also be published in a legal newspaper of general circulation in or as near as possible to that part of the county in which such work is to be done. If the county official newspaper is a newspaper of general circulation covering at least forty percent of the residences in that part of the county in which such public works are to be done, then the publication of an advertisement of the applicable specifications in the county official newspaper shall be sufficient. Such advertisements shall be published at least once at least thirteen days prior to the last date upon which bids will be received. The bids shall be in writing, shall be filed with the clerk, shall be opened and read in public at the time and place named therefor in the advertisements, and after being opened, shall be filed for public inspection. No bid may be considered for public work unless it is accompanied by a bid deposit in the form of a surety bond, postal money order, cash, cashier's check, or certified check in an amount equal to five percent of the amount of the bid proposed. The contract for the public work shall be awarded to the lowest responsible bidder. Any or all bids may be rejected for good cause. The county legislative authority shall require from the successful bidder for

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such public work a contractor's bond in the amount and with the conditions imposed by law. If the bidder to whom the contract is awarded fails to enter into the contract and furnish the contractor's bond as required within ten days after notice of the award, exclusive of the day of notice, the amount of the bid deposit shall be forfeited to the county and the contract awarded to the next lowest and best bidder. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. The bid deposit of all unsuccessful bidders shall be returned after the contract is awarded and the required contractor's bond given by the successful bidder is accepted by the county legislative authority. In the letting of any contract for public works involving less than forty thousand dollars, advertisement and competitive bidding may be dispensed with on order of the county legislative authority. Immediately after the award is made, the bid quotations obtained shall be recorded and open to public inspection and shall be available by telephone inquiry.

As an alternative to requirements under this section, a county may let contracts using the small works roster process under RCW 39.04.155.

This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(4), that are negotiated under chapter 39.35A RCW. [2009 c 229 § 8; 2000 c 138 § 207; 1996 c 18 § 3; 1993 c 198 § 8; 1991 c 363 § 58. Prior: 1989 c 431 § 57; 1989 c 244 § 6; prior: 1985 c 369 § 1; 1985 c 169 § 9; 1977 ex.s. c 267 § 1; 1975 1st ex.s. c 230 § 1; 1967 ex.s. c 144 § 16; 1967 c 97 § 1; 1965 c 113 § 1; 1963 c 4 § 36.32.250; prior: 1945 c 61 § 2; Rem. Supp. 1945 § 10322-16.]

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.155.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Subcontractors to be identified by bidder, when: RCW 39.30.060.

Additional notes found at www.leg.wa.gov

36.32.253 Competitive bids—Leases of personal property. No lease of personal property may be entered into by the county legislative authority or by any elected or appointed officer of the county except upon use of the procedures specified in this chapter and chapter 39.04 RCW for awarding contracts for purchases when it leases personal property from the lowest responsible bidder. [1993 c 198 § 6; 1991 c 363 § 63.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.32.256 Competitive bids—Multiple awards for road maintenance materials. A county when calling for competitive bids for the procurement of road maintenance materials may award to multiple bidders for the same commodity when the bid specifications provide for the factors of haul distance to be included in the determination of which vendor is truly the lowest price to the county. The county may readvertise for additional bidders and vendors if it deems it necessary in the public interest. [1991 c 363 § 61.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.32.260 Competitive bids—Purchasing agent. In any county having a purchasing department the board of county commissioners shall appoint a county purchasing agent, who shall be the head of such purchasing department. The county purchasing agent shall have had previous purchasing experience as purchasing agent of a commercial, industrial, institutional, or governmental plant or agency, and shall be placed under such bond as the board may require. The board may establish a central storeroom or storerooms in charge of the county purchasing agent in which supplies and equipment may be stored and issued upon proper requisition by department heads. The purchasing agent shall be responsible for maintaining perpetual inventories of supplies and equipment and shall at least yearly, or oftener when so required by the board, report to the county commissioners a balancing of the inventory record with the actual amount of supplies or equipment on hand. [1963 c 4 § 36.32.260. Prior: 1961 c 169 § 2; 1945 c 61 § 3; Rem. Supp. 1945 § 10322-17.]

36.32.265 Competitive bids—Inapplicability to certain agreements relating to water pollution control, solid waste handling facilities. RCW 36.32.240, 36.32.250, and 36.32.260 do not apply to the selection of persons or entities to construct or develop water pollution control facilities or to provide water pollution control services under RCW 70.150.040 or the selection of persons or entities to construct or develop solid waste handling facilities or to provide solid waste handling services under RCW 36.58.090. [1989 c 399 § 8; 1987 c 436 § 9.]

36.32.270 Competitive bids—Exemptions. The county legislative authority may waive the competitive bidding requirements of this chapter pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work. [1998 c 278 § 4; 1963 c 4 § 36.32.270. Prior: 1961 c 169 § 3; 1945 c 61 § 4; Rem. Supp. 1945 § 10322-18.]

36.32.280 Regulation of watercourses. The state in the exercise of its sovereign and police power authorizes any county alone or acting jointly with any other county to regulate and control the flow of waters, both navigable and non-navigable, within such county or counties, for the purpose of preventing floods which may threaten or cause damage, public or private. [1963 c 4 § 36.32.280. Prior: 1921 c 30 § 1; RRS § 4057-1.]

36.32.290 Regulation of watercourses—Removal of obstructions. When the board of county commissioners of any county deems it essential to the public interest for flood prevention purposes it may remove drifts, jams, logs, debris, gravel, earth, stone or bars forming obstructions to the stream, or other material from the beds, channels, and banks of watercourses in any manner deemed expedient, including the deposit thereof on bars not forming obstructions to the stream, or on subsidiary or high water channels of such watercourses. [1963 c 4 § 36.32.290. Prior: 1921 c 30 § 2; RRS § 4057-2.]

36.32.300 Regulation of watercourses—Trees may be removed from river banks. When any forest trees are situ-

ated upon the bank of any watercourse or so close thereto as to be in danger of falling into it, the owner or occupant of any of the premises shall be notified to remove them forthwith. The notice shall be based upon a resolution or order of the county commissioners and may be given by mail to the last known address of the owner or occupant. If the trees are not removed within ten days after the date of the notice, the county may thereupon fell them. [1963 c 4 § 36.32.300. Prior: 1921 c 30 § 3; RRS § 4057-3.]

36.32.302 Transfer of ownership of county-owned vessel—Review of vessel's physical condition. (1) Prior to transferring ownership of a county-owned vessel, the county shall conduct a thorough review of the physical condition of the vessel, the vessel's operating capability, and any containers and other materials that are not fixed to the vessel.

(2) If the county determines that the vessel is in a state of advanced deterioration or poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination, the county may: (a) Not transfer the vessel until the conditions identified under this subsection have been corrected; or (b) permanently dispose of the vessel by landfill, deconstruction, or other related method.

(3) Vessels taken into custody under chapter 79.100 RCW are not subject to this section or RCW 36.32.304. [2013 c 291 § 19.]

36.32.304 Transfer of ownership of county-owned vessel—Further requirements. (1) Following the inspection required under RCW 36.32.302 and prior to transferring ownership of a county-owned vessel, a county shall obtain the following from the transferee:

(a) The purposes for which the transferee intends to use the vessel; and

(b) Information demonstrating the prospective owner's intent to obtain legal moorage following the transfer, in the manner determined by the county.

(2)(a) The county shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.

(b) However, the county may transfer a vessel with:

(i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the county's satisfaction that the container's or material's presence is consistent with the anticipated use of the vessel; and

(ii) A reasonable amount of fuel as determined by the county, based on factors including the vessel's size, condition, and anticipated use of the vessel including initial destination following transfer.

(c) The county may consult with the department of ecology in carrying out the requirements of this subsection.

(3) Prior to sale, and unless the vessel has a title or valid marine document, the county is required to apply for a certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550. [2013 c 291 § 20.]

36.32.310 Compensation for extra services. Whenever a member of the board of county commissioners of any county has a claim for compensation for per diem and expenses for attendance upon any special session of the board or a claim for compensation for extra services or expenses

incurred as such commissioners, including services performed as road commissioner, the claim shall be verified by him or her and after being approved by a majority of the board of county commissioners of the county shall be filed with the clerk of the superior court and be approved by a judge of the superior court of such county or any superior court judge holding court in such county. The judge may make such investigation as he or she deems necessary to determine the correctness of the claim and may, after such investigation, approve or reject any part of such claim. If the judge so approve the claim or any part thereof the same shall be certified by the clerk under the seal of his or her office and be returned to the county auditor who shall draw a warrant therefor. The court shall not be required oftener than once in each month to pass upon such claims and it may fix a time in each month by general order filed with the clerk of the board of county commissioners on or before which such claims must be filed with the clerk of the court. [2009 c 549 § 4067; 1963 c 4 § 36.32.310. Prior: 1921 c 100 § 1; 1911 c 66 § 1; RRS § 4053.]

36.32.330 Appeals from board's action. Any person may appeal to the superior court from any decision or order of the board of county commissioners. Such appeal shall be taken within twenty days after the decision or order, and the appellant shall within that time serve notice of appeal on the county commissioners. The notice shall be in writing and shall be delivered to at least one of the county commissioners personally, or left with the county auditor. The appellant shall, within ten days after service of the notice of appeal give a bond to the county with one or more sureties, to be approved by the county auditor, conditioned for the payment of all costs which shall be adjudged against him or her on such appeal in the superior court. The practice regulating appeals from and writs of certiorari to justice's courts shall, insofar as applicable, govern in matters of appeal from a decision or order of the board of county commissioners.

Nothing herein contained shall be construed to prevent a party having a claim against any county in this state from enforcing the collection thereof by civil action in any court of competent jurisdiction after the same has been presented to and filed as provided by law and disallowed in whole or in part by the board of county commissioners of the proper county. Such action must, however, be commenced within the time limitation provided in *RCW 36.45.030. [2009 c 549 § 4068; 1963 c 4 § 36.32.330. Prior: 1957 c 224 § 5; 1893 c 121 § 1; Code 1881 § 2695; 1869 p 308 § 29; 1867 p 57 § 29; 1863 p 545 § 30; 1854 p 423 § 24; RRS § 4076. Cf. 1879 p 143 §§ 1, 2.]

*Reviser's note: RCW 36.45.030 was repealed by 1993 c 449 § 13.

36.32.335 Coordination of county administrative programs—Legislative declaration. The public necessity for the coordination of county administrative programs, especially in the fields of highways and social security, be and is hereby recognized. [1963 c 4 § 36.32.335. Prior: 1939 c 188 § 1; RRS § 4077-2.]

36.32.340 Coordination of county administrative programs—Duties incident to. The county commissioners shall take such action as is necessary to effect coordination of

their administrative programs and prepare reports annually on the operations of all departments under their jurisdiction. [1998 c 245 § 27; 1963 c 4 § 36.32.340. Prior: 1939 c 188 § 2; RRS § 4077-3.]

36.32.350 Coordination of county administrative programs—Coordinating agency—Agency reimbursement. County legislative authorities may designate the Washington state association of counties as a coordinating agency in the execution of duties imposed by RCW 36.32.335 through 36.32.360 and reimburse the association from county current expense funds in the county legislative authority's budget for the costs of any such services rendered. Such reimbursement shall be paid on vouchers submitted to the county auditor and approved by the county legislative authority in the manner provided for the disbursement of other current expense funds and the vouchers shall set forth the nature of the service rendered, supported by affidavit that the service has actually been performed. [1991 c 363 § 59; 1973 1st ex.s. c 195 § 30; 1971 ex.s. c 85 § 3; 1970 ex.s. c 47 § 1; 1963 c 4 § 36.32.350. Prior: 1947 c 49 § 1; 1939 c 188 § 3; Rem. Supp. 1947 § 4077-4.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Associations of municipal corporations or municipal officers to furnish information to legislature and governor: RCW 44.04.170.

Merger of state association of counties with state association of county officials: RCW 36.47.070.

Winter recreation advisory committee, representative of association of counties as member: RCW 79A.05.255.

Additional notes found at www.leg.wa.gov

36.32.360 Coordination of county administrative programs—Attendance at conventions authorized. County commissioners are hereby authorized to take such other and further action as may be deemed necessary to the compliance with the intent of RCW 36.32.335 through 36.32.360, including attendance at such state or district meetings as may be required to formulate the reports directed in RCW 36.32.340. [1963 c 4 § 36.32.360. Prior: 1939 c 188 § 4; RRS § 4077-5.]

36.32.370 Land surveys. Except as otherwise provided in this title, the board of county commissioners, through a surveyor employed by it shall execute all surveys of land that may be required by the county. The certificate of the surveyor so employed of any survey made of lands within the county shall be presumptive evidence of the facts therein contained. [1963 c 4 § 36.32.370. Prior: (i) 1895 c 77 § 3; RRS § 4144. (ii) 1895 c 77 § 4; RRS § 4145.]

36.32.380 Land surveys—Record of surveys. Except as otherwise provided in this title, the board of county commissioners shall cause to be recorded in a suitable book all surveys except such as are made for a temporary purpose. The record book shall be so constructed as to have one page for diagrams to be numbered progressively and the opposite page for notes and remarks; no diagram shall be so constructed as to scale less than one inch to twenty chains. [1963 c 4 § 36.32.380. Prior: 1895 c 77 § 5; RRS § 4150.]

36.32.390 Nonmonthly employees, vacations and sick leaves. Each employee of any county in this state who is employed on an hourly or per diem basis, who shall have worked fifteen hundred hours or more in any one year may in the discretion of the board of county commissioners be given the same vacations and sick leaves as are provided for the employees of the county employed on a monthly basis. [1963 c 4 § 36.32.390. Prior: 1951 c 187 § 1.]

36.32.400 Health care and group insurance. Subject to chapter 48.62 RCW, any county by a majority vote of its board of county commissioners may enter into contracts to provide health care services and/or group insurance for the benefit of its employees, and may pay all or any part of the cost thereof. Any two or more counties, by a majority vote of their respective boards of county commissioners may, if deemed expedient, join in the procuring of such health care services and/or group insurance, and the board of county commissioners of each participating county may, by appropriate resolution, authorize their respective counties to pay all or any portion of the cost thereof.

Nothing in this section shall impair the eligibility of any employee of a county, municipality, or other political subdivision under RCW 41.04.205. [1991 sp.s. c 30 § 21; 1975-'76 2nd ex.s. c 106 § 7; 1963 c 4 § 36.32.400. Prior: 1957 c 106 § 1; 1955 c 51 § 1.]

Additional notes found at www.leg.wa.gov

36.32.410 Participation in Economic Opportunity Act programs. The board of county commissioners of any county is hereby authorized and empowered in its discretion by resolution or ordinance passed by a majority of the board, to take whatever action it deems necessary to enable the county to participate in the programs set forth in the Economic Opportunity Act of 1964 (Public Law 88-452; 78 Stat. 508), as amended. Such participation may be engaged in as a sole county operation or in conjunction or cooperation with the state, any other county, city, or municipal corporation, or any private corporation qualified under said Economic Opportunity Act. [1971 ex.s. c 177 § 1; 1965 c 14 § 1.]

36.32.415 Low-income housing—Loans and grants. A county may assist in the development or preservation of publicly or privately owned housing for persons of low income by providing loans or grants of general county funds to the owners or developers of the housing. The loans or grants shall be authorized by the legislative authority of a county. They may be made to finance all or a portion of the cost of construction, reconstruction, acquisition, or rehabilitation of housing that will be occupied by a person or family of low income. As used in this section, "low income" means income that does not exceed eighty percent of the median income for the standard metropolitan statistical area in which the county is located. Housing constructed with loans or grants made under this section shall not be considered public works or improvements subject to competitive bidding or a purchase of services subject to the prohibition against advance payment for services: PROVIDED, That whenever feasible the borrower or grantee shall make every reasonable and practicable effort to utilize a competitive public bidding process. [1986 c 248 § 2.]

[Title 36 RCW—page 82]

36.32.420 Youth agencies—Establishment authorized. See RCW 35.21.630.

36.32.425 Juvenile curfews. (1) The legislative authority of any county has the authority to enact an ordinance, for the purpose of preserving the public safety or reducing acts of violence by or against juveniles that are occurring at such rates as to be beyond the capacity of the police to assure public safety, establishing times and conditions under which juveniles may be present on the public streets, in the public parks, or in any other public place during specified hours.

(2) The ordinance shall not contain any criminal sanctions for a violation of the ordinance. [1994 sp.s. c 7 § 504.]

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

36.32.430 Parks, may designate name of. The board of county commissioners is authorized to designate the name of any park established by the county. [1965 ex.s. c 76 § 3.]

Acquisition of property for park, recreational, viewpoint, greenbelt, conservation, historic, scenic, or view purposes: RCW 36.34.340.

36.32.435 Historic preservation—Authorization to acquire property, borrow money, issue bonds, etc. Any county may acquire title to or any interest in real and personal property for the purpose of historic preservation and may restore, improve, maintain, manage, and lease the property for public or private use and may enter into contracts, borrow money, and issue bonds and other obligations for such purposes. This authorization shall not expand the eminent domain powers of counties. [1984 c 203 § 4.]

Additional notes found at www.leg.wa.gov

36.32.440 Staff to aid in purchasing, poverty programs, parks, emergency services, budget, etc., authorized. The board of county commissioners of the several counties may employ such staff as deemed appropriate to serve the several boards directly in matters including but not limited to purchasing, poverty and relief programs, parks and recreation, emergency services, budgetary preparations set forth in RCW 36.40.010-36.40.050, code enforcement and general administrative coordination. Such authority shall in no way infringe upon or relieve the county auditor of responsibilities contained in RCW *36.22.010(9) and 36.22.020. [1974 ex.s. c 171 § 3; 1969 ex.s. c 252 § 3.]

***Reviser's note:** RCW 36.22.010 was amended by 1984 c 128 § 2, changing subsection (9) to subsection (8); and was subsequently amended by 1995 c 194 § 1, changing subsection (8) to subsection (6).

36.32.450 Tourist promotion. Any county in this state acting through its council or other legislative body shall have power to expend moneys and conduct promotion of resources and facilities in the county or general area by advertising, publicizing, or otherwise distributing information for the purpose of attracting visitors and encouraging tourist expansion. [1971 ex.s. c 61 § 1.]

36.32.460 Employee safety award programs. The board of county commissioners may establish an employee safety award program to reward and encourage the safe performance of assigned duties by county employees.

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The board may establish standards and regulations necessary or appropriate for the proper administration and for otherwise accomplishing the purposes of such program.

The board may authorize every department head and other officer of county government who oversees or directs county employees to make the determination as to whether an employee safety award will be made.

Such awards shall be made annually from the county general fund by warrant on vouchers duly authorized by the board according to the following schedule based upon safe and accident-free performance:

5 years.....	\$	2.50
10 years.....		5.00
15 years.....		7.50
20 years.....		10.00
25 years.....		12.50
30 years.....		20.00:

PROVIDED, That the board may give such department heads and other officers overseeing and directing county employees discretion to purchase a noncash award of equal value in lieu of the cash award. If a noncash award is given the warrants shall be made payable to the business enterprise from which the noncash award is purchased.

However, safety awards made to persons whose safe and accident-free performance has directly benefited the county road system shall be made from the county road fund by warrant on vouchers duly authorized by the board. [1971 c 79 § 1.]

36.32.470 Fire protection, ambulance or other emergency services provided by municipal corporations within county—Financial and other assistance authorized. The legislative authority of any county shall have the power to furnish, upon such terms as the board may deem proper, with or without consideration, financial or other assistance to any municipal corporation, or political subdivision within such county for the purpose of implementing the fire protection, ambulance, medical or other emergency services provided by such municipal corporation, or political subdivision: PROVIDED, That no such municipal corporation or political subdivision shall be authorized to expend any funds or property received as part of such assistance for any purpose, or in any manner, for which it could not otherwise legally expend its own funds. [1974 ex.s. c 51 § 1.]

Ambulance services may be provided by county: RCW 36.01.100.

36.32.475 Regulation of automatic number or location identification—Prohibited. No county may enact or enforce an ordinance or regulation mandating automatic number identification or automatic location identification for a private telecommunications system or for a provider of private shared telecommunications services. [1995 c 243 § 8.]

Findings—Severability—1995 c 243: See notes following RCW 80.36.555.

36.32.480 Emergency medical service districts—Creation authorized—Composition of governing body. (1) A county legislative authority may adopt an ordinance creating an emergency medical service district in all or a portion of the unincorporated area of the county and, pursuant to subsection

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(2) of this section, within the corporate limits of any city or town. The ordinance may only be adopted after a public hearing has been held on the creation of such a district and the county legislative authority makes a finding that it is in the public interest to create the district.

An emergency medical service district shall be a quasi-municipal corporation and an independent taxing "authority" within the meaning of Article 7, Section 1, Washington State Constitution. Emergency medical service districts shall also be "taxing authorities" within the meaning of Article 7, Section 2, Washington State Constitution.

An emergency medical service district shall have the authority to provide emergency medical services.

(2) When any part of a proposed emergency medical service district includes an area within the corporate limits of a city or town, the governing body of the city or town shall approve the inclusion, and the county governing body shall maintain a certified copy of the resolution of approval before adopting an ordinance including the area.

(3) The members of the county legislative authority shall compose the governing body of any emergency medical service district which is created within the county: PROVIDED, That where an emergency medical service district includes an area within the corporate limits of a city or town, the emergency medical service district may be governed as provided in an interlocal agreement adopted pursuant to chapter 39.34 RCW. The voters of an emergency medical service district must be registered voters residing within the service area. [2000 c 31 § 1; 1979 ex.s. c 200 § 2.]

Levy for emergency medical care and services: RCW 84.52.069.

Additional notes found at www.leg.wa.gov

36.32.490 County freeholders—Method of filling vacancies. Vacancies in the position of county freeholder shall be filled with a person qualified for the position who is appointed by majority action of the remaining county freeholders. [1984 c 163 § 1.]

36.32.510 Right-of-way donations—Credit against required improvements. Where the zoning and planning provisions of a county require landscaping, parking, or other improvements as a condition to granting permits for commercial or industrial developments, the county may credit donations of right-of-way in excess of that required for traffic improvement against such landscaping, parking, or other requirements. [1987 c 267 § 10.]

Right-of-way donations: Chapter 47.14 RCW.

Additional notes found at www.leg.wa.gov

36.32.520 Child care facilities—Review of need and demand—Adoption of ordinances. If a county operating under home rule charter zones pursuant to its inherent charter authority and not pursuant to chapter 35.63 RCW, nor chapter 36.70 RCW, and that county does not provide for the siting of family day care homes in zones or areas that are designated for single-family or other residential uses, and for the siting of mini-day care centers and day care centers in zones or areas that are designated for any residential or commercial uses, the county shall conduct a review of the need and demand for child care facilities, including the cost of any conditional or special use permit that may be required. The

review shall be completed by August 30, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the *department of community development by September 30, 1990.

On or before June 30, 1991, each municipality that plans and zones under this chapter shall have adopted an ordinance or ordinances that are necessary to implement the findings of this review, if the findings indicate that such changes are necessary, or shall notify the *department of community development as to why such implementing ordinances were not adopted. [1989 c 335 § 8.]

***Reviser's note:** Powers, duties, and functions of the department of community development and the department of trade and economic development were transferred to the department of community, trade, and economic development by 1993 c 280, effective July 1, 1994. The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Findings—Purpose—Severability—1989 c 335: See notes following RCW 35.63.170.

Definitions for RCW 36.32.520: See RCW 35.63.170.

36.32.525 Conditional and special use permit applications by parties licensed or certified by the department of social and health services or the department of corrections—Mediation prior to appeal required. A final decision by a hearing examiner involving a conditional or special use permit application under a home rule charter that is requested by a party that is licensed or certified by the department of social and health services or the department of corrections is subject to mediation under RCW 35.63.260 before an appeal may be filed. [1998 c 119 § 5.]

36.32.540 Settlement of Indian claims. (1) The settlement of Indian land and other claims against public and private property owners is declared to be in the interest of public health and safety, orderly government, environmental protection, economic development, and the social well-being of the citizens of this state, and to specifically benefit the properties released from those claims.

It is the purpose of *this act to encourage the settlement of such Indian land and other claims lawsuits by permitting the establishment and use of local improvement districts to finance all or a portion of the settlement costs of such lawsuits.

(2) A local improvement district may be established by a county legislative authority to finance all or part of the settlement costs in an Indian land and other claims settlement related to public and private property located within the incorporated or unincorporated areas of the county. The settlement of an Indian land and other claims lawsuit shall be deemed to be an improvement that may be financed in whole or in part through use of a local improvement district.

(3) Except as expressly provided in this section, all matters relating to the establishment and operation of such a local improvement district, the levying and collection of special assessments, the issuance of local improvement district bonds and other obligations, and all related matters, shall be subject to the provisions of chapter 36.94 RCW concerning the use of local improvement districts to finance sewer or water facilities. The requirements of chapter 36.94 RCW concerning the preparation of a general plan and formation of a review committee shall not apply to a local improvement

district used to finance all or a portion of Indian land and other claims settlements. The resolution or petition that initiates the creation of a local improvement district used to finance all or a portion of an Indian land and other claims settlement shall describe the general nature of the Indian land and other claims and the proposed settlement. The value of a contribution by any person, municipal corporation, political subdivision, or the state of money, real property, or personal property to the settlement of Indian land and other claims shall be credited to any assessment for a local improvement district under this section. [1989 1st ex.s. c 4 § 3.]

***Reviser's note:** "This act" consists of the enactment of this section, RCW 35.43.280, and an uncodified section.

Additional notes found at www.leg.wa.gov

36.32.550 Conformance with chapter 43.97 RCW required. With respect to the National Scenic Area, as defined in the Columbia River Gorge National Scenic Area Act, P.L. 99-663, the exercise of any power or authority by a county pursuant to this chapter shall be subject to and in conformity with the requirements of chapter 43.97 RCW, including the Interstate Compact adopted by RCW 43.97.015, and with the management plan regulations and ordinances adopted by the Columbia River Gorge commission pursuant to the Compact. [1987 c 499 § 8.]

36.32.560 Home rule charter counties—Residential care facilities—Review of need and demand—Adoption of ordinances. If a county operating under home rule charter zones pursuant to its inherent charter authority and not pursuant to chapter 35.63 RCW, nor chapter 36.70 RCW, and that county does not provide for the siting of residential care facilities in zones or areas that are designated for single-family or other residential uses, the county shall conduct a review of the need and demand for the facilities, including the cost of any conditional or special use permit that may be required. The review shall be completed by August 30, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the *department of community development by September 30, 1990.

On or before June 30, 1991, each municipality that plans and zones under this chapter shall have adopted an ordinance or ordinances that are necessary to implement the findings of this review, if the findings indicate that such changes are necessary, or shall notify the *department of community development as to why such implementing ordinances were not adopted. [1989 c 427 § 40.]

***Reviser's note:** Powers, duties, and functions of the department of community development and the department of trade and economic development were transferred to the department of community, trade, and economic development by 1993 c 280, effective July 1, 1994. The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Additional notes found at www.leg.wa.gov

36.32.570 Conservation area acquisition and maintenance. The legislative authority of each county may acquire a fee simple interest, or lesser interest, in conservation areas in the county and may maintain the conservation areas. The conservation areas may be acquired and maintained with moneys obtained from the excise tax under RCW 82.46.070, or any other moneys available for such purposes.

As used in this section, the term "conservation area" means land and water that has environmental, agricultural, aesthetic, cultural, scientific, historic, scenic, or low-intensity recreational value for existing and future generations, and includes, but is not limited to, open spaces, wetlands, marshes, aquifer recharge areas, shoreline areas, natural areas, and other lands and waters that are important to preserve flora and fauna. [1990 1st ex.s. c 5 § 2.]

Purpose—1990 1st ex.s. c 5: "The purpose of this act is to provide a mechanism for the acquisition and maintenance of conservation areas through an orderly process that is approved by the voters of a county. The authorities provided in this act are supplemental, and shall not be construed to limit otherwise existing authorities." [1990 1st ex.s. c 5 § 1.]

36.32.580 Home rule charter counties subject to limitations on moratoria, interim zoning controls. A charter county that plans under the authority of its charter is subject to the provisions of RCW 36.70.795. [1992 c 207 § 5.]

36.32.590 Building construction projects—County prohibited from requiring state agencies or local governments to provide bond or other security as a condition for issuance of permit. A county legislative authority may not require any state agency or unit of local government to secure the performance of a permit requirement with a surety bond or other financial security device, including cash or assigned account, as a condition of issuing a permit to that unit of local government for a building construction project.

As used in this section, "building construction project" includes, in addition to its usual meaning, associated landscaping, street alteration, pedestrian or vehicular access alteration, or other amenities or alterations necessarily associated with the project. [1993 c 439 § 3.]

36.32.600 Amateur radio antennas—Local regulation to conform with federal law. No county shall enact or enforce an ordinance or regulation that fails to conform to the limited preemption entitled "Amateur Radio Preemption, 101 FCC 2nd 952 (1985)" issued by the federal communications commission. An ordinance or regulation adopted by a county with respect to amateur radio antennas shall conform to the limited federal preemption, that states local regulations that involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to reasonably accommodate amateur communications, and to represent the minimal practicable regulation to accomplish the local authority's legitimate purpose. [1994 c 50 § 3.]

Additional notes found at www.leg.wa.gov

36.32.610 Library capital facility areas authorized. A county legislative authority may establish a library capital facility area pursuant to chapter 27.15 RCW. [1995 c 368 § 8.]

Findings—1995 c 368: See RCW 27.15.005.

36.32.620 Abandoned or derelict vessels. A county has the authority, subject to the processes and limitation outlined in chapter 79.100 RCW, to store, strip, use, auction, sell, salvage, scrap, or dispose of an abandoned or derelict vessel found on or above publicly or privately owned aquatic lands within the jurisdiction of the county. [2002 c 286 § 17.]

(2014 Ed.)

Additional notes found at www.leg.wa.gov

Chapter 36.33 RCW COUNTY FUNDS

Sections

36.33.010	Current expense fund.
36.33.020	Cumulative reserve fund—Purposes—Election to allow other specified use.
36.33.030	Cumulative reserve fund—Accumulation of, current expense fund limits not to affect.
36.33.040	Cumulative reserve fund—Permissible uses of funds in.
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36.33.065	Claims fund—Reimbursement.
36.33.070	Investment in warrants on tax refund fund.
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36.33.200	Election reserve fund.
36.33.210	Election reserve fund—Accumulation of fund—Transfers.
36.33.220	County road property tax revenues, expenditure for services authorized.

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Assessments and taxes, prepayment and deposit of: RCW 36.32.120.

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air pollution control: Chapter 70.94 RCW.

airport purposes: Chapters 14.07, 14.08 RCW.

validation of funds spent: RCW 14.08.070.

combined city-county health department: RCW 70.08.080.

prior expenditures validated: RCW 70.08.110.

flood control zone districts: RCW 86.15.150, 86.15.160, 86.15.180.

housing cooperation law: Chapter 35.83 RCW.

legal aid: Chapter 2.50 RCW.

mosquito control: Chapter 70.22 RCW.

public utility district election costs: RCW 54.08.041.

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traffic schools: RCW 46.83.030.

transcripts of testimony forma pauperis: RCW 2.32.240.

Billiard tables, licensing of, receipts as: RCW 67.14.120.

Bonds, notes of port district toll facility as investment for: RCW 53.34.150.

Bonds for capitol building purposes, as investment for: RCW 79.24.150 and chapter 43.83 RCW.

Bonds of federal agencies as investment for: Chapter 39.60 RCW.

Bonds of housing authority as investment for: RCW 35.82.220.

Bonds to build schools as investment for: Chapter 28A.525 RCW.

Bowling alleys, licensing of, receipts as: RCW 67.14.120.

County law library fund: RCW 27.24.070, 27.24.090.

County road fund

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moneys from may be paid on establishing, constructing, etc., of streets: RCW 35.77.030.

surplus, unclaimed money in public waterway district funds to go into: RCW 91.08.610, 91.08.620.

traffic control devices to be paid from: RCW 47.36.040.

County school funds: Chapter 28A.545 RCW.
apportionment of: Chapter 28A.150 RCW.
penalties collected paid into: RCW 6.17.120.
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Disposition of off-road vehicle moneys: RCW 46.68.045.

Distribution of snowmobile registration fees: RCW 46.68.350(2).

Employee safety award program, funds affected: RCW 36.32.460.

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Flood control maintenance fund: RCW 86.26.070.

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Game and game fish law, fines from violations as: RCW 77.12.170.

Horticultural tax receipts as: Chapter 15.08 RCW.

Indigent soldiers' relief funds, veterans meeting place rent paid from: RCW 73.04.080.

Intercounty river improvement fund: RCW 86.13.030.

Liquor
excise tax fund moneys as: RCW 82.08.170.
law violation receipts as: RCW 66.44.010.
licensing sale of, receipts as: RCW 67.14.120.
revolving fund moneys as: Chapter 66.08 RCW.

Metropolitan municipal corporation fund: RCW 35.58.430.

Mineral and petroleum leases, moneys as: RCW 78.16.050.

Moneys paid into from
general tax levy for road fund: RCW 36.82.040.
television reception improvement districts: Chapter 36.95 RCW.

Motor vehicle fuel tax moneys as: RCW 82.36.020, 82.36.100, 82.36.420.

Motor vehicle funds allocated to counties
distribution of: RCW 46.68.120.
generally: Chapter 46.68 RCW.

Motor vehicle licensing fees for oversize or overweight movements paid to county, when: RCW 46.44.096.

Public assistance moneys, allocation to counties: Chapter 74.04 RCW.

Public health funds (county): Chapter 70.12 RCW.

Public health pooling fund: RCW 70.12.030 through 70.12.070.

Public utility district privilege taxes as: Chapter 54.28 RCW.

Reforestation lands proceeds as: RCW 79.22.040, 79.22.050.

Registration of land titles, disposition of fees: RCW 65.12.800.

Reserve fund for labor, material or tax liens on public works: Chapter 60.28 RCW.

River improvement fund
flood control maintenance account: RCW 86.12.010, 86.12.020.
generally: Chapter 86.12 RCW.

Sale of stock found in stock restricted area, proceeds as: RCW 16.24.070.

Taxes for city and town purposes: State Constitution Art. 11 § 12.

Teachers' institute fund: RCW 28A.410.060.

Tuberculosis funds, moneys to go into: RCW 70.30.045.

Witness fees of county officers as: RCW 42.16.030.

36.33.010 Current expense fund. Every county shall maintain a current expense fund to which shall be credited all taxes levied for that purpose and all fees collected, fines assessed, and forfeitures adjudged in the county the proceeds of which have not been specifically allocated to any other purpose. [1963 c 4 § 36.33.010. Prior: 1945 c 85 § 1; Rem. Supp. 1945 § 5634-1.]

Moneys paid from for
disinfection of horticultural premises: Chapter 15.08 RCW.
public health pooling fund: RCW 70.12.040.
weed district taxes on county lands: RCW 17.04.180.

Moneys paid into from
disinfection of horticultural premises tax: RCW 15.08.170.
horticultural tax funds: RCW 15.08.260.

motor vehicle fuel tax violation fines: RCW 82.36.420.
registration of land titles fees: RCW 65.12.800.
unclaimed property in hands of sheriff, sale of: RCW 63.40.030.
use tax on vehicles, auditor's collection fees: RCW 82.12.045.
vehicle registration filing fees: RCW 46.68.400.
vehicle use tax collection fees: RCW 82.12.045.
violations bureau funds: RCW 3.30.090.

36.33.020 Cumulative reserve fund—Purposes—Election to allow other specified use. Any board of county commissioners may establish by resolution a cumulative reserve fund in general terms for several different county purposes as well as for a very specific county purpose, including that of buying any specified supplies, material or equipment, or the construction, alteration or repair of any public building or work, or the making of any public improvement. The resolution shall designate the fund as "cumulative reserve fund for (naming the purpose or purposes for which the fund is to be accumulated and expended)." The moneys in said fund may be allowed to accumulate from year to year until the board of county commissioners of the county shall determine to expend the moneys in the fund for the purpose or purposes specified: PROVIDED, That any moneys in said fund shall never be expended for any other purpose or purposes than those specified, without an approving vote by a majority of the electors of the county at a general or special election to allow other specified uses to be made of said fund. [1963 c 4 § 36.33.020. Prior: 1961 c 172 § 1; 1945 c 51 § 1; Rem. Supp. 1945 § 5634-10.]

36.33.030 Cumulative reserve fund—Accumulation of, current expense fund limits not to affect. An item for said cumulative reserve fund may be included in the county's annual budget or estimate of amounts required to meet public expense for the ensuing year and a tax levy made within the limits and as authorized by law for said item; and said item and levy may be repeated from year to year until, in the judgment of the board of county commissioners of the county the amount required for the specified purpose or purposes has been raised or accumulated. The board of county commissioners may accept gifts or bequests for the cumulative reserve fund and may make transfers from the current expense fund to the cumulative reserve fund. Any moneys in said fund at the end of the fiscal year shall not lapse nor shall the same be a surplus available or which may be used for any other purpose or purposes than those specified, except as herein provided, nor shall moneys in said fund be considered when computing the limitations on cash balances set out in section 4, chapter 164, Laws of 1923 as last amended by section 1, chapter 145, Laws of 1943 and RCW 36.40.090. [1963 c 4 § 36.33.030. Prior: 1961 c 172 § 2; 1945 c 51 § 2; Rem. Supp. 1945 § 5634-11.]

36.33.040 Cumulative reserve fund—Permissible uses of funds in. No money in any cumulative reserve fund shall be used for any purpose other than that for which the fund was created except:

(1) If the purpose of the creation of a cumulative reserve fund has been accomplished by the completion of the proposed building or improvement, the balance remaining in the fund may be transferred to any other cumulative reserve fund or to the county current expense fund by order of the board.

(2) If the purpose of the creation of a cumulative reserve fund ceases to exist or is abandoned, the fund or any part thereof, may be transferred to any other cumulative reserve fund or to the county current expense fund by order of the board after a public hearing thereon pursuant to a notice by publication: PROVIDED, That if the amount to be transferred exceeds fifty thousand dollars, no transfer may be made until authorized by a majority of the voters of the county voting upon the question at an election. [1963 c 4 § 36.33.040. Prior: 1945 c 51 § 3; Rem. Supp. 1945 § 5634-12.]

36.33.060 Salary fund—Reimbursement. The county legislative authority of each county with a population of one hundred twenty-five thousand or more shall establish a salary fund to be used for paying the salaries and wages of all officials and employees. The county legislative authority of any other county may establish such a salary fund. Said salary fund shall be reimbursed from any county funds or other funds under the jurisdiction or control of the county treasurer or county auditor budgeted for salaries and wages. The deposits shall be made in the exact amount of the payroll or vouchers paid from the salary fund. [1991 c 363 § 64; 1973 1st ex.s. c 38 § 1; 1971 ex.s. c 214 § 1; 1963 c 4 § 36.33.060. Prior: 1961 c 273 § 1; prior: (i) 1935 c 94 § 1; 1933 ex.s. c 14 § 1; RRS § 4201-1. (ii) 1933 ex.s. c 14 § 2; RRS § 4201-2. (iii) 1933 ex.s. c 14 § 3; RRS § 4201-3.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.33.065 Claims fund—Reimbursement. The county legislative authority of any county may establish by resolution a fund to be known as the claims fund, which shall be used for paying claims against the county. Such claims fund shall be reimbursed from any county funds or other funds under the jurisdiction or control of the county treasurer or county auditor budgeted for such expenditures. The deposits shall be made in the exact amount of the vouchers paid from the claims fund. [1991 c 363 § 65; 1973 1st ex.s. c 38 § 2; 1971 ex.s. c 214 § 2.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.33.070 Investment in warrants on tax refund fund. Whenever the county treasurer deems it expedient and for the best interests of the county he or she may invest any moneys in the county current expense fund in outstanding warrants on the county tax refund fund in the following manner: When he or she has determined the amount of moneys in the county current expense fund available for investment, he or she shall call, in the order of their issuance, a sufficient number of warrants drawn on the county tax refund fund as nearly as possible equaling in amount but not exceeding the moneys to be invested, and upon presentation and surrender thereof he or she shall pay to the holders of such warrants the face amount thereof and the accrued interest thereon out of moneys in the county current expense fund. [2009 c 549 § 4069; 1963 c 4 § 36.33.070. Prior: 1943 c 61 § 1; Rem. Supp. 1943 § 5545-10.]

36.33.080 Investment in warrants on tax refund fund—Procedure upon purchase—Interest on. Upon

receipt of any such warrant on the tax refund fund the county treasurer shall enter the principal amount thereof, and accrued interest thereon, as a suspense credit upon his or her records, and shall hold the warrant until it with interest, if any, is paid in due course out of the county tax refund fund, and upon such payment, the amount thereof shall be restored to the county current expense fund. The refund warrants held by the county treasurer shall continue to draw interest until the payment thereof out of the county tax refund fund, which interest accruing subsequent to acquisition of the warrants by the county treasurer shall be paid into the county current expense fund. [2009 c 549 § 4070; 1963 c 4 § 36.33.080. Prior: 1943 c 61 § 2; Rem. Supp. 1943 § 5545-11.]

36.33.090 Investment in warrants on tax refund fund—Breaking of warrants authorized. Whenever it appears to the county treasurer that the face amount plus accrued interest of the tax refund warrant next eligible for investment exceeds by one hundred dollars the amount of moneys in the county current expense fund available for investment, the county treasurer may notify the warrant holder who shall thereupon apply to the county auditor for the breaking of the warrant and the county auditor upon such application shall take up the original warrant and reissue, as of the date which the original warrant bears, two new refund warrants one of which shall be in an amount approximately equaling, with accrued interest, the amount of moneys in the county current expense fund determined by the county treasurer to be available for investment. The new warrants when issued shall be callable and payable in the same order with respect to other outstanding tax refund warrants as the original warrant in lieu of which the new warrants were issued. [1963 c 4 § 36.33.090. Prior: 1943 c 61 § 3; Rem. Supp. 1943 § 5545-12.]

36.33.100 Investment in warrants on tax refund fund—Purchased warrants as cash. In making settlements of accounts between outgoing and incoming county treasurers, any county tax refund warrant in which money in the county current expense fund has been invested shall be deemed in every way the equivalent of cash and shall be receipted for by the incoming county treasurer as such. [1963 c 4 § 36.33.100. Prior: 1943 c 61 § 4; Rem. Supp. 1943 § 5545-13.]

36.33.120 County lands assessment fund created—Levy for. The boards of county commissioners may annually levy a tax upon all taxable property in the county, for the purpose of creating a fund to be known as "county lands assessment fund." [1963 c 4 § 36.33.120. Prior: 1929 c 193 § 1; RRS § 4027-1.]

36.33.130 County lands assessment fund created—Purpose of fund. The county lands assessment fund may be expended by the county commissioners to pay in full or in part, any assessment or installment of assessments of drainage improvement districts, diking improvement districts, or districts formed for the foregoing purposes, or assessments for road improvements, falling due against lands in the year when such lands are acquired by the county or while they are owned by the county, including lands acquired by the county

for general purposes; also lands which have been acquired by the county by foreclosure of general taxes. Payment may be made of such assessments, or installments thereof, against such lands or classes of lands, and in such districts or classes of districts as the county commissioners deem advisable. No payment shall be made of any assessments or installments of assessments falling due prior to the year in which the lands were acquired by the county, nor shall any assessments be paid in advance of the time when they fall due. Assessments for maintenance and operation of dikes, drains, or other improvements of districts falling due upon such lands while owned by the county, may be paid without the payment of assessments or installments thereof for construction of the improvements, if the county commissioners elect so to do. [1963 c 4 § 36.33.130. Prior: 1929 c 193 § 2; RRS § 4027-2.]

36.33.140 County lands assessment fund created—Amount of levy. The amount of the levy in any year for the county lands assessment fund shall not exceed the estimated amount needed over and above all moneys on hand in the fund, to pay the aggregate amount of such assessments falling due against the lands in the ensuing year; and in no event shall the levy exceed twelve and one-half cents per thousand dollars of assessed value upon all taxable property in the county. [1973 1st ex.s. c 195 § 31; 1963 c 4 § 36.33.140. Prior: 1929 c 193 § 3; RRS § 4027-3.]

Additional notes found at www.leg.wa.gov

36.33.150 County lands assessment fund created—Surplus from tax sales to go into fund. Into the county lands assessment fund shall also be paid any surplus moneys from the sale by the county, pursuant to foreclosure of real estate taxes, of any lands lying in any district formed for diking or drainage purposes or for assessment of road improvements, over and above the amount necessary to redeem the general taxes and other assessments against them, as required by law. Any surplus from any county levy for the fund, unexpended in any year, shall be carried forward in the fund to the next year. [1963 c 4 § 36.33.150. Prior: 1929 c 193 § 4; RRS § 4027-4.]

36.33.160 County lands assessment fund created—List of lands to be furnished. Upon request the county treasurer shall furnish to the county legislative authority a list of all lands owned by the county, together with the amounts levied as assessments and the district in or by which such assessments are levied, against each description of the lands, as it appears on the assessment roll of the district. On or before the first day of August of each year, upon request, the treasurer shall furnish to the county legislative authority a similar list of all land owned by the county and subject to any such assessments, together with the amounts of any installment of assessments falling due against any of such lands in the ensuing year and an estimate of any maintenance or other assessments to be made against same to fall due in the ensuing year. [1991 c 245 § 9; 1963 c 4 § 36.33.160. Prior: 1929 c 193 § 5; RRS § 4027-5.]

36.33.170 County lands assessment fund created—Rentals may be applied against assessments. Moneys received as rentals of irrigated lands may be applied to the

payment of current irrigation charges or assessments against the land. [1963 c 4 § 36.33.170. Prior: 1929 c 193 § 6; RRS § 4027-6.]

36.33.190 County lands assessment fund created—Disposal of bonds. The county treasurer shall cash any United States bonds owned by the county as they mature or, with the approval of the state finance committee and of the county finance committee, he or she may at any time sell them. In either event he or she must return the proceeds into the treasury. [2009 c 549 § 4071; 1963 c 4 § 36.33.190. Prior: 1937 c 209 § 2; RRS § 5646-12.]

36.33.200 Election reserve fund. The board of county commissioners may establish an election reserve fund for the payment of expenses of conducting regular and special state and county elections and compensation of election and registration officers and annually budget and levy a tax therefor. It may also make transfers into the election reserve fund from the current expense fund and receive funds for such purposes from cities, school districts and other subdivisions. [1963 c 4 § 36.33.200. Prior: 1955 c 48 § 1.]

36.33.210 Election reserve fund—Accumulation of fund—Transfers. The limits placed upon the amount to be accumulated in the current expense fund shall not affect the election reserve fund nor shall the existence of the election reserve fund affect the amount which may be accumulated in the current expense fund, nor shall any unexpended balance in the election reserve fund at the end of any budget year revert to the current expense fund but shall be carried forward in the election reserve fund to be used for the purposes for which the fund was created: PROVIDED, That at a regular session, the county commissioners may transfer any surplus in said fund to the current expense fund, if they deem it expedient to do so. [1963 c 4 § 36.33.210. Prior: 1955 c 48 § 2.]

36.33.220 County road property tax revenues, expenditure for services authorized. The legislative authority of any county may budget, in accordance with the provisions of chapter 36.40 RCW, and expend any portion of the county road property tax revenues for any service to be provided in the unincorporated area of the county notwithstanding any other provision of law, including chapter 36.82 RCW and RCW 84.52.050 and 84.52.043. County road property tax revenues that are diverted under chapter 39.89 RCW may be expended as provided under chapter 39.89 RCW. [2001 c 212 § 25; 1973 1st ex.s. c 195 § 142; 1973 1st ex.s. c 195 § 32; 1971 ex.s. c 25 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 36.33A RCW

EQUIPMENT RENTAL AND REVOLVING FUND

Sections

- 36.33A.010 Equipment rental and revolving fund—Establishment—Purposes.
- 36.33A.020 Use of fund by other offices, departments or agencies.
- 36.33A.030 Administration of fund.
- 36.33A.040 Rates for equipment rental.
- 36.33A.050 Deposits in fund.
- 36.33A.060 Accumulated moneys.

36.33A.010 Equipment rental and revolving fund—Establishment—Purposes. Every county shall establish, by resolution, an "equipment rental and revolving fund", hereinafter referred to as "the fund", in the county treasury to be used as a revolving fund for the purchase, maintenance, and repair of county road department equipment; for the purchase of equipment, materials, supplies, and services required in the administration and operation of the fund; and for the purchase or manufacture of materials and supplies needed by the county road department. [1977 c 67 § 1.]

36.33A.020 Use of fund by other offices, departments or agencies. The legislative body of any county may authorize, by resolution, the use of the fund by any other office or department of the county government or any other governmental agency for similar purposes. [1977 c 67 § 2.]

36.33A.030 Administration of fund. With the approval of the county legislative body, the county engineer, or other appointee of the county legislative body, shall administer the fund and shall be responsible for establishing the terms and charges for the sale of any material or supplies which have been purchased, maintained, or manufactured with moneys from the fund. The terms and charges shall be set to cover all costs of purchasing, storing, and distributing the material or supplies, and may be amended as considered necessary. [1977 c 67 § 3.]

36.33A.040 Rates for equipment rental. Rates for the rental of equipment owned by the fund shall be set to cover all costs of maintenance and repair, material and supplies consumed in operating or maintaining the equipment, and the future replacement thereof. The rates shall be determined by the county engineer or other appointee of the county legislative body and shall be subject to annual review by the legislative body. This section does not restrict the ability of the county road administration board to directly inquire into the process of setting rental rates while performing its statutory oversight responsibility. [2007 c 195 § 1; 1977 c 67 § 4.]

36.33A.050 Deposits in fund. The legislative authority of the county may, from time to time, place moneys in the fund from any source lawfully available to it and may transfer equipment, materials, and supplies of any office or department to the equipment rental and revolving fund with or without charge consistent with RCW 43.09.210. Charges for the rental of equipment and for providing materials, supplies, and services to any county office or department shall be paid monthly into the fund. Proceeds received from other governmental agencies for similar charges and from the sale of equipment or other personal property owned by the equipment rental and revolving fund, which is no longer of any value to or needed by the county, shall be placed in the fund as received. [1977 c 67 § 5.]

36.33A.060 Accumulated moneys. Moneys accumulated in the equipment rental and revolving fund shall be retained therein from year to year; shall be used only for the purposes stated in this chapter; and shall be subject to the budgetary regulations in chapter 36.40 RCW. [1977 c 67 § 6.]

(2014 Ed.)

Chapter 36.34 RCW COUNTY PROPERTY

Sections

- 36.34.005 Establishment of comprehensive procedures for management of county property authorized—Exemption from chapter.
- 36.34.010 Authority to sell—May sell timber, minerals separately—Mineral reservation.
- 36.34.020 Publication of notice of intention to sell.
- 36.34.030 Requirements of notice—Posting.
- 36.34.040 Public hearing.
- 36.34.050 Findings and determination—Minimum price.
- 36.34.060 Sales of personalty.
- 36.34.070 Sales and purchases of equipment—Trade-ins.
- 36.34.080 Sales to be at public auction.
- 36.34.090 Notice of sale.
- 36.34.100 Notice of sale—Requirements of.
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- 36.34.120 Used equipment sales.
- 36.34.130 Intergovernmental sales.
- 36.34.135 Leases of county property—Affordable housing.
- 36.34.140 Leases of county property—Airports.
- 36.34.145 Leases of county property to nonprofit organizations for agricultural fairs.
- 36.34.150 Application to lease—Deposit.
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- 36.34.180 Lease terms.
- 36.34.190 Lease to highest responsible bidder.
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- 36.34.200 Execution of lease agreement.
- 36.34.205 Lease of building space—Counties with a population of six hundred thousand or more.
- 36.34.210 Forest lands may be conveyed to United States.
- 36.34.220 Lease or conveyance to United States for flood control, navigation, and allied purposes.
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- 36.34.250 Lease or conveyance to the state or to United States for military, housing, and other purposes.
- 36.34.260 Lease or conveyance to the state or to United States for military, housing, and other purposes—Procedure.
- 36.34.270 Lease or conveyance to the state or to United States for military, housing, and other purposes—Execution of instrument of transfer.
- 36.34.280 Conveyance to municipality.
- 36.34.290 Dedication of county land for streets and alleys.
- 36.34.300 Dedication of county land for streets and alleys—Execution of dedication—Effective date.
- 36.34.310 Long term leases to United States.
- 36.34.320 Executory conditional sales contracts for purchase of property—Limit on indebtedness—Election, when.
- 36.34.330 Exchange for privately owned real property of equal value.
- 36.34.340 May acquire property for park, recreational, viewpoint, greenbelt, conservation, historic, scenic, or view purposes.
- 36.34.355 Chapter not applicable to certain transfers of property.

Acquisition and operation of public cemeteries and funeral facilities: Chapter 68.52 RCW.

Eminent domain by state of county property: Chapter 8.04 RCW.

Federal areas on

generally: Chapters 37.08, 37.16 RCW.

Indians and Indian lands, jurisdiction: Chapter 37.12 RCW.

King county

Auburn general depot: RCW 37.08.260.

Lake Washington ship canal: RCW 37.08.240, 37.08.250.

military installations (permanent United States), county aid in acquisition of land for: Chapter 37.16 RCW.

Flood control by counties jointly, lease or sale of property: RCW 86.13.100.

Industrial development districts, transfer of county lands to: Chapter 53.25 RCW.

Local improvement assessments against county lands: RCW 35.44.140, 35.49.070.

Mineral and petroleum leases on county lands: Chapter 78.16 RCW.

Property subject to diking, drainage or sewerage improvement assessments, resale or lease by county: RCW 85.08.500.

Rights-of-way over by diking districts: RCW 85.05.080.

Tax liens, property, county acquisitions as subject to: RCW 84.60.050.

Television reception improvement district dissolution, disposition of property: RCW 36.95.200.

Underground storage of natural gas, lease of county lands for: RCW 80.40.070.

36.34.005 Establishment of comprehensive procedures for management of county property authorized—Exemption from chapter. Pursuant to public notice and hearing, any county may establish comprehensive procedures for the management of county property consistent with the public interest and counties establishing such procedures shall be exempt from the provisions of chapter 36.34 RCW: PROVIDED, That all counties shall retain all powers now or hereafter granted by chapter 36.34 RCW. [1973 1st ex.s. c 196 § 1.]

36.34.010 Authority to sell—May sell timber, minerals separately—Mineral reservation. Whenever it appears to the board of county commissioners that it is for the best interests of the county and the taxing districts and the people thereof that any part or parcel, or portion of such part or parcel, of property, whether real, personal, or mixed, belonging to the county, including tax title land, should be sold, the board shall sell and convey such property, under the limitations and restrictions and in the manner hereinafter provided.

In making such sales the board of county commissioners may sell any timber, mineral, or other resources on any land owned by the county separate and apart from the land in the same manner and upon the same terms and conditions as provided in this chapter for the sale of real property.

The board of county commissioners may reserve mineral rights in such land and, if such reservation is made, any conveyance of the land shall contain the following reservation:

"The party of the first part hereby expressly saves, excepts, and reserves out of the grant hereby made, unto itself, its successors, and assigns, forever, all oils, gases, coals, ores, minerals, gravel, timber, and fossils of every name, kind, or description, and which may be in or upon said lands above described; or any part thereof, and the right to explore the same for such oils, gases, coals, ores, minerals, gravel, timber and fossils; and it also hereby expressly saves and reserves out of the grant hereby made, unto itself, its successors, and assigns, forever, the right to enter by itself, its agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, and working mines thereon, and taking out and removing therefrom all such oils, gases, coal, ores, minerals, gravel, timber, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its successors, and assigns, forever, the right by it or its agents, servants, and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads and railroads, sink such shafts, remove such oil, and to remain on said lands or any part thereof, for the business of mining and to occupy as much of said lands as may be necessary or convenient for the successful prosecution of such mining business, hereby expressly reserving to itself, its successors, and assigns, as aforesaid, generally, all rights and powers in, to, and over said land, whether herein expressed or not, reason-

ably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and the rights hereby expressly reserved."

No rights shall be exercised under the foregoing reservation until provision has been made to pay to the owner of the land upon which the rights reserved are sought to be exercised, full payment for all damages sustained by reason of entering upon the land: PROVIDED, That if the owner for any cause refuses or neglects to settle the damages, the county, its successors, or assigns, or any applicant for a lease or contract from the county for the purpose of prospecting for or mining valuable minerals, or operation contract, or lease, for mining coal, or lease for extracting petroleum or natural gas, shall have the right to institute such legal proceedings in the superior court of the county wherein the land is situated, as may be necessary to determine the damages which the owner of the land may suffer. Any of the reserved minerals or other resources not exceeding two hundred dollars in value may be sold, when the board deems it advisable, either with or without publication of notice of sale, and in such manner as the board may determine will be most beneficial to the county. [1963 c 4 § 36.34.010. Prior: 1945 c 172 § 3; 1943 c 19 § 1; 1891 c 76 § 1; Rem. Supp. 1945 § 4007.]

36.34.020 Publication of notice of intention to sell. Whenever the county legislative authority desires to dispose of any county property except:

- (1) When selling to a governmental agency;
- (2) When personal property to be disposed of is to be traded in upon the purchase of a like article;
- (3) When the value of the property to be sold is less than two thousand five hundred dollars;
- (4) When the county legislative authority by a resolution setting forth the facts has declared an emergency to exist; it shall publish notice of its intention so to do once each week during two successive weeks in a legal newspaper of general circulation in the county. [1991 c 363 § 66; 1985 c 469 § 45; 1967 ex.s. c 144 § 1; 1963 c 4 § 36.34.020. Prior: 1945 c 254 § 1; Rem. Supp. 1945 § 4014-1; prior: 1891 c 76 § 2, part; RRS § 4008, part.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Additional notes found at www.leg.wa.gov

36.34.030 Requirements of notice—Posting. The notice of hearing on the proposal to dispose of any county property must particularly describe the property or portion thereof proposed to be sold and designate the place where and the day and hour when a hearing will be held thereon and be posted in a conspicuous place in the courthouse. Both posting and the date of first publication must be at least ten days before the day set for the hearing. [1963 c 4 § 36.34.030. Prior: 1945 c 254 § 2; Rem. Supp. 1945 § 4014-2; prior: 1891 c 76 § 2, part; RRS § 4008, part.]

36.34.040 Public hearing. The board shall hold a public hearing upon a proposal to dispose of county property at the day and hour fixed in the notice at its usual place of business and admit evidence offered for and against the propriety and advisability of the proposed action. Any taxpayer in person or by counsel may submit evidence and submit an argu-

ment, but the board may limit the number to three on a side. [1963 c 4 § 36.34.040. Prior: 1945 c 254 § 3; Rem. Supp. 1945 § 4014-3; prior: 1891 c 76 § 2, part; RRS § 4008, part.]

36.34.050 Findings and determination—Minimum price. Within three days after the hearing upon a proposal to dispose of county property, the county legislative authority shall make its findings and determination thereon and cause them to be spread upon its minutes and made a matter of record. The county legislative authority may set a minimum sale price on property that is proposed for sale. [1991 c 363 § 67; 1963 c 4 § 36.34.050. Prior: 1945 c 254 § 4; Rem. Supp. 1945 § 4014-4; prior: 1891 c 76 § 3; RRS § 4009.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.34.060 Sales of personalty. Sales of personal property must be for cash except:

(1) When property is transferred to a governmental agency;

(2) When the county property is to be traded in on the purchase of a like article, in which case the proposed cash allowance for the trade-in must be part of the proposition to be submitted by the seller in the transaction. [1963 c 4 § 36.34.060. Prior: 1945 c 254 § 5; Rem. Supp. 1945 § 4014-5; prior: 1915 c 8 § 1, part; 1891 c 76 § 5, part; RRS § 4011, part.]

36.34.070 Sales and purchases of equipment—Trade-ins. The board may advertise and sell used highway or other equipment belonging to the county or to any taxing division thereof subject to its jurisdiction in the manner prescribed for the sale of county property, or it may trade it in on the purchase of new equipment. If the board elects to trade in the used equipment it shall include in its call for bids on the new equipment a notice that the county has for sale or trade-in used equipment of a specified type and description which will be sold or traded in on the same day and hour that the bids on the new equipment are opened. Any bidder on the new equipment may include in his or her offer to sell, an offer to accept the used equipment as a part payment of the new equipment purchase price, setting forth the amount of such allowance.

In determining the lowest and best bid on the new equipment the board shall consider the net cost to the county of such new equipment after trade-in allowances have been deducted. The board may accept the new equipment bid of any bidder without trading in the used equipment but may not require any such bidder to purchase the used equipment without awarding the bidder the new equipment contract. Nothing in this section shall bar anyone from making an offer for the purchase of the used equipment independent of a bid on the new equipment and the board shall consider such offers in relation to the trade-in allowances offered to determine the net best sale and purchase combination for the county. [2009 c 549 § 4072; 1963 c 4 § 36.34.070. Prior: 1945 c 254 § 6; Rem. Supp. 1945 § 4014-6.]

36.34.080 Sales to be at public auction. All sales of county property ordered after a public hearing upon the proposal to dispose thereof must be supervised by the county

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treasurer and may be sold at a county or other government agency's public auction, at a privately operated consignment auction that is open to the public, or by sealed bid to the highest and best bidder meeting or exceeding the minimum sale price as directed by the county legislative authority. [1993 c 8 § 1. Prior: 1991 c 363 § 68; 1991 c 245 § 10; 1965 ex.s. c 23 § 1; 1963 c 4 § 36.34.080; prior: 1945 c 254 § 7; Rem. Supp. 1945 § 4014-7; prior: 1891 c 76 § 4, part; RRS § 4010, part.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Public auction sales, where held: RCW 36.16.140.

36.34.090 Notice of sale. Whenever county property is to be sold at public auction, consignment auction, or sealed bid, the county treasurer or the county treasurer's designee shall publish notice thereof once during each of two successive calendar weeks in a newspaper of general circulation in the county. Notice thereof must also be posted in a conspicuous place in the courthouse. The posting and date of first publication must be at least ten days before the day fixed for the sale. [1997 c 393 § 5; 1991 c 363 § 69; 1985 c 469 § 46; 1963 c 4 § 36.34.090. Prior: 1945 c 254 § 8; Rem. Supp. 1945 § 4014-8; prior: 1891 c 76 § 4, part; RRS § 4010, part.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.34.100 Notice of sale—Requirements of. The notice of sale of county property by auction sale must particularly describe the property to be sold and designate the day and hour and the location of the auction sale. The notice of sale of county property by sealed bid must describe the property to be sold, designate the date and time after which the bids are not received, the location to turn in the sealed bid, and the date, time, and location of the public meeting of the county legislative authority when the bids are opened and read in public. [1991 c 363 § 70; 1963 c 4 § 36.34.100. Prior: 1945 c 254 § 9; Rem. Supp. 1945 § 4014-9; prior: 1891 c 76 § 4, part; RRS § 4010, part.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.34.110 Disposition of proceeds. The proceeds of sales of county property except in cases of trade-in allowances upon purchases of like property must be paid to the county treasurer who must receipt therefor and execute the proper documents transferring title attested to by the county auditor. In no case shall the title be transferred until the purchase price has been fully paid. [1963 c 4 § 36.34.110. Prior: 1945 c 254 § 10; Rem. Supp. 1945 § 4014-10; prior: (i) 1915 c 8 § 1, part; 1891 c 76 § 5, part; RRS § 4011, part. (ii) 1891 c 76 § 6, part; RRS § 4013, part.]

36.34.120 Used equipment sales. Proceeds from the sale of used equipment must be credited to the fund from which the original purchase price was paid. [1963 c 4 § 36.34.120. Prior: 1945 c 254 § 11; Rem. Supp. 1945 § 4014-11.]

36.34.130 Intergovernmental sales. The board of county commissioners may dispose of county property to

another governmental agency and may acquire property for the county from another governmental agency by means of private negotiation upon such terms as may be agreed upon and for such consideration as may be deemed by the board of county commissioners to be adequate. [1963 c 4 § 36.34.130. Prior: 1945 c 254 § 12; Rem. Supp. 1945 § 4014-12.]

36.34.135 Leases of county property—Affordable housing. If a county owns property that is located anywhere within the county, including within the limits of a city or town, and that is suitable for affordable housing, the legislative authority of the county may, by negotiation, lease the property for affordable housing for a term not to exceed seventy-five years to any public housing authority or nonprofit organization that has demonstrated its ability to construct or operate housing for very low-income, low-income, or moderate-income households as defined in RCW 43.63A.510 and special needs populations. Leases for housing for very low-income, low-income, or moderate-income households and special needs populations shall not be subject to any requirement of periodic rental adjustments, as provided in RCW 36.34.180, but shall provide for such fixed annual rents as appear reasonable considering the public, social, and health benefits to be derived by providing an adequate supply of safe and sanitary housing for very low-income, low-income, or moderate-income households and special needs populations. [1993 c 461 § 6; 1990 c 253 § 7.]

Finding—1993 c 461: See note following RCW 43.63A.510.

Legislative finding and purpose—1990 c 253: See note following RCW 43.70.340.

36.34.140 Leases of county property—Airports. The board of county commissioners, if it appears that it is for the best interests of the county and the people thereof, that any county real property and its appurtenances should be leased for a year or a term of years, may lease such property under the limitations and restrictions and in the manner provided in this chapter, and, if it appears that it is for the best interests of the county and the people thereof, that any county real property and its appurtenances which is now being, or is to be devoted to airport or aeronautical purposes or purposes incidental thereto, should be leased for a year or a term of years, said board of county commissioners may lease such property under the limitations and restrictions and in the manner provided in this chapter, and said board of county commissioners shall have power to lease such county real property and its appurtenances whether such property was heretofore or hereafter acquired or whether heretofore or hereafter acquired by tax deed under tax foreclosure proceedings for nonpayment of taxes or whether held or acquired in any other manner. Any lease executed under the authority of the provisions hereof creates a vested interest and a contract binding upon the county and the lessee. [1963 c 4 § 36.34.140. Prior: 1951 2nd ex.s. c 14 § 1; prior: (i) 1901 c 87 § 1; RRS § 4019. (ii) 1901 c 87 § 6, part; RRS § 4024, part.]

36.34.145 Leases of county property to nonprofit organizations for agricultural fairs. The legislative authority of any county owning property in or outside the limits of any city or town, or anywhere within the county, which is suitable for agricultural fair purposes may by negotiation

lease such property for such purposes for a term not to exceed seventy-five years to any nonprofit organization that has demonstrated its qualification to conduct agricultural fairs. Such agricultural fair leases shall not be subject to any requirement of periodic rental adjustments, as provided in RCW 36.34.180, but shall provide for such fixed annual rental as shall appear reasonable, considering the benefit to be derived by the county in the promotion of the fair and in the improvement of the property. The lessee may utilize or rent out such property at times other than during the fair season for nonfair purposes in order to obtain income for fair purposes, and during the fair season may sublease portions of the property for purposes and activities associated with such fair. No sublease shall be valid unless the same shall be approved in writing by the county legislative authority: PROVIDED, That failure of such lessee, except by act of God, war or other emergency beyond its control, to conduct an annual agricultural fair or exhibition, shall cause said lease to be subject to cancellation by the county legislative authority. A county legislative authority entering into an agreement with a nonprofit association to lease property for agricultural fair purposes shall, when requested to do so, file a copy of the lease agreement with the department of agriculture or the state fair commission in order to assure compliance with the provisions of RCW 15.76.165. [1986 c 171 § 2; 1963 c 4 § 36.34.145. Prior: 1957 c 134 § 1.]

36.34.150 Application to lease—Deposit. Any person desiring to lease county lands shall make application in writing to the board of county commissioners. Each application shall be accompanied by a deposit of not less than ten dollars or such other sum as the county commissioners may require, not to exceed twenty-five dollars. The deposit shall be in the form of a certified check or certificate of deposit on some bank in the county, or may be paid in cash. In case the lands applied for are leased at the time they are offered, the deposit shall be returned to the applicant, but if the party making application fails or refuses to comply with the terms of his or her application and to execute the lease, the deposit shall be forfeited to the county, and the board of county commissioners shall pay the deposit over to the county treasurer, who shall place it to the credit of the current expense fund. [2009 c 549 § 4073; 1963 c 4 § 36.34.150. Prior: 1901 c 87 § 2; RRS § 4020.]

36.34.160 Notice of intention to lease. When, in the judgment of the board of county commissioners, it is found desirable to lease the land applied for, it shall first give notice of its intention to make such lease by publishing a notice in a legal newspaper at least once a week for the term of three weeks, and shall also post a notice of such intention in a conspicuous place in the courthouse for the same length of time. The notice so published and posted shall designate and describe the property which is proposed to be leased, together with the improvements thereon and appurtenances thereto, and shall contain a notice that the board of county commissioners will meet at the county courthouse on a day and at an hour designated in the notice, for the purpose of leasing the property which day and hour shall be at a time not more than a week after the expiration of the time required for the publi-

cation of the notice. [1963 c 4 § 36.34.160. Prior: 1901 c 87 § 3; RRS § 4021.]

36.34.170 Objections to leasing. Any person may appear at the meeting of the county commissioners or any adjourned meeting thereof, and make objection to the leasing of the property, which objection shall be stated in writing. In passing upon objections the board of county commissioners shall, in writing, briefly give its reasons for accepting or rejecting the same, and such objections, and the reasons for accepting or refusing the application, shall be published by the board in the next subsequent weekly issue of the newspaper in which the notice of hearing was published. [1963 c 4 § 36.34.170. Prior: 1901 c 87 § 5; RRS § 4023.]

36.34.180 Lease terms. At the day and hour designated in the notice or at any subsequent time to which the meeting may be adjourned by the board of county commissioners, but not more than thirty days after the day and hour designated for the meeting in the published notice, the board may lease the property in such notice described for a term of years and upon such terms and conditions as to the board may seem just and right in the premises. No lease shall be for a longer term in any one instance than ten years, and no renewal of a lease once executed and delivered shall be had, except by a re-leasing and re-letting of the property according to the terms and conditions of this chapter: PROVIDED, That if a county owns property within or outside the corporate limits of any city or town or anywhere in the county suitable for municipal purposes, or for commercial buildings, or owns property suitable for manufacturing or industrial purposes or sites, or for military purposes, or for temporary or emergency housing, or for any requirement incidental to manufacturing, commercial, agricultural, housing, military, or governmental purposes, the board of county commissioners may lease it for such purposes for any period not to exceed thirty-five years: PROVIDED FURTHER, Where the property involved is or is to be devoted to airport purposes and construction work or the installation of new facilities is contemplated, the board may lease said property for such period as may equal the estimated useful life of such work or facilities but not to exceed seventy-five years.

If property is leased for municipal purposes or for commercial buildings or manufacturing or industrial purposes the lessee shall prior to the execution of the lease file with the board of county commissioners general plans and specifications of the building or buildings to be erected thereon for such purposes. All leases when executed shall provide that they shall be canceled by failure of the lessee to construct such building or buildings or other improvements for such purposes within three years from date of the lease, and in case of failure so to do the lease and all improvements thereon including the rentals paid, shall thereby be forfeited to the county unless otherwise stipulated. No change or modification of the plans shall be made unless first approved by the board of county commissioners. If at any time during the life of the lease the lessee fails to use the property for the purposes leased, without first obtaining permission in writing from the board of county commissioners so to do, the lease shall be forfeited.

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Any lease made for a longer period than ten years shall contain provisions requiring the lessee to permit the rentals for every five year period thereafter, or part thereof, at the commencement of such period, to be readjusted and fixed by the board of county commissioners. In the event that the lessee and the board cannot agree upon the rentals for said five year period, the lessee shall submit to have the disputed rentals for the subsequent period adjusted by arbitration. The lessee shall pick one arbitrator and the board one, and the two so chosen shall select a third. No board of arbitrators shall reduce the rentals below the sum fixed or agreed upon for the last preceding period. All buildings, factories, or other improvements made upon property leased shall belong to and become property of such county, unless otherwise stipulated, at the expiration of the lease.

No lease shall be assigned without the assignment being first authorized by resolution of the board of county commissioners and the consent in writing of at least two members of the board endorsed on the lease. All leases when drawn shall contain this provision.

This section shall not be construed to limit the power of the board of county commissioners to sell, lease, or by gift convey any property of the county to the United States or any of its governmental agencies to be used for federal government purposes. [1963 c 4 § 36.34.180. Prior: 1951 c 41 § 1; 1941 c 110 § 2; 1913 c 162 § 1; 1903 c 57 § 1; 1901 c 87 § 4; RRS § 4022.]

36.34.190 Lease to highest responsible bidder. No lease shall be made by the county except to the highest responsible bidder at the time of the hearing set forth in the notice of intention to lease. [1963 c 4 § 36.34.190. Prior: 1901 c 87 § 6, part; RRS § 4024, part.]

36.34.192 Application of RCW 36.34.150 through 36.34.190 to certain service provider agreements under chapter 70.150 RCW. RCW 36.34.150 through 36.34.190 shall not apply to agreements entered into pursuant to chapter 70.150 RCW provided there is compliance with the procurement procedure under RCW 70.150.040. [1986 c 244 § 12.]

Additional notes found at www.leg.wa.gov

36.34.200 Execution of lease agreement. Upon the decision of the board of county commissioners to lease the lands applied for, a lease shall be executed in duplicate to the lessee by the chair of the board and the county auditor, attested by his or her seal of office, which lease shall also be signed by the lessee. The lease shall refer to the order of the board directing the lease, with a description of the lands conveyed, the periods of payment, and the amounts to be paid for each period. [2009 c 549 § 4074; 1963 c 4 § 36.34.200. Prior: 1901 c 87 § 7; RRS § 4025.]

36.34.205 Lease of building space—Counties with a population of six hundred thousand or more. In accordance with RCW 35.42.010 through 35.42.220, a county with a population of six hundred thousand or more may lease space and provide for the leasing of such space through leases with an option to purchase and the acquisition of buildings erected upon land owned by the county upon the expiration of lease of such land. For the purposes of this section, "build-

ing," as defined in RCW 35.42.020 shall be construed to include any building or buildings used as part of, or in connection with, the operation of the county. The authority conferred by this section is in addition to and not in lieu of any other provision authorizing counties to lease property. [2009 c 153 § 1; 1998 c 278 § 10.]

36.34.210 Forest lands may be conveyed to United States. The board of county commissioners of any county which acquires any lands through foreclosure of tax liens or otherwise, which by reason of their location, topography, or geological formation are chiefly valuable for the purpose of developing and growing timber, and which are situated within the boundaries of any national forest, may, upon application by the proper forest service official of the United States government, convey such lands to the United States government for national forest purposes under the national forest land exchange regulations, for such compensation as may be deemed equitable. [1963 c 4 § 36.34.210. Prior: 1931 c 69 § 1; RRS § 4015-1.]

36.34.220 Lease or conveyance to United States for flood control, navigation, and allied purposes. If the board of county commissioners of any county adjudges that it is desirable and for the general welfare and benefit of the people of the county and for the interest of the county to lease or convey property, real or personal, belonging to the county, however acquired, whether by tax foreclosure or in any other manner, to the United States for the purpose of flood control, navigation, power development, or for use in connection with federal projects within the scope of the federal reclamation act of June 17, 1902, and the act of congress of August 30, 1935, entitled "An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," and federal acts amendatory thereof and supplemental thereto, for the reclamation and irrigation of arid lands, the board, by majority vote, may lease or convey such property to the United States for flood control, navigation, and power development purposes, or for use in connection with federal projects for the reclamation and irrigation of arid lands. This property may be conveyed or leased by deed or other instrument of conveyance or lease without notice and upon such consideration, if any, as shall be determined by the board and the deed or lease may be signed by the county treasurer when authorized to do so by resolution of the board. Any deed issued heretofore by any county to the United States under authority of section 1, chapter 46, Laws of 1937 and the amendments thereto, is ratified and approved and declared to be valid. [1963 c 4 § 36.34.220. Prior: 1945 c 94 § 1; 1941 c 142 § 1; 1937 c 46 § 1; Rem. Supp. 1945 § 4015-6.]

36.34.230 Lease or conveyance to United States for flood control, navigation, and allied purposes—State consents to conveyance. Pursuant to the Constitution and laws of the United States and the Constitution of this state, consent of the legislature is given to such conveyance by a county to the United States for such purposes. [1963 c 4 § 36.34.230. Prior: 1937 c 46 § 2; RRS § 4015-7.]

36.34.240 Lease or conveyance to United States for flood control, navigation, and allied purposes—Cession of jurisdiction. Pursuant to the Constitution and laws of the United States and the Constitution of this state, consent of the legislature is given to the exercise by the congress of the United States of exclusive legislation in all cases whatsoever on such tract or parcels of land so conveyed to it: PROVIDED, That all civil process issued from the courts of the state and such criminal process as may issue under the authority of the state against any person charged with crime in cases arising outside of said tract may be served and executed thereon in the same manner as if such property were retained by the county. [1963 c 4 § 36.34.240. Prior: 1937 c 46 § 3; RRS § 4015-8.]

36.34.250 Lease or conveyance to the state or to United States for military, housing, and other purposes. The board of county commissioners of any county by a majority vote are hereby authorized to directly lease, sell, or convey by gift, all or any portion of real estate, or any interest therein owned by the county, however acquired, by tax foreclosure or in any other manner, to the United States for the use and benefit of any branch of the army, navy, marine corps or air forces of the United States, or for enlarging or improving any military base thereof, or for any governmental housing project, or for the purpose of constructing and operating any federal power project, or to the state of Washington, without requiring competitive bids or notice to the public and at such price and terms as the board may deem for the best interests of the county. The property may be conveyed to the United States or to the state of Washington by deed or other instrument of conveyance and shall not require any consideration, if donated, other than the benefit which may be derived by the county on account of the use thereof and development of such property by the United States government or the state. [1963 c 4 § 36.34.250. Prior: 1941 c 227 § 1; Rem. Supp. 1941 § 4026-1a.]

36.34.260 Lease or conveyance to the state or to United States for military, housing, and other purposes—Procedure. In any county where the federal government owns and maintains property under the jurisdiction of the navy department or war department, or any other federal department, the board of county commissioners by majority vote may sell, lease or transfer to the United States government any real or personal property owned by said county, however acquired, for the use and benefit of any branch of the army, navy, marine corps or air forces thereof or for enlarging or improving any military base thereof, or for any other governmental housing project, or to the state of Washington, without requiring competitive bids or notice to the public and at such price and terms as the board may deem for the best interests of the county. This property may be conveyed to the government of the United States by bill of sale or other instrument of conveyance and need not require consideration other than the benefit which may be derived by the county on account of the use thereof and development of such property by the United States government. The state of Washington may buy and/or sell such property, or the state of Washington may buy and/or sell such property for the purposes herein stated; or mutually interchange or trade such property or pur-

chase one from the other. [1963 c 4 § 36.34.260. Prior: 1941 c 227 § 2; Rem. Supp. 1941 § 4026-1b.]

36.34.270 Lease or conveyance to the state or to United States for military, housing, and other purposes—Execution of instrument of transfer. The resolution of the board of county commissioners to grant an option to purchase, contract to sell, lease, sell and convey, or donate, as provided, shall be entered by said board upon its journal, and any option to purchase, contract to sell, lease, sale and conveyance, or donation executed pursuant thereto, shall be signed on behalf of the county by the board of county commissioners, or a majority thereof, and shall be acknowledged in the manner prescribed by law. [1963 c 4 § 36.34.270. Prior: 1941 c 227 § 3; Rem. Supp. 1941 § 4026-1c.]

36.34.280 Conveyance to municipality. Whenever any county holds title to lands, for county purposes, acquired by grant, patent, or other conveyance from the United States executed under and pursuant to an act of congress, and the board of county commissioners of such county by resolution finds and determines that any portion thereof is not required for county purposes and that it would be for the best interest of the county to have such portion of the lands devoted to use by a municipality lying within the county, the board of county commissioners may, with the consent of the congress of the United States, by a proper instrument of conveyance executed by the board on behalf of the county, convey such lands to the municipality for municipal purposes, either with or without consideration, and shall not be required to advertise or offer such lands for sale or lease in the manner provided by law for the sale or lease of county property. [1963 c 4 § 36.34.280. Prior: 1917 c 69 § 1; RRS § 4015.]

36.34.290 Dedication of county land for streets and alleys. The boards of county commissioners of the several counties may dedicate any county land to public use for public streets and alleys in any city or town. [1963 c 4 § 36.34.290. Prior: 1903 c 89 § 1; RRS § 4026.]

36.34.300 Dedication of county land for streets and alleys—Execution of dedication—Effective date. Whenever the board of county commissioners of any county deems it for the best interests of the public that any county land lying in any city or town should be dedicated to the public use for streets or alleys, it shall make and enter an order upon its records, designating the land so dedicated, and shall cause a certified copy of the order to be recorded in the auditor's office of the county in which the land is situated, and from and after entry of such order of dedication and the recording thereof as herein provided, such lands shall be thereby dedicated to the public use. [1963 c 4 § 36.34.300. Prior: 1903 c 89 § 2; RRS § 4027.]

36.34.310 Long term leases to United States. Any county in the state may lease any property owned by it to the United States of America or to any agency thereof for a term not exceeding ninety-nine years upon such conditions as may be contained in a written agreement therefor executed on behalf of the county by its board of county commissioners, and by any person on behalf of the United States of America

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or any agency thereof who has been thereunto authorized: PROVIDED, That any lease made for a longer period than ten years hereunder shall contain provisions requiring the lessee to permit the rentals for every five-year period thereafter, or part thereof, at the commencement of such period, to be readjusted upward and fixed by the board of county commissioners. In the event that the lessee and the board of county commissioners cannot agree upon the rentals for the five-year period, the lessee shall submit to have the disputed rentals for such subsequent period adjusted by arbitration. The lessee shall pick one arbitrator and the board of county commissioners one, and the two so chosen shall select a third. No board of arbitrators shall reduce the rentals below the sum fixed or agreed upon for the last preceding period. All buildings, factories or other improvements made upon property leased under this proviso shall belong to and become property of the county, unless otherwise stipulated, at the expiration of the lease. [1963 c 4 § 36.34.310. Prior: 1949 c 85 § 1; Rem. Supp. 1949 § 4019-1.]

36.34.320 Executory conditional sales contracts for purchase of property—Limit on indebtedness—Election, when. See RCW 39.30.010.

36.34.330 Exchange for privately owned real property of equal value. The board of county commissioners of any county shall have authority to exchange county real property for privately owned real property of equal value whenever it is determined by a decree of the superior court in the county in which the real property is located, after publication of notice of hearing is given as fixed and directed by such court, that:

- (1) The county real property proposed to be exchanged is not necessary to the future foreseeable needs of such county; and
- (2) The real property to be acquired by such exchange is necessary for the future foreseeable needs of such county; and
- (3) The value of the county real property to be exchanged is not more than the value of the real property to be acquired by such exchange. [1965 ex.s. c 21 § 1.]

36.34.340 May acquire property for park, recreational, viewpoint, greenbelt, conservation, historic, scenic, or view purposes. Any county or city may acquire by purchase, gift, devise, bequest, grant or exchange, title to or any interests or rights in real property to be provided or preserved for (a) park or recreational purposes, viewpoint or greenbelt purposes, (b) the conservation of land or other natural resources, or (c) historic, scenic, or view purposes. [1965 ex.s. c 76 § 4.]

Acquisition of interests in land for conservation, protection, preservation, or open space purposes by counties: RCW 64.04.130.

Historic preservation—Authority of county to acquire property: RCW 36.32.435.

Parks, county commissioners may designate name of: RCW 36.32.430.

36.34.355 Chapter not applicable to certain transfers of property. This chapter does not apply to transfers of property under *sections 1 and 2 of this act. [2006 c 35 § 4.]

***Reviser's note:** The reference to "sections 1 and 2 of this act" appears to be erroneous. Reference to "sections 2 and 3 of this act" codified as RCW 43.99C.070 and 43.83D.120 was apparently intended.

Findings—2006 c 35: See note following RCW 43.99C.070.

Chapter 36.35 RCW TAX TITLE LANDS

Sections

36.35.010	Purpose—Powers of county legislative authority as to tax title lands.
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36.35.270	Quieting title to tax-title property—Limitation on recovery for breach of warranty.
36.35.280	Tax deeds to cities and towns absolute despite reversionary provision.
36.35.290	Easements.

36.35.010 Purpose—Powers of county legislative authority as to tax title lands. The purpose of this chapter is to increase the power of county legislative authorities over tax title lands. The legislative authority of each county shall have the power to devote tax title lands to public use under its own control or the control of other governmental or quasi-governmental agencies, to exchange such lands for lands worth at least ninety percent of the value of the land exchanged, and to manage such lands to produce maximum revenue therefrom in the manner which derives the most income from such lands. The further purpose of this chapter is to relieve the courts of the obligation of supervising the county legislative authorities in the management and disposition of tax title lands. [1972 ex.s. c 150 § 1.]

36.35.020 "Tax title lands" defined—Held in trust for taxing districts. The term "tax title lands" as used in this chapter shall mean any tract of land acquired by the county for lack of other bidders at a tax foreclosure sale. Tax title lands are held in trust for the taxing districts. [2007 c 295 § 2; 1972 ex.s. c 150 § 2.]

36.35.070 Chapter as alternative. The provisions of this chapter shall be deemed as alternatives to, and not be limited by, the provisions of RCW 39.33.010, 36.34.130, and

36.35.140, nor shall the authority granted in this chapter be held to be subjected to or qualified by the terms of such statutory provisions. [1998 c 106 § 22; 1972 ex.s. c 150 § 8.]

36.35.080 Other lands not affected. Nothing in this chapter shall affect any land deeded in trust to the department of natural resources or its successors pursuant to the provisions of Title 76 RCW. [1988 c 128 § 7; 1972 ex.s. c 150 § 9.]

36.35.090 Chapter not affected by other acts. Notwithstanding any provision of law to the contrary, or provisions of law limiting the authority granted in this chapter, the legislative authority of any county shall have the authority to manage and exchange tax title lands heretofore or hereafter acquired in the manner and on the terms and conditions set forth in this chapter. [1972 ex.s. c 150 § 3.]

36.35.100 Treatment of county held tax-title property. All property deeded to the county under the provisions of this chapter shall be treated as follows during the period the property is so held:

- (1) The property shall be:
 - (a) Stricken from the tax rolls as county property;
 - (b) Exempt from taxation;
 - (c) Exempt from special assessments except as provided in chapter 35.49 RCW and RCW 35.44.140 and 79.44.190; and
 - (d) Exempt from property owner association dues or fees.
- (2) The sale, management, and leasing of tax title property shall be handled as under chapter 36.35 RCW. [2007 c 295 § 3; 1998 c 106 § 13; 1961 c 15 § 84.64.220. Prior: 1925 ex.s. c 130 § 131; RRS § 11292; prior: 1899 c 141 § 27. Formerly RCW 84.64.220.]

36.35.110 Disposition of proceeds of sales. (1) No claims are allowed against the county from any municipality, school district, road district or other taxing district for taxes levied on property acquired by the county by tax deed under the provisions of this chapter, but all taxes must at the time of deeding the property be thereby canceled. However, the proceeds of any sale of any property acquired by the county by tax deed must first be applied to reimburse the county for the costs of foreclosure and sale. The remainder of the proceeds, if any, must be applied to pay any amounts deferred under chapter 84.37 or 84.38 RCW on the property, including accrued interest, and outstanding at the time the county acquired the property by tax deed. The remainder of the proceeds, if any, must be justly apportioned to the various funds existing at the date of the sale, in the territory in which such property is located, according to the tax levies of the year last in process of collection.

(2) For purposes of this section, "costs of foreclosure and sale" means those costs of foreclosing on the property that, when collected, are subject to RCW 84.56.020(9), and the direct costs incurred by the county in selling the property. [2013 c 221 § 2; 1961 c 15 § 84.64.230. Prior: 1925 ex.s. c 130 § 132; RRS § 11293; prior: 1899 c 141 § 28. Formerly RCW 84.64.230.]

36.35.120 Sales of tax-title property—Reservations—Notices—Installment contracts—Separate sale of reserved resources. Real property acquired by any county of this state by foreclosure of delinquent taxes may be sold by order of the county legislative authority of the county when in the judgment of the county legislative authority it is deemed in the best interests of the county to sell the real property.

When the legislative authority desires to sell any such property it may, if deemed advantageous to the county, combine any or all of the several lots and tracts of such property in one or more units, and may reserve from sale coal, oil, gas, gravel, minerals, ores, fossils, timber, or other resources on or in the lands, and the right to mine for and remove the same, and it shall then enter an order on its records fixing the unit or units in which the property shall be sold and the minimum price for each of such units, and whether the sale will be for cash or whether a contract will be offered, and reserving from sale such of the resources as it may determine and from which units such reservations shall apply, and directing the county treasurer to sell such property in the unit or units and at not less than the price or prices and subject to such reservations so fixed by the county legislative authority. The order shall be subject to the approval of the county treasurer if several lots or tracts of land are combined in one unit.

Except in cases where the sale is to be by direct negotiation as provided in RCW 36.35.150, it shall be the duty of the county treasurer upon receipt of such order to publish once a week for three consecutive weeks a notice of the sale of such property in a newspaper of general circulation in the county where the land is situated. The notice shall describe the property to be sold, the unit or units, the reservations, and the minimum price fixed in the order, together with the time and place and terms of sale, in the same manner as foreclosure sales as provided by RCW 84.64.080.

The person making the bid shall state whether he or she will pay cash for the amount of his or her bid or accept a real estate contract of purchase in accordance with the provisions hereinafter contained. The person making the highest bid shall become the purchaser of the property. If the highest bidder is a contract bidder the purchaser shall be required to pay thirty percent of the total purchase price at the time of the sale and shall enter into a contract with the county as vendor and the purchaser as vendee which shall obligate and require the purchaser to pay the balance of the purchase price in ten equal annual installments commencing November 1st and each year following the date of the sale, and shall require the purchaser to pay twelve percent interest on all deferred payments, interest to be paid at the time the annual installment is due; and may contain a provision authorizing the purchaser to make payment in full at any time of any balance due on the total purchase price plus accrued interest on such balance. The contract shall contain a provision requiring the purchaser to pay before delinquency all subsequent taxes and assessments that may be levied or assessed against the property subsequent to the date of the contract, and shall contain a provision that time is of the essence of the contract and that in event of a failure of the vendee to make payments at the time and in the manner required and to keep and perform the covenants and conditions therein required of him or her that the contract may be forfeited and terminated at the election of the vendor, and that in event of the election all sums theretofore

paid by the vendee shall be forfeited as liquidated damages for failure to comply with the provisions of the contract; and shall require the vendor to execute and deliver to the vendee a deed of conveyance covering the property upon the payment in full of the purchase price, plus accrued interest.

The county legislative authority may, by order entered in its records, direct the coal, oil, gas, gravel, minerals, ores, timber, or other resources sold apart from the land, such sale to be conducted in the manner hereinabove prescribed for the sale of the land. Any such reserved minerals or resources not exceeding two hundred dollars in value may be sold, when the county legislative authority deems it advisable, either with or without such publication of the notice of sale, and in such manner as the county legislative authority may determine will be most beneficial to the county. [2001 c 299 § 10; 1993 c 310 § 1; 1991 c 245 § 30; 1981 c 322 § 7; 1965 ex.s. c 23 § 5; 1961 c 15 § 84.64.270. Prior: 1945 c 172 § 1; 1937 c 68 § 1; 1927 c 263 § 1; 1925 ex.s. c 130 § 133; Rem. Supp. 1945 § 11294; prior: 1903 c 59 § 1; 1899 c 141 § 29; 1890 p 579 § 124; Code 1881 § 2934. Formerly RCW 84.64.270, 84.64.280, 84.64.290, and 84.64.270.]

City may acquire property from county before resale: RCW 35.49.150.

Disposition of proceeds upon resale generally: RCW 35.49.160.

of property subject to diking, drainage or sewerage improvement district assessments: RCW 85.08.500.

Exchange, lease, management of county tax title lands: Chapter 36.35 RCW.

Tax title land

conveyance of to port districts: RCW 53.25.050.

may be deeded to department of natural resources for reforestation purposes: RCW 79.22.010.

may be leased for mineral, gas and petroleum development: Chapter 78.16 RCW.

36.35.130 Form of deed and reservation. The county treasurer shall upon payment to the county treasurer of the purchase price for the property and any interest due, make and execute under the county treasurer's hand and seal, and issue to the purchaser, a deed in the following form for any lots or parcels of real property sold under the provisions of RCW 36.35.120.

State of Washington }
County of } ss.

This indenture, made this day of , . . (year) . . , between , as treasurer of county, state of Washington, the party of the first part, and , party of the second part.

WITNESSETH, That whereas, at a public sale of real property, held on the day of , . . (year) . . , pursuant to an order of the county legislative authority of the county of , state of Washington, duly made and entered, and after having first given due notice of the time and place and terms of the sale, and, whereas, in pursuance of the order of the county legislative authority, and of the laws of the state of Washington, and for and in consideration of the sum of dollars, lawful money of the United States of America, to me in hand paid, the receipt whereof is hereby acknowledged, I have this day sold to the following described real property, and which the

real property is the property of county, and which is particularly described as follows, to wit: , the being the highest and best bidder at the sale, and the sum being the highest and best sum bid at the sale;

NOW, THEREFORE, Know ye that I, , county treasurer of the county of , state of Washington, in consideration of the premises and by virtue of the statutes of the state of Washington, in such cases made and provided, do hereby grant and convey unto , heirs and assigns, forever, the real property hereinbefore described, as fully and completely as the party of the first part can by virtue of the premises convey the same.

Given under my hand and seal of office this day of , . . . (year) . .

.....
County Treasurer,
By
Deputy:

PROVIDED, That when by order of the county legislative authority any of the minerals or other resources enumerated in RCW 36.35.120 are reserved, the deed or contract of purchase shall contain the following reservation:

The party of the first part hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its successors, and assigns, forever, all oils, gases, coals, ores, minerals, gravel, timber and fossils of every name, kind or description, and which may be in or upon the lands above described; or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, gravel, timber and fossils; and it also hereby expressly saves reserves out of the grant hereby made, unto itself, its successors and assigns, forever, the right to enter by itself, its agents, attorneys and servants upon the lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing and working mines thereon, and taking out and removing therefrom all such oils, gases, coal, ores, minerals, gravel, timber and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its successors and assigns, forever, the right by it or its agents, servants and attorneys at any and all times to erect, construct, maintain and use all such buildings, machinery, roads and railroads, sink such shafts, remove such oil, and to remain on the lands or any part thereof, for the business of mining and to occupy as much of the lands as may be necessary or convenient for the successful prosecution of such mining business, hereby expressly reserving to itself, its successors and assigns, as aforesaid, generally, all rights and powers in, to and over, the land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and the rights hereby expressly reserved. No rights shall be exercised under the foregoing reservation, by the county, its successors or assigns, until provision has been made by the county, its successors or assigns, to pay to the owner of the land upon which the rights herein reserved to the county, its successors or assigns, are sought to be exercised, full payment for all damages sustained by the owner, by reason of entering upon the land: PROVIDED, That if the owner from any cause whatever refuses or neglects to settle the damages, then the county, its successors or assigns, or any applicant for a lease or contract from the

county for the purpose of prospecting for or mining valuable minerals, or operation contract, or lease, for mining coal, or lease for extracting petroleum or natural gas, shall have the right to institute such legal proceedings in the superior court of the county wherein the land is situated, as may be necessary to determine the damages which the owner of the land may suffer: PROVIDED, The county treasurer shall cross out of such reservation any of the minerals or other resources which were not reserved by order of the county legislative authority. [1998 c 106 § 14; 1961 c 15 § 84.64.300. Prior: 1945 c 172 § 2; 1927 c 263 § 2; 1925 ex.s. c 130 § 134; Rem. Supp. 1945 § 11295; prior: 1903 c 59 § 5; 1890 p 577 § 119; Code 1881 § 2938. Formerly RCW 84.64.300.]

36.35.140 Rental of tax-title property on month to month tenancy authorized. The board of county commissioners of any county may, pending sale of any county property acquired by foreclosure of delinquent taxes or amounts deferred under chapter 84.37 or 84.38 RCW, rent any portion thereof on a tenancy from month to month. From the proceeds of the rentals the board of county commissioners must first pay all expense in management of said property and in repairing, maintaining and insuring the improvements thereon. The balance of said proceeds must first be paid to reimburse the county for the costs of foreclosure and sale as defined in RCW 36.35.110. The remainder of the proceeds, if any, must be paid to the department of revenue in the amount of any taxes deferred under chapter 84.37 or 84.38 RCW on the property, including accrued interest, outstanding at the time the county acquired the property by tax deed, and then to the various taxing units interested in the taxes levied against said property in the same proportion as the current tax levies of the taxing units having levies against said property. [2013 c 221 § 3; 1961 c 15 § 84.64.310. Prior: 1945 c 170 § 1; Rem. Supp. 1945 § 11298-1. Formerly RCW 84.64.310.]

36.35.150 Tax-title property may be disposed of without bids in certain cases. The county legislative authority may dispose of tax foreclosed property by private negotiation, without a call for bids, for not less than the principal amount of the unpaid taxes in any of the following cases: (1) When the sale is to any governmental agency and for public purposes; (2) when the county legislative authority determines that it is not practical to build on the property due to the physical characteristics of the property or legal restrictions on construction activities on the property; (3) when the property has an assessed value of less than five hundred dollars and the property is sold to an adjoining landowner; or (4) when no acceptable bids were received at the attempted public auction of the property, if the sale is made within twelve months from the date of the attempted public auction. [2001 c 299 § 11; 1997 c 244 § 2; 1993 c 310 § 2; 1961 c 15 § 84.64.320. Prior: 1947 c 238 § 1; Rem. Supp. 1947 § 11295-1. Formerly RCW 84.64.320.]

Additional notes found at www.leg.wa.gov

36.35.160 Quieting title to tax-title property. In any and all instances in this state in which a treasurer's deed to real property has been or shall be issued to the county in proceedings to foreclose the lien of general taxes, and for any reason a defect in title exists or adverse claims against the

same have not been legally determined, the county or its successors in interest or assigns shall have authority to institute an action in the superior court in the county to correct such defects, and to determine such adverse claims and the priority thereof as provided in RCW 36.35.160 through 36.35.270. [1998 c 106 § 15; 1961 c 15 § 84.64.330. Prior: 1931 c 83 § 1; 1925 ex.s. c 171 § 1; RRS § 11308-1. Formerly RCW 84.64.330.]

36.35.170 Quieting title to tax-title property—Form of action—Pleadings. The county or its successors in interest or assigns shall have authority to include in one action any and all tracts of land in which plaintiff or plaintiffs in such action, jointly or severally, has or claims to have an interest. Such action shall be one in rem as against every right and interest in and claim against any and every part of the real property involved, except so much thereof as may be at the time the summons and notice is filed with the clerk of the superior court in the actual, open and notorious possession of any person or corporation, and then except only as to the interest claimed by such person so in possession: PROVIDED, That the possession required under the provisions of RCW 36.35.160 through 36.35.270 shall be construed to be that by personal occupancy only, and not merely by representation or in contemplation of law. No person, firm or corporation claiming an interest in or to such lands need be specifically named in the summons and notice, except as in RCW 36.35.160 through 36.35.270, and no pleadings other than the summons and notice and the written statements of those claiming a right, title and interest in and to the property involved shall be required. [1998 c 106 § 16; 1961 c 15 § 84.64.340. Prior: 1931 c 83 § 2; 1925 ex.s. c 171 § 2; RRS § 11308-2. Formerly RCW 84.64.340.]

36.35.180 Quieting title to tax-title property—Summons and notice. Upon filing a copy of the summons and notice in the office of the county clerk, service thereof as against every interest in and claim against any and every part of the property described in such summons and notice, and every person, firm, or corporation, except one who is in the actual, open and notorious possession of any of the properties, shall be had by publication in the official county newspaper for six consecutive weeks; and no affidavit for publication of such summons and notice shall be required. In case special assessments imposed by a city or town against any of the real property described in the summons and notice remain outstanding, a copy of the same shall be served on the treasurer of the city or town within which such real property is situated within five days after such summons and notice is filed.

The summons and notice in such action shall contain the title of the court; specify in general terms the years for which the taxes were levied and the amount of the taxes and the costs for which each tract of land was sold; give the legal description of each tract of land involved, and the tax record owner thereof during the years in which the taxes for which the property was sold were levied; state that the purpose of the action is to foreclose all adverse claims of every nature in and to the property described, and to have the title of existing liens and claims of every nature against the described real property, except that of the county, forever barred.

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The summons and notice shall also summon all persons, firms and corporations claiming any right, title and interest in and to the described real property to appear within sixty days after the date of the first publication, specifying the day and year, and state in writing what right, title and interest they have or claim to have in and to the property described, and file the same with the clerk of the court above named; and shall notify them that in case of their failure so to do, judgment will be rendered determining that the title to the real property is in the county free from all existing adverse interests, rights or claims whatsoever: PROVIDED, That in case any of the lands involved is in the actual, open and notorious possession of anyone at the time the summons and notice is filed, as herein provided, a copy of the same modified as herein specified shall be served personally upon such person in the same manner as summons is served in civil actions generally. The summons shall be substantially in the form above outlined, except that in lieu of the statement relative to the date and day of publication it shall require the person served to appear within twenty days after the day of service, exclusive of the date of service, and that the day of service need not be specified therein, and except further that the recitals regarding the amount of the taxes and costs and the years the same were levied, the legal description of the land and the tax record owner thereof may be omitted except as to the land occupied by the persons served.

Every summons and notice provided for in RCW 36.35.160 through 36.35.270 shall be subscribed by the prosecuting attorney of the county, or by any successor or assign of the county or his or her attorney, as the case may be, followed by the post office address of the successor or assign. [2009 c 549 § 4075; 1998 c 106 § 17; 1961 c 15 § 84.64.350. Prior: 1931 c 83 § 3; 1925 ex.s. c 171 § 3; RRS § 11308-3. Formerly RCW 84.64.350.]

36.35.190 Quieting title to tax-title property—Redemption before judgment. (1) Any person, firm or corporation who or which may have been entitled to redeem the property involved prior to the issuance of the treasurer's deed to the county, and his or her or its successor in interest, has the right, at any time after the commencement of, and prior to the judgment in the action authorized herein, to redeem such property by paying to the county treasurer:

(a) The amount of any taxes deferred under chapter 84.37 or 84.38 RCW on the property, including accrued interest, outstanding at the time the county acquired the property by tax deed;

(b) The amount of the taxes for which the property was sold to the county, and the amount of any other general taxes which may have accrued prior to the issuance of said treasurer's deed, together with interest on all such taxes from the date of delinquency thereof, respectively, at the rate of twelve percent per annum;

(c) For the benefit of the assessment district concerned the amount of principal, penalty and interest of all special assessments, if any, which have been levied against such property; and

(d) Such proportional part of the costs of the tax or tax deferral foreclosure proceedings and of the action herein authorized as the county treasurer determines.

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(2) Upon redemption of any property before judgment as herein provided, the county treasurer must issue to the redemptioner a certificate specifying the amount of the taxes, including amounts deferred under chapters 84.37 and 84.38 RCW, special assessments, penalty, interest and costs charged describing the land and stating that the taxes, including any applicable deferred taxes, special assessments, penalty, interest and costs specified have been fully paid, and the liens thereof discharged. Such certificate must clear the land described therein from any claim of the county based on the treasurer's deed previously issued in the tax or tax deferral foreclosure proceedings. [2013 c 221 § 4; 2009 c 549 § 4076; 1961 c 15 § 84.64.360. Prior: 1925 ex.s. c 171 § 4; RRS § 11308-4. Formerly RCW 84.64.360.]

36.35.200 Quieting title to tax-title property—Judgment. At any time after the return day named in the summons and notice the plaintiff in the cause shall be entitled to apply for judgment. In case any person has appeared in such action and claimed any interest in the real property involved adverse to that of the county or its successors in interest, such person shall be given a three days' notice of the time when application for judgment shall be made. The court shall hear and determine the matter in a summary manner similar to that provided in RCW 84.64.080, relating to judgment and order of sale in general tax foreclosure proceedings, and shall pronounce and enter judgment according to the rights of the parties and persons concerned in the action. No order of sale shall be made nor shall any sale on execution be necessary to determine the title of the county to the real property involved in such action. [1961 c 15 § 84.64.370. Prior: 1931 c 83 § 4; 1925 ex.s. c 171 § 5; RRS § 11308-5. Formerly RCW 84.64.370.]

36.35.210 Quieting title to tax-title property—Proof—Presumptions. The right of action of the county, its successors or assigns, under RCW 36.35.160 through 36.35.270 shall rest on the validity of the taxes involved, and the plaintiff shall be required to prove only the amount of the former judgment foreclosing the lien thereof, together with the costs of the foreclosure and sale of each tract of land for the taxes, and all the presumptions in favor of the tax foreclosure sale and issuance of treasurer's deed existing by law shall obtain in the action. [1998 c 106 § 18; 1961 c 15 § 84.64.380. Prior: 1931 c 83 § 5; 1925 ex.s. c 171 § 6; RRS § 11308-6. Formerly RCW 84.64.380.]

36.35.220 Quieting title to tax-title property—Appearance fee—Tender of taxes. Any person filing a statement in such action must pay the clerk of the court an appearance fee in the amount required by the county for appearances in civil actions, and is required to tender the amount of all taxes, including any amounts deferred under chapter 84.37 or 84.38 RCW, interest and costs charged against the real property to which he or she lays claim, and no further costs in such action may be required or recovered. [2013 c 221 § 5; 2009 c 549 § 4077; 1961 c 15 § 84.64.390. Prior: 1925 ex.s. c 171 § 7; RRS § 11308-7. Formerly RCW 84.64.390.]

36.35.230 Quieting title to tax-title property—Appellate review. Any person aggrieved by the judgment rendered in such action may seek appellate review of the part of said judgment objectionable to him or her in the manner and within the time prescribed for appeals in RCW 84.64.120. [2009 c 549 § 4078; 1988 c 202 § 71; 1971 c 81 § 155; 1961 c 15 § 84.64.400. Prior: 1925 ex.s. c 171 § 8; 1925 ex.s. c 130 § 121; RRS § 11308-8; prior: 1903 c 59 § 4; 1897 c 71 § 104; 1893 c 124 § 106. Formerly RCW 84.64.400.]

Additional notes found at www.leg.wa.gov

36.35.240 Quieting title to tax-title property—Effect of judgment. The judgment rendered in such action, unless appealed from within the time prescribed herein and upon final judgment on appeal, shall be conclusive, without the right of redemption upon and against every person who may or could claim any lien or any right, title or interest in or to any of the properties involved in said action, including minors, insane persons, those convicted of crime, as well as those free from disability, and against those who may have at any time attempted to pay any tax on any of the properties, and against those in actual open and notorious possession of any of said properties.

Such judgment shall be conclusive as to those who appeal therefrom, except as to the particular property to which such appellant laid claim in the action and concerning which he or she appealed, and shall be conclusive as to those in possession of any property and who were not served except as to the property which such person is in the actual, open and notorious possession of, and in any case where it is asserted that the judgment was not conclusive because of such possession, the burden of showing such actual, open and notorious possession shall be on the one asserting such possession. [2009 c 549 § 4079; 1961 c 15 § 84.64.410. Prior: 1925 ex.s. c 171 § 9; RRS § 11308-9. Formerly RCW 84.64.410.]

36.35.250 Quieting title to tax-title property—Special assessments payable out of surplus. Nothing in RCW 36.35.160 through 36.35.270 contained may be construed to deprive any city, town, or other unit of local government that imposed special assessments on the property by including the property in a local improvement or special assessment district of its right to reimbursement for special assessments out of any surplus over and above the taxes, including amounts deferred under chapters 84.37 and 84.38 RCW, interest and costs involved. [2013 c 221 § 6; 1998 c 106 § 19; 1961 c 15 § 84.64.420. Prior: 1925 ex.s. c 171 § 10; RRS § 11308-10. Formerly RCW 84.64.420.]

36.35.260 Quieting title to tax-title property—Form of deed on sale after title quieted. That in all cases where any county of the state of Washington has perfected title to real estate owned by the county, under the provisions of RCW 36.35.160 through 36.35.270 and resells the same or part thereof, it shall give to the purchaser a warranty deed in substantially the following form:

STATE OF WASHINGTON
County of } ss.

This indenture, made this day of (year) . . . , between as treasurer of county, state of Washington, the party of the first part, and , party of the second part.

WITNESSETH, THAT WHEREAS, at a public sale of real property, held on the day of (year) . . . , pursuant to an order of the county legislative authority of the county of , state of Washington, duly made and entered, and after having first given due notice of the time and place and terms of the sale, and, whereas, in pursuance of the order of the county legislative authority, and of the laws of the state of Washington, and for and in consideration of the sum of dollars, lawful money of the United States of America, to me in hand paid, the receipt whereof is hereby acknowledged, I have this day sold to the following described real property, and which the real property is the property of county, and which is particularly described as follows, to wit:

. , the being the highest and best bidder at the sale, and the sum being the highest and best sum bid at the sale:

NOW THEREFORE KNOW YE that I, county treasurer of the county of , state of Washington, in consideration of the premises and by virtue of the statutes of the state of Washington, in such cases made and provided, do hereby grant, convey and warrant on behalf of county unto , his or her heirs and assigns, forever, the real property hereinbefore described.

Given under my hand and seal of office this day of , (year) . . .

.
County Treasurer.
By
Deputy.

[1998 c 106 § 20; 1961 c 15 § 84.64.430. Prior: 1929 c 197 § 1; RRS § 11308-11. Formerly RCW 84.64.430.]

36.35.270 Quieting title to tax-title property—Limitation on recovery for breach of warranty. No recovery for breach of warranty shall be had, against the county executing a deed under the provisions of RCW 36.35.260, in excess of the purchase price of the land described in such deed, with interest at the legal rate. [1998 c 106 § 21; 1961 c 15 § 84.64.440. Prior: 1929 c 197 § 2; RRS § 11308-12. Formerly RCW 84.64.440.]

36.35.280 Tax deeds to cities and towns absolute despite reversionary provision. All sales of tax-title lands heretofore consummated by any county, to a city or town, for municipal purposes, or public use, shall be absolute and final, and transfer title in fee, notwithstanding any reversionary provision in the tax deed to the contrary; and all tax-title deeds containing any such reversionary provision shall upon application of grantee in interest, be revised to conform with the provisions herein. [1961 c 15 § 84.64.450. Prior: 1947 c 269 § 1; Rem. Supp. 1947 § 11295-2. Formerly RCW 84.64.450.]

36.35.290 Easements. The general property tax assessed on any tract, lot, or parcel of real property includes

all easements appurtenant thereto, provided said easements are a matter of public record in the auditor's office of the county in which said real property is situated. Any foreclosure of delinquent taxes on any tract, lot or parcel of real property subject to such easement or easements, and any tax deed issued pursuant thereto shall be subject to such easement or easements, provided such easement or easements were established of record prior to the year for which the tax was foreclosed. [1961 c 15 § 84.64.460. Prior: 1959 c 129 § 1. Formerly RCW 84.64.460.]

**Chapter 36.36 RCW
AQUIFER PROTECTION AREAS**

Sections	
36.36.010	Purpose.
36.36.020	Creation of aquifer protection area—Public hearing—Ballot proposition.
36.36.030	Imposition of fees—Ballot proposition to authorize increased fees or additional purposes.
36.36.035	Reduced fees for low-income persons.
36.36.040	Use of fee revenues.
36.36.045	Lien for delinquent fees.
36.36.050	Dissolution of aquifer protection area—Petition—Ballot proposition.
36.36.900	Severability—1985 c 425.

Assessments and charges against state lands: Chapter 79.44 RCW.

36.36.010 Purpose. The protection of subterranean water from pollution or degradation is of great concern. The depletion of subterranean water is of great concern. The purpose of this chapter is to allow the creation of aquifer protection areas to finance the protection, preservation, and rehabilitation of subterranean water, and to reduce special assessments imposed upon households to finance facilities for such purposes. Pollution and degradation of subterranean drinking water supplies, and the depletion of subterranean drinking water supplies, pose immediate threats to the safety and welfare of the citizens of this state. [1991 c 151 § 1; 1985 c 425 § 1.]

36.36.020 Creation of aquifer protection area—Public hearing—Ballot proposition. The county legislative authority of a county may create one or more aquifer protection areas for the purpose of funding the protection, preservation, and rehabilitation of subterranean water.

When a county legislative authority proposes to create an aquifer protection area it shall conduct a public hearing on the proposal. Notice of the public hearing shall be published at least once, not less than ten days prior to the hearing, in a newspaper of general circulation within the proposed aquifer protection area. The public hearing may be continued to other times, dates, and places announced at the public hearing, without publication of the notice. At the public hearing, the county legislative authority shall hear objections and comments from anyone interested in the proposed aquifer protection area.

After the public hearing, the county legislative authority may adopt a resolution causing a ballot proposition to be submitted to the registered voters residing within the proposed aquifer protection area to authorize the creation of the aquifer protection area, if the county legislative authority finds that the creation of the aquifer protection area would be in the

public interest. The resolution shall: (1) Describe the boundaries of the proposed aquifer protection area; (2) find that its creation is in the public interest; (3) state the maximum level of fees for the withdrawal of water, or on-site sewage disposal, occurring in the aquifer protection area, or both; and (4) describe the uses for the fees.

An aquifer protection area shall be created by ordinances of the county if the voters residing in the proposed aquifer protection area approve the ballot proposition by a simple majority vote. The ballot proposition shall be in substantially the following form:

"Shall the . . . (insert the name) aquifer protection area be created and authorized to impose monthly fees on . . . (insert "the withdrawal of water" or "on-site sewage disposal") of not to exceed . . . (insert a dollar amount) per household unit for up to . . . (insert a number of years) to finance . . . (insert the type of activities proposed to be financed)?

Yes

No"

If both types of monthly fees are proposed to be imposed, maximum rates for each shall be included in the ballot proposition.

An aquifer protection area may not include territory located within a city or town without the approval of the city or town governing body, nor may it include territory located in the unincorporated area of another county without the approval of the county legislative authority of that county. [1985 c 425 § 2.]

36.36.030 Imposition of fees—Ballot proposition to authorize increased fees or additional purposes. Aquifer protection areas are authorized to impose fees on the withdrawal of subterranean water and on on-site sewage disposal. The fees shall be expressed as a dollar amount per household unit. Fees imposed for the withdrawal of water, or on-site sewage disposal, other than by households shall be expressed and imposed in equivalents of household units. If both types of fees are imposed, the rate imposed on on-site sewage disposal shall not exceed the rate imposed for the withdrawal of water.

No fees shall be imposed in excess of the amount authorized by the voters of the aquifer protection area. Fees shall only be used for the activity or activities authorized by the voters of the aquifer protection area. Ballot propositions may be submitted to the voters of an aquifer protection area to authorize a higher maximum level of such fees or to authorize additional activities for which the fees may be used. Such a ballot proposition shall be substantially in the form of that portion of the proposition to authorize the creation of an aquifer protection district that relates to fees or activities, as provided in RCW 36.36.020. Approval of the ballot proposition by simple majority vote shall authorize the higher maximum level of fees or additional activities for which the fees may be used.

A county may contract with existing public utilities to collect the fees, or collect the fees itself. [1985 c 425 § 3.]

36.36.035 Reduced fees for low-income persons. A county may adopt an ordinance reducing the level of fees, for the withdrawal of subterranean water or for on-site sewage disposal, that are imposed upon the residential property of a class or classes of low-income persons. [1987 c 381 § 1.]

36.36.040 Use of fee revenues. Aquifer protection areas may impose fees to fund:

(1) The preparation of a comprehensive plan to protect, preserve, and rehabilitate subterranean water, including groundwater management programs adopted under chapter 90.44 RCW. This plan may be prepared as a portion of a county sewerage and/or water general plan pursuant to RCW 36.94.030;

(2) The construction of facilities for: (a) The removal of waterborne pollution; (b) water quality improvement; (c) sanitary sewage collection, disposal, and treatment; (d) storm water or surface water drainage collection, disposal, and treatment; and (e) the construction of public water systems;

(3) The proportionate reduction of special assessments imposed by a county, city, town, or special district in the aquifer protection area for any of the facilities described in subsection (2) of this section;

(4) The costs of monitoring and inspecting on-site sewage disposal systems or community sewage disposal systems for compliance with applicable standards and rules, and for enforcing compliance with these applicable standards and rules in aquifer protection areas created after June 9, 1988; and

(5) The costs of: (a) Monitoring the quality and quantity of subterranean water and analyzing data that is collected; (b) ongoing implementation of the comprehensive plan developed under subsection (1) of this section; (c) enforcing compliance with standards and rules relating to the quality and quantity of subterranean waters; and (d) public education relating to protecting, preserving, and enhancing subterranean waters. [1991 c 151 § 2; 1988 c 258 § 1; 1985 c 425 § 4.]

36.36.045 Lien for delinquent fees. The county shall have a lien for any delinquent fees imposed for the withdrawal of subterranean water or on-site sewage disposal, which shall attach to the property to which the fees were imposed, if the following conditions are met:

(1) At least eighteen months have passed since the first billing for a delinquent fee installment; and

(2) At least three billing notices and a letter have been mailed to the property owner, within the period specified in subsection (1) of this section, explaining that a lien may be imposed for any delinquent fee installment that has not been paid in that period.

The lien shall otherwise be subject to the provisions of chapter 36.94 RCW related to liens for delinquent charges. The county shall record liens for any delinquent fees in the office of the county auditor. Failure on the part of the county to record the lien does not affect the validity of the lien. [1997 c 393 § 6; 1987 c 381 § 2.]

36.36.050 Dissolution of aquifer protection area—Petition—Ballot proposition. A county legislative author-

ity may dissolve an aquifer protection area upon a finding that such dissolution is in the public interest.

A ballot proposition to dissolve an aquifer protection district shall be placed on the ballot for the approval or rejection of the voters residing in an aquifer protection area, when a petition requesting such a ballot proposition is signed by at least twenty percent of the voters residing in the aquifer protection area and is filed with the county legislative authority of the county originally creating the aquifer protection area. The ballot proposition shall be placed on the ballot at the next general election occurring sixty or more days after the petition has been filed. Approval of the ballot proposition by a simple majority vote shall cause the dissolution of the aquifer protection area. [1985 c 425 § 5.]

36.36.900 Severability—1985 c 425. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 425 § 7.]

Chapter 36.37 RCW

AGRICULTURAL FAIRS AND POULTRY SHOWS

Sections

36.37.010	Fairs authorized—Declared county purpose.
36.37.020	Property may be acquired for fairs.
36.37.040	Expenditure of funds—Revolving fund—Management of fairs.
36.37.050	District or multiple county fairs authorized.
36.37.090	Poultry shows—Petition—Appropriation.
36.37.100	Poultry shows—Open to public—Admission charge.
36.37.110	Poultry shows—Conduct of shows.
36.37.150	Lease of state-owned lands for county fairgrounds.
36.37.160	Lease of state-owned lands for county fairgrounds—Lands adjacent to Northern State Hospital.

36.37.010 Fairs authorized—Declared county purpose. The holding of county fairs and agricultural exhibitions of stock, cereals, and agricultural produce of all kinds, including dairy produce, as well as arts and manufactures, by any county in the state, and the participation by any county in a district fair or agricultural exhibition, is declared to be in the interest of public good and a strictly county purpose. [1963 c 4 § 36.37.010. Prior: 1947 c 184 § 1; 1917 c 32 § 1; Rem. Supp. 1947 § 2750.]

36.37.020 Property may be acquired for fairs. The board of county commissioners of any county in the state may acquire by gift, devise, purchase, condemnation and purchase, or otherwise, lands, property rights, leases, easements, and all kinds of personal property and own and hold the same and construct and maintain temporary or permanent improvements suitable and necessary for the purpose of holding and maintaining county or district fairs for the exhibition of county or district resources and products. [1963 c 4 § 36.37.020. Prior: 1947 c 184 § 2; 1917 c 32 § 2; Rem. Supp. 1947 § 2751.]

36.37.040 Expenditure of funds—Revolving fund—Management of fairs. The board of county commissioners of any county may appropriate and expend each year such sums of money as they deem advisable and necessary for (1)

acquisition of necessary grounds for fairs and world fairs, (2) construction, improvement and maintenance of buildings thereon, (3) payment of fair premiums, and (4) the general maintenance of such fair. The board of county commissioners of any county may also authorize the county auditor to provide a revolving fund to be used by the fair officials for the conduct of the fair. The board of county commissioners may employ persons to assist in the management of fairs or by resolution designate a nonprofit corporation as the exclusive agency to operate and manage such fairs. [1963 c 4 § 36.37.040. Prior: 1957 c 124 § 1; 1955 c 297 § 1; prior: (i) 1947 c 184 § 3; 1943 c 101 § 1; 1923 c 83 § 2; Rem. Supp. 1947 § 2753 1/2. (ii) 1923 c 83 § 1; 1917 c 32 § 4; RRS § 2753.]

36.37.050 District or multiple county fairs authorized. Each county is authorized to hold one county fair in each year, or, as an alternative, to participate with any other county or counties in the holding of a district fair. Where counties participate in the holding of a district fair, the boards of county commissioners of each of participating counties may enter into mutual agreements setting forth the manner and extent of the participation by each county in the management and support of the district fair, subject to the limitations imposed on each respective county by the provisions of this chapter. [1963 c 4 § 36.37.050. Prior: 1947 c 184 § 4; Rem. Supp. 1947 § 2753a.]

36.37.090 Poultry shows—Petition—Appropriation. Upon petition of twenty-five resident taxpayers of any county who are interested in the poultry industry, the board of county commissioners may set aside and include in its annual budget a sum equivalent to five percent of the assessed valuation of poultry in the county each year for the purpose of holding winter poultry shows, the said sum not to exceed five hundred dollars in any one year. [1963 c 4 § 36.37.090. Prior: 1929 c 109 § 1; RRS § 2755-1.]

36.37.100 Poultry shows—Open to public—Admission charge. All poultry shows shall be open to the public. Such admission charge may be made as is authorized by the board of county commissioners. [1963 c 4 § 36.37.100. Prior: 1929 c 109 § 2; RRS § 2755-2.]

36.37.110 Poultry shows—Conduct of shows. All such poultry shows shall be held under the rules of the American Poultry Association and only licensed poultry judges shall be employed thereat. [1963 c 4 § 36.37.110. Prior: 1929 c 109 § 3; RRS § 2755-3.]

36.37.150 Lease of state-owned lands for county fairgrounds. If requested by a county legislative authority, an agency of the state managing state-owned lands, other than state trust lands, shall consider leasing a requested portion of these lands that are not used for any significant purpose and if not otherwise prohibited, to the county to be used as county fairgrounds. If it is determined that such a lease shall be made, the agency in setting lease charges shall consider the fair market return for leasing the land, the public benefit for leasing the land to the county for county fair purposes at a

level below the fair market return, and other appropriate factors. [1986 c 307 § 3.]

Intent—1986 c 307: "The legislature finds that county fairs provide unique educational opportunities to the people of this state and are a public purpose. By helping counties acquire lands for county fairs, the legislature intends to preserve and enhance the educational opportunities of the people of this state." [1986 c 307 § 1.]

36.37.160 Lease of state-owned lands for county fairgrounds—Lands adjacent to Northern State Hospital. If requested by a county legislative authority, the department of natural resources shall negotiate a lease for any requested portion of the state lands directly adjacent to buildings on the Northern State Hospital site that were transferred to the department under chapter 178, Laws of 1974 ex. sess., if not otherwise prohibited, to the county to use for the purpose of establishing county fairgrounds. However, the portion to be leased shall be contiguous and compact, of an area not to exceed two hundred fifty acres and shall be segregated in such a manner that the remaining portion of these state lands can be efficiently managed by the department. The lease shall be for as long as the county is actually using the land as the site of the county fairgrounds. Notwithstanding chapter 178, Laws of 1974 ex. sess., the department shall charge the county the sum of one thousand dollars per year for the lease of such lands and this sum may be periodically adjusted to compensate the department for any increased costs in administration of the lease. The lease shall contain provisions directing payment of all assessments and authorizing the county to place any improvements on the leased lands if the improvements are consistent with the purposes of county fairs. [1986 c 307 § 2.]

Intent—1986 c 307: See note following RCW 36.37.150.

Chapter 36.38 RCW ADMISSIONS TAX

Sections

36.38.010	Taxes authorized—Exception as to schools.
36.38.020	Optional provisions in ordinance.
36.38.030	Form of ordinance.
36.38.040	Vehicle parking charges tax—Parking facility at stadium and exhibition center—Use of revenues before and after issuance of bonds.

Taxes for city and town purposes: State Constitution Art. 11 § 12.

36.38.010 Taxes authorized—Exception as to schools. (1) Any county may by ordinance enacted by its county legislative authority, levy and fix a tax of not more than one cent on twenty cents or fraction thereof to be paid for county purposes by persons who pay an admission charge to any place, including a tax on persons who are admitted free of charge or at reduced rates to any place for which other persons pay a charge or a regular higher charge for the same or similar privileges or accommodations; and require that one who receives any admission charge to any place must collect and remit the tax to the county treasurer of the county. However, no county may impose such tax on persons paying an admission to any activity of any elementary or secondary school or any public facility of a public facility district under chapter 35.57 or 36.100 RCW for which a tax is imposed under RCW 35.57.100 or 36.100.210.

(2) As used in this chapter, the term "admission charge" includes a charge made for season tickets or subscriptions, a cover charge, or a charge made for use of seats and tables, reserved or otherwise, and other similar accommodations; a charge made for food and refreshments in any place where any free entertainment, recreation, or amusement is provided; a charge made for rental or use of equipment or facilities for purpose of recreation or amusement, and where the rental of the equipment or facilities is necessary to the enjoyment of a privilege for which a general admission is charged, the combined charges must be considered as the admission charge. Admission charge also includes any automobile parking charge where the amount of such charge is determined according to the number of passengers in any automobile.

(3) Subject to subsections (4) and (5) of this section, the tax authorized in this section is not exclusive and does not prevent any city or town within the taxing county, when authorized by law, from imposing within its corporate limits a tax of the same or similar kind. However, whenever the same or similar kind of tax is imposed by any such city or town, no such tax may be levied within the corporate limits of such city or town by the county.

(4) Notwithstanding subsection (3) of this section, the legislative authority of a county with a population of one million or more may exclusively levy taxes on events in baseball stadiums constructed on or after January 1, 1995, that are owned by a public facilities district under chapter 36.100 RCW and that have seating capacities over forty thousand at the rates of:

(a) Not more than one cent on twenty cents or fraction thereof, to be used for the purpose of paying the principal and interest payments on bonds issued by a county to construct a baseball stadium as defined in RCW 82.14.0485. If the revenue from the tax exceeds the amount needed for that purpose, the excess must be placed in a contingency fund which must be used exclusively by the public facilities district to fund repair, reequipping, and capital improvement of the baseball stadium; and

(b) Not more than one cent on twenty cents or fraction thereof, to be used for the purpose of paying the principal and interest payments on bonds issued by a county to construct a baseball stadium as defined in RCW 82.14.0485. The tax imposed under this subsection (4)(b) expires when the bonds issued for the construction of the baseball stadium are retired, but not later than twenty years after the tax is first collected.

(5)(a) Notwithstanding subsection (3) of this section, the legislative authority of a county that has created a public stadium authority to develop a stadium and exhibition center under RCW 36.102.050 may levy and fix a tax on charges for admission to events in a stadium and exhibition center, as defined in RCW 36.102.010, constructed in the county on or after January 1, 1998, that is owned by a public stadium authority under chapter 36.102 RCW.

(b) Except as provided otherwise in (c) of this subsection (5), the tax is exclusive and precludes the city or town within which the stadium and exhibition center is located from imposing a tax of the same or similar kind on charges for admission to events in the stadium and exhibition center, and precludes the imposition of a general county admissions tax on charges for admission to events in the stadium and exhibition center.

(c) A city within which the stadium and exhibition center is located has the exclusive right to impose an admissions tax under the authority of RCW 35.21.280 and the county is precluded from imposing an admissions tax, for a sporting event conducted during calendar year 2012 by a state college or university, if such sporting event occurs:

(i) Due to the temporary closure of any similar facility owned by that college or university; and

(ii) At a facility owned by a public stadium authority located within a city with a population that exceeds five hundred thousand people.

(d) For the purposes of this subsection (5), "charges for admission to events" means only the actual admission charge, exclusive of taxes and service charges and the value of any other benefit conferred by the admission.

(e) The tax authorized under this subsection (5) is at the rate of not more than one cent on ten cents or fraction thereof.

(f) Revenues collected under this subsection (5) must be deposited in the stadium and exhibition center account under RCW 43.99N.060 until the bonds issued under RCW 43.99N.020 for the construction of the stadium and exhibition center are retired. After the bonds issued for the construction of the stadium and exhibition center are retired, the tax authorized under this section is used exclusively to fund repair, reequipping, and capital improvement of the stadium and exhibition center.

(g) The tax under this subsection (5) may be levied upon the first use of any part of the stadium and exhibition center but may not be collected at any facility already in operation as of July 17, 1997. [2012 c 260 § 1; 2011 1st sp.s. c 38 § 2; 1999 c 165 § 20; 1997 c 220 § 301 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 203; 1995 1st sp.s. c 14 § 9; 1963 c 4 § 36.38.010. Prior: 1957 c 126 § 2; 1951 c 34 § 1; 1943 c 269 § 1; Rem. Supp. 1943 § 11241-10.]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Additional notes found at www.leg.wa.gov

36.38.020 Optional provisions in ordinance. In addition to the provisions levying and fixing the amount of tax, the ordinance may contain any or all of the following provisions:

(1) A provision defining the words and terms used therein;

(2) A provision requiring the price (exclusive of the tax to be paid by the person paying for admission) at which every admission ticket or card is sold to be conspicuously and indelibly printed or written on the face or back of that part of the ticket which is to be taken up by the management of the place for which an admission charge is exacted, and making the violation of such provision a misdemeanor punishable by fine of not exceeding one hundred dollars;

(3) Provisions fixing reasonable exemptions from such tax;

(4) Provisions allowing as an offset against the tax, the amount of like taxes levied, fixed, and collected within their jurisdiction by incorporated cities and towns in the county;

(5) A provision requiring persons receiving payments for admissions taxed under said ordinance to collect the amount of the tax from the persons making such payments;

(6) A provision to the effect that the tax imposed by said ordinance shall be deemed to be held in trust by the person required to collect the same until paid to the county treasurer, and making it a misdemeanor for any person receiving payment of the tax and appropriating or converting the same to his or her own use or to any use other than the payment of the tax as provided in said ordinance to the extent that the amount of such tax is not available for payment on the due date for filing returns as provided in said ordinance;

(7) A provision that in case any person required by the ordinance to collect the tax imposed thereby fails to collect the same, or having collected the tax fails to pay the same to the county treasurer in the manner prescribed by the ordinance, whether such failure is the result of such person's own acts or the result of acts or conditions beyond such person's control, such person shall nevertheless be personally liable to the county for the amount of the tax;

(8) Provisions fixing the time when the taxes imposed by the ordinance shall be due and payable to the county treasurer; requiring persons receiving payments for admissions to make periodic returns to the county treasurer on such forms and setting forth such information as the county treasurer may specify; requiring such return to show the amount of tax upon admissions for which such person is liable for specified preceding periods, and requiring such person to sign and transmit the same to the county treasurer together with a remittance for the amount;

(9) A provision requiring taxpayers to file with the county treasurer verified annual returns setting forth such additional information as he or she may deem necessary to determine tax liability correctly;

(10) A provision to the effect that whenever a certificate of registration, if required by the ordinance, is obtained for operating or conducting temporary places of amusement by persons who are not the owners, lessees, or custodians of the building, lot or place where the amusement is to be conducted, or whenever the business is permitted to be conducted without the procurement of a certificate, the tax imposed shall be returned and paid as provided in the ordinance by such owner, lessee, or custodian, unless paid by the person conducting the place of amusement;

(11) A provision requiring the applicant for a temporary certificate of registration, if required by the ordinance, to furnish with the application therefor, the name and address of the owner, lessee, or custodian of the premises upon which the amusement is to be conducted, and requiring the county treasurer to notify such owner, lessee, or custodian of the issuance of any such temporary certificate, and of the joint liability for such tax;

(12) A provision empowering the county treasurer to declare the tax upon temporary or itinerant places of amusement to be immediately due and payable and to collect the same, when he or she believes there is a possibility that the tax imposed under the ordinance will not be otherwise paid;

(13) Any or all of the applicable general administrative provisions contained in RCW 82.32.010 through 82.32.340 and 82.32.380, and the amendments thereto, except that unless otherwise indicated by the context of said sections, in

all provisions so incorporated in such ordinance (a) the term "county treasurer" (of the county enacting said ordinance) shall be substituted for each reference made in said sections to the "department," the "department of revenue," "any employee of the department," or "director of the department of revenue"; (b) the name of the county enacting such ordinance shall be substituted for each reference made in said sections to the "state" or to the "state of Washington"; (c) the term "this ordinance" shall be substituted for each reference made in said sections to "this chapter"; (d) the name of the county enacting said ordinance shall be substituted for each reference made in said sections to "Thurston county"; and (e) the term "board of county commissioners" shall be substituted for each reference made in said sections to the "director of financial management." [2009 c 549 § 4080; 1979 c 151 § 38; 1975 1st ex.s. c 278 § 21; 1963 c 4 § 36.38.020. Prior: 1943 c 269 § 3; Rem. Supp. 1943 § 11241-12.]

Additional notes found at www.leg.wa.gov

36.38.030 Form of ordinance. The ordinance levying and fixing the tax shall be headed by a title expressing the subject thereof, and the style of the ordinance shall be: "Be it ordained by the Board of County Commissioners of County, State of Washington." The ordinance shall be enacted by a majority vote of the board at a regular meeting thereof, and only after the form of such ordinance as ultimately enacted has been on file with the clerk of the board and open to public inspection for not less than ten days. The ordinance shall not become effective until thirty days following its enactment, and within five days following its enactment it shall be printed and published in a newspaper of general circulation in the county. The ordinance shall be signed by a majority of the board, attested by the clerk of the board, and shall be duly entered and recorded in the book wherein orders of the board are entered and recorded. The ordinance may be at any time amended or repealed by an ordinance enacted, published, and recorded in the same manner. [1963 c 4 § 36.38.030. Prior: 1943 c 269 § 2; Rem. Supp. 1943 § 11241-11.]

36.38.040 Vehicle parking charges tax—Parking facility at stadium and exhibition center—Use of revenues before and after issuance of bonds. The legislative authority of a county that has created a public stadium authority to develop a stadium and exhibition center under RCW 36.102.050 may levy and fix a tax on any vehicle parking charges imposed at any parking facility that is part of a stadium and exhibition center, as defined in RCW 36.102.010. The tax shall be exclusive and shall preclude the city or town within which the stadium and exhibition center is located from imposing within its corporate limits a tax of the same or similar kind on any vehicle parking charges imposed at any parking facility that is part of a stadium and exhibition center. For the purposes of this section, "vehicle parking charges" means only the actual parking charges exclusive of taxes and service charges and the value of any other benefit conferred. The tax authorized under this section shall be at the rate of not more than ten percent. Revenues collected under this section shall be deposited in the stadium and exhibition center account under RCW 43.99N.060 until the bonds issued under RCW 43.99N.020 for the construction of the stadium and

exhibition center are retired. After the bonds issued for the construction of the stadium and exhibition center are retired, the tax authorized under this section shall be used exclusively to fund repair, reequipping, and capital improvement of the stadium and exhibition center. The tax under this section may be levied upon the first use of any part of the stadium and exhibition center but shall not be collected at any facility already in operation as of July 17, 1997. [1997 c 220 § 302 (Referendum Bill No. 48, approved June 17, 1997).]

Referendum—Other legislation limited—Legislator's personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Chapter 36.39 RCW ASSISTANCE AND RELIEF

Sections

- 36.39.010 Public assistance.
- 36.39.030 Disposal of remains of indigent persons.
- 36.39.040 Federal surplus commodities—County expenses—Handling commodities for certified persons—County program, cooperative program.
- 36.39.050 Federal surplus commodities—Certification of persons by department of social and health services.
- 36.39.060 Senior citizens programs—Long-term care ombuds programs—Authorization.

Burial of indigent war veterans: Chapter 73.24 RCW.

Housing authorities law: Chapter 35.82 RCW.

Veterans' relief: Chapter 73.08 RCW.

36.39.010 Public assistance. Public assistance generally, see Title 74 RCW.

36.39.030 Disposal of remains of indigent persons. The board of county commissioners of any county shall provide for the disposition of the remains of any indigent person including a recipient of public assistance who dies within the county and whose body is unclaimed by relatives or church organization. [1963 c 4 § 36.39.030. Prior: 1953 c 224 § 1; 1951 c 258 § 1.]

36.39.040 Federal surplus commodities—County expenses—Handling commodities for certified persons—County program, cooperative program. The county commissioners of any county may expend from the county general fund for the purpose of receiving, warehousing and distributing federal surplus commodities for the use of or assistance to recipients of public assistance or other needy families and individuals when such recipients, families or individuals are certified as eligible to obtain such commodities by the state department of social and health services. The county commissioners may expend county general fund moneys to carry out any such program as a sole county operation or in conjunction or cooperation with any similar program of distribution by private individuals or organizations, any department of the state, or any political subdivision of the state. [1979 c 141 § 43; 1963 c 4 § 36.39.040. Prior: 1957 c 187 § 5.]

36.39.050 Federal surplus commodities—Certification of persons by department of social and health services. See RCW 74.04.340 through 74.04.360.

36.39.060 Senior citizens programs—Long-term care ombuds programs—Authorization. (1) Counties, cities, and towns are granted the authority, and it is hereby declared to be a public purpose for counties, cities, and towns, to establish and administer senior citizens programs either directly or by creating public corporations or authorities to carry out the programs and to expend their own funds for such purposes, as well as to expend federal, state, or private funds that are made available for such purposes. Such federal funds shall include, but not be limited to, funds provided under the federal older Americans act, as amended (42 U.S.C. Sec. 3001 et seq.).

(2) Counties, cities, and towns may establish and administer long-term care ombuds programs for residents, patients, and clients if such a program is not prohibited by federal or state law. Such local ombuds programs shall be coordinated with the efforts of other long-term care ombuds programs, including the office of the state long-term care ombuds established in RCW 43.190.030, to avoid multiple investigation of complaints. [2013 c 23 § 67; 1983 c 290 § 13; 1979 c 109 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 36.40 RCW BUDGET

Sections

36.40.010	Estimates to be filed by county officials.
36.40.020	Commissioners to file road and bridge estimate and estimate of future bond expenditures.
36.40.030	Forms of estimates—Penalty for delay.
36.40.040	Preliminary budget.
36.40.050	Revision by county commissioners.
36.40.060	Notice of hearing on budget.
36.40.070	Budget hearing.
36.40.071	Budget hearing—Alternate date for budget hearing.
36.40.080	Final budget to be fixed.
36.40.090	Taxes to be levied.
36.40.100	Budget constitutes appropriations—Transfers—Supplemental appropriations.
36.40.120	Limitation on use of borrowed money.
36.40.130	Excess of expenditures, liability.
36.40.140	Emergencies subject to hearing.
36.40.150	Emergencies subject to hearing—Right of taxpayer to review order.
36.40.160	Emergencies subject to hearing—Petition for review suspends order.
36.40.170	Emergencies subject to hearing—Court's power on review.
36.40.180	Emergencies subject to hearing—Nondebatable emergencies.
36.40.190	Payment of emergency warrants.
36.40.195	Supplemental appropriations of unanticipated funds from local sources.
36.40.200	Lapse of budget appropriations.
36.40.205	Salary adjustment for county legislative authority office—Ratification and validation of preelection action.
36.40.210	Monthly report.
36.40.220	Rules, classifications, and forms.
36.40.230	No new funds created.
36.40.240	Penalty.
36.40.250	Biennial budgets—Supplemental and emergency budgets.

County road property tax revenues, budgeting of for services: RCW 36.33.220.

Flood control zone district budget as affecting: RCW 86.15.140.

Juvenile detention facilities, budget allocation may be used for: RCW 13.16.080.

Metropolitan municipal corporation costs in: RCW 35.58.420.

36.40.010 Estimates to be filed by county officials. On or before the second Monday in July of each year, the county auditor or chief financial officer designated in a char-

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ter county shall notify in writing each county official, elective or appointive, in charge of an office, department, service, or institution of the county, to file with him or her on or before the second Monday in August thereafter detailed and itemized estimates, both of the probable revenues from sources other than taxation, and of all expenditures required by such office, department, service, or institution for the ensuing fiscal year. [2009 c 337 § 6; 1963 c 4 § 36.40.010. Prior: 1923 c 164 § 1, part; RRS § 3997-1, part.]

36.40.020 Commissioners to file road and bridge estimate and estimate of future bond expenditures. The county commissioners shall submit to the auditor a detailed statement showing all new road and bridge construction to be financed from the county road fund, and from bond issues theretofore issued, if any, for the ensuing fiscal year, together with the cost thereof as computed by the county road engineer or for constructions in charge of a special engineer, then by such engineer, and such engineer shall prepare such estimates of cost for the county commissioners. They shall also submit a similar statement showing the road and bridge maintenance program, as near as can be estimated.

The county commissioners shall also submit to the auditor detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bonds or warrants not yet authorized. [1963 c 4 § 36.40.020. Prior: 1923 c 164 § 1, part; RRS § 3997-1, part.]

36.40.030 Forms of estimates—Penalty for delay. The estimates required in RCW 36.40.010 and 36.40.020 shall be submitted on forms provided by the county auditor or chief financial officer designated in a charter county and classified according to the classification established by the state auditor. The county auditor or chief financial officer designated in a charter county shall provide such forms. He or she shall also prepare the estimates for interest and debt redemption requirements and any other estimates the preparation of which properly falls within the duties of his or her office.

Each such official shall file his or her estimates within the time and in the manner provided in the notice and form and the county auditor or chief financial officer designated in a charter county may deduct and withhold as a penalty from the salary of each official failing or refusing to file such estimates as herein provided, the sum of fifty dollars for each day of delay: PROVIDED, That the total penalty against any one official shall not exceed two hundred fifty dollars in any one year.

In the absence or disability of any official the duties required herein shall devolve upon the official or employee in charge of the office, department, service, or institution for the time being. The notice shall contain a copy of this penalty clause. [2009 c 337 § 7; 1995 c 301 § 62; 1963 c 4 § 36.40.030. Prior: 1923 c 164 § 1, part; RRS § 3997-1, part.]

36.40.040 Preliminary budget. Upon receipt of the estimates the county auditor or chief financial officer designated in a charter county shall prepare the county budget which shall set forth the complete financial program of the county for the ensuing fiscal year, showing the expenditure program and the sources of revenue by which it is to be financed.

The revenue section shall set forth the estimated receipts from sources other than taxation for each office, department, service, or institution for the ensuing fiscal year, the actual receipts for the first six months of the current fiscal year and the actual receipts for the last completed fiscal year, the estimated surplus at the close of the current fiscal year and the amount proposed to be raised by taxation.

The expenditure section shall set forth in comparative and tabular form by offices, departments, services, and institutions the estimated expenditures for the ensuing fiscal year, the appropriations for the current fiscal year, the actual expenditures for the first six months of the current fiscal year including all contracts or other obligations against current appropriations, and the actual expenditures for the last completed fiscal year.

All estimates of receipts and expenditures for the ensuing year shall be fully detailed in the annual budget and shall be classified and segregated according to a standard classification of accounts to be adopted and prescribed by the state auditor after consultation with the Washington state association of counties and the Washington state association of county officials.

The county auditor or chief financial officer designated in a charter county shall set forth separately in the annual budget to be submitted to the county legislative authority the total amount of emergency warrants issued during the preceding fiscal year, together with a statement showing the amount issued for each emergency, and the legislative authority shall include in the annual tax levy, a levy sufficient to raise an amount equal to the total of such warrants: PROVIDED, That the legislative authority may fund the warrants or any part thereof into bonds instead of including them in the budget levy. [2009 c 337 § 8. Prior: 1995 c 301 § 63; 1995 c 194 § 7; 1973 c 39 § 1; prior: 1971 ex.s. c 85 § 4; 1969 ex.s. c 252 § 1; 1963 c 4 § 36.40.040; prior: (i) 1923 c 164 § 2; RRS § 3997-2. (ii) 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

36.40.050 Revision by county commissioners. The budget shall be submitted by the auditor or chief financial officer designated in a charter county to the board of county commissioners on or before the first Tuesday in September of each year. The board shall thereupon consider the same in detail, making any revisions or additions it deems advisable. [2009 c 337 § 9; 1963 c 4 § 36.40.050. Prior: 1923 c 164 § 3, part; RRS § 3997-3, part.]

36.40.060 Notice of hearing on budget. The county legislative authority shall then publish a notice stating that it has completed and placed on file its preliminary budget for the county for the ensuing fiscal year, a copy of which will be furnished any citizen who will call at its office for it, and that it will meet on the first Monday in October thereafter for the purpose of fixing the final budget and making tax levies, designating the time and place of the meeting, and that any taxpayer may appear thereat and be heard for or against any part of the budget. The notice shall be published once each week for two consecutive weeks immediately following adoption of the preliminary budget in the official newspaper of the county. The county legislative authority shall provide a sufficient number of copies of the detailed and comparative pre-

liminary budget to meet the reasonable demands of taxpayers therefor and the same shall be available for distribution not later than two weeks immediately preceding the first Monday in October. [1985 c 469 § 47; 1963 c 4 § 36.40.060. Prior: 1923 c 164 § 3, part; RRS § 3997-3, part.]

36.40.070 Budget hearing. On the first Monday in October in each year the board of county commissioners shall meet at the time and place designated in the notice, whereat any taxpayer may appear and be heard for or against any part of the budget. The hearing may be continued from day to day until concluded but not to exceed a total of five days. The officials in charge of the several offices, departments, services, and institutions shall, at the time the estimates for their respective offices, departments, services or institutions are under consideration be called in and appear before such hearing by the board at the request of any taxpayer and may be questioned concerning such estimates by the commissioners or any taxpayer present. [1963 c 4 § 36.40.070. Prior: 1943 c 145 § 1, part; 1941 c 99 § 1, part; 1923 c 164 § 4, part; Rem. Supp. 1943 § 3997-4, part.]

36.40.071 Budget hearing—Alternate date for budget hearing. Notwithstanding any provision of law to the contrary, the board of county commissioners may meet for the purpose of holding a budget hearing, provided for in RCW 36.40.070, on the first Monday in December. The board of county commissioners may also set other dates relating to the budget process, including but not limited to the dates set in RCW 36.40.010, 36.40.050, and 36.81.130 to conform to the alternate date for the budget hearing. [1971 ex.s. c 136 § 1.]

36.40.080 Final budget to be fixed. Upon the conclusion of the budget hearing the county legislative authority shall fix and determine each item of the budget separately and shall by resolution adopt the budget as so finally determined and enter the same in detail in the official minutes of the board, a copy of which budget shall be forwarded to the state auditor. [1995 c 301 § 64; 1963 c 4 § 36.40.080. Prior: 1943 c 145 § 1, part; 1941 c 99 § 1, part; 1923 c 164 § 4, part; Rem. Supp. 1943 § 3997-4, part.]

36.40.090 Taxes to be levied. The board of county commissioners shall then fix the amount of the levies necessary to raise the amount of the estimated expenditures as finally determined, less the total of the estimated revenues from sources other than taxation, including such portion of any available surplus as in the discretion of the board it shall be advisable to so use, and such expenditures as are to be met from bond or warrant issues: PROVIDED, That no county shall retain an unbudgeted cash balance in the current expense fund in excess of a sum equal to the proceeds of a one dollar and twenty-five cents per thousand dollars of assessed value levy against the assessed valuation of the county. All taxes shall be levied in specific sums and shall not exceed the amount specified in the preliminary budget. [1973 1st ex.s. c 195 § 33; 1963 c 4 § 36.40.090. Prior: 1943 c 145 § 1, part; 1941 c 99 § 1, part; 1923 c 164 § 4, part; Rem. Supp. 1943 § 3997-4, part.]

Additional notes found at www.leg.wa.gov

36.40.100 Budget constitutes appropriations—Transfers—Supplemental appropriations. The estimates of expenditures itemized and classified as required in RCW 36.40.040 and as finally fixed and adopted in detail by the board of county commissioners shall constitute the appropriations for the county for the ensuing fiscal year; and every county official shall be limited in the making of expenditures or the incurring of liabilities to the amount of the detailed appropriation items or classes respectively: PROVIDED, That upon a resolution formally adopted by the board at a regular or special meeting and entered upon the minutes, transfers or revisions within departments, or supplemental appropriations to the budget from unanticipated federal or state funds may be made: PROVIDED FURTHER, That the board shall publish notice of the time and date of the meeting at which the supplemental appropriations resolution will be adopted, and the amount of the appropriation, once each week, for two consecutive weeks prior to the meeting in the official newspaper of the county. [1985 c 469 § 48; 1973 c 97 § 1; 1969 ex.s. c 252 § 2; 1965 ex.s. c 19 § 1; 1963 c 4 § 36.40.100. Prior: 1945 c 201 § 1, part; 1943 c 66 § 1, part; 1927 c 301 § 1, part; 1923 c 164 § 5, part; Rem. Supp. 1945 § 3997-5, part.]

36.40.120 Limitation on use of borrowed money. Moneys received from borrowing shall be used for no other purpose than that for which borrowed except that if any surplus shall remain after the accomplishment of the purpose for which borrowed, it shall be used to redeem the county debt. Where the budget contains an expenditure program to be financed from a bond issue to be authorized thereafter no such expenditure shall be made or incurred until such bonds have been duly authorized. [1963 c 4 § 36.40.120. Prior: 1945 c 201 § 1, part; 1943 c 66 § 1, part; 1927 c 301 § 1, part; 1923 c 164 § 5, part; Rem. Supp. 1945 § 3997-5, part.]

36.40.130 Excess of expenditures, liability. Expenditures made, liabilities incurred, or warrants issued in excess of any of the detailed budget appropriations or as revised by transfer as in RCW 36.40.100 or 36.40.120 provided shall not be a liability of the county, but the official making or incurring such expenditure or issuing such warrant shall be liable therefor personally and upon his or her official bond. The county auditor shall issue no warrant and the county commissioners shall approve no claim for any expenditure in excess of the detailed budget appropriations or as revised under the provisions of RCW 36.40.100 through 36.40.130, except upon an order of a court of competent jurisdiction, or for emergencies as hereinafter provided. [2009 c 337 § 10; 1963 c 4 § 36.40.130. Prior: 1945 c 201 § 1, part; 1943 c 66 § 1, part; 1927 c 301 § 1, part; 1923 c 164 § 5, part; Rem. Supp. 1945 § 3997-5, part.]

36.40.140 Emergencies subject to hearing. When a public emergency, other than such as are specifically described in RCW 36.40.180, and which could not reasonably have been foreseen at the time of making the budget, requires the expenditure of money not provided for in the budget, the board of county commissioners by majority vote of the commissioners at any meeting the time and place of which all the commissioners have had reasonable notice,

shall adopt and enter upon its minutes a resolution stating the facts constituting the emergency and the estimated amount of money required to meet it, and shall publish the same, together with a notice that a public hearing thereon will be held at the time and place designated therein, which shall not be less than one week after the date of publication, at which any taxpayer may appear and be heard for or against the expenditure of money for the alleged emergency. The resolution and notice shall be published once in the official county newspaper, or if there is none, in a legal newspaper in the county. Upon the conclusion of the hearing, if the board of county commissioners approves it, an order shall be made and entered upon its official minutes by a majority vote of all the members of the board setting forth the facts constituting the emergency, together with the amount of expenditure authorized, which order, so entered, shall be lawful authorization to expend said amount for such purpose unless a review is applied for within five days thereafter. [1969 ex.s. c 185 § 3; 1963 c 4 § 36.40.140. Prior: 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

Additional notes found at www.leg.wa.gov

36.40.150 Emergencies subject to hearing—Right of taxpayer to review order. No expenditure shall be made or liability incurred pursuant to the order until a period of five days, exclusive of the day of entry of the order, have elapsed, during which time any taxpayer or taxpayers of the county feeling aggrieved by the order may have the superior court of the county review it by filing with the clerk of such court a verified petition, a copy of which has been served upon the county auditor. The petition shall set forth in detail the objections of the petitioners to the order and the reasons why the alleged emergency does not exist. [1963 c 4 § 36.40.150. Prior: 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

36.40.160 Emergencies subject to hearing—Petition for review suspends order. The service and filing of the petition shall operate to suspend the emergency order and the authority to make any expenditure or incur any liability thereunder until final determination of the matter by the court. [1963 c 4 § 36.40.160. Prior: 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

36.40.170 Emergencies subject to hearing—Court's power on review. Upon the filing of a petition the court shall immediately fix a time for hearing it which shall be at the earliest convenient date. At such hearing the court shall hear the matter de novo and may take such testimony as it deems necessary. Its proceedings shall be summary and informal and its determination as to whether an emergency such as is contemplated within the meaning and purpose of this chapter exists or not and whether the expenditure authorized by said order is excessive or not shall be final. [1963 c 4 § 36.40.170. Prior: 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

36.40.180 Emergencies subject to hearing—Nondebtable emergencies. Upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, epidemic, riot, or insurrection, or for the immediate preserva-

tion of order or of public health or for the restoration to a condition of usefulness of any public property the usefulness of which has been destroyed by accident, or for the relief of a stricken community overtaken by a calamity, or in settlement of approved claims for personal injuries or property damages, exclusive of claims arising from the operation of any public utility owned by the county, or to meet mandatory expenditures required by any law, the board of county commissioners may, upon the adoption by the unanimous vote of the commissioners present at any meeting the time and place of which all of such commissioners have had reasonable notice, of a resolution stating the facts constituting the emergency and entering the same upon their minutes, make the expenditures necessary to meet such emergency without further notice or hearing. [1963 c 4 § 36.40.180. Prior: 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

36.40.190 Payment of emergency warrants. All emergency expenditures shall be paid for by the issuance of emergency warrants which shall be paid from any moneys on hand in the county treasury in the fund properly chargeable therewith and the county treasurer shall pay such warrants out of any moneys in the treasury in such fund. If at any time there are insufficient moneys on hand in the treasury to pay any of such warrants, they shall be registered, bear interest and be called in the manner provided by law for other county warrants. [1963 c 4 § 36.40.190. Prior: 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

36.40.195 Supplemental appropriations of unanticipated funds from local sources. In addition to the supplemental appropriations provided in RCW 36.40.100 and 36.40.140, the county legislative authority may provide by resolution a policy for supplemental appropriations as a result of unanticipated funds from local revenue sources. [1997 c 204 § 4.]

36.40.200 Lapse of budget appropriations. All appropriations shall lapse at the end of the fiscal year: PROVIDED, That the appropriation accounts may remain open for a period of thirty days, and may, at the auditor's discretion, remain open for a period not to exceed sixty days thereafter for the payment of claims incurred against such appropriations prior to the close of the fiscal year.

After such period has expired all appropriations shall become null and void and any claim presented thereafter against any such appropriation shall be provided for in the next ensuing budget: PROVIDED, That this shall not prevent payments upon uncompleted improvements in progress at the close of the fiscal year. [1997 c 204 § 2; 1963 c 4 § 36.40.200. Prior: 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

36.40.205 Salary adjustment for county legislative authority office—Ratification and validation of preelection action. If prior to the election for any county legislative authority office, a salary adjustment for such position to become effective upon the commencement of the term next following such election is adopted by ordinance or resolution of the legislative authority of such county, and a salary adjustment coinciding with such preceding ordinance or res-

olution thereof is properly adopted as part of the county budget for the years following such election, such action shall be deemed a continuing part of and shall ratify and validate the preelection action as to such salary adjustment. [1975 1st ex.s. c 32 § 1.]

36.40.210 Monthly report. On or before the twenty-fifth day of each month the auditor shall submit or make available to the board of county commissioners a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding calendar month and like information for the whole of the current fiscal year to the first day of said month, together with the unexpended and unencumbered balance of each appropriation. He or she shall also set forth the receipts from taxes and from sources other than taxation for the same periods. [2009 c 337 § 11; 1963 c 4 § 36.40.210. Prior: 1923 c 164 § 7; RRS § 3997-7.]

36.40.220 Rules, classifications, and forms. The state auditor may make such rules, classifications, and forms as may be necessary to carry out the provisions in respect to county budgets, define what expenditures shall be chargeable to each budget account, and establish such accounting and cost systems as may be necessary to provide accurate budget information. [1995 c 301 § 65; 1963 c 4 § 36.40.220. Prior: 1923 c 164 § 8; RRS § 3997-8.]

36.40.230 No new funds created. This chapter shall not be construed to create any new fund. [1963 c 4 § 36.40.230. Prior: 1923 c 164 § 9; RRS § 3997-9.]

36.40.240 Penalty. Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars nor more than five hundred dollars. [1963 c 4 § 36.40.240. Prior: 1923 c 164 § 10; RRS § 3997-10.]

36.40.250 Biennial budgets—Supplemental and emergency budgets. In lieu of adopting an annual budget, the county legislative authority of any county may adopt an ordinance or a resolution providing for biennial budgets with a mid-biennium review and modification for the second year of the biennium. The county legislative authority may repeal such an ordinance or resolution and revert to adopting annual budgets for a period commencing after the end of a biennial budget cycle. The county legislative authority of a county with a biennial budget cycle may adopt supplemental and emergency budgets in the same manner and subject to the same conditions as the county legislative authority in a county with an annual budget cycle.

The procedure and steps for adopting a biennial budget shall conform with the procedure and steps for adopting an annual budget and with requirements established by the state auditor. The state auditor shall establish requirements for preparing and adopting the mid-biennium review and modification for the second year of the biennium.

Expenditures included in the biennial budget, mid-term modification budget, supplemental budget, or emergency budget shall constitute the appropriations for the county dur-

ing the applicable period of the budget and every county official shall be limited in making expenditures or incurring liabilities to the amount of the detailed appropriation item or classes in the budget.

In lieu of adopting an annual budget or a biennial budget with a mid-biennium review for all funds, the legislative authority of any county may adopt an ordinance or a resolution providing for a biennial budget or budgets for any one or more funds of the county, with a mid-biennium review and modification for the second year of the biennium, with the other funds remaining on an annual budget. The county legislative authority may repeal such an ordinance or resolution and revert to adopting annual budgets for a period commencing after the end of the biennial budget or biennial budgets for the specific agency fund or funds. The county legislative authority of a county with a biennial budget cycle may adopt supplemental and emergency budgets in the same manner and subject to the same conditions as the county legislative authority in a county with an annual budget cycle.

The county legislative authority shall hold a public hearing on the proposed county property taxes and proposed road district property taxes prior to imposing the property tax levies. [1997 c 204 § 3; 1995 c 193 § 1.]

Reviser's note: 1995 c 193 directed that this section be added to chapter 36.32 RCW. Since this placement appears inappropriate, this section has been codified as part of chapter 36.40 RCW.

Chapter 36.42 RCW RETAIL SALES AND USE TAXES

County and city sales and use taxes: Chapter 82.14 RCW.

Chapter 36.43 RCW BUILDING CODES AND FIRE REGULATIONS

Sections

36.43.010	Authority to adopt.
36.43.020	Area to which applicable.
36.43.030	Enforcement—Inspectors.
36.43.040	Penalty for violation of code or regulation.

Electrical construction regulations applicable to counties: RCW 19.29.010.

Energy-related building standards: Chapter 19.27A RCW.

State building code: Chapter 19.27 RCW.

36.43.010 Authority to adopt. The boards of county commissioners may adopt standard building codes and standard fire regulations to be applied within their respective jurisdictions. [1963 c 4 § 36.43.010. Prior: 1943 c 204 § 1; Rem. Supp. 1943 § 4077-10.]

36.43.020 Area to which applicable. The building codes or fire regulations when adopted by the board of county commissioners shall be applicable to all the area of the county situated outside the corporate limits of any city or town, or to such portion thereof as may be prescribed in such building code or fire regulation. [1963 c 4 § 36.43.020. Prior: 1943 c 204 § 2; Rem. Supp. 1943 § 4077-11.]

36.43.030 Enforcement—Inspectors. The boards of county commissioners may appoint fire inspectors or other inspectors to enforce any building code or fire regulation adopted by them. The boards must enforce any building code

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or fire regulation adopted by them. [1963 c 4 § 36.43.030. Prior: 1943 c 204 § 3; Rem. Supp. 1943 § 4077-12.]

36.43.040 Penalty for violation of code or regulation.

Any person violating the provisions of any building code or any fire regulation lawfully adopted by any board of county commissioners shall be guilty of a misdemeanor. [1963 c 4 § 36.43.040. Prior: 1943 c 204 § 4; Rem. Supp. 1943 § 4077-13.]

Chapter 36.45 RCW CLAIMS AGAINST COUNTIES

Sections

36.45.010	Manner of filing.
36.45.040	Labor and material claims.

Assessor's expense when meeting with department of revenue as: RCW 84.08.190.

Autopsy costs as: RCW 68.50.104, 68.50.106.

Claims, reports, etc., filing: RCW 1.12.070.

Compromise of unlawful, when: RCW 43.09.260.

Costs against county, civil actions: RCW 4.84.170.

Courtrooms, expense of sheriff in providing as county charge: RCW 2.28.140.

Diking, drainage, or sewerage improvement assessments as: RCW 85.08.500, 85.08.530.

Elections, expense of registration of voters as: RCW 29A.08.150.

Expense of keeping jury as: RCW 4.44.310.

Flood control

by counties jointly, county liability: RCW 86.13.080.

districts (1937 act) assessments as: RCW 86.09.526, 86.09.529.

Health officers' convention expense as: RCW 43.70.140.

Incorporation into city or town of intercounty areas as: RCW 35.02.240.

Liability of county on failure to require contractors bond: RCW 39.08.015.

Lien for labor, material, taxes on public works: Chapter 60.28 RCW.

Metropolitan municipal corporation costs as: Chapter 35.58 RCW.

Municipal court expenses as: RCW 35.20.120.

Port district election costs as: RCW 53.04.070.

Railroad grade crossing costs as: Chapter 81.53 RCW.

Reclamation district commission expenses as: RCW 89.30.070.

Regional jail camps, cost of committing county prisoners to as: RCW 72.64.110.

Superior court, expenses of visiting judge as: RCW 2.08.170.

Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages: Chapter 4.96 RCW.

Veterans' meeting place rental as: RCW 73.04.080.

Vital statistics registrars' fees as charge against: RCW 70.58.040.

36.45.010 Manner of filing. All claims for damages against any county shall be filed in the manner set forth in chapter 4.96 RCW. [1993 c 449 § 10; 1967 c 164 § 14; 1963 c 4 § 36.45.010. Prior: 1957 c 224 § 7; prior: 1919 c 149 § 1, part; RRS § 4077, part.]

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

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

Tortious conduct of political subdivisions and municipal corporations, liability for damages: Chapter 4.96 RCW.

36.45.040 Labor and material claims. Whenever any county, by its board of county commissioners, has entered into a contract for the construction of any public improvement for the benefit of the county, whereby the contractor agreed to furnish all labor, material, and supplies necessary for the improvement, and the contractor has proceeded with such improvement and procured from other persons labor, material, or supplies and used the same in the construction of the improvement, but has failed to pay such persons therefor, and such persons have filed claims therefor against the county, and the claims have been audited in the manner provided by law and found to be just claims against the county, and valid obligations of the county except for the fact that they were not filed within the time provided by law; the board of county commissioners may provide funds sufficient therefor, and cause the payment, of such claims in the manner provided by law for the payment of valid claims against the county. [1963 c 4 § 36.45.040. Prior: 1927 c 220 § 1; RRS § 4077-1.]

Chapter 36.47 RCW COORDINATION OF ADMINISTRATIVE PROGRAMS

Sections

36.47.010	Declaration of necessity.
36.47.020	Joint action by officers of each county.
36.47.030	State association of county officials may be coordinating agency.
36.47.040	Reimbursement for costs and expenses to state association of county officials.
36.47.050	County officials—Further action authorized—Meetings.
36.47.060	Association financial records subject to audit by state auditor.
36.47.070	Merger of state association of county officials with state association of counties.

36.47.010 Declaration of necessity. The necessity and the desirability of coordinating the administrative programs of all of the counties in this state is recognized by this chapter. [1963 c 4 § 36.47.010. Prior: 1959 c 130 § 1.]

36.47.020 Joint action by officers of each county. It shall be the duty of the assessor, auditor, clerk, coroner, sheriff, superintendent of schools, treasurer, and prosecuting attorney of each county in the state, including appointive officials in charter counties heading like departments, to take such action as they jointly deem necessary to effect the coordination of the administrative programs of each county. [1998 c 245 § 28; 1969 ex.s. c 5 § 1; 1963 c 4 § 36.47.020. Prior: 1959 c 130 § 2.]

36.47.030 State association of county officials may be coordinating agency. The county officials enumerated in RCW 36.47.020 are empowered to designate the Washington state association of county officials as a coordinating agency through which the duties imposed by RCW 36.47.020 may be performed, harmonized, or correlated. [1969 ex.s. c 5 § 2; 1963 c 4 § 36.47.030. Prior: 1959 c 130 § 3.]

36.47.040 Reimbursement for costs and expenses to state association of county officials. Each county which designates the Washington state association of county officials as the agency through which the duties imposed by RCW 36.47.020 may be executed is authorized to reimburse

the association from the county current expense fund for the cost of any such services rendered: PROVIDED, That no reimbursement shall be made to the association for any expenses incurred under RCW 36.47.050 for travel, meals, or lodging of such county officials, or their representatives at such meetings, but such expenses may be paid by such official's respective county as other expenses are paid for county business. Such reimbursement shall be paid only on vouchers submitted to the county auditor and approved by the legislative authority of each county in the manner provided for the disbursement of other current expense funds. Each such voucher shall set forth the nature of the services rendered by the association, supported by affidavit that the services were actually performed. [1991 c 363 § 71; 1977 ex.s. c 221 § 1; 1973 1st ex.s. c 195 § 35; 1970 ex.s. c 47 § 2; 1969 ex.s. c 5 § 3; 1963 c 4 § 36.47.040. Prior: 1959 c 130 § 4.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Additional notes found at www.leg.wa.gov

36.47.050 County officials—Further action authorized—Meetings. The county officials enumerated in RCW 36.47.020 are authorized to take such further action as they deem necessary to comply with the intent of this chapter, including attendance at state and district meetings which may be required to formulate the reports provided for in *RCW 36.47.020. [1969 ex.s. c 5 § 4; 1963 c 4 § 36.47.050. Prior: 1959 c 130 § 5.]

***Reviser's note:** RCW 36.47.020 was amended by 1998 c 245 § 28, removing the requirement to submit reports.

36.47.060 Association financial records subject to audit by state auditor. The financial records of the Washington state association of county officials shall be subject to audit by the state auditor. [1995 c 301 § 66; 1969 ex.s. c 5 § 5; 1963 c 4 § 36.47.060. Prior: 1959 c 130 § 6.]

36.47.070 Merger of state association of county officials with state association of counties. It is the desire of the legislature that the Washington State Association of County Officials, as set forth in chapter 36.47 RCW and the Washington State Association of Counties, as set forth in RCW 36.32.350, shall merge into one association of elected county officers. Only one association shall carry out the duties imposed by RCW 36.32.335 through 36.32.360 and 36.47.020 through 36.47.060. [1998 c 245 § 29; 1977 ex.s. c 221 § 2.]

Chapter 36.48 RCW DEPOSITARIES

Sections

36.48.010	Depositaries to be designated by treasurer.
36.48.040	Depositaries to be designated by treasurer—Deposited funds deemed in county treasury.
36.48.050	Depositaries to be designated by treasurer—Treasurer's liability and bond additional.
36.48.060	Definition—"Financial institution."
36.48.070	County finance committee—Approval of investment policy and debt policy—Rules.
36.48.080	County clerk's funds may be deposited.
36.48.090	Clerk's trust fund created—Deposits—Interest—Investments.

36.48.010 Depositories to be designated by treasurer.

Each county treasurer shall annually at the end of each fiscal year or at such other times as may be deemed necessary, designate one or more financial institutions in the state which are qualified public depositories as set forth by the public deposit protection commission as depository or depositories for all public funds held and required to be kept by the treasurer, and no county treasurer shall deposit any public money in financial institutions, except as herein provided. Public funds of the county or a special district for which the county treasurer acts as its treasurer may only be deposited in bank accounts authorized by the treasurer or authorized in statute. All bank card depository service contracts for the county and special districts for which the county treasurer acts as its treasurer must be authorized by the county treasurer. [1998 c 106 § 6; 1984 c 177 § 8; 1973 c 126 § 5; 1969 ex.s. c 193 § 27; 1963 c 4 § 36.48.010. Prior: 1907 c 51 § 1; RRS § 5562.]

Public depositories: Chapter 39.58 RCW.

Additional notes found at www.leg.wa.gov

36.48.040 Depositories to be designated by treasurer—Deposited funds deemed in county treasury.

The county treasurer shall deposit with any depository, which has fully complied with all requirements of RCW 36.48.010 through 36.48.060, any county money in his or her hands or under his or her official control, and for the purpose of making the quarterly settlement and counting funds in the hands of the treasurer any sums so on deposit shall be deemed to be in the county treasury. [2009 c 549 § 4084; 1963 c 4 § 36.48.040. Prior: 1907 c 51 § 4; RRS § 5565.]

36.48.050 Depositories to be designated by treasurer—Treasurer's liability and bond additional.

The provisions of RCW 36.48.010 through 36.48.060 shall in no way relieve or release the county treasurer from any liability upon his or her official bond as such treasurer, or any surety upon such bond, and shall in no way affect the duty of the several county treasurers to give bond as required by law. [2009 c 549 § 4085; 1963 c 4 § 36.48.050. Prior: 1907 c 51 § 5; RRS § 5566.]

36.48.060 Definition—"Financial institution."

"Financial institution," whenever it occurs in RCW 36.48.010 through 36.48.050, means a branch of a bank engaged in banking in this state in accordance with *RCW 30.04.300, and any state bank or trust company, national banking association, stock savings bank, mutual savings bank, or savings and loan association, which institution is located in this state and lawfully engaged in business. [1984 c 177 § 9; 1963 c 4 § 36.48.060. Prior: 1907 c 51 § 6; RRS § 5567.]

*Reviser's note: RCW 30.04.300 was recodified as RCW 30A.04.300 pursuant to 2014 c 37 § 4, effective January 5, 2015.

36.48.070 County finance committee—Approval of investment policy and debt policy—Rules.

The county treasurer, the county auditor, and the chair of the county legislative authority, ex officio, shall constitute the county finance committee. The county treasurer shall act as chair of the committee and the county auditor as secretary thereof. The committee shall keep a full and complete record of all its

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proceedings in appropriate books of record and all such records and all correspondence relating to the committee shall be kept in the office of the county auditor and shall be open to public inspection. The committee shall approve county investment policy and a debt policy and shall make appropriate rules and regulations for the carrying out of the provisions of RCW 36.48.010 through 36.48.060, not inconsistent with law. [1999 c 18 § 5; 1991 c 245 § 11; 1963 c 4 § 36.48.070. Prior: 1933 ex.s. c 45 § 2; RRS § 5567-1.]

Additional notes found at www.leg.wa.gov

36.48.080 County clerk's funds may be deposited.

The county clerks of all the counties of the state shall deposit all funds in their custody, as clerk of the superior court of their respective counties, in one or more qualified depositories, as provided in chapter 39.58 RCW, as now or hereafter amended. [1973 c 126 § 7; 1963 c 4 § 36.48.080. Prior: 1933 ex.s. c 40 § 1; RRS § 5561-1.]

36.48.090 Clerk's trust fund created—Deposits—

Interest—Investments. Whenever the clerk of the superior court has funds held in trust for any litigant or for any purpose, they shall be deposited in a separate fund designated "clerk's trust fund," and shall not be commingled with any public funds. However, in the case of child support payments, the clerk may send the checks or drafts directly to the recipient or endorse the instrument to the recipient and the clerk is not required to deposit such funds. In processing child support payments, the clerk shall comply with RCW 26.09.120. The clerk may invest the funds in any of the investments authorized by RCW 36.29.020. The clerk shall place the income from such investments in the county current expense fund to be used by the county for general county purposes unless: (1) The funds being held in trust in a particular matter are two thousand dollars or more, and (2) a litigant in the matter has filed a written request that such investment be made of the funds being held in trust. Interest income accrued from the date of filing of the written request for investment shall be paid to the beneficiary. In such an event, any income from such investment shall be paid to the beneficiary of such trust upon the termination thereof: PROVIDED, That five percent of the income shall be deducted by the clerk as an investment service fee and placed in the county current expense fund to be used by the county for general county purposes.

In any matter where funds are held in the clerk's trust fund, any litigant who is not represented by an attorney and who has appeared in matters where the funds held are two thousand dollars or more shall receive written notice of the provisions of this section from the clerk. [1994 c 185 § 4; 1987 c 363 § 4; 1979 ex.s. c 227 § 1; 1977 c 63 § 1; 1973 c 126 § 8; 1963 c 4 § 36.48.090. Prior: 1933 ex.s. c 40 § 2; RRS § 5561-2.]

Chapter 36.49 RCW DOG LICENSE TAX

Sections

36.49.020	Treasurer to collect—Tags.
36.49.030	Application for license after assessor's list returned.
36.49.040	Delinquent tax, how collected.
36.49.050	"County dog license tax fund"—Created.

36.49.060 "County dog license tax fund"—Transfer of excess funds in.
36.49.070 Penalty.

*Indemnity for dogs doing damage, etc.: RCW 16.08.010 through 16.08.030.
Taxes for city and town purposes: State Constitution Art. 11 § 12.*

36.49.020 Treasurer to collect—Tags. The county assessor shall turn over the list of dog owners to the county treasurer for collection of the taxes. Upon the payment of the license tax upon any dog or kennel the county treasurer shall deliver to the owner or keeper of such dog or kennel a license, and a metallic tag for each dog taxed and licensed or kept in such kennel. The license shall be dated and numbered and shall bear the name of the county issuing it, the name and address of the owner of the dog or kennel licensed; and if a dog license, a description of the dog including its breed, age, color, and markings; and if a kennel license, a description of the breed, number, and ages of the dogs kept in such kennel. The metallic tag shall bear the name of the county issuing it, a serial number corresponding with the number on the license, and the calendar year in which it is issued. Every owner or keeper of a dog shall keep a substantial collar on the dog and attached firmly thereto the license tag for the current year. [1963 c 4 § 36.49.020. Prior: 1929 c 198 § 2; RRS § 8304-2; prior: 1919 c 6 § 2, part.]

36.49.030 Application for license after assessor's list returned. Any person becoming the owner of a dog or kennel after the assessment has been returned by the assessor and any owner of a dog or kennel which for any reason the assessor has failed to assess, may at any time apply to the county treasurer, and upon the payment of the required fee procure a license and a metallic tag or tags. [1963 c 4 § 36.49.030. Prior: 1929 c 198 § 3, part; RRS § 8304-3, part.]

36.49.040 Delinquent tax, how collected. If any person whose name appears upon the list prepared by the county assessor fails to pay the license tax to the county treasurer on or before the first day of August of the year in which the list is made, the county treasurer shall proceed to collect the delinquent license taxes in the manner provided by law for collection of delinquent personal property taxes. [1963 c 4 § 36.49.040. Prior: 1929 c 198 § 3, part; RRS § 8304-3, part.]

36.49.050 "County dog license tax fund"—Created. All license taxes collected in accordance with the provisions of this chapter shall be placed in a separate fund in the office of the county treasurer to be known as the "county dog license tax fund." [1963 c 4 § 36.49.050. Prior: 1929 c 198 § 4; RRS § 8304-4; prior: 1919 c 6 § 2, part.]

36.49.060 "County dog license tax fund"—Transfer of excess funds in. On the first day of March of each year all moneys in the county dog license tax fund in excess of five hundred dollars shall be transferred and credited by the county treasurer to the current expense fund of the county. [1963 c 4 § 36.49.060. Prior: 1929 c 198 § 8; RRS § 8304-5.]

36.49.070 Penalty. Any person or officer who refuses to comply with or enforce any of the provisions of this chapter shall be guilty of a misdemeanor. [1963 c 4 § 36.49.070. Prior: 1929 c 198 § 9; RRS § 8304-6.]

Chapter 36.50 RCW

FARM AND HOME EXTENSION WORK

Sections

36.50.010 Cooperative extension work in agriculture and home economics authorized.

36.50.010 Cooperative extension work in agriculture and home economics authorized. The board of county commissioners of any county and the governing body of any municipality are authorized to establish and conduct extension work in agriculture and home economics in cooperation with Washington State University, upon such terms and conditions as may be agreed upon by any such board or governing body and the director of the extension service of Washington State University; and may employ such means and appropriate and expend such sums of money as may be necessary to effectively establish and carry on such work in agriculture and home economics in their respective counties and municipalities. [1963 c 4 § 36.50.010. Prior: 1949 c 181 § 1; Rem. Supp. 1949 § 4589-1.]

Chapter 36.53 RCW

FERRIES—PRIVATELY OWNED

Sections

36.53.010 Grant of license—Term.
36.53.020 Licensing tax.
36.53.030 To whom license granted—Notice of intention if nonowner.
36.53.040 Notice of application to be posted.
36.53.050 Bond of licensee.
36.53.060 Duties of licensee.
36.53.070 Duties of licensee—Duties as to ferriage—Liability for non-performance.
36.53.080 Rates of ferriage.
36.53.090 Commissioners may fix and alter rates.
36.53.100 Rates to be posted.
36.53.110 Order of ferriage—Liability for nonperformance.
36.53.120 Grant exclusive.
36.53.130 Revocation of license.
36.53.140 Penalty for maintaining unlicensed ferry.
36.53.150 Interstate ferry—County may contribute to—Grant of permit to operator.

36.53.010 Grant of license—Term. The board of county commissioners may grant a license to keep a ferry across any lake or stream within its county, upon being satisfied that a ferry is necessary at the point applied for, which license shall continue in force for a term to be fixed by the commissioners not exceeding five years. [1963 c 4 § 36.53.010. Prior: Code 1881 § 3002; 1879 p 61 § 38; 1869 p 280 § 40; 1863 p 521 § 1; 1854 p 354 § 1; RRS § 5462.]

36.53.020 Licensing tax. The county legislative authority may charge such sum as may be fixed under the authority of RCW 36.32.120(3) for such license, and the person to whom the license is granted shall pay to the appropriate county official the tax for one year in advance. [1985 c 91 § 2; 1963 c 4 § 36.53.020. Prior: Code 1881 § 3003; 1879 p 61 § 39; 1869 p 280 § 41; 1863 p 522 § 2; 1854 p 354 § 2; RRS § 5463.]

36.53.030 To whom license granted—Notice of intention if nonowner. No license shall be granted to any person other than the owner of the land embracing or adjoining the lake or stream where the ferry is proposed to be kept, unless

the owner neglects to apply therefor. Whenever application for a license is made by any person other than the owner, the board of county commissioners shall not grant it, unless proof is made that the applicant caused notice, in writing, of his or her intention to make such application to be given to such owner, if residing in the county, at least ten days before the session of the board of county commissioners at which application is made. [2009 c 549 § 4086; 1963 c 4 § 36.53.030. Prior: Code 1881 § 3004; 1879 p 61 § 40; 1869 p 280 § 42; 1863 p 522 § 3; 1854 p 354 § 3; RRS § 5464.]

36.53.040 Notice of application to be posted. Every person intending to apply for a license to keep a ferry at any place shall give notice of his or her intention by posting up at least three notices in public places in the neighborhood where the ferry is proposed to be kept, twenty days prior to any regular session of the board of county commissioners at which the application is to be made. [2009 c 549 § 4087; 1963 c 4 § 36.53.040. Prior: Code 1881 § 3005; 1879 p 61 § 41; 1869 p 281 § 43; 1863 p 522 § 4; 1854 p 354 § 4; RRS § 5465.]

36.53.050 Bond of licensee. Every person applying for a license to keep a ferry shall, before the same is issued, enter into a bond with one or more sureties, to be approved by the county auditor, in a sum not less than one hundred nor more than five hundred dollars, conditioned that such person will keep the ferry according to law and that if default at any time is made in the condition of the bond, damages, not exceeding the penalty, may be recovered by any person aggrieved, before any court having jurisdiction. [1963 c 4 § 36.53.050. Prior: Code 1881 § 3006; 1879 p 62 § 42; 1869 p 281 § 44; 1863 p 522 § 5; 1854 p 354 § 5; RRS § 5466.]

36.53.060 Duties of licensee. Every person obtaining a license to keep a ferry shall provide and keep in good and complete repair the necessary boat or boats for the safe conveyance of all persons and property, and furnish such boats at all times with suitable oars, setting poles, and other implements necessary for the service thereof, and shall keep a sufficient number of discreet and skillful men or women ferry workers to attend and manage the same; and he or she shall also at all times keep the place of embarking and landing in good order and repair, by cutting away the bank of the stream so that persons and property may be embarked and landed without danger or unnecessary delay. [2009 c 549 § 4088; 1963 c 4 § 36.53.060. Prior: Code 1881 § 3007; 1879 p 62 § 43; 1869 p 281 § 45; 1863 p 522 § 6; 1854 p 354 § 6; RRS § 5467.]

36.53.070 Duties of licensee—Duties as to ferriage—Liability for nonperformance. Every person obtaining a ferry license shall give constant and diligent attention to such ferry from daylight in the morning until dark in the evening of each day, and shall, moreover, at any hour in the night, if required, except in cases of imminent danger, give passage to all persons requiring the same on the payment of double rate of ferriage allowed to be taken in the daytime.

If the licensee at any time neglects or refuses to give passage to any person or property, the licensee shall forfeit and pay to the party aggrieved for every such offense the sum of five dollars, to be recovered before any district judge having

jurisdiction; the licensee shall, moreover, be liable in an action at law for any special damage which such person may have sustained in consequence of such neglect or refusal.

No forfeiture or damages shall be recovered for a failure or refusal to convey any person or property across the stream when it is manifestly hazardous to do so, by reason of any storm, flood, or ice; nor shall any keeper of a ferry be compelled to give passage to any person or property until the fare or toll chargeable by law has been fully paid or tendered. [1987 c 202 § 207; 1963 c 4 § 36.53.070. Prior: Code 1881 § 3008; 1879 p 62 § 44; 1869 p 281 § 46; 1863 p 523 § 7; 1854 p 355 § 7; RRS § 5468.]

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

36.53.080 Rates of ferriage. Whenever the board of county commissioners grants a license to keep a ferry across any lake or stream, it shall establish the rates of ferriage which may be lawfully demanded for the transportation of persons and property across the same, having due regard for the breadth and situation of the stream, and the dangers and difficulties incident thereto, and the publicity of the place at which the same is established, and every keeper of a ferry who at any time demands and receives more than the amount so designated for ferrying shall forfeit and pay to the party aggrieved, for every such offense, the sum of five dollars, over and above the amount which has been illegally received, to be recovered before any district judge having jurisdiction. [1987 c 202 § 208; 1963 c 4 § 36.53.080. Prior: Code 1881 § 3009; 1879 p 63 § 45; 1869 p 282 § 47; 1863 p 523 § 8; 1854 p 355 § 8; RRS § 5469.]

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

36.53.090 Commissioners may fix and alter rates. The boards of county commissioners may fix, alter, and establish from time to time, the rates of ferriage to be levied and collected at all ferries established by law, within or bordering upon the county lines of any of the counties in this state. [1963 c 4 § 36.53.090. Prior: Code 1881 § 3010; 1879 p 63 § 46; 1869 p 282 § 48; RRS § 5470.]

36.53.100 Rates to be posted. Every person licensed to keep a ferry shall post up, in some conspicuous place near his or her ferry landing a list of the rates of ferriage which are chargeable by law at such ferry, which list of rates shall at all times be plain and legible and posted up so near the place where persons pass across the ferry that it may be easily read. If the keeper neglects or refuses to post and keep up such list, it shall not be lawful to charge or take any ferriage or compensation at the ferry, during the time of such delinquency. [2009 c 549 § 4089; 1963 c 4 § 36.53.100. Prior: Code 1881 § 3011; 1879 p 63 § 47; 1869 p 283 § 49; 1863 p 523 § 9; 1854 p 355 § 9; RRS § 5471.]

36.53.110 Order of ferriage—Liability for nonperformance. All persons shall be received into the ferry boats and conveyed across the stream over which a ferry is established according to their arrival thereat, and if the keeper of a ferry acts contrary to this regulation, the keeper shall forfeit and pay to the party aggrieved the sum of ten dollars for every such offense, to be recovered before any district judge having jurisdiction: PROVIDED, That public officers on urgent

business, post riders, couriers, physicians, surgeons, and midwives shall in all cases be first carried over, when all cannot go at the same time. [1987 c 202 § 209; 1963 c 4 § 36.53.110. Prior: Code 1881 § 3012; 1879 p 63 § 48; 1869 p 283 § 50; 1863 p 524 § 10; 1854 p 356 § 10; RRS § 5472.]

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

36.53.120 Grant exclusive. Every person licensed to keep a ferry under the provisions of RCW 36.53.010 through 36.53.140 shall have the exclusive privilege of transporting all persons and property over and across the stream where the ferry is established, and shall be entitled to all the fare arising by law therefrom: PROVIDED, That any person may cross such stream at the ferry location in his or her own boat, or take in and carry over his or her neighbor, when done without fee or charge, and not with intent to injure the person licensed to keep a ferry. [2009 c 549 § 4090; 1963 c 4 § 36.53.120. Prior: Code 1881 § 3013; 1879 p 63 § 49; 1869 p 283 § 51; 1863 p 524 § 11; 1854 p 356 § 11; RRS § 5473.]

36.53.130 Revocation of license. If any person licensed to keep a ferry fails to pay the taxes assessed thereon when due, or to provide and keep in good and complete repair the necessary boat or boats, with the oars, setting poles, and other necessary implements for the service thereof, or to employ a sufficient number of skilled and discreet ferry workers within three months from the time license is granted, or if the ferry is not at any time kept in good condition and repair, or if it is abandoned, disused, or unfrequented for the space of six months at any one time, the board of county commissioners, on complaint being made in writing, may summon the person licensed to keep such ferry, to show cause why his or her license should not be revoked. The board may revoke or not according to the testimony adduced and the laws of this state, the decision subject to review by the superior court: PROVIDED, That if disuse resulted because the stream is fordable at certain seasons of the year, or because travel by that route is subject to periodical fluctuations, it shall not work a forfeiture within the meaning of this section. [2009 c 549 § 4091; 1963 c 4 § 36.53.130. Prior: Code 1881 § 3014; 1879 p 64 § 50; 1869 p 283 § 52; 1863 p 524 § 12; 1854 p 356 § 12; RRS § 5474.]

36.53.140 Penalty for maintaining unlicensed ferry. Any person who maintains any ferry and receives ferriage without first obtaining a license therefor shall pay a fine of ten dollars for each offense, to be collected for the use of the county, by suit before any district judge having jurisdiction, and any person may bring such suit: PROVIDED, That it shall not be unlawful for any person to transport any other person or property over any stream for hire, when there is no ferry, or the ferry established at such place was not in actual operation at the time, or in sufficient repair to have afforded to such person or property a safe and speedy passage. [1987 c 202 § 210; 1963 c 4 § 36.53.140. Prior: Code 1881 § 3015; 1879 p 64 § 51; 1869 p 284 § 53; 1863 p 525 § 13; 1854 p 356 § 13; RRS § 5475.]

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

36.53.150 Interstate ferry—County may contribute to—Grant of permit to operator. Whenever the board of

county commissioners of any county determines that the construction or maintenance of a ferry in a state adjoining such county or connecting such county with the adjoining state is of necessity or convenience to the citizens of the county, the board may enter into a contract for the construction or maintenance of such ferry, or make such contribution as may be deemed advisable toward the construction or maintenance thereof, and may lease, or grant exclusive permits to use, any wharf or landing owned or leased by the board to any person, firm or corporation furnishing, or agreeing to furnish, ferry service between such county and the adjoining state. [1963 c 4 § 36.53.150. Prior: 1921 c 165 § 1; 1915 c 26 § 1; RRS § 5478.]

Chapter 36.54 RCW FERRIES—COUNTY OWNED

Sections

36.54.010	County may acquire, construct, maintain, and operate ferry.
36.54.015	Ferries—Fourteen year long range improvement plan—Contents.
36.54.020	Joint ferries—Generally.
36.54.030	Joint ferries over water boundary between two counties.
36.54.040	Joint ferries over water boundary between two counties—Joint board of commissioners to administer—Records kept.
36.54.050	Joint ferries over water boundary between two counties—Commission authority—Expenses shared.
36.54.060	Joint ferries over water boundary between two counties—Audit and allowance of claims.
36.54.070	Joint ferries over water boundary between two counties—County commissioner duties enumerated—Omission as ground for impeachment.
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36.54.120	County ferry districts—District may construct, purchase, operate, and maintain passenger-only ferries and wharves.
36.54.130	County ferry districts—Tax levy authorized—Uses.
36.54.135	County ferry districts—General indebtedness, bond issuance.
36.54.140	County ferry districts—Excess levies.
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36.54.160	County ferry districts—General property tax levies.
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36.54.180	County ferry districts—Not subject to Washington utilities and transportation commission.
36.54.190	County ferry districts—Dissolution.
36.54.200	Vessel replacement surcharge—Use of revenues.

36.54.010 County may acquire, construct, maintain, and operate ferry. Any county may construct, condemn, or purchase, operate and maintain ferries or wharves at any unfordable stream, lake, estuary or bay within or bordering on said county, or between portions of the county, or between such county and other counties, together with all the necessary boats, grounds, roads, approaches, and landings appertaining thereto under the direction and control of the board of county commissioners free or for toll and as the board shall by resolution determine. [1963 c 4 § 36.54.010. Prior: 1919 c 115 § 1; 1899 c 29 § 1; 1895 c 130 § 2; RRS § 5477.]

36.54.015 Ferries—Fourteen year long range improvement plan—Contents. The legislative authority of every county operating ferries shall prepare, with the advice and assistance of the county engineer, a fourteen year long range capital improvement plan embracing all major elements of the ferry system. Such plan shall include a listing of each major element of the system showing its estimated cur-

rent value, its estimated replacement cost, and its amortization period. [1975 1st ex.s. c 21 § 2.]

36.54.020 Joint ferries—Generally. The board of county commissioners of any county may, severally or jointly with any other county, city or town, or the state of Washington, or any other state or any county, city or town of any other state, construct or acquire by purchase, gift, or condemnation, and operate any ferry necessary for continuation or connection of any county road across any navigable water. The procedure with respect to the exercise of the power herein granted shall be the same as provided for the joint erection or acquisition of bridges, trestles, or other structures. Any such ferries may be operated as free ferries or as toll ferries under the provisions of law of this state relating thereto. [1963 c 4 § 36.54.020. Prior: 1937 c 187 § 31; RRS § 6450-31.]

36.54.030 Joint ferries over water boundary between two counties. Whenever a river, lake, or other body of water is on the boundary line between two counties, the boards of county commissioners of the counties adjoining such stream or body of water may construct, purchase, equip, maintain, and operate a ferry across such river, lake, or other body of water, when such ferry connects the county roads or other public highways of their respective counties. All costs and expenses of constructing, purchasing, maintaining, and operating such ferry shall be paid by the two counties, each paying such proportion thereof as shall be agreed upon by the boards of county commissioners. [1963 c 4 § 36.54.030. Prior: 1917 c 158 § 1; RRS § 5479.]

36.54.040 Joint ferries over water boundary between two counties—Joint board of commissioners to administer—Records kept. The boards of county commissioners of the two counties, participating in a joint ferry, shall meet in joint session at the county seat of one of the counties interested, and shall elect one of their members as chair of the joint board of commissioners, who shall act as such chair during the remainder of his or her term of office, and, at the expiration of his or her term of office, the two boards of county commissioners shall meet and elect a new chair, who shall act as such chair during his or her term of office as county commissioner, and they shall continue to elect a chair in like manner thereafter. The county auditors of the counties shall be clerks of such joint commission, and the county auditor of the county where each meeting is held shall act as clerk of the commission at all meetings held in his or her county. Each county auditor, as soon as the joint commission is organized, shall procure a record book and enter therein a complete record of the proceedings of the commission, and immediately after each adjournment the county auditor of the county in which the meeting is held shall forward a complete copy of the minutes of the proceedings of the commission to the auditor of the other county to be entered by him or her in his or her record. Each county shall keep a complete record of the proceedings of the commission. [2009 c 549 § 4092; 1963 c 4 § 36.54.040. Prior: 1917 c 158 § 2; RRS § 5480.]

36.54.050 Joint ferries over water boundary between two counties—Commission authority—Expenses shared. The joint commission is authorized to transact all business

necessary in carrying out the purposes of RCW 36.54.030 through 36.54.070 and its acts shall be binding upon the two counties, and one-half of all bills and obligations created by the commission shall be binding and a legal charge against the road fund of each county and the claims therefor shall be allowed and paid out of the county road fund the same as other claims against said fund are allowed and paid, unless otherwise provided in an agreement between the two counties. [2006 c 332 § 10; 1963 c 4 § 36.54.050. Prior: 1917 c 158 § 3; RRS § 5481.]

36.54.060 Joint ferries over water boundary between two counties—Audit and allowance of claims. All claims and accounts for the construction, operation and maintenance of a joint county ferry shall be presented to and audited by the joint commission: PROVIDED, That items of expense connected with the operation of such ferry which do not exceed the sum of thirty dollars may be presented to the chair of the joint commission and allowed by him or her and when allowed shall be a joint charge against the road fund of each of the counties operating such ferry. [2009 c 549 § 4093; 1963 c 4 § 36.54.060. Prior: 1917 c 158 § 4; RRS § 5482.]

36.54.070 Joint ferries over water boundary between two counties—County commissioner duties enumerated—Omission as ground for impeachment. The members of the board of county commissioners of each county shall be members of the joint commission and their refusal to act shall be ground for impeachment. They shall provide for the maintenance and operation of the ferry until it is discontinued by a majority vote of the joint commission. [1963 c 4 § 36.54.070. Prior: 1917 c 158 § 5; RRS § 5483.]

36.54.110 County ferry districts—Authorized—Powers—Governing body—Passenger-only ferry service between Vashon and Seattle. (1) The legislative authority of a county may adopt an ordinance creating a ferry district in all or a portion of the area of the county, including the area within the corporate limits of any city or town within the county. The ordinance may be adopted only after a public hearing has been held on the creation of a ferry district, and the county legislative authority makes a finding that it is in the public interest to create the district.

(2) A ferry district is a municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

(3) A ferry district is a body corporate and possesses all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, and to sue and be sued.

(4) The members of the county legislative authority, acting ex officio and independently, shall compose the governing body of any ferry district that is created within the county. The voters of a ferry district must be registered voters residing within the boundaries of the district.

(5) A county with a population greater than one million persons and having a boundary on Puget Sound, or a county

to the west of Puget Sound with a population greater than two hundred thirty thousand but less than three hundred thousand persons, proposing to create a ferry district to assume a passenger-only ferry route between Vashon and Seattle, including an expansion of that route to include Southworth, shall first receive approval from the governor after submitting a complete business plan to the governor and the legislature by November 1, 2007. The business plan must, at a minimum, include hours of operation, vessel needs, labor needs, proposed routes, passenger terminal facilities, passenger rates, anticipated federal and local funding, coordination with Washington state ferry system, coordination with existing transit providers, long-term operation and maintenance needs, and long-term financial plan. The business plan may include provisions regarding coordination with an appropriate county to participate in a joint ferry under RCW 36.54.030 through 36.54.070. In order to be considered for assuming the route, the ferry district shall ensure that the route will be operated only by the ferry district and not contracted out to a private entity, all existing labor agreements will be honored, and operations will begin no later than July 1, 2008. If the route is to be expanded to include serving Southworth, the ferry district shall enter into an interlocal agreement with the public transportation benefit area serving the Southworth ferry terminal within thirty days of beginning Southworth ferry service. For the purposes of this subsection, Puget Sound is considered as extending north to Admiralty Inlet. [2007 c 223 § 5; 2006 c 332 § 7; 2003 c 83 § 301.]

Effective date—2007 c 223: See note following RCW 36.57A.220.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

36.54.120 County ferry districts—District may construct, purchase, operate, and maintain passenger-only ferries and wharves. A ferry district may construct, purchase, operate, and maintain passenger-only ferries and wharves at any unfordable stream, lake, estuary, or bay within or bordering the ferry district, or between portions of the ferry district, or between the ferry district and other ferry districts, together with all the necessary boats, grounds, roads, approaches, and landings appertaining thereto under the direction and control of the governing body of the ferry district, free or for toll as the governing body determines by resolution. [2003 c 83 § 302.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

36.54.130 County ferry districts—Tax levy authorized—Uses. (1) To carry out the purposes for which ferry districts are created, the governing body of a ferry district may levy each year an ad valorem tax on all taxable property located in the district not to exceed seventy-five cents per thousand dollars of assessed value, except a ferry district in a county with a population of one million five hundred thousand or more may not levy at a rate that exceeds seven and one-half cents per thousand dollars of assessed value. The levy must be sufficient for the provision of ferry services as shown to be required by the budget prepared by the governing body of the ferry district.

(2) A tax imposed under this section may be used only for:

(a) Providing ferry services, including the purchase, lease, or rental of ferry vessels and dock facilities;

(b) The operation, maintenance, and improvement of ferry vessels and dock facilities;

(c) Providing shuttle services between the ferry terminal and passenger parking facilities, and other landside improvements directly related to the provision of passenger-only ferry service; and

(d) Related personnel costs. [2009 c 551 § 4; 2007 c 223 § 6; 2006 c 332 § 9; 2003 c 83 § 303.]

Effective date—2007 c 223: See note following RCW 36.57A.220.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

36.54.135 County ferry districts—General indebtedness, bond issuance. (1) A county ferry district may incur general indebtedness, and issue general obligation bonds, to finance the construction, purchase, and preservation of passenger-only ferries and associated terminals and retire the indebtedness in whole or in part from the revenues received from the tax levy authorized in RCW 36.54.130.

(2) The ordinance adopted by the county legislative authority creating the county ferry district and authorizing the use of revenues received from the tax levy authorized in RCW 36.54.130 must indicate an intent to incur this indebtedness and the maximum amount of this indebtedness that is contemplated. [2007 c 223 § 7.]

Effective date—2007 c 223: See note following RCW 36.57A.220.

36.54.140 County ferry districts—Excess levies. A ferry district may impose excess levies upon the property included within the district for a one-year period to be used for operating or capital purposes whenever authorized by the electors of the district under RCW 84.52.052 and Article VII, section 2(a) of the state Constitution. [2003 c 83 § 304.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

36.54.150 County ferry districts—Budget of fund requirements. The governing body of the ferry district shall annually prepare a budget of the requirements of each district fund. [2003 c 83 § 305.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

36.54.160 County ferry districts—General property tax levies. At the time of making general tax levies in each year, the county legislative authority of the county in which a ferry district is located shall make the required levies for district purposes against the real and personal property in the district. The tax levies must be a part of the general tax roll and be collected as a part of the general taxes against the property in the district. [2003 c 83 § 306.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

36.54.170 County ferry districts—Treasurer—Ferry district fund. (1) The treasurer of the county in which a ferry district is located shall be treasurer of the district. The county treasurer shall receive and disburse ferry district revenues,

collect taxes authorized and levied under this chapter, and credit district revenues to the proper fund.

(2) The county treasurer shall establish a ferry district fund, into which must be paid all district revenues, and the county treasurer shall also maintain such special funds as may be created by the governing body of a ferry district, into which the county treasurer shall place all money as the governing body of the district may, by resolution, direct.

(3) The county treasurer shall pay out money received for the account of the ferry district on warrants issued by the county auditor against the proper funds of the district.

(4) All district funds must be deposited with the county depositories under the same restrictions, contracts, and security as provided for county depositories.

(5) All interest collected on ferry district funds belongs to the district and must be deposited to its credit in the proper district funds. [2003 c 83 § 307.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

36.54.180 County ferry districts—Not subject to Washington utilities and transportation commission. A ferry district is exempt from the provisions of Title 81 RCW and is not subject to the control of the Washington utilities and transportation commission. It is not necessary for a ferry district to apply for a certificate of public convenience and necessity. [2003 c 83 § 308.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

36.54.190 County ferry districts—Dissolution. A ferry district formed under this chapter may be dissolved in the manner provided in chapter 53.48 RCW, relating to port districts. [2003 c 83 § 309.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

36.54.200 Vessel replacement surcharge—Use of revenues. A county or ferry district operating ferries under this chapter may impose a vessel replacement surcharge on every ferry fare sold. The surcharge must be at least equal to the surcharge amount included in Washington state ferry fares identified in RCW 47.60.315(7). Revenues generated from the surcharge may be used only for the construction or purchase of ferry vessels and to pay the principal and interest on bonds authorized for the construction or purchase of ferry vessels. The surcharge must be clearly indicated to ferry passengers and drivers and, if possible, on the fare media itself. [2012 c 78 § 1.]

Chapter 36.55 RCW

FRANCHISES ON ROADS AND BRIDGES

Sections

36.55.010	Pipe line and wire line franchises on county roads.
36.55.020	Cattleguards, tramroad, and railway rights.
36.55.030	Franchises on county bridges.
36.55.040	Application—Notice of hearing.
36.55.050	Hearing—Order.
36.55.060	Limitations upon grants.
36.55.070	Existing franchises validated.
36.55.080	Record of franchises.

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36.55.010 Pipe line and wire line franchises on county roads. Any board of county commissioners may grant franchises to persons or private or municipal corporations to use the right-of-way of county roads in their respective counties for the construction and maintenance of waterworks, gas pipes, telephone, telegraph, and electric light lines, sewers and any other such facilities. [1963 c 4 § 36.55.010. Prior: 1961 c 55 § 2; prior: 1937 c 187 § 38, part; RRS § 6450-38, part.]

36.55.020 Cattleguards, tramroad, and railway rights. Any board of county commissioners may grant to any person the right to build and maintain tramroads and railway roads upon county roads under such regulations and conditions as the board may prescribe, and may grant to any person the right to build and maintain cattleguards across the entire right-of-way on any county road, under such regulations and conditions as the board may prescribe: PROVIDED, That such tramroad or railway road shall not occupy more than eight feet of the county road upon which the same is built and shall not be built upon the roadway of such county road nor in such a way as to interfere with the public travel thereon. [1963 c 4 § 36.55.020. Prior: 1941 c 138 § 1; 1937 c 187 § 39; Rem. Supp. 1941 § 6450-39.]

36.55.030 Franchises on county bridges. Any board of county commissioners may grant franchises upon bridges, trestles, or other structures constructed and maintained by it, severally or jointly with any other county or city or town of this state, or jointly with any other state or any county, city or town of any other state, in the same manner and under the same provisions as govern the granting of franchises on county roads. [1963 c 4 § 36.55.030. Prior: 1937 c 187 § 40; RRS § 6450-40.]

36.55.040 Application—Notice of hearing. On application being made to the county legislative authority for franchise, it shall fix a time and place for hearing the same, and shall cause the county auditor to give public notice thereof at the expense of the applicant, by posting notices in three public places in the county seat of the county at least fifteen days before the day fixed for the hearing. The county legislative authority shall also publish a like notice two times in the official newspaper of the county, the last publication to be not less than five days before the day fixed for the hearing. The notice shall state the name or names of the applicant or applicants, a description of the county roads by reference to section, township and range in which the county roads or portions thereof are physically located, to be included in the franchise for which the application is made, and the time and place fixed for the hearing. [1985 c 469 § 49; 1963 c 4 § 36.55.040. Prior: 1961 c 55 § 3; prior: 1937 c 187 § 38, part; RRS § 6450-38, part.]

36.55.050 Hearing—Order. The hearing may be adjourned from time to time by the order of the board of county commissioners. If, after the hearing, the board deems it to be for the public interest to grant the franchise in whole or in part, it may make and enter a resolution to that effect and may require the applicant to place his or her utility and its appurtenances in such location on or along the county road as

the board finds will cause the least interference with other uses of the road. [2009 c 549 § 4094; 1963 c 4 § 36.55.050. Prior: 1961 c 55 § 4; prior: 1937 c 187 § 38, part; RRS § 6450-38, part.]

36.55.060 Limitations upon grants. (1) Any person constructing or operating any utility on or along a county road shall be liable to the county for all necessary expense incurred in restoring the county road to a suitable condition for travel.

(2) No franchise shall be granted for a period of longer than fifty years.

(3) No exclusive franchise or privilege shall be granted.

(4) The facilities of the holder of any such franchise shall be removed at the expense of the holder thereof, to some other location on such county road in the event it is to be constructed, altered, or improved or becomes a primary state highway and such removal is reasonably necessary for the construction, alteration, or improvement thereof.

(5) Counties shall, in the predesign phase of construction projects involving relocation of sewer and/or water facilities, consult with public utilities operating water/sewer systems in order to coordinate design. [2007 c 31 § 6; 1963 c 4 § 36.55.060. Prior: 1961 c 55 § 5; prior: 1937 c 187 § 38, part; RRS § 6450-38, part.]

36.55.070 Existing franchises validated. All rights, privileges, or franchises granted or attempted to be granted by the board of county commissioners of any county prior to April 1, 1937, when such board of county commissioners was in regular or special session and when the action of such board is shown by its records, to any person to erect, construct, maintain, or operate any railway or poles, pole lines, wires, or any other thing for the furnishing, transmission, delivery, enjoyment, or use of electric energy, electric power, electric light, and telephone connection therewith, or any other matter relating thereto; or to lay or maintain pipes for the distribution of water, or gas, or to or for any other such facilities in, upon, along, through or over any county roads, are confirmed and declared to be valid to the extent that such rights, privileges, or franchises specifically refer or apply to any county road or county roads, or to the extent that any such county road has prior to April 1, 1937, been actually occupied by the bona fide construction and operation of such utility, and such rights, privileges, and franchises hereby confirmed shall have the same force and effect as if the board of county commissioners prior to the time of granting said rights, privileges, and franchises, had been specifically authorized to grant them. [1963 c 4 § 36.55.070. Prior: 1937 c 187 § 41; RRS § 6450-41.]

36.55.080 Record of franchises. The board of county commissioners shall cause to be recorded with the county auditor a complete record of all existing franchises upon the county roads of its county and the auditor shall keep and maintain a currently correct record of all franchises existing or granted with the information describing the holder of the franchise, the purpose thereof, the portion of county road over or along which granted, the date of granting, term for which granted, and date of expiration, and any other information with reference to any special provisions of such fran-

chises. [1963 c 4 § 36.55.080. Prior: 1937 c 187 § 42; RRS § 6450-42.]

Chapter 36.56 RCW

METROPOLITAN MUNICIPAL CORPORATION FUNCTIONS, ETC.—ASSUMPTION BY COUNTIES

Sections

- 36.56.010 Assumption of rights, powers, functions, and obligations authorized.
- 36.56.020 Ordinance or resolution of intention to assume rights, powers, functions, and obligations—Adoption—Publication—Hearing.
- 36.56.030 Hearing.
- 36.56.040 Declaration of intention to assume—Submission of ordinance or resolution to voters required—Extent of rights, powers, functions, and obligations assumed and vested in county—Abolition of metropolitan council—Transfer of rights, powers, functions, and obligations to county.
- 36.56.050 Employees and personnel.
- 36.56.060 Apportionment of budgeted funds—Transfer and adjustment of funds, accounts and records.
- 36.56.070 Existing rights, actions, proceedings, etc. not impaired or altered.
- 36.56.080 Collective bargaining units or agreements.
- 36.56.090 Rules and regulations, pending business, contracts, obligations, validity of official acts.
- 36.56.100 Real and personal property—Reports, books, records, etc.—Funds, credits, assets—Appropriations or federal grants.
- 36.56.110 Debts and obligations.
- 36.56.121 Maintenance plan.
- 36.56.900 Severability—Construction—1977 ex.s. c 277.
- 36.56.910 Effective date—1977 ex.s. c 277.

Acquisition of interests in land for conservation, protection, preservation, or open space purposes by county or metropolitan municipal corporation: RCW 64.04.130.

36.56.010 Assumption of rights, powers, functions, and obligations authorized. Any county with a population of two hundred ten thousand or more in which a metropolitan municipal corporation has been established pursuant to chapter 35.58 RCW with boundaries coterminous with the boundaries of the county may by ordinance or resolution, as the case may be, of the county legislative authority assume the rights, powers, functions, and obligations of such metropolitan municipal corporation in accordance with the provisions of *this 1977 amendatory act. The definitions contained in RCW 35.58.020 shall be applicable to this chapter. [1991 c 363 § 72; 1977 ex.s. c 277 § 1.]

*Reviser's note: "this 1977 amendatory act" or "this act" [1977 ex.s. c 277] consists of chapter 36.56 RCW and the amendment to RCW 35.58.020 by 1977 ex.s. c 277.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.56.020 Ordinance or resolution of intention to assume rights, powers, functions, and obligations—Adoption—Publication—Hearing. The assumption of the rights, powers, functions, and obligations of a metropolitan municipal corporation may be initiated by the adoption of an ordinance or a resolution, as the case may be, by the county legislative authority indicating its intention to conduct a hearing concerning assumption of such rights, powers, functions, and obligations. In the event the county legislative authority adopts such an ordinance or a resolution of intention, such ordinance or resolution shall set a time and place at which it will consider the proposed assumption of the rights, powers, functions, and obligations of the metropolitan municipal corporation, and shall state that all persons interested may

appear and be heard. Such ordinance or resolution of intention shall be published for at least four times during the four weeks next preceding the scheduled hearing in newspapers of daily general circulation printed or published in said county. [1977 ex.s. c 277 § 2.]

36.56.030 Hearing. At the time scheduled for the hearing in the ordinance or resolution of intention, the county legislative authority shall consider the assumption of the rights, powers, functions, and obligations of the metropolitan municipal corporation, and hear those appearing and all protests and objections to it. The county legislative authority may continue the hearing from time to time, not exceeding sixty days in all. [1977 ex.s. c 277 § 3.]

36.56.040 Declaration of intention to assume—Submission of ordinance or resolution to voters required—Extent of rights, powers, functions, and obligations assumed and vested in county—Abolition of metropolitan council—Transfer of rights, powers, functions, and obligations to county. If, from the testimony given before the county legislative authority, it appears that the public interest or welfare would be satisfied by the county assuming the rights, powers, functions, and obligations of the metropolitan municipal corporation, the county legislative authority may declare that to be its intent and assume such rights, powers, functions, and obligations by ordinance or resolution, as the case may be, providing that the county shall be vested with every right, power, function, and obligation currently granted to or possessed by the metropolitan municipal corporation pursuant to chapter 35.58 RCW (including *RCW 35.58.273 relating to levy and use of the motor vehicle excise tax) or other provision of state law, including but not limited to, the power and authority to levy a sales and use tax pursuant to chapter 82.14 RCW or other provision of law: PROVIDED, That such ordinance or resolution shall be submitted to the voters of the county for their adoption and ratification or rejection, and if a majority of the persons voting on the proposition residing within the central city shall vote in favor thereof and a majority of the persons voting on the proposition residing in the metropolitan area outside of the central city shall vote in favor thereof, the ordinance or resolution shall be deemed adopted and ratified.

Upon assumption of the rights, powers, functions, and obligations of the metropolitan municipal corporation by the county, the metropolitan council established pursuant to the provisions of RCW 35.58.120 through 35.58.160 shall be abolished, said provisions shall be inapplicable to the county, and the county legislative authority shall thereafter be vested with all rights, powers, duties, and obligations otherwise vested by law in the metropolitan council: PROVIDED, That in any county with a home rule charter such rights, powers, functions, and obligations shall vest in accordance with the executive and legislative responsibilities defined in such charter. [1977 ex.s. c 277 § 4.]

*Reviser's note: RCW 35.58.273 was repealed by 2002 c 6 § 2.

36.56.050 Employees and personnel. All employees and personnel of the metropolitan municipal corporation who are under a personnel system pursuant to RCW 35.58.370 shall be assigned to the county personnel system to perform

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their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the county personnel system. [1977 ex.s. c 277 § 5.]

36.56.060 Apportionment of budgeted funds—Transfer and adjustment of funds, accounts and records. If apportionments of budgeted funds are required because of the transfers authorized by this chapter, the county budget office shall certify such apportionments to the agencies and local governmental units affected and to the state auditor. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with such certification. [1977 ex.s. c 277 § 6.]

36.56.070 Existing rights, actions, proceedings, etc. not impaired or altered. No transfer of any function made pursuant to this chapter shall be construed to impair or alter any existing rights acquired under the provisions of chapter 35.58 RCW or any other provision of law relating to metropolitan municipal corporations, nor as impairing or altering any actions, activities, or proceedings validated thereunder, nor as impairing or altering any civil or criminal proceedings instituted thereunder, nor any rule, regulation, or order promulgated thereunder, nor any administrative action taken thereunder; and neither the assumption of control of any metropolitan municipal function by a county, nor any transfer of rights, powers, functions, and obligations as provided in this chapter, shall impair or alter the validity of any act performed by such metropolitan municipal corporation or division thereof or any officer thereof prior to the assumption of such rights, powers, functions, and obligations by any county as authorized by this chapter. [1977 ex.s. c 277 § 7.]

36.56.080 Collective bargaining units or agreements. Nothing contained in this chapter shall be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until any such agreement has expired or until any such bargaining unit has been modified as provided by law. [1977 ex.s. c 277 § 8.]

36.56.090 Rules and regulations, pending business, contracts, obligations, validity of official acts. All rules and regulations, and all pending business before the committees, divisions, boards, and other agencies of any metropolitan municipal corporation transferred pursuant to the provisions of this chapter shall be continued and acted upon by the county.

All existing contracts and obligations of the transferred metropolitan municipal corporation shall remain in full force and effect, and shall be performed by the county. No transfer authorized in this chapter shall affect the validity of any official act performed by any official or employee prior to the transfer authorized pursuant to *this amendatory act. [1977 ex.s. c 277 § 9.]

*Reviser's note: "this amendatory act," see note following RCW 36.56.010.

36.56.100 Real and personal property—Reports, books, records, etc.—Funds, credits, assets—Appropriations.

tions or federal grants. When the rights, powers, functions, and obligations of a metropolitan municipal corporation are transferred pursuant to this chapter, all real and personal property owned by the metropolitan municipal corporation shall become that of the county.

All reports, documents, surveys, books, records, files, papers, or other writings relating to the administration of the powers, duties, and functions transferred pursuant to this chapter and available to the metropolitan municipal corporation shall be made available to the county.

All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed in carrying out the rights, powers, functions, and obligations transferred by this chapter and available to the metropolitan municipal corporation shall be made available to the county.

All funds, credits, or other assets held in connection with powers, duties, and functions herein transferred shall be assigned to the county.

Any appropriations or federal grant made to any committee, division, board, or other department of a metropolitan municipal corporation for the purpose of carrying out the rights, powers, functions, and obligations authorized to be assumed by a county pursuant to this chapter shall on the effective date of such transfer be credited to the county for the purpose of carrying out such transferred rights, powers, functions, and obligations. [1977 ex.s. c 277 § 10.]

36.56.110 Debts and obligations. The county shall assume and agree to provide for the payment of all of the indebtedness of the metropolitan municipal corporation including the payment and retirement of outstanding general obligation and revenue bonds issued by the metropolitan municipal corporation. Until the indebtedness of a metropolitan municipal corporation thus assumed by a county has been discharged, all property within the boundaries of the metropolitan municipal corporation and the owners and occupants of that property, shall continue to be liable for taxes, special assessments, and other charges legally pledged to pay the indebtedness of the metropolitan municipal corporation. The county shall assume the obligation of causing the payment of such indebtedness, collecting such taxes, assessments, and charges and observing and performing the other contractual obligations of the metropolitan municipal corporation. The legislative authority of the county shall act in the same manner as the governing body of the metropolitan municipal corporation for the purpose of certifying the amount of any property tax to be levied and collected therein, and may cause service and other charges and assessments to be collected from such property or owners or occupants thereof, enforce such collection and perform all acts necessary to ensure performance of the contractual obligations of the metropolitan municipal corporation in the same manner and by the same means as if the property of the metropolitan municipal corporation had not been acquired by the county.

When a county assumes the obligation of paying indebtedness of a metropolitan municipal corporation and if property taxes or assessments have been levied and service and other charges have accrued for such purpose but have not been collected by the metropolitan municipal corporation prior to such assumption, the same when collected shall belong and be paid to the county and be used by such county

so far as necessary for payment of the indebtedness of the metropolitan municipal corporation existing and unpaid on the date such county assumed that indebtedness. Any funds received by the county which have been collected for the purpose of paying any bonded or other indebtedness of the metropolitan municipal corporation shall be used for the purpose for which they were collected and for no other purpose until such indebtedness has been paid and retired or adequate provision has been made for such payment and retirement. No transfer of property as provided in *this act shall derogate from the claims or rights of the creditors of the metropolitan municipal corporation or impair the ability of the metropolitan municipal corporation to respond to its debts and obligations. [1977 ex.s. c 277 § 11.]

*Reviser's note: "this act," see note following RCW 36.56.010.

36.56.121 Maintenance plan. As a condition of receiving state funding, a county that has assumed the transportation functions of a metropolitan municipal corporation shall submit a maintenance and preservation management plan for certification by the department of transportation. The plan must inventory all transportation system assets within the direction and control of the county, and provide a preservation plan based on lowest life-cycle cost methodologies. [2006 c 334 § 29; 2003 c 363 § 303.]

Effective date—2006 c 334: See note following RCW 47.01.051.

Finding—Intent—2003 c 363: See note following RCW 35.84.060.

Additional notes found at www.leg.wa.gov

36.56.900 Severability—Construction—1977 ex.s. c 277. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. In the event the provisions in RCW 36.56.040 requiring approval by both the voters of a central city and the county voters residing outside of the central city are held to be invalid, then such provisions shall be severable and the ballot proposition on the transfer of the metropolitan municipal corporation to the county shall be decided by the majority vote of the voters voting thereon in a countywide election. [1977 ex.s. c 277 § 14.]

36.56.910 Effective date—1977 ex.s. c 277. This 1977 amendatory act shall take effect July 1, 1978. [1977 ex.s. c 277 § 15.]

Chapter 36.57 RCW

COUNTY PUBLIC TRANSPORTATION AUTHORITY

Sections

36.57.010	Definitions.
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36.57.100	Counties authorized to perform public transportation function in unincorporated areas—Exceptions.
36.57.110	Boundaries of unincorporated transportation benefit areas.

- 36.57.120 Rail fixed guideway system—Safety program plan and security and emergency preparedness plan.
- 36.57.130 Public transportation for persons with special needs.

Financing of public transportation systems: Chapter 35.95 RCW and RCW 82.14.045.

Municipality defined for purposes of RCW 36.57.080, 36.57.100, and 36.57.110: RCW 35.58.272.

36.57.010 Definitions. For the purposes of this chapter the following definitions shall apply:

(1) "Authority" means the county transportation authority created pursuant to this chapter.

(2) "Population" means the number of residents as shown by the figures released for the most recent official state, federal, or county census, or population determination made by the office of financial management.

(3) "Public transportation function" means the transportation of passengers and their incidental baggage by means other than by chartered bus, sightseeing bus, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people-moving systems, and may include contracting for the provision of ambulance services for the transportation of the sick and injured: PROVIDED, That such contracting for ambulance services shall not include the exercise of eminent domain powers: PROVIDED, FURTHER, That nothing shall prohibit an authority from leasing its buses to private certified carriers or prohibit the county from providing school bus service. [1981 c 319 § 1; 1979 c 151 § 39; 1974 ex.s. c 167 § 1.]

Population determinations, office of financial management: Chapter 43.62 RCW.

36.57.020 Public transportation authority authorized. Every county, except a county in which a metropolitan municipal corporation is performing the function of public transportation on May 5, 1974, is authorized to create a county transportation authority which shall perform the function of public transportation. Such authority shall embrace all the territory within a single county and all cities and towns therein. [1974 ex.s. c 167 § 2.]

36.57.030 Membership—Compensation. Every county which undertakes the transportation function pursuant to RCW 36.57.020 shall create by resolution of the county legislative body a county transportation authority which shall be composed as follows:

(1) The elected officials of the county legislative body, not to exceed three such elected officials;

(2) The mayor of the most populous city within the county;

(3) The mayor of a city with a population less than five thousand, to be selected by the mayors of all such cities within the county;

(4) The mayor of a city with a population greater than five thousand, excluding the most populous city, to be selected by the mayors of all such cities within the county: PROVIDED, HOWEVER, That if there is no city with a population greater than five thousand, excluding the most populous city, then the sixth member who shall be an elected official, shall be selected by the other two mayors selected pursuant to subsections (2) and (3) of this section; and

(5) An individual recommended by the labor organization representing the public transportation employees within the county transportation authority. If the public transportation employees are represented by more than one labor organization, all such labor organizations shall select the nonvoting member by majority vote. The nonvoting member shall comply with all governing bylaws and policies of the authority. The chair or cochair of the county transportation authority shall exclude the nonvoting member from attending any executive session held for the purpose of discussing negotiations with labor organizations. The chair or cochair may exclude the nonvoting member from attending any other executive session.

The members of the authority shall be selected within sixty days after the date of the resolution creating such authority.

Any member of the authority who is a mayor or an elected official selected pursuant to subsection (4) of this section and whose office is not a full time position shall receive one hundred dollars for each day attending official meetings of the authority. [2010 c 278 § 2; 1974 ex.s. c 167 § 3.]

36.57.040 Powers and duties. Every county transportation authority created to perform the function of public transportation pursuant to RCW 36.57.020 shall have the following powers:

(1) To prepare, adopt, carry out, and amend a general comprehensive plan for public transportation service.

(2) To acquire by purchase, condemnation, gift, or grant and to lease, construct, add to, improve, replace, repair, maintain, operate, and regulate the use of any transportation facilities and properties, including terminal and parking facilities, together with all lands, rights-of-way, property, equipment, and accessories necessary for such systems and facilities.

(3) To fix rates, tolls, fares, and charges for the use of such facilities and to establish various routes and classes of service. Fares or charges may be adjusted or eliminated for any distinguishable class of users including, but not limited to senior citizens, handicapped persons, and students.

(4) If a county transit authority extends its transportation function to any area in which service is already offered by any company holding a certificate of public convenience and necessity from the Washington utilities and transportation commission under RCW 81.68.040, to acquire by purchase or condemnation at the fair market value, from the person holding the existing certificate for providing the services, that portion of the operating authority and equipment representing the services within the area of public operation, or to contract with such person or corporation to continue to operate such service or any part thereof for time and upon such terms and conditions as provided by contract.

(5)(a) To contract with the United States or any agency thereof, any state or agency thereof, any metropolitan municipal corporation, any other county, city, special district, or governmental agency and any private person, firm, or corporation for the purpose of receiving gifts or grants or securing loans or advances for preliminary planning and feasibility studies, or for the design, construction, operation, or maintenance of transportation facilities and ambulance services: PROVIDED, That before the authority enters into any such contract for the provision of ambulance service, it shall sub-

mit to the voters a proposition authorizing such contracting authority, and a majority of those voting thereon shall have approved the proposition; and

(b) To contract with any governmental agency or with any private person, firm, or corporation for the use by either contracting party of all or any part of the facilities, structures, lands, interests in lands, air rights over lands, and rights-of-way of all kinds which are owned, leased, or held by the other party and for the purpose of planning, constructing, or operating any facility or performing any service related to transportation which the county is authorized to operate or perform, on such terms as may be agreed upon by the contracting parties: PROVIDED, That before any contract for the lease or operation of any transportation facilities shall be let to any private person, firm, or corporation, competitive bids shall first be called for and contracts awarded in accord with the procedures established in accord with RCW 36.32.240, 36.32.250, and 36.32.270.

(6) In addition to all other powers and duties, an authority shall have the power to own, construct, purchase, lease, add to, and maintain any real and personal property or property rights necessary for the conduct of the affairs of the authority. An authority may sell, lease, convey, or otherwise dispose of any authority real or personal property no longer necessary for the conduct of the affairs of the authority. An authority may enter into contracts to carry out the provisions of this section. [1982 c 10 § 6. Prior: 1981 c 319 § 2; 1981 c 25 § 3; 1974 ex.s. c 167 § 4.]

Additional notes found at www.leg.wa.gov

36.57.050 Chair—General manager. The authority shall elect a chair, and appoint a general manager who shall be experienced in administration, and who shall act as executive secretary to, and administrative officer for the authority. He or she shall also be empowered to employ such technical and other personnel as approved by the authority. The general manager shall be paid such salary and allowed such expenses as shall be determined by the authority. The general manager shall hold office at the pleasure of the authority, and shall not be removed until after notice is given him or her, and an opportunity for a hearing before the authority as to the reason for his or her removal. [2009 c 549 § 4095; 1974 ex.s. c 167 § 5.]

36.57.060 Transportation fund—Contributions. Each authority shall establish a fund to be designated as the "transportation fund", in which shall be placed all sums received by the authority from any source, and out of which shall be expended all sums disbursed by the authority. The county treasurer shall be the custodian of the fund, and the county auditor shall keep the record of the receipts and disbursements, and shall draw and the county treasurer shall honor and pay all warrants, which shall be approved before issuance and payment as directed by the authority.

The county and each city or town which is included in the authority shall contribute such sums towards the expense for maintaining and operating the authority as shall be agreed upon between them. [1974 ex.s. c 167 § 6.]

36.57.070 Public transportation plan. The authority shall adopt a public transportation plan. Such plan shall be a

general comprehensive plan designed to best serve the residents of the entire county. Prior to adoption of the plan, the authority shall provide a minimum of sixty days during which sufficient hearings shall be held to provide interested persons an opportunity to participate in development of the plan. [1974 ex.s. c 167 § 7.]

36.57.080 Transfer of transportation powers and rights to authority—Funds—Contract indebtedness. On the effective date of the proposition approved by the voters in accord with RCW 35.95.040 or 82.14.045, as now or hereafter amended, the authority shall have and exercise all rights with respect to the construction, acquisition, maintenance, operation, extension, alteration, repair, control and management of passenger transportation which the county or any city located within such county shall have been previously empowered to exercise and such powers shall not thereafter be exercised by the county or such cities without the consent of the authority. The county and all cities within such county upon demand of the authority shall transfer to the authority all unexpended funds earmarked or budgeted from any source for public transportation, including funds receivable. The county in which an authority is located shall have the power to contract indebtedness and issue bonds pursuant to chapter 36.67 RCW to enable the authority to carry out the purposes of this chapter and RCW 35.95.040 or 82.14.045, as now or hereafter amended, and the purposes of this chapter and RCW 35.95.040 or 82.14.045, as now or hereafter amended, shall constitute a "county purpose" as that term is used in chapter 36.67 RCW. [1975 1st ex.s. c 270 § 5; 1974 ex.s. c 167 § 8.]

Additional notes found at www.leg.wa.gov

36.57.090 Acquisition of existing transportation system—Assumption of labor contracts—Transfer of employees—Preservation of benefits—Collective bargaining. A county transportation authority may acquire any existing transportation system by conveyance, sale, or lease. In any purchase from a county or city, the authority shall receive credit from the county or city for any federal assistance and state matching assistance used by the county or city in acquiring any portion of such system. The authority shall assume and observe all existing labor contracts relating to such system and, to the extent necessary for operation of facilities, all of the employees of such acquired transportation system whose duties are necessary to operate efficiently the facilities acquired shall be appointed to comparable positions to those which they held at the time of such transfer, and no employee or retired or pensioned employee of such systems shall be placed in any worse position with respect to pension seniority, wages, sick leave, vacation or other benefits that he or she enjoyed as an employee of such system prior to such acquisition. The authority shall engage in collective bargaining with the duly appointed representatives of any employee labor organization having existing contracts with the acquired transportation system and may enter into labor contracts with such employee labor organization. [2009 c 549 § 4096; 1974 ex.s. c 167 § 9.]

36.57.100 Counties authorized to perform public transportation function in unincorporated areas—Excep-

tions. Every county, except a county in which a metropolitan municipal corporation is performing the public transportation function as of July 1, 1975, is authorized to perform such function in such portions of the unincorporated areas of the county, except within the boundaries of a public transportation benefit area established pursuant to chapter 36.57A RCW, as the county legislative body shall determine and the county shall have those powers as are specified in RCW 36.57.040 with respect to the provision of public transportation as is authorized pursuant to RCW 36.57.040. [1975 1st ex.s. c 270 § 9.]

Additional notes found at www.leg.wa.gov

36.57.110 Boundaries of unincorporated transportation benefit areas. The legislative body of any county is hereby authorized to create and define the boundaries of unincorporated transportation benefit areas within the unincorporated areas of the county, following school district or election precinct lines, as far as practicable. Such areas shall include only those portions of the unincorporated area of the county which could reasonably assume to benefit from the provision of public transportation services. [1975 1st ex.s. c 270 § 10.]

Additional notes found at www.leg.wa.gov

36.57.120 Rail fixed guideway system—Safety program plan and security and emergency preparedness plan. (1) Each county transportation authority that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety program plan and a system security and emergency preparedness plan for that guideway to the state department of transportation by September 1, 1999, or at least one hundred eighty calendar days before beginning operations or instituting revisions to its plans. These plans must describe the county transportation authority's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plans must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the county transportation authority shall revise its plans to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plans for review.

(2) Each county transportation authority shall implement and comply with its system safety program plan and system security and emergency preparedness plan. The county transportation authority shall perform internal safety and security audits to evaluate its compliance with the plans, and submit its audit schedule to the department of transportation no later than December 15th each year. The county transportation authority shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result

of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plans.

(3) Each county transportation authority shall notify the department of transportation within two hours of an occurrence of a reportable accident, unacceptable hazardous condition, or security breach. The department may adopt rules further defining a reportable accident, unacceptable hazardous condition, or security breach. The county transportation authority shall investigate all reportable accidents, unacceptable hazardous conditions, or security breaches and provide a written investigation report to the department within forty-five calendar days after the reportable accident, unacceptable hazardous condition, or security breach.

(4) The system security and emergency preparedness plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.56 RCW. However, the system safety program plan as described in this section is not subject to this exemption. [2007 c 422 § 4; 2005 c 274 § 270; 1999 c 202 § 4.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Additional notes found at www.leg.wa.gov

36.57.130 Public transportation for persons with special needs. (1) Effective January 1, 2001, in addition to any other authority granted under this chapter, a county transportation authority may be created to purchase, acquire, maintain, operate, or lease transportation services, equipment, and facilities for public transportation limited only to persons with special needs by any method or combination of methods provided by the authority.

(2) As used in this section, "persons with special needs" means those persons, including their personal attendants, who because of physical or mental disability, income status, or age are unable to transport themselves or purchase transportation.

(3) The county transportation authority may fix, regulate, and control fares and rates to be charged for these transportation services. [2001 c 89 § 1.]

Chapter 36.57A RCW

PUBLIC TRANSPORTATION BENEFIT AREAS

Sections

- 36.57A.010 Definitions.
- 36.57A.011 Municipality defined.
- 36.57A.020 Public transportation improvement conference—Convening—Purpose—Multi-county conferences.
- 36.57A.030 Establishment or change in boundaries of public transportation benefit area—Hearing—Notice—Procedure—Authority of county to terminate public transportation benefit area.
- 36.57A.040 Cities included or excluded—Boundaries—Only benefited areas included—One area per county, exception.
- 36.57A.050 Governing body—Selection, qualification, number of members—Travel expenses, compensation.
- 36.57A.055 Governing body—Periodic review of composition.
- 36.57A.060 Comprehensive plan—Development—Elements.
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- 36.57A.080 General powers.
- 36.57A.090 Additional powers—Acquisition of existing system.
- 36.57A.100 Agreements with operators of local public transportation services—Operation without agreement prohibited—Purchase or condemnation of assets.
- 36.57A.110 Powers of component city concerning passenger transportation transferred to benefit area—Operation of system by city until acquired by benefit area—Consent.

- 36.57A.120 Acquisition of existing system—Labor contracts, employee rights preserved—Collective bargaining.
- 36.57A.130 Treasurer and auditor—Powers and duties—Transportation fund—Contribution of sums for expenses.
- 36.57A.140 Annexation of additional area.
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- 36.57A.180 Public transportation for persons with special needs.
- 36.57A.191 Maintenance plan.
- 36.57A.200 Passenger-only ferry service—Authorized—Investment plan.
- 36.57A.210 Passenger-only ferry service—Taxes, fees, and tolls.
- 36.57A.220 Passenger-only ferry service between Kingston and Seattle.
- 36.57A.230 Public transportation fares—Proof of payment—Civil infractions.
- 36.57A.235 Public transportation fares—Schedule of fines and penalties—Who may monitor fare payment—Administration of citations.
- 36.57A.240 Public transportation fares—Powers of law enforcement authorities.
- 36.57A.245 Public transportation fares—Powers and authority are supplemental to other laws.
- 36.57A.250 Supplemental transportation improvements.

Financing of public transportation systems: Chapter 35.95 RCW and RCW 82.14.045.

Transportation centers authorized: Chapter 81.75 RCW.

36.57A.010 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "City" means an incorporated city or town.
- (2) "City council" means the legislative body of any city or town.
- (3) "Component city" means an incorporated city or town within a public transportation benefit area.
- (4) "County legislative authority" means the board of county commissioners or the county council.
- (5) "Population" means the number of residents as shown by the figures released for the most recent official state, federal, or county census, or population determination made by the office of financial management.
- (6) "Proof of payment" means evidence of fare prepayment authorized by a public transportation benefit area for the use of buses or other modes of public transportation.
- (7) "Public transportation benefit area" means a municipal corporation of the state of Washington created pursuant to this chapter.
- (8) "Public transportation benefit area authority" or "authority" means the legislative body of a public transportation benefit area.
- (9) "Public transportation improvement conference" or "conference" means the body established pursuant to RCW 36.57A.020 which shall be authorized to establish, subject to the provisions of RCW 36.57A.030, a public transportation benefit area pursuant to the provisions of this chapter.
- (10) "Public transportation service" means the transportation of packages, passengers, and their incidental baggage by means other than by chartered bus, sight-seeing bus, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people moving systems: PROVIDED, That nothing shall prohibit an authority from leasing its buses to private certified carriers or prohibit the authority from providing school bus service. "Public transportation service" includes passenger-only ferry service for those public transportation benefit areas eligible to provide

passenger-only ferry service under RCW 36.57A.200. [2008 c 123 § 10; 2003 c 83 § 209; 1983 c 65 § 1; 1979 c 151 § 40; 1975 1st ex.s. c 270 § 11.]

Alphabetization—2008 c 123: See note following RCW 35.58.020.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Population determinations, office of financial management: Chapter 43.62 RCW.

Additional notes found at www.leg.wa.gov

36.57A.011 Municipality defined. See RCW 35.58.272.

36.57A.020 Public transportation improvement conference—Convening—Purpose—Multi-county conferences. The county legislative authority of every county with a population of forty thousand or more shall, and the legislative authority of every other county may, within ninety days of July 1, 1975, and as often thereafter as it deems necessary, and upon thirty days prior written notice addressed to the legislative body of each city within the county and with thirty days public notice, convene a public transportation improvement conference to be attended by an elected representative selected by the legislative body of each city, within such county, and by the county legislative authority. Such conference shall be for the purpose of evaluating the need for and the desirability of the creation of a public transportation benefit area within certain incorporated and unincorporated portions of the county to provide public transportation services within such area. In those counties where county officials believe the need for public transportation service extends across county boundaries so as to provide public transportation service in a metropolitan area, the county legislative bodies of two or more neighboring counties may elect to convene a multi-county conference. In addition, countywide conferences may be convened by resolution of the legislative bodies of two or more cities within the county, not to exceed one in any twelve month period, or a petition signed by at least ten percent of the registered voters in the last general election of the city, county or city/county areas of a proposed benefit area. The chair of the conference shall be elected from the members at large. [1991 c 363 § 73; 1975 1st ex.s. c 270 § 12.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Additional notes found at www.leg.wa.gov

36.57A.030 Establishment or change in boundaries of public transportation benefit area—Hearing—Notice—Procedure—Authority of county to terminate public transportation benefit area. Any conference which finds it desirable to establish a public transportation benefit area or change the boundaries of any existing public transportation benefit area shall fix a date for a public hearing thereon, or the legislative bodies of any two or more component cities or the county legislative body by resolution may require the public transportation improvement conference to fix a date for a public hearing thereon. Prior to the convening of the public hearing, the county governing body shall delineate the area of the county proposed to be included within the transportation benefit area, and shall furnish a copy of such

delineation to each incorporated city within such area. Each city shall advise the county governing body, on a preliminary basis, of its desire to be included or excluded from the transportation benefit area. The county governing body shall cause the delineations to be revised to reflect the wishes of such incorporated cities. This delineation shall be considered by the conference at the public hearing for inclusion in the public transportation benefit area.

Notice of such hearing shall be published once a week for at least four consecutive weeks in one or more newspapers of general circulation within the area. The notice shall contain a description and map of the boundaries of the proposed public transportation benefit area and shall state the time and place of the hearing and the fact that any changes in the boundaries of the public transportation benefit area will be considered at such time and place. At such hearing or any continuation thereof, any interested person may appear and be heard on all matters relating to the effect of the formation of the proposed public transportation benefit area.

The conference may make such changes in the boundaries of the public transportation benefit area as they shall deem reasonable and proper, but may not delete any portion of the proposed area which will create an island of included or excluded lands, and may not delete a portion of any city. If the conference shall determine that any additional territory should be included in the public transportation benefit area, a second hearing shall be held and notice given in the same manner as for the original hearing. The conference may adjourn the hearing on the formation of a public transportation benefit area from time to time not exceeding thirty days in all.

Following the conclusion of such hearing the conference shall adopt a resolution fixing the boundaries of the proposed public transportation benefit area, declaring that the formation of the proposed public transportation benefit area will be conducive to the welfare and benefit of the persons and property therein.

Within thirty days of the adoption of such conference resolution, the county legislative authority of each county wherein a conference has established proposed boundaries of a public transportation benefit area, may by resolution, upon making a legislative finding that the proposed benefit area includes portions of the county which could not be reasonably expected to benefit from such benefit area or excludes portions of the county which could be reasonably expected to benefit from its creation, disapprove and terminate the establishment of such public transportation benefit area within such county. [1977 ex.s. c 44 § 1; 1975 1st ex.s. c 270 § 13.]

Additional notes found at www.leg.wa.gov

36.57A.040 Cities included or excluded—Boundaries—Only benefited areas included—One area per county, exception. At the time of its formation no public transportation benefit area may include only a part of any city, and every city shall be either wholly included or wholly excluded from the boundaries of such area. Notwithstanding any other provision of law, if subsequent to the formation of a public transportation benefit area additional area became or will become a part of a component city by annexation, merger, or otherwise, the additional area shall be included within the boundaries of the transportation benefit area and

be subject to all taxes and other liabilities and obligations of the public transportation benefit area. The component city shall be required to notify the public transportation benefit area at the time the city has added the additional area. Furthermore, notwithstanding any other provisions of law except as specifically provided in this section, if a city that is not a component city of the public transportation benefit area adds area to its boundaries that is within the boundaries of the public transportation benefit area, the area so added shall be deemed to be excluded from the public transportation benefit area: PROVIDED, That the public transportation benefit area shall be given notice of the city's intention to add such area. If a city extends its boundaries through annexation across a county boundary line and such extended boundaries include areas within the public transportation benefit area, then the entire area of the city within the county that is within the public transportation benefit area shall be included within the public transportation benefit area boundaries. Such area of the city in the public transportation benefit area shall be considered a component city of the public transportation benefit area corporation.

The boundaries of any public transportation benefit area shall follow school district lines or election precinct lines, as far as practicable. Only such areas shall be included which the conference determines could reasonably benefit from the provision of public transportation services. Except as provided in RCW 36.57A.140(2), only one public transportation benefit area may be created in any county. [1992 c 16 § 1; 1991 c 318 § 15; 1983 c 65 § 2; 1975 1st ex.s. c 270 § 14.]

Intent—1991 c 318: "The legislature recognizes that certain communities have important cultural, economic, or transportation linkages to communities in other counties. Many public services can most efficiently be delivered from public agencies located in counties other than the county within which the community is located. It is the intent of the legislature by enacting sections 15 through 17 of this act to further more effective public transportation linkages between communities, regardless of county association, in order to better serve state citizen needs." [1991 c 318 § 14.]

Additional notes found at www.leg.wa.gov

36.57A.050 Governing body—Selection, qualification, number of members—Travel expenses, compensation. Within sixty days of the establishment of the boundaries of the public transportation benefit area the members of the county legislative authority and the elected representative of each city within the area shall provide for the selection of the governing body of such area, the public transportation benefit area authority, which shall consist of elected officials selected by and serving at the pleasure of the governing bodies of component cities within the area and the county legislative authority of each county within the area. If at the time a public transportation benefit area authority assumes the public transportation functions previously provided under the Interlocal Cooperation Act (chapter 39.34 RCW) there are citizen positions on the governing board of the transit system, those positions may be retained as positions on the governing board of the public transportation benefit area authority.

Within such sixty-day period, any city may by resolution of its legislative body withdraw from participation in the public transportation benefit area. The county legislative authority and each city remaining in the public transportation benefit area may disapprove and prevent the establishment of any

governing body of a public transportation benefit area if the composition thereof does not meet its approval.

In no case shall the governing body of a single county public transportation benefit area be greater than nine voting members and in the case of a multicounty area, fifteen voting members. Those cities within the transportation benefit area and excluded from direct membership on the authority are hereby authorized to designate a member of the authority who shall be entitled to represent the interests of such city which is excluded from direct membership on the authority. The legislative body of such city shall notify the authority as to the determination of its authorized representative on the authority.

There is one nonvoting member of the public transportation benefit area authority. The nonvoting member is recommended by the labor organization representing the public transportation employees within the local public transportation system. If the public transportation employees are represented by more than one labor organization, all such labor organizations shall select the nonvoting member by majority vote. The nonvoting member shall comply with all governing bylaws and policies of the authority. The chair or cochairs of the authority shall exclude the nonvoting member from attending any executive session held for the purpose of discussing negotiations with labor organizations. The chair or cochairs may exclude the nonvoting member from attending any other executive session. The requirement that a nonvoting member be appointed to the governing body of a public transportation benefit area authority does not apply to an authority that has no employees represented by a labor union.

Each member of the authority is eligible to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 and to receive compensation, as set by the authority, in an amount not to exceed forty-four dollars for each day during which the member attends official meetings of the authority or performs prescribed duties approved by the chair of the authority. Except that the authority may, by resolution, increase the payment of per diem compensation to each member from forty-four dollars up to ninety dollars per day or portion of a day for actual attendance at board meetings or for performance of other official services or duties on behalf of the authority. In no event may a member be compensated in any year for more than seventy-five days, except the chair who may be paid compensation for not more than one hundred days: PROVIDED, That compensation shall not be paid to an elected official or employee of federal, state, or local government who is receiving regular full-time compensation from such government for attending meetings and performing prescribed duties of the authority.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all

items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2010 c 278 § 3; 2009 c 549 § 4097; 2007 c 469 § 14; 1998 c 121 § 15; 1983 c 65 § 3; 1977 ex.s. c 44 § 2; 1975 1st ex.s. c 270 § 15.]

Additional notes found at www.leg.wa.gov

36.57A.055 Governing body—Periodic review of composition. After a public transportation benefit area has been in existence for four years, members of the county legislative authority and the elected representative of each city within the boundaries of the public transportation benefit area shall review the composition of the governing body of the benefit area and change the composition of the governing body if the change is deemed appropriate. The review shall be at a meeting of the designated representatives of the component county and cities, and the majority of those present shall constitute a quorum at such meeting. Twenty days notice of the meeting shall be given by the chief administrative officer of the public transportation benefit area authority. After the initial review, a review shall be held every four years.

If an area having a population greater than fifteen percent, or areas with a combined population of greater than twenty-five percent of the population of the existing public transportation benefit area as constituted at the last review meeting, annex to the public transportation benefit area, or if an area is added under RCW 36.57A.140(2), the representatives of the component county and cities shall meet within ninety days to review and change the composition of the governing body, if the change is deemed appropriate. This meeting is in addition to the regular four-year review meeting and shall be conducted pursuant to the same notice requirement and quorum provisions of the regular review. [1991 c 318 § 16; 1983 c 65 § 4.]

Intent—1991 c 318: See note following RCW 36.57A.040.

36.57A.060 Comprehensive plan—Development—Elements. The public transportation benefit area authority authorized pursuant to RCW 36.57A.050 shall develop a comprehensive transit plan for the area. Such plan shall include, but not be limited to the following elements:

- (1) The levels of transit service that can be reasonably provided for various portions of the benefit area.
- (2) The funding requirements, including local tax sources, state and federal funds, necessary to provide various levels of service within the area.

(3) The impact of such a transportation program on other transit systems operating within that county or adjacent counties.

(4) The future enlargement of the benefit area or the consolidation of such benefit area with other transit systems. [1975 1st ex.s. c 270 § 16.]

Additional notes found at www.leg.wa.gov

36.57A.070 Comprehensive plan—Review. The comprehensive transit plan adopted by the authority shall be reviewed by the state department of transportation to determine:

(1) The completeness of service to be offered and the economic viability of the transit system proposed in such comprehensive transit plan;

(2) Whether such plan integrates the proposed transportation system with existing transportation modes and systems that serve the benefit area;

(3) Whether such plan coordinates that area's system and service with nearby public transportation systems;

(4) Whether such plan is eligible for matching state or federal funds. [2006 c 334 § 30; 1985 c 6 § 5; 1975 1st ex.s. c 270 § 17.]

Effective date—2006 c 334: See note following RCW 47.01.051.

Additional notes found at www.leg.wa.gov

36.57A.080 General powers. In addition to the powers specifically granted by this chapter a public transportation benefit area shall have all powers which are necessary to carry out the purposes of the public transportation benefit area. A public transportation benefit area may contract with the United States or any agency thereof, any state or agency thereof, any other public transportation benefit area, any county, city, metropolitan municipal corporation, special district, or governmental agency, within or without the state, and any private person, firm or corporation for the purpose of receiving gifts or grants or securing loans or advances for preliminary planning and feasibility studies, or for the design, construction or operation of transportation facilities. In addition a public transportation benefit area may contract with any governmental agency or with any private person, firm or corporation for the use by either contracting party of all or any part of the facilities, structures, lands, interests in lands, air rights over lands and rights-of-way of all kinds which are owned, leased or held by the other party and for the purpose of planning, constructing or operating any facility or performing any service which the public transportation benefit area may be authorized to operate or perform, on such terms as may be agreed upon by the contracting parties. Before any contract for the lease or operation of any public transportation benefit area facilities shall be let to any private person, firm or corporation, a general schedule of rental rates for bus equipment with or without drivers shall be publicly posted applicable to all private certificated carriers, and for other facilities competitive bids shall first be called upon such notice, bidder qualifications and bid conditions as the public transportation benefit area authority shall determine.

A public transportation benefit area may sue and be sued in its corporate capacity in all courts and in all proceedings. [1975 1st ex.s. c 270 § 18.]

Additional notes found at www.leg.wa.gov

(2014 Ed.)

36.57A.090 Additional powers—Acquisition of existing system. A public transportation benefit area authority shall have the following powers in addition to the general powers granted by this chapter:

(1) To prepare, adopt, and carry out a general comprehensive plan for public transportation service which will best serve the residents of the public transportation benefit area and to amend said plan from time to time to meet changed conditions and requirements.

(2) To acquire by purchase, condemnation, gift, or grant and to lease, construct, add to, improve, replace, repair, maintain, operate, and regulate the use of transportation facilities and properties within or without the public transportation benefit area or the state, including systems of surface, underground, or overhead railways, tramways, buses, or any other means of local transportation except taxis, and including escalators, moving sidewalks, or other people-moving systems, passenger terminal and parking facilities and properties, and such other facilities and properties as may be necessary for passenger and vehicular access to and from such people-moving systems, terminal and parking facilities and properties, together with all lands, rights-of-way, property, equipment, and accessories necessary for such systems and facilities. Public transportation facilities and properties which are owned by any city may be acquired or used by the public transportation benefit area authority only with the consent of the city council of the city owning such facilities. Cities are hereby authorized to convey or lease such facilities to a public transportation benefit area authority or to contract for their joint use on such terms as may be fixed by agreement between the city council of such city and the public transportation benefit area authority, without submitting the matter to the voters of such city.

The facilities and properties of a public transportation benefit area system whose vehicles will operate primarily within the rights-of-way of public streets, roads, or highways, may be acquired, developed, and operated without the corridor and design hearings which are required by *RCW 35.58.273, as now or hereafter amended, for mass transit facilities operating on a separate right-of-way.

(3) To fix rates, tolls, fares, and charges for the use of such facilities and to establish various routes and classes of service. Fares or charges may be adjusted or eliminated for any distinguishable class of users including, but not limited to, senior citizens, handicapped persons, and students.

In the event any person holding a certificate of public convenience and necessity from the Washington utilities and transportation commission under RCW 81.68.040 has operated under such certificate for a continuous period of one year prior to the date of certification and is offering service within the public transportation benefit area on the date of the certification by the county canvassing board that a majority of votes cast authorize a tax to be levied and collected by the public transportation benefit area authority, such authority may by purchase or condemnation acquire at the fair market value, from the person holding the existing certificate for providing the services, that portion of the operating authority and equipment representing the services within the area of public operation. The person holding such existing certificate may require the public transportation benefit area authority to initiate such purchase of those assets of such person, existing as

of the date of the county canvassing board certification, within sixty days after the date of such certification. [1981 c 25 § 4; 1977 ex.s. c 44 § 3; 1975 1st ex.s. c 270 § 19.]

*Reviser's note: RCW 35.58.273 was repealed by 2002 c 6 § 2.

Additional notes found at www.leg.wa.gov

36.57A.100 Agreements with operators of local public transportation services—Operation without agreement prohibited—Purchase or condemnation of assets. Except in accordance with an agreement made as provided in this section or in accordance with the provisions of RCW 36.57A.090(3) as now or hereafter amended, upon the effective date on which the public transportation benefit area commences to perform the public transportation service, no person or private corporation shall operate a local public passenger transportation service, including passenger-only ferry service, within the public transportation benefit area with the exception of taxis, buses owned or operated by a school district or private school, and buses owned or operated by any corporation or organization solely for the purposes of the corporation or organization and for the use of which no fee or fare is charged.

An agreement may be entered into between the public transportation benefit area authority and any person or corporation legally operating a local public passenger transportation service, including passenger-only ferry service, wholly within or partly within and partly without the public transportation benefit area and on said effective date under which such person or corporation may continue to operate such service or any part thereof for such time and upon such terms and conditions as provided in such agreement. Such agreement shall provide for a periodic review of the terms and conditions contained therein. Where any such local public passenger transportation service, including passenger-only ferry service, will be required to cease to operate within the public transportation benefit area, the public transportation benefit area authority may agree with the owner of such service to purchase the assets used in providing such service, or if no agreement can be reached, the public transportation benefit area authority shall condemn such assets in the manner and by the same procedure as is or may be provided by law for the condemnation of other properties for cities of the first class, except insofar as such laws may be inconsistent with the provisions of this chapter.

Wherever a privately owned public carrier operates wholly or partly within a public transportation benefit area, the Washington utilities and transportation commission shall continue to exercise jurisdiction over such operation as provided by law. [2003 c 83 § 210; 1977 ex.s. c 44 § 4; 1975 1st ex.s. c 270 § 20.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Additional notes found at www.leg.wa.gov

36.57A.110 Powers of component city concerning passenger transportation transferred to benefit area—Operation of system by city until acquired by benefit area—Consent. The public transportation benefit area shall have and exercise all rights with respect to the construction, acquisition, maintenance, operation, extension, alteration, repair, control and management of passenger transportation

which any component city shall have been previously empowered to exercise and such powers shall not thereafter be exercised by such component cities without the consent of the public transportation benefit area: PROVIDED, That any city owning and operating a public transportation system on July 1, 1975 may continue to operate such system within such city until such system shall have been acquired by the public transportation benefit area and a public transportation benefit area may not acquire such system without the consent of the city council of such city. [1975 1st ex.s. c 270 § 21.]

Additional notes found at www.leg.wa.gov

36.57A.120 Acquisition of existing system—Labor contracts, employee rights preserved—Collective bargaining. If a public transportation benefit area shall acquire any existing transportation system, it shall assume and observe all existing labor contracts relating to such system and, to the extent necessary for operation of facilities, all of the employees of such acquired transportation system whose duties are necessary to operate efficiently the facilities acquired shall be appointed to comparable positions to those which they held at the time of such transfer, and no employee or retired or pensioned employee of such systems shall be placed in any worse position with respect to pension seniority, wages, sick leave, vacation or other benefits that he or she enjoyed as an employee of such system prior to such acquisition. The public transportation benefit area authority shall engage in collective bargaining with the duly appointed representatives of any employee labor organization having existing contracts with the acquired transportation system and may enter into labor contracts with such employee labor organization. [2009 c 549 § 4098; 1975 1st ex.s. c 270 § 22.]

Additional notes found at www.leg.wa.gov

36.57A.130 Treasurer and auditor—Powers and duties—Transportation fund—Contribution of sums for expenses. The treasurer of the county in which a public transportation benefit area authority is located shall be ex officio treasurer of the authority. In the case of a multicounty public transportation benefit area the county treasurer of the largest component county, by population, shall be the treasurer of the authority. However, the authority, by resolution, and upon the approval of the county treasurer, may designate some other person having experience in financial or fiscal matters as treasurer of the authority. Such a treasurer shall possess all of the powers, responsibilities, and duties the county treasurer possesses for a public transportation benefit area authority related to investing surplus authority funds. The authority may (and if the treasurer is not a county treasurer, it shall) require a bond with a surety company authorized to do business in the state of Washington in an amount and under the terms and conditions the authority, by resolution, from time to time finds will protect the authority against loss. The premium on any such bond shall be paid by the authority.

All authority funds shall be paid to the treasurer and shall be disbursed by the treasurer only on warrants issued by the county auditor, upon orders or vouchers approved by the authority. However, the authority may, by resolution, designate some person having experience in financial or fiscal matters, other than the county auditor, as the auditor of the

authority. Such an auditor shall possess all of the powers, responsibilities, and duties that the county auditor possesses for a public transportation benefit area authority related to creating and maintaining funds, issuing warrants, and maintaining a record of receipts and disbursements.

The treasurer shall establish a "transportation fund," into which shall be paid all authority funds, and the treasurer shall maintain such special accounts as may be created by the authority into which shall be placed all money as the authority may, by resolution, direct.

If the treasurer of the authority is a treasurer of the county, all authority funds shall be deposited with the county depository under the same restrictions, contracts, and security as provided for county depositories. If the treasurer of the authority is some other person, all funds shall be deposited in such bank or banks authorized to do business in this state that have qualified for insured deposits under any federal deposit insurance act as the authority, by resolution, shall designate.

An authority may provide and require a reasonable bond of any other person handling moneys or securities of the authority, but the authority shall pay the premium on the bond.

The county or counties and each city or town which is included in the authority shall contribute such sums towards the expense for maintaining and operating the public transportation system as shall be agreed upon between them. [1983 c 151 § 1; 1975 1st ex.s. c 270 § 23.]

Additional notes found at www.leg.wa.gov

36.57A.140 Annexation of additional area. (1) An election to authorize the annexation of territory contiguous to a public transportation benefit area may be called within the area to be annexed pursuant to resolution or petition in the following manner:

(a) By resolution of a public transportation benefit area authority when it determines that the best interests and general welfare of the public transportation benefit area would be served. The authority shall consider the question of areas to be annexed to the public transportation benefit area at least once every two years.

(b) By petition calling for such an election signed by at least four percent of the qualified voters residing within the area to be annexed and filed with the auditor of the county wherein the largest portion of the public transportation benefit area is located, and notice thereof shall be given to the authority. Upon receipt of such a petition, the auditor shall examine it and certify to the sufficiency of the signatures thereon.

(c) By resolution of a public transportation benefit area authority upon request of any city for annexation thereto.

(2) If the area proposed to be annexed is located within another county, the petition or resolution for annexation as set forth in subsection (1) of this section must be approved by the legislative authority of the county if the area is unincorporated or by the legislative authority of the city or town if the area is incorporated. Any annexation under this subsection must involve contiguous areas.

(3) The resolution or petition shall describe the boundaries of the area to be annexed. It shall require that there also be submitted to the electorate of the territory sought to be annexed a proposition authorizing the inclusion of the area

within the public transportation benefit area and authorizing the imposition of such taxes authorized by law to be collected by the authority. [1991 c 318 § 17; 1983 c 65 § 5; 1975 1st ex.s. c 270 § 24.]

Intent—1991 c 318: See note following RCW 36.57A.040.

Additional notes found at www.leg.wa.gov

36.57A.150 Advanced financial support payments. Counties that have established a county transportation authority pursuant to chapter 36.57 RCW and public transportation benefit areas that have been established pursuant to this chapter are eligible to receive a one-time advanced financial support payment from the state to assist in the development of the initial comprehensive transit plan required by RCW 36.57.070 and 36.57A.060. The amount of this support payment is established at one dollar per person residing within each county or public transportation benefit area, as determined by the office of financial management, but no single payment shall exceed fifty thousand dollars. Repayment of an advanced financial support payment shall be made to the public transportation account in the general fund or, if such account does not exist, to the general fund by each agency within two years of the date such advanced payment was received. Such repayment shall be waived within two years of the date such advanced payment was received if the voters in the appropriate counties or public transportation benefit areas do not elect to levy and collect taxes enabled under authority of this chapter and RCW 35.95.040 and 82.14.045. The state department of transportation shall provide technical assistance in the preparation of local transit plans, and administer the advanced financial support payments authorized by this section. [1985 c 6 § 6; 1979 c 151 § 41; 1975 1st ex.s. c 270 § 25.]

Additional notes found at www.leg.wa.gov

36.57A.160 Dissolution and liquidation. A public transportation benefit area established pursuant to this chapter may be dissolved and its affairs liquidated when so directed by a majority of persons in the benefit area voting on such question. An election placing such question before the voters may be called in the following manner:

(1) By resolution of the public transportation benefit area authority;

(2) By resolution of the county legislative body or bodies with the concurrence therein by resolution of the city council of a component city; or

(3) By petition calling for such election signed by at least ten percent of the qualified voters residing within the area filed with the auditor of the county wherein the largest portion of the public transportation benefit area is located. The auditor shall examine the same and certify to the sufficiency of the signatures thereon: PROVIDED, That to be validated, signatures must have been collected within a ninety day period as designated by the petition sponsors.

Any dissolution of a public transportation benefit area authority shall be carried out in accordance with the procedures in chapter 53.48 RCW. Any remaining deficit of the authority determined pursuant to RCW 53.48.080 shall be paid from the moneys collected from the tax source under which the authority operated. [1977 ex.s. c 44 § 5; 1975 1st ex.s. c 270 § 26.]

Additional notes found at www.leg.wa.gov

36.57A.170 Rail fixed guideway system—Safety program plan and security and emergency preparedness plan. (1) Each public transportation benefit area that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety program plan and a system security and emergency preparedness plan for that guideway to the state department of transportation by September 1, 1999, or at least one hundred eighty calendar days before beginning operations or instituting revisions to its plans. These plans must describe the public transportation benefit area's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plans must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the public transportation benefit area shall revise its plans to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plans for review.

(2) Each public transportation benefit area shall implement and comply with its system safety program plan and system security and emergency preparedness plan. The public transportation benefit area shall perform internal safety and security audits to evaluate its compliance with the plans, and submit its audit schedule to the department of transportation no later than December 15th each year. The public transportation benefit area shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plans.

(3) Each public transportation benefit area shall notify the department of transportation within two hours of an occurrence of a reportable accident, unacceptable hazardous condition, or security breach. The department may adopt rules further defining a reportable accident, unacceptable hazardous condition, or security breach. The public transportation benefit area shall investigate all reportable accidents, unacceptable hazardous conditions, or security breaches and provide a written investigation report to the department within forty-five calendar days after the reportable accident, unacceptable hazardous condition, or security breach.

(4) The system security and emergency preparedness plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.56 RCW. However, the system safety program plan as described in this section is not subject to this exemption. [2007 c 422 § 5; 2005 c 274 § 271; 1999 c 202 § 5.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Additional notes found at www.leg.wa.gov

36.57A.180 Public transportation for persons with special needs. (1) Effective January 1, 2001, in addition to any other authority granted under this chapter, a newly formed public transportation benefit area, or an existing public transportation benefit area that has not yet successfully submitted an authorizing proposition to the voters under RCW 82.14.045, may purchase, acquire, maintain, operate, or lease transportation services, equipment, and facilities for public transportation limited only to persons with special needs by any method or combination of methods provided by the area authority.

(2) As used in this section, "persons with special needs" means those persons, including their personal attendants, who because of physical or mental disability, income status, or age are unable to transport themselves or purchase transportation.

(3) The public transportation benefit area may fix, regulate, and control fares and rates to be charged for these transportation services. [2001 c 89 § 2.]

36.57A.191 Maintenance plan. As a condition of receiving state funding, a public transportation benefit area authority shall submit a maintenance and preservation management plan for certification by the department of transportation. The plan must inventory all transportation system assets within the direction and control of the authority, and provide a preservation plan based on lowest life-cycle cost methodologies. [2006 c 334 § 9; 2003 c 363 § 304.]

Effective date—2006 c 334: See note following RCW 47.01.051.

Finding—Intent—2003 c 363: See note following RCW 35.84.060.

Additional notes found at www.leg.wa.gov

36.57A.200 Passenger-only ferry service—Authorized—Investment plan. A public transportation benefit area having a boundary located on Puget Sound may provide passenger-only ferry service. For the purposes of this chapter and RCW 82.14.440 and 82.80.130, Puget Sound is considered as extending north as far as the Canadian border and west as far as Port Angeles. Before a benefit area may provide passenger-only ferry service, it must develop a passenger-only ferry investment plan including elements to operate or contract for the operation of passenger-only ferry services, purchase, lease, or rental of ferry vessels and dock facilities for the provision of transit service, and identify other activities necessary to implement the plan. The plan must set forth terminal locations to be served, projected costs of providing services, and revenues to be generated from tolls, locally collected tax revenues, and other revenue sources. The plan must ensure that services provided under the plan are for the benefit of the residents of the benefit area. The benefit area may use any of its powers to carry out this purpose, unless otherwise prohibited by law. In addition, the public transportation benefit area may enter into contracts and agreements to operate passenger-only ferry service and public-private partnerships and design-build, general contractor/construction management, or other alternative procurement process substantially consistent with chapter 39.10 RCW. [2003 c 83 § 201.]

Findings—Intent—2003 c 83: "The legislature finds that passenger-only ferry service is a key element to the state's transportation system and that it is in the interest of the state to ensure provision of such services. The legislature further finds that diminished state transportation resources require that regional and local authorities be authorized to develop, operate, and fund

needed services.

The legislature recognizes that if the state eliminates passenger-only ferry service on one or more routes, it should provide an opportunity for locally sponsored service and the department of transportation should assist in this effort.

It is the intent of the legislature to encourage interlocal agreements to ensure passenger-only ferry service is reinstated on routes that the Washington state ferry system eliminates." [2003 c 83 § 101.]

Additional notes found at www.leg.wa.gov

36.57A.210 Passenger-only ferry service—Taxes, fees, and tolls. (1) A public transportation benefit area may, as part of a passenger-only ferry investment plan, recommend some or all of the following revenue sources as provided in this chapter:

(a) A motor vehicle excise tax, as provided in RCW 82.80.130;

(b) A sales and use tax, as provided in RCW 82.14.440;

(c) Tolls for passengers and packages and, where applicable, parking; and

(d) Charges or licensing fees for advertising, leasing space for services to ferry passengers, and other revenue-generating activities.

(2) Taxes may not be imposed without an affirmative vote of the majority of the voters within the boundaries of the area voting on a single ballot proposition to both approve a passenger-only ferry investment plan and to approve taxes to implement the plan. Revenues from these taxes and fees may be used only to implement the plan and must be used for the benefit of the residents of the benefit area. A district may contract with the state department of revenue or other appropriate entities for administration and collection of any of the taxes or charges authorized in this section. [2003 c 83 § 202.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

36.57A.220 Passenger-only ferry service between Kingston and Seattle. A public transportation benefit area seeking grant funding as described in RCW 47.01.350 for a passenger-only ferry route between Kingston and Seattle shall first receive approval from the governor after submitting a complete business plan to the governor and the legislature by November 1, 2007. The business plan must, at a minimum, include hours of operation, vessel needs, labor needs, proposed routes, passenger terminal facilities, passenger rates, anticipated federal and local funding, coordination with the Washington state ferry system, coordination with existing transit providers, long-term operation and maintenance needs, and a long-term financial plan. [2007 c 223 § 1; 2006 c 332 § 8.]

Effective date—2007 c 223: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 27, 2007]." [2007 c 223 § 11.]

36.57A.230 Public transportation fares—Proof of payment—Civil infractions. (1) Persons traveling on public transportation operated by a public transportation benefit area shall pay the fare established by the public transportation benefit area and shall produce proof of payment in accordance with the terms of use established by the public transportation benefit area. Such persons shall produce proof of payment when requested by a person designated to monitor

fare payment. The required manner of producing proof of payment specified in the terms of use established by the public transportation benefit area may include, but is not limited to, requiring a person using an electronic fare payment card to validate the card by presenting the card to an electronic card reader before or upon entering a public transportation vehicle or a restricted fare paid area.

(2) The following constitute civil infractions punishable according to the schedule of fines and penalties established by a public transportation benefit area under RCW 36.57A.235:

(a) Failure to pay the required fare, except when a public transportation benefit area fails to meet the requirements of subsection (3) of this section;

(b) Failure to produce proof of payment in the manner required by the terms of use established by the public transportation benefit area including, but not limited to, the failure to produce a validated fare payment card when requested to do so by a person designated to monitor fare payment; and

(c) Failure to depart the bus or other mode of public transportation when requested to do so by a person designated to monitor fare payment.

(3) If fare payment is required before entering a transit vehicle, as defined in RCW 9.91.025(2)(b), or before entering a fare paid area in a transit facility, as defined in RCW 9.91.025(2)(a), signage must be conspicuously posted at the place of boarding or within ten feet of the nearest entrance to a transit facility that clearly indicates: (a) The locations where tickets or fare media may be purchased; and (b) that a person using an electronic fare payment card must present the card to an electronic card reader before entering a transit vehicle or before entering a restricted fare paid area. [2012 c 68 § 2; 2008 c 123 § 6.]

36.57A.235 Public transportation fares—Schedule of fines and penalties—Who may monitor fare payment—Administration of citations. (1) A public transportation benefit area may establish, by resolution, a schedule of fines and penalties for civil infractions established in RCW 36.57A.230. Fines established shall not exceed those imposed for class 1 infractions under RCW 7.80.120.

(2)(a) A public transportation benefit area may designate persons to monitor fare payment who are equivalent to, and are authorized to exercise all the powers of, an enforcement officer as defined in RCW 7.80.040. A public transportation benefit area may employ personnel to either monitor fare payment or contract for such services, or both.

(b) In addition to the specific powers granted to enforcement officers under RCW 7.80.050 and 7.80.060, persons designated to monitor fare payment may also take the following actions:

(i) Request proof of payment from passengers;

(ii) Request personal identification from a passenger who does not produce proof of payment when requested;

(iii) Issue a citation conforming to the requirements established in RCW 7.80.070; and

(iv) Request that a passenger leave the bus or other mode of public transportation when the passenger has not produced proof of payment after being asked to do so by a person designated to monitor fare payment.

(3) A public transportation benefit area shall keep records of citations in the manner prescribed by RCW 7.80.150. All civil infractions established by this section and RCW 36.57A.230 and 36.57A.240 shall be heard and determined by a district court as provided in RCW 7.80.010 (1) and (4). [2008 c 123 § 7.]

36.57A.240 Public transportation fares—Powers of law enforcement authorities. RCW 36.57A.230 and 36.57A.235 do not prevent law enforcement authorities from prosecuting for theft, trespass, or other charges by any individual who:

(1) Fails to pay the required fare on more than one occasion within a twelve-month period;

(2) Fails to timely select one of the options for responding to the notice of civil infraction after receiving a statement of the options for responding to the notice of infraction and the procedures necessary to exercise these options; or

(3) Fails to depart the bus or other mode of public transportation when requested to do so by a person designated to monitor fare payment. [2008 c 123 § 8.]

36.57A.245 Public transportation fares—Powers and authority are supplemental to other laws. The powers and authority conferred by RCW 36.57A.230 through 36.57A.240 shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained therein shall be construed as limiting any other powers or authority of any public agency. [2008 c 123 § 9.]

36.57A.250 Supplemental transportation improvements. If the legislative authority of a city provides or contracts for supplemental transportation improvements, as described in RCW 35.21.925 or under chapter 36.73 RCW, a public transportation benefit area serving the city or border jurisdictions shall coordinate its services with the supplemental transportation improvements to maximize efficiencies in public transportation services within and across service boundaries. [2010 c 251 § 5.]

Chapter 36.58 RCW SOLID WASTE DISPOSAL

Sections

36.58.010	Acquisition of solid waste or recyclable materials sites authorized.
36.58.020	Rules and regulations as to use—Penalty.
36.58.030	"Transfer station" defined.
36.58.040	Solid waste handling systems authorized—Disposal sites—Contracts for solid waste handling and collection of source separated recyclable material—Waste reduction and recycling.
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36.58.140	Solid waste disposal district—Excise tax—Lien for delinquent taxes and penalties.
36.58.150	Solid waste disposal district—Excess levies authorized—General obligation and revenue bonds.
36.58.160	Collection and transportation of recyclable materials by recycling companies or nonprofit entities—Reuse or reclamation—Application of chapter.

Solid waste collection companies: Chapter 81.77 RCW.

36.58.010 Acquisition of solid waste or recyclable materials sites authorized. Any county legislative authority may acquire by purchase or by gift, dedication, or donation, sites for the use of the public in disposing of solid waste or recyclable materials. However, no county legislative authority shall be authorized to require any retail enterprise engaged in the sale of consumer-packaged products to locate or place a public solid waste collection site or buy-back center upon or within a certain distance of the retail establishment as a condition of engaging in the sale of consumer-packaged products. [1989 c 431 § 52; 1963 c 4 § 36.58.010. Prior: 1943 c 87 § 1; Rem. Supp. 1943 § 6294-150.]

Additional notes found at www.leg.wa.gov

36.58.020 Rules and regulations as to use—Penalty. Any board of county commissioners may make such rules and regulations as may be deemed necessary for the use and occupation of such sites, and may provide for the maintenance and care thereof. Any person violating any of the rules and regulations made by the board relating to the use or occupation of any site owned or occupied by the county for garbage disposal purposes shall be guilty of a misdemeanor. [1963 c 4 § 36.58.020. Prior: 1943 c 87 § 2; Rem. Supp. 1943 § 6294-151.]

36.58.030 "Transfer station" defined. As used in RCW 36.58.030 through 36.58.060, the term "transfer station" means a staffed, fixed supplemental facility used by persons and route collection vehicles to deposit solid wastes into transfer trailers for transportation to a disposal site. This does not include detachable containers, except in counties with a population of less than seventy thousand, and in any county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand that is located east of the crest of the Cascade mountain range, where detachable containers shall be securely fenced, staffed by an attendant during all hours when the detachable container is open to the public, charge a tipping fee that shall cover the cost of providing and for use of the service, and shall be operated as a transfer station. [1991 c 363 § 74; 1989 c 431 § 27; 1975-'76 2nd ex.s. c 58 § 1.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Additional notes found at www.leg.wa.gov

36.58.040 Solid waste handling systems authorized—Disposal sites—Contracts for solid waste handling and collection of source separated recyclable material—Waste reduction and recycling. The legislative authority of

a county may by ordinance provide for the establishment of a system or systems of solid waste handling for all unincorporated areas of the county or for portions thereof. A county may designate a disposal site or sites for all solid waste collected in the unincorporated areas pursuant to the provisions of a comprehensive solid waste plan adopted pursuant to chapter 70.95 RCW. However for any solid waste collected by a private hauler operating under a certificate granted by the Washington utilities and transportation commission under the provisions of chapter 81.77 RCW and which certificate is for collection in a geographic area lying in more than one county, such designation of disposal sites shall be pursuant to an interlocal agreement between the involved counties.

A county may construct, lease, purchase, acquire, add to, alter, or extend solid waste handling systems, plants, sites, or other facilities and shall have full jurisdiction and authority to manage, regulate, maintain, utilize, operate, control, and establish the rates and charges for those solid waste handling systems, plants, sites, or other facilities. A county may enter into agreements with public or private parties to: (1) Construct, purchase, acquire, lease, add to, alter, extend, maintain, manage, utilize, or operate publicly or privately owned or operated solid waste handling systems, plants, sites, or other facilities; (2) establish rates and charges for those systems, plants, sites, or other facilities; (3) designate particular publicly or privately owned or operated systems, plants, sites, or other facilities as disposal sites; (4) process, treat, or convert solid waste into other valuable or useful materials or products; and (5) sell the material or products of those systems, plants, or other facilities.

The legislative authority of a county may award contracts for solid waste handling that provide that a county provide for a minimum periodic fee or other method of compensation in consideration of the operational availability of those solid waste handling systems, plants, sites, or other facilities at a specified minimum level, without regard to the ownership of the systems, plants, sites or other facilities, or the amount of solid waste actually handled during all or any part of the contract. When a minimum level of solid waste is specified in a contract entered into under this section, there shall be a specific allocation of financial responsibility in the event the amount of solid waste handled falls below the minimum level provided in the contract. Solid waste handling systems, plants, sites, or other facilities constructed, purchased, acquired, leased, added to, altered, extended, maintained, managed, utilized, or operated pursuant to this section, whether publicly or privately owned, shall be in substantial compliance with the solid waste management plan applicable to the county adopted pursuant to chapter 70.95 RCW. Agreements relating to such solid waste handling systems, plans [plants], sites, or other facilities may be for such term and may contain such covenants, conditions, and remedies as the legislative authority of the county may deem necessary or appropriate.

As used in this chapter, the terms "solid waste" and "solid waste handling" shall be as defined in RCW 70.95.030.

The legislative authority of a county may:

(1) By ordinance award a contract to collect source separated recyclable materials from residences within unincorporated areas. The legislative authority has complete authority to manage, regulate, and fix the price of the source separated

recyclable collection service. The contracts may provide that the county pay minimum periodic fees to a municipal entity or permit holder; or

(2) Notify the commission in writing to carry out and implement the provisions of the waste reduction and recycling element of the comprehensive solid waste management plan.

This election may be made by counties at any time after July 23, 1989. An initial election must be made no later than ninety days following approval of the local comprehensive waste management plan required by RCW 70.95.090.

Nothing in this section shall be construed to authorize the operation of a solid waste collection system by counties or to authorize counties to affect the authority of the utilities and transportation commission under RCW 81.77.020. [1992 c 131 § 3. Prior: 1989 c 431 § 28; 1989 c 399 § 9; 1986 c 282 § 20; 1975-'76 2nd ex.s. c 58 § 2.]

Severability—Legislative findings—Construction—Liberal construction—Supplemental powers—1986 c 282: See notes following RCW 35.21.156.

Additional notes found at www.leg.wa.gov

36.58.045 County may impose fee upon solid waste collection services—Revenue to fund compliance with comprehensive solid waste management plan.

(1) The legislative authority of any county may impose a fee upon the solid waste collection services of a solid waste collection company operating within the unincorporated areas of the county, to fund the administration and planning expenses that may be incurred by the county in complying with the requirements in RCW 70.95.090. The fee may be in addition to any other solid waste services fees and charges a county may legally impose.

(2) Each county imposing the fee authorized by this section shall notify the Washington utilities and transportation commission and the affected solid waste collection companies of the amount of the fee ninety days prior to its implementation. [1989 c 431 § 15.]

Additional notes found at www.leg.wa.gov

36.58.050 Solid waste disposal—Transfer stations.

When a comprehensive solid waste plan, as provided in RCW 70.95.080, incorporates the use of transfer stations, such stations shall be considered part of the disposal site and as such, along with the transportation of solid wastes between disposal sites, shall be exempt from regulation by the Washington utilities and transportation commission as provided in chapter 81.77 RCW.

Each county may enter into contracts for the hauling of trailers of solid wastes from these transfer stations to disposal sites and return either by (1) the normal bidding process, or (2) negotiation with the qualified collection company servicing the area under authority of chapter 81.77 RCW. [1975-'76 2nd ex.s. c 58 § 3.]

36.58.060 Solid waste disposal—Ownership of solid wastes—Responsibility for handling.

Ownership of solid wastes shall be vested in the person or local jurisdiction managing disposal and/or resource recovery facilities upon the arrival of said solid wastes at said facility: PROVIDED, That the original owner retains ownership of the solid wastes until

they arrive at the disposal site or transfer station or detachable container, and the original owner has the right of recovery to any valuable items inadvertently discarded: PROVIDED FURTHER, That the person or agency providing the collection service shall be responsible for the proper handling of the solid wastes from the point of collection to the disposal or recovery facility. [1975-'76 2nd ex.s. c 58 § 4.]

36.58.080 County solid waste facilities—Exempt from municipal taxes—Charges to mitigate impacts—Negotiation and arbitration. County-owned solid waste facilities shall not be subject to any tax or excise imposed by any city or town. Cities or towns may charge counties to mitigate impacts directly attributable to the solid waste facility: PROVIDED, That any city or town establishes that such charges are reasonably necessary to mitigate such impacts and that revenue generated from such charges is expended only to mitigate such impacts. Impacts resulting from commercial and residential solid waste collection within any city or town shall not be considered to be directly attributable to the solid waste facility. In the event that no agreement can be reached between the city or town and the county following a reasonable period of good faith negotiations, including mediation where appropriate, the matter shall be resolved by a board of arbitrators, to be convened at the request of either party, such board of arbitrators to consist of a representative from the city or town involved, a representative of the county, and a third representative to be appointed by the other two representatives. If no agreement can be reached with regard to said third representative, the third representative shall be appointed by a judge of the superior court of the county of the jurisdiction owning the solid waste facility. The determination by the board of arbitrators of the sum to be paid by the county shall be binding on all parties. Each party shall pay the costs of their individual representatives on the board of arbitrators and they shall pay one-half of the cost of the third representative. [1983 c 171 § 1; 1982 c 175 § 8.]

Additional notes found at www.leg.wa.gov

36.58.090 Contracts with vendors for solid waste handling systems, plants, sites, or facilities—Requirements—Vendor selection procedures. (1) Notwithstanding the provisions of any county charter or any law to the contrary, and in addition to any other authority provided by law, the legislative authority of a county may contract with one or more vendors for one or more of the design, construction, or operation of, or other service related to, the solid waste handling systems, plants, sites, or other facilities in accordance with the procedures set forth in this section. When a contract for design services is entered into separately from other services permitted under this section, procurement shall be in accord with chapter 39.80 RCW. For the purpose of this chapter, the term "legislative authority" shall mean the board of county commissioners or, in the case of a home rule charter county, the official, officials, or public body designated by the charter to perform the functions authorized therein.

(2) If the legislative authority of the county decides to proceed with the consideration of qualifications or proposals for services from vendors, the county shall publish notice of its requirements and request submission of qualifications statements or proposals. The notice shall be published in the

official newspaper of the county at least once a week for two weeks not less than sixty days before the final date for the submission of qualifications statements or proposals. The notice shall state in summary form (a) the general scope and nature of the design, construction, operation, or other service, (b) the name and address of a representative of the county who can provide further details, (c) the final date for the submission of qualifications statements or proposals, (d) an estimated schedule for the consideration of qualifications, the selection of vendors, and the negotiation of a contract or contracts for services, (e) the location at which a copy of any request for qualifications or request for proposals will be made available, and (f) the criteria established by the legislative authority to select a vendor or vendors, which may include but shall not be limited to the vendor's prior experience, including design, construction, or operation of other similar facilities; respondent's management capability, schedule availability and financial resources; cost of the services, nature of facility design proposed by the vendor; system reliability; performance standards required for the facilities; compatibility with existing service facilities operated by the public body or other providers of service to the public; project performance guarantees; penalty and other enforcement provisions; environmental protection measures to be used; consistency with the applicable comprehensive solid waste management plan; and allocation of project risks.

(3) If the legislative authority of the county decides to proceed with the consideration of qualifications or proposals, it may designate a representative to evaluate the vendors who submitted qualifications statements or proposals and conduct discussions regarding qualifications or proposals with one or more vendors. The legislative authority or representative may request submission of qualifications statements and may later request more detailed proposals from one or more vendors who have submitted qualifications statements, or the representative may request detailed proposals without having first received and evaluated qualifications statements. The representative shall evaluate the qualifications or proposals, as applicable. If two or more vendors submit qualifications or proposals that meet the criteria established by the legislative authority of the county, discussions and interviews shall be held with at least two vendors. Any revisions to a request for qualifications or request for proposals shall be made available to all vendors then under consideration by the city or town and shall be made available to any other person who has requested receipt of that information.

(4) Based on criteria established by the legislative authority of the county, the representative shall recommend to the legislative authority a vendor or vendors that are initially determined to be the best qualified to provide one or more of the design, construction, or operation of, or other service related to, the proposed project or services. The legislative authority may select one or more qualified vendors for one or more of the design, construction, or operation of, or other service related to, the proposed project or services.

(5) The legislative authority or its representative may attempt to negotiate a contract with the vendor or vendors selected for one or more of the design, construction, or operation of, or other service related to, the proposed project or services on terms that the legislative authority determines to be fair and reasonable and in the best interest of the county. If

the legislative authority or its representative is unable to negotiate such a contract with any one or more of the vendors first selected on terms that it determines to be fair and reasonable and in the best interest of the county, negotiations with any one or more of the vendors shall be terminated or suspended and another qualified vendor or vendors may be selected in accordance with the procedures set forth in this section. If the legislative authority decides to continue the process of selection, negotiations shall continue with a qualified vendor or vendors in accordance with this section at the sole discretion of the legislative authority until an agreement is reached with one or more qualified vendors, or the process is terminated by the legislative authority. The process may be repeated until an agreement is reached.

(6) Prior to entering into a contract with a vendor, the legislative authority of the county shall make written findings, after holding a public hearing on the proposal, that it is in the public interest to enter into the contract, that the contract is financially sound, and that it is advantageous for the county to use this method for awarding contracts compared to other methods.

(7) Each contract shall include a project performance bond or bonds or other security by the vendor that in the judgment of the legislative authority of the county is sufficient to secure adequate performance by the vendor.

(8) The provisions of chapters 39.12, 39.19, and *39.25 RCW shall apply to a contract entered into under this section to the same extent as if the systems and plants were owned by a public body.

(9) The vendor selection process permitted by this section shall be supplemental to and shall not be construed as a repeal of or limitation on any other authority granted by law.

(10) The alternative selection process provided by this section may not be used in the selection of a person or entity to construct a publicly owned facility for the storage or transfer of solid waste or solid waste handling equipment unless the facility is either (a) privately operated pursuant to a contract greater than five years, or (b) an integral part of a solid waste processing facility located on the same site. Instead, the applicable provisions of RCW 36.32.250 and chapters 39.04 and 39.30 RCW shall be followed. [1992 c 131 § 4; 1989 c 399 § 10; 1986 c 282 § 19.]

*Reviser's note: Chapter 39.25 RCW was repealed by 1994 c 138 § 2.

Severability—Legislative findings—Construction—Liberal construction—Supplemental powers—1986 c 282: See notes following RCW 35.21.156.

Additional notes found at www.leg.wa.gov

36.58.100 Solid waste disposal district—Authorized—Boundaries—Powers—Governing body. The legislative authority of any county with a population of less than one million is authorized to establish one or more solid waste disposal districts within the county for the purpose of providing and funding solid waste disposal services. No solid waste disposal district may include any area within the corporate limits of a city or town unless the city or town governing body adopts a resolution approving inclusion of the area within its limits. The county legislative authority may modify the boundaries of the solid waste disposal district by the same procedure used to establish the district. A solid waste disposal district may be dissolved by the county legislative

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authority after holding a hearing as provided in RCW 36.58.110.

As used in RCW 36.58.100 through 36.58.150 the term "county" includes all counties other than a county with a population of one million or more.

A solid waste disposal district is a quasi-municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

A solid waste disposal district shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute: PROVIDED, That a solid waste disposal district shall not have the power of eminent domain.

The county legislative authority shall be the governing body of a solid waste disposal district. The electors of a solid waste disposal district shall be all registered voters residing within the district. [1991 c 363 § 75; 1982 c 175 § 1.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Additional notes found at www.leg.wa.gov

36.58.110 Solid waste disposal district—Establishment, modification, or dissolution—Hearing—Notice. A county legislative authority proposing to establish a solid waste disposal district or to modify or dissolve an existing solid waste disposal district shall conduct a hearing at the time and place specified in a notice published at least once not less than ten days prior to the hearing in a newspaper of general circulation within the proposed solid waste disposal district. This notice shall be in addition to any other notice required by law to be published. Additional notice of such hearing may be given by mail, posting within the proposed solid waste disposal district, or in any manner local authorities deem necessary to notify affected persons. All hearings shall be public and the county legislative authority shall hear objections from any person affected by the formation, modification, or dissolution of the solid waste disposal district and make such changes in the boundaries of the district or any other modifications that the county legislative authority deems necessary. [1982 c 175 § 2.]

Additional notes found at www.leg.wa.gov

36.58.120 Solid waste disposal district—Establishment—Ordinance. No solid waste disposal district shall be established within a county unless the county legislative authority determines, following a hearing held pursuant to RCW 36.58.110, that it is in the public interest to form the district and the county legislative authority adopts an ordinance creating the solid waste disposal district and establishing its boundaries. [1982 c 175 § 3.]

Additional notes found at www.leg.wa.gov

36.58.130 Solid waste disposal district—Powers—Restrictions—Fees. A solid waste disposal district may provide for all aspects of disposing of solid wastes. All moneys received by a solid waste disposal district shall be used exclusively for district purposes. Nothing in this chapter shall pre-

mit waste disposal districts to engage in the collection of residential or commercial garbage.

A solid waste disposal district shall perform all construction in excess of twenty-five thousand dollars by contract let pursuant to RCW 36.32.250.

A solid waste disposal district may collect disposal fees based exclusively upon utilization by weight or volume for accepting solid wastes at a disposal site or transfer station. The county may transfer moneys to a solid waste disposal district to be used for district purposes. [1982 c 175 § 4.]

Additional notes found at www.leg.wa.gov

36.58.140 Solid waste disposal district—Excise tax—Lien for delinquent taxes and penalties. A solid waste disposal district may levy and collect an excise tax on the privilege of living in or operating a business in a solid waste disposal taxing district sufficient to fund its solid waste disposal activities: PROVIDED, That any property which is producing commercial garbage shall be exempt if the owner is providing regular collection and disposal. The excise tax shall be billed and collected at times and in the manner fixed and determined by the solid waste disposal district. Penalties for failure to pay the tax on time may be provided for. A solid waste disposal district shall have a lien for delinquent taxes and penalties, plus an interest rate equal to the interest rate for delinquent property taxes. The lien shall be attached to each parcel of property in the district that is occupied by the person so taxed and shall be superior to all other liens and encumbrances except liens for property taxes.

The solid waste disposal district shall periodically certify the delinquencies to the county treasurer at which time the lien shall be attached. The lien shall be foreclosed in the same manner as the foreclosure of real property taxes. [1982 c 175 § 5.]

Additional notes found at www.leg.wa.gov

36.58.150 Solid waste disposal district—Excess levies authorized—General obligation and revenue bonds. (1) A solid waste disposal district shall not have the power to levy an annual levy without voter approval, but it shall have the power to levy a tax, in excess of the one percent limitation, upon the property within the district for a one year period to be used for operating or capital purposes whenever authorized by the electors of the district pursuant to RCW 84.52.052 and Article VII, section 2(a) of the state Constitution.

A solid waste disposal district may issue general obligation bonds for capital purposes only, subject to the limitations prescribed in RCW 39.36.020(1), and may provide for the retirement of the bonds by voter-approved bond retirement tax levies pursuant to Article VII, section 2(b) of the state Constitution and RCW 84.52.056. Such general obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW.

A solid waste disposal district may issue revenue bonds to fund its activities. Such revenue bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such revenue bonds may be issued and sold in accordance with

chapter 39.46 RCW. [1984 c 186 § 25; 1983 c 167 § 71; 1982 c 175 § 6.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Additional notes found at www.leg.wa.gov

36.58.160 Collection and transportation of recyclable materials by recycling companies or nonprofit entities—Reuse or reclamation—Application of chapter. Nothing in this chapter shall prevent a recycling company or nonprofit entity from collecting and transporting recyclable materials from a buy-back center, drop-box, or from a commercial or industrial generator of recyclable materials, or upon agreement with a solid waste collection company.

Nothing in this chapter shall be construed as prohibiting a commercial or industrial generator of commercial recyclable materials from selling, conveying, or arranging for transportation of such material to a recycler for reuse or reclamation. [1989 c 431 § 34.]

Additional notes found at www.leg.wa.gov

Chapter 36.58A RCW

SOLID WASTE COLLECTION DISTRICTS

Sections

- 36.58A.010 Authorized—Conditions—Modification or dissolution of district.
- 36.58A.020 Hearings upon establishing, modification or dissolution of district—Notice—Scope.
- 36.58A.030 County legislative authority determination required to establish district—Commission findings as to present services.
- 36.58A.040 County may collect fees of garbage and refuse collection company—Disposition of fees—Subrogation—Lien.

Dissolution of inactive special purpose districts: Chapter 36.96 RCW.

36.58A.010 Authorized—Conditions—Modification or dissolution of district. Any county legislative authority may establish solid waste collection districts within the county boundaries for the mandatory collection of solid waste: PROVIDED, That no such district shall include any area within the corporate limits of any city or town without the consent of the legislative authority of the city or town. Such districts may be established only after approval of a coordinated, comprehensive solid waste management plan adopted pursuant to chapter 134, Laws of 1969 ex. sess. and chapter 70.95 RCW or pursuant to another solid waste management plan adopted prior to May 21, 1971 or within one year thereafter. The legislative authority of the county may modify or dissolve such district after a hearing as provided for in RCW 36.58A.020. [1971 ex.s. c 293 § 2.]

Certain provisions not to detract from commission powers, duties, and functions: RCW 80.01.300.

36.58A.020 Hearings upon establishing, modification or dissolution of district—Notice—Scope. The county legislative authority proposing to establish a solid waste collection district or to modify or dissolve an existing solid waste collection district shall conduct a hearing at the time and place specified in a notice published at least once not less than ten days prior to the hearing in a newspaper of general circulation within the county. Additional notice of such hearing may be given by mail, posting on the property, or in any manner local authorities deem necessary to notify adjacent

landowners and the public. All hearings shall be public and the legislative authority shall hear objections from any person affected by the formation of the solid waste collection district and make such changes in the boundaries of the district or any other modifications of plans that the legislative authority deems necessary. [1971 ex.s. c 293 § 3.]

Certain provisions not to detract from commission powers, duties, and functions: RCW 80.01.300.

36.58A.030 County legislative authority determination required to establish district—Commission findings as to present services. No solid waste collection district shall be established in an area within the county boundaries unless the county legislative authority, after the hearing regarding formation of such district, determines from that hearing that mandatory solid waste collection is in the public interest and necessary for the preservation of public health. Such determination by the county legislative authority shall require the utilities and transportation commission to investigate and make a finding as to the ability and willingness of the existing garbage and refuse collection companies servicing the area to provide the required service.

If the utilities and transportation commission finds that the existing garbage and refuse collection company or companies are unable or unwilling to provide the required service it shall proceed to issue a certificate of public need and necessity to any qualified person or corporation in accordance with the provisions of RCW 81.77.040.

The utilities and transportation commission shall notify the county legislative authority within sixty days of its findings and actions and if no qualified garbage and refuse collection company or companies are available in the proposed solid waste collection district, the county legislative authority may provide county garbage and refuse collection services in the area and charge and collect reasonable fees therefor. The county shall not provide service in any portion of the area found by the utilities and transportation commission to be receiving adequate service from an existing certificated carrier unless the county shall acquire the rights of such existing certificated carrier by purchase or condemnation. [1971 ex.s. c 293 § 4.]

Certain provisions not to detract from commission powers, duties, and functions: RCW 80.01.300.

36.58A.040 County may collect fees of garbage and refuse collection company—Disposition of fees—Subrogation—Lien. If any garbage and refuse collection company certified by the utilities and transportation commission which operates in any solid waste collection district fails to collect any fees due and payable to it for garbage and refuse collection services, such company may request the county to collect such fees. Upon the collection of such fees, the county shall pay one-half of the fees actually collected to the garbage and refuse collection company entitled to receive such and shall deposit the remaining one-half in the county general fund.

When the county undertakes to collect such fees as requested by the garbage and refuse collection companies, the county shall be subrogated to all of the rights of such companies. Any such fees which the county fails to collect shall become liens on the real or personal property of the per-

sons owing such fees and the county may take all appropriate legal action to enforce such liens. [1971 ex.s. c 293 § 6.]

Certain provisions not to detract from commission powers, duties, and functions: RCW 80.01.300.

Chapter 36.60 RCW COUNTY RAIL DISTRICTS

Sections

36.60.010	Establishment of district—Boundaries—Powers.
36.60.020	Establishment, modification, or dissolution of district—Public notice and hearing—Election.
36.60.030	Authority of district to provide rail service.
36.60.040	Excess property tax levies authorized.
36.60.050	General obligation bonds authorized—Limitations—Terms.
36.60.060	Revenue bonds authorized—Limitations—Terms.
36.60.070	Power of eminent domain.
36.60.100	Establishment, modification, or dissolution of district—Alternate method.
36.60.110	Establishment, modification, or dissolution of district—Alternate method—Petition.
36.60.120	Establishment, modification, or dissolution of district—Alternate method—Public hearing.
36.60.130	Establishment, modification, or dissolution of district—Alternate method—Determination by county legislative authority.
36.60.140	Annexation by boundary modification—Assumption of outstanding indebtedness.
36.60.900	Liberal construction.
36.60.905	Severability—1983 c 303.

36.60.010 Establishment of district—Boundaries—Powers. Subject to RCW 36.60.020, the legislative authority of a county may establish one or more county rail districts within the county for the purpose of providing and funding improved rail freight or passenger service, or both. The boundaries of county rail districts shall be drawn to include contiguous property in an area from which agricultural or other goods could be shipped by the rail service provided. The district shall not include property outside this area which does not, or, in the judgment of the county legislative authority, is not expected to produce goods which can be shipped by rail, or property substantially devoted to fruit crops or producing goods that are shipped in a direction away from the district. A county rail district is a quasi municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

A county rail district shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, to accept and expend or use gifts, grants, and donations, and to sue and be sued.

The county legislative authority shall be the governing body of a county rail district. The county treasurer shall act as the ex officio treasurer of the county rail district. The electors of a district are all registered voters residing within the district.

This authority and that provided in RCW 36.60.030 may only be exercised outside the boundaries of the county rail district if such extraterritorial rail services, equipment, or facilities are found, by resolution of the county legislative authority exercising such authority, to be reasonably neces-

sary to link the rail services, equipment, and facilities within the rail district to an interstate railroad system; however, if such extraterritorial rail services, equipment, or facilities are in or are to be located in one or more other counties, the legislative authority of such other county must consent by resolution to the proposed plan of the originating county which consent shall not be unreasonably withheld. [2001 c 58 § 1; 1985 c 187 § 1; 1983 c 303 § 8.]

36.60.020 Establishment, modification, or dissolution of district—Public notice and hearing—Election. (1) A county legislative authority proposing to establish a county rail district, or to modify the boundaries of an existing county rail district, or to dissolve an existing county rail district, shall conduct a hearing at the time and place specified in a notice published at least once, not less than ten days prior to the hearing, in a newspaper of general circulation within the proposed county rail district. This notice shall be in addition to any other notice required by law to be published. Additional notice of the hearing may be given by mail, posting within the proposed county rail district, or in any manner the county legislative authority deems necessary to notify affected persons. All hearings shall be public and the county legislative authority shall hear objections from any person affected by the formation, modification of the boundaries, or dissolution of the county rail district.

(2) Following the hearing held under subsection (1) of this section, the county legislative authority may adopt a resolution providing for the submission of a proposal to establish a county rail district, modify the boundaries of an existing county rail district, or dissolve an existing county rail district, if the county legislative authority finds the proposal to be in the public interest. The resolution shall contain the boundaries of the district if applicable.

A proposition to create a county rail district, modify the boundaries of an existing county rail district, or dissolve an existing rail district shall be submitted to the affected voters at the next general election held sixty or more days after the adoption of the resolution providing for the submittal by the county legislative authority. The resolution shall establish the boundaries of the district and include a finding that the creation of the district is in the public interest and that the area included within the district can reasonably be expected to benefit from its creation. No portion of a city may be included in such a district unless the entire city is included.

The district shall be created upon approval of the proposition by simple majority vote. The ballot proposition submitted to the voters shall be in substantially the following form:

FORMATION OF COUNTY RAIL DISTRICT

Shall a county rail district be established for the area described in a resolution of the legislative authority of county, adopted on the day of, 19. . . ?

[1983 c 303 § 9.]

Dissolution of inactive special purpose districts: Chapter 36.96 RCW.

36.60.030 Authority of district to provide rail service. A county rail district is authorized to contract with a person, partnership, or corporation to provide rail service along a light-density essential-service rail line for the purpose of car-

rying commodities. The district shall also have the power to acquire, maintain, improve, or extend rail facilities within the district that are necessary for the safe and efficient operation of the contracted rail service. A county rail district may receive state rail assistance under chapter 47.76 RCW. Two or more county rail districts may enter into interlocal cooperation agreements under chapter 39.34 RCW to carry out the purposes of this chapter. [1983 c 303 § 10.]

36.60.040 Excess property tax levies authorized. A county rail district is not authorized to impose a regular ad valorem property tax levy but may:

(1) Levy an ad valorem property tax, in excess of the one percent limitation, upon the property within the district for a one-year period to be used for operating or capital purposes whenever authorized by the voters of the district pursuant to RCW 84.52.052 and Article VII, section 2(a) of the state Constitution.

(2) Provide for the retirement of voter approved general obligation bonds, issued for capital purposes only, by levying bond retirement ad valorem property tax levies, in excess of the one percent limitation, whenever authorized by the voters of the district pursuant to Article VII, section 2(b) of the state Constitution and RCW 84.52.056. [1983 c 303 § 11.]

36.60.050 General obligation bonds authorized—Limitations—Terms.

(1) To carry out the purpose of this chapter, a county rail district may issue general obligation bonds, not to exceed an amount, together with any outstanding nonvoter approved general obligation indebtedness, equal to three-eighths of one percent of the value of taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015. A county rail district may additionally issue general obligation bonds for capital purposes only, together with any outstanding general obligation indebtedness, not to exceed an amount equal to one and one-fourth percent of the value of the taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015, as prescribed in Article VIII, section 6 of the state Constitution, and to provide for the retirement thereof by excess property tax levies as provided in RCW 36.60.040(2). The county rail district may submit a single proposition to the voters which, if approved, authorizes both the issuance of the bonds and the bond retirement property tax levies.

(2) General obligation bonds with a maturity in excess of forty years shall not be issued. The governing body of the county rail district shall by resolution determine for each general obligation bond issue the amount, date or dates, terms, conditions, denominations, interest rate or rates, which may be fixed or variable, maturity or maturities, redemption rights, registration privileges, manner of execution, price, manner of sale, and covenants. The bonds may be in any form, including bearer bonds or registered bonds. Facsimile signatures may be used on the bonds and any coupons. Refunding general obligation bonds may be issued in the same manner as general obligation bonds are issued.

(3) Whenever general obligation bonds are issued to fund specific projects or enterprises that generate revenues, charges, user fees, or special assessments, the county rail district which issues the bonds may specifically pledge all or a

portion of the revenues, charges, user fees, or special assessments to refund the general obligation bonds. [1983 c 303 § 12.]

36.60.060 Revenue bonds authorized—Limitations—Terms. (1) A county rail district may issue revenue bonds to fund revenue generating facilities which it is authorized to provide or operate. Whenever revenue bonds are to be issued, the governing body of the district shall create or have created a special fund or funds for the sole purpose of paying the principal of and interest on the bonds of each such issue, into which fund or funds the governing body may obligate the district to pay such amounts of the gross revenue of all or any part of the facilities constructed, acquired, improved, repaired, or replaced pursuant to this chapter as the governing body determines.

(2) The governing body of a county rail district issuing revenue bonds shall create a special fund or funds from which, along with any reserves created under RCW 39.44.140, the principal and interest on the revenue bonds shall exclusively be payable. The governing body may obligate the county rail district to set aside and pay into the special fund or funds a fixed proportion or a fixed amount of the revenues from the public improvements, projects, facilities, and all related additions funded by the revenue bonds. This amount or proportion shall be a lien and charge against these revenues, subject only to operating and maintenance expenses. The governing body shall consider the cost of operation and maintenance of the public improvement, project, facility, or additions funded by the revenue bonds and shall not place into the special fund or funds a greater amount or proportion of the revenues than it thinks will be available after maintenance and operation expenses have been paid and after the payment of revenue previously pledged. The governing body may also provide that revenue bonds payable from the same source or sources of revenue may later be issued on parity with any revenue bonds issued and sold.

(3) Revenue bonds issued pursuant to this section shall not be an indebtedness of the county rail district issuing the bonds, and the interest and principal on the bonds shall only be payable from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created pursuant to RCW 39.44.140. The owner of a revenue bond or any interest coupon issued pursuant to this section shall not have any claim against the county rail district arising from the bond or coupon except for payment from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created pursuant to RCW 39.44.140. The substance of the limitations included in this subsection shall be plainly printed, written, or engraved on each bond issued pursuant to this section.

(4) Revenue bonds with a maturity in excess of thirty years shall not be issued. The governing body of the county rail district shall by resolution determine for each revenue bond issue the amount, date, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, manner of execution, manner of sale, callable provisions, if any, and covenants including the refunding of existing revenue bonds. The bonds may be in any form, including bearer bonds or registered bonds. Facsimile signatures may be used

on the bonds and any coupons. Refunding revenue bonds may be issued in the same manner as revenue bonds are issued. [1983 c 303 § 13.]

36.60.070 Power of eminent domain. A county rail district may exercise the power of eminent domain to obtain property for its authorized purposes in the manner counties exercise the powers of eminent domain. [1983 c 303 § 14.]

Eminent domain by counties: Chapter 8.08 RCW.

36.60.100 Establishment, modification, or dissolution of district—Alternate method. The method of establishing, modifying, or dissolving a county rail district in RCW 36.60.110 through 36.60.130 is an alternate method to that specified in RCW 36.60.020. [1986 c 26 § 1.]

36.60.110 Establishment, modification, or dissolution of district—Alternate method—Petition. A petition to establish, modify the boundaries, or dissolve a county rail district shall be filed with the county legislative authority. The petition shall be signed by the owners of property valued at not less than seventy-five percent according to the assessed valuation for general taxation of the property for which establishment, modification or dissolution is petitioned. The petition shall set forth a legal description of the property and shall be accompanied by a plat which outlines the boundaries of the property sought to be annexed. [1986 c 26 § 2.]

36.60.120 Establishment, modification, or dissolution of district—Alternate method—Public hearing. If a petition to establish, modify the boundaries, or dissolve a county rail district is filed with the county legislative authority that complies with the requirements specified in RCW 36.60.110, the legislative authority may accept the petition, fix a date for a public hearing, and publish notice of the hearing in one issue of the official county newspaper. The notice shall also be posted in three public places within the area proposed for establishment, modification, or dissolution, and shall specify the time and place of hearing. The expense of publication and posting of the notice shall be paid by the signers of the petition. [1986 c 26 § 3.]

36.60.130 Establishment, modification, or dissolution of district—Alternate method—Determination by county legislative authority. Following the hearing, the county legislative authority shall determine by resolution whether the area proposed shall establish, modify the boundaries, or dissolve the county rail district. They may include all or any portion of the proposed area but may not include any property not described in the petition. [1986 c 26 § 4.]

36.60.140 Annexation by boundary modification—Assumption of outstanding indebtedness. All property annexed to a county rail district by a boundary modification under RCW 36.60.110 through 36.60.130 shall assume all or any portion of the outstanding indebtedness of the county rail district existing at the date of modification. [1986 c 26 § 5.]

36.60.900 Liberal construction. The rule of strict construction does not apply to this chapter, and this chapter shall

be liberally construed to permit the accomplishment of its purposes. [1983 c 303 § 15.]

36.60.905 Severability—1983 c 303. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 303 § 23.]

Chapter 36.61 RCW

LAKE AND BEACH MANAGEMENT DISTRICTS

Sections

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Assessments and charges against state lands: Chapter 79.44 RCW.

Boat trailer fee: RCW 46.17.305.

36.61.010 Findings—Intent—Purpose. (1) The legislature finds that the environmental, recreational, and aesthetic values of many of the state's lakes are threatened by eutrophication and other deterioration and that existing governmental authorities are unable to adequately improve and maintain the quality of the state's lakes.

(2) The legislature intends that an ecosystem-based beach management approach should be used to help promote the health of aquatic ecosystems and that such a management approach be undertaken in a manner that retains ecosystem values within the state. This management approach should use long-term strategies that focus on reducing nutrient

inputs from human activities affecting the aquatic ecosystem, such as decreasing nutrients into storm water sewers, decreasing fertilizer application, promoting the proper disposal of pet waste, promoting the use of vegetative borders, promoting the reduction of nutrients from on-site septic systems where appropriate, and protecting riparian areas. Organic debris, including vegetation, driftwood, seaweed, kelp, and organisms, are extremely important to beach ecosystems.

(3) The legislature further finds that it is in the public interest to promote the conservation and stewardship of shorelines and upland properties adjoining lakes and beaches in order to: (a) Conserve natural or scenic resources; (b) protect riparian habitats and water quality; (c) promote conservation of soils, wetlands, shorelines, or tidal marshes; (d) enhance the value of lakes or beaches to the public as well as the benefit of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries, or other open space; (e) enhance recreation opportunities; (f) preserve historic sites; and (g) protect visual quality along highway, road, street, trail, recreational, and other corridors or scenic vistas.

(4) It is the purpose of this chapter to establish a governmental mechanism by which property owners can embark on a program of lake or beach improvement and maintenance for their and the general public's benefit, health, and welfare. Public property, including state property, shall be considered the same as private property in this chapter, except liens for special assessments and liens for rates and charges shall not extend to public property. Lake bottom property and marine property below the line of the ordinary high water mark shall not be considered to be benefited, shall not be subject to special assessments or rates and charges, and shall not receive voting rights under this chapter. [2014 c 85 § 1; 2008 c 301 § 1; 1987 c 432 § 1; 1985 c 398 § 1.]

36.61.020 Creation of district—Special assessments or rates and charges.

(1) Any county may create lake or beach management districts to finance: (a) The improvement and maintenance of lakes or beaches located within or partially within the boundaries of the county; and (b) the acquisition of real property or property rights within or outside a lake or beach management district including, by way of example, conservation easements authorized under RCW 64.04.130, and to promote the conservation and stewardship of shorelines as well as the conservation and stewardship of upland properties adjoining lakes or beaches for conservation or for minimal development. All or a portion of a lake or beach and the adjacent land areas may be included within one or more lake or beach management districts. More than one lake or beach, or portions of lakes or beaches, and the adjacent land areas may be included in a single lake or beach management district.

(2) For the purposes of this chapter, the term "improvement" includes, among other things, the acquisition of real property and property rights within or outside a lake or beach management district for the purposes set forth in RCW 36.61.010 and this section.

(3) Special assessments or rates and charges may be imposed on the property included within a lake or beach management district to finance lake or beach improvement and maintenance activities, including: (a) Controlling or remov-

ing aquatic plants and vegetation; (b) improving water quality; (c) controlling water levels; (d) treating and diverting storm water; (e) controlling agricultural waste; (f) studying lake or marine water quality problems and solutions; (g) cleaning and maintaining ditches and streams entering the lake or marine waters or leaving the lake; (h) monitoring air quality; (i) the acquisition of real property and property rights; and (j) the related administrative, engineering, legal, and operational costs, including the costs of creating the lake or beach management district.

(4) Special assessments or rates and charges may be imposed annually on all the land in a lake or beach management district for the duration of the lake or beach management district without a related issuance of lake or beach management district bonds or revenue bonds. Special assessments also may be imposed in the manner of special assessments in a local improvement district with each landowner being given the choice of paying the entire special assessment in one payment, or to paying installments, with lake or beach management district bonds being issued to obtain moneys not derived by the initial full payment of the special assessments, and the installments covering all of the costs related to issuing, selling, and redeeming the lake or beach management district bonds. [2014 c 85 § 2; 2008 c 301 § 3; 2000 c 184 § 5; 1987 c 432 § 2; 1985 c 398 § 2.]

Cities and towns authorized to establish lake and beach management districts: RCW 35.21.403.

Flood control districts authorized to engage in activities under RCW 36.61.020: RCW 86.09.151.

Additional notes found at www.leg.wa.gov

36.61.025 Creation of district—Duration. To improve the ability of counties to finance long-term lake or beach management objectives, lake or beach management districts may be created for any needed period of time. [2008 c 301 § 4; 2000 c 184 § 4.]

Additional notes found at www.leg.wa.gov

36.61.030 Creation of district—Resolution or petition—Contents. A lake or beach management district may be initiated upon either the adoption of a resolution of intention by a county legislative authority or the filing of a petition signed by ten landowners or the owners of at least twenty percent of the acreage contained within the proposed lake or beach management district, whichever is greater. A petition or resolution of intention shall set forth: (1) The nature of the lake or beach improvement or maintenance activities proposed to be financed; (2) the amount of money proposed to be raised by special assessments or rates and charges; (3) if special assessments are to be imposed, whether the special assessments will be imposed annually for the duration of the lake or beach management district, or the full special assessments will be imposed at one time, with the possibility of installments being made to finance the issuance of lake or beach management district bonds, or both methods; (4) if rates and charges are to be imposed, the annual amount of revenue proposed to be collected and whether revenue bonds payable from the rates and charges are proposed to be issued; (5) the number of years proposed for the duration of the lake or beach management district; and (6) the proposed boundaries of the lake or beach management district.

(2014 Ed.)

The county legislative authority may require the posting of a bond of up to five thousand dollars before the county considers the proposed creation of a lake or beach management district initiated by petition. The bond may only be used by the county to finance its costs in studying, holding hearings, making notices, preparing special assessment rolls or rolls showing the rates and charges on each parcel, and conducting elections related to the lake or beach management district if the proposed lake or beach management district is not created.

A resolution of intention shall also designate the number of the proposed lake or beach management district, and fix a date, time, and place for a public hearing on the formation of the proposed lake or beach management district. The date for the public hearing shall be at least thirty days and no more than ninety days after the adoption of the resolution of intention unless an emergency exists.

Petitions shall be filed with the county legislative authority. The county legislative authority shall determine the sufficiency of the signatures, which shall be conclusive upon all persons. No person may withdraw his or her name from a petition after it is filed. If the county legislative authority determines a petition to be sufficient and the proposed lake or beach management district appears to be in the public interest and the financing of the lake or beach improvement or maintenance activities is feasible, it shall adopt a resolution of intention, setting forth all of the details required to be included when a resolution of intention is initiated by the county legislative authority. [2014 c 85 § 8; 2008 c 301 § 5; 1987 c 432 § 3; 1985 c 398 § 3.]

36.61.040 Creation of district—Public hearing—Notice—Contents. Notice of the public hearing shall be published in at least two consecutive issues of a newspaper of general circulation in the proposed lake or beach management district, the date of the first publication to be at least fifteen days prior to the date fixed for the public hearing by the resolution of intention. Notice of the public hearing shall also be given to the owner or reputed owner of any lot, tract, parcel of land, or other property within the proposed lake or beach management district by mailing the notice at least fifteen days before the date fixed for the public hearing to the owner or reputed owner of the property as shown on the tax rolls of the county assessor at the address shown thereon. Notice of the public hearing shall also be mailed to the departments of fish and wildlife, natural resources, and ecology at least fifteen days before the date fixed for the public hearing.

Notices of the public hearing shall: (1) Refer to the resolution of intention; (2) designate the proposed lake or beach management district by number; (3) set forth a proposed plan describing: (a) The nature of the proposed lake or beach improvement or maintenance activities; (b) the amount of special assessments or rates and charges proposed to be raised by the lake or beach management district; (c) if special assessments are proposed to be imposed, whether the special assessments will be imposed annually for the duration of the lake or beach management district, or the full special assessments will be payable at one time, with the possibility of periodic installments being paid and lake or beach management bonds being issued, or both; (d) if rates and charges are pro-

posed to be imposed, the annual amount of revenue proposed to be collected and whether revenue bonds payable from the rates and charges are proposed to be issued; and (e) the proposed duration of the lake or beach management district; and (4) indicate the date, time, and place of the public hearing designated in the resolution of intention.

In the case of the notice sent to each owner or reputed owner by mail, the notice shall set forth the estimated amount of the cost of the lake or beach improvement or maintenance activities to be borne by special assessment, or annual special assessments, or rates and charges on the lot, tract, parcel of land, or other property owned by the owner or reputed owner.

If the county legislative authority has designated a committee of itself or an officer to hear complaints and make recommendations to the full county legislative authority, as provided in RCW 36.61.060, the notice shall also describe this additional step before the full county legislative authority may adopt a resolution creating the lake or beach management district. [2008 c 301 § 6; 1994 c 264 § 9; 1988 c 36 § 9; 1987 c 432 § 4; 1985 c 398 § 4.]

36.61.050 Creation of district—Public hearing—Amendments to original plan. The county legislative authority shall hold a public hearing on the proposed lake or beach management district at the date, time, and place designated in the resolution of intention.

At this hearing the county legislative authority shall hear objections from any person affected by the formation of the lake or beach management district. Representatives of the departments of fish and wildlife, natural resources, and ecology shall be afforded opportunities to make presentations on and comment on the proposal. Members of the public shall be afforded an opportunity to comment on the proposal. The county legislative authority must consider recommendations provided to it by the departments of fish and wildlife, natural resources, and ecology. The public hearing may be extended to other times and dates declared at the public hearing. The county legislative authority may make such changes in the boundaries of the lake or beach management district or such modification in plans for the proposed lake or beach improvement or maintenance activities as it deems necessary. The county legislative authority may not change boundaries of the lake or beach management district to include property that was not included previously without first passing an amended resolution of intention and giving new notice to the owners or reputed owners of property newly included in the proposed lake or beach management district in the manner and form and within the time provided for the original notice. The county legislative authority shall not alter the plans for the proposed lake or beach improvement or maintenance activities to result in an increase in the amount of money proposed to be raised, and shall not increase the amount of money proposed to be raised, without first passing an amended resolution of intention and giving new notice to property owners in the manner and form and within the time provided for the original notice. [2008 c 301 § 7; 1994 c 264 § 10; 1988 c 36 § 10; 1985 c 398 § 5.]

36.61.060 Creation of district—Public hearing—Legislative authority may delegate responsibility. A county legislative authority may adopt an ordinance provid-

ing for a committee of itself, or an officer, to hold public hearings on the proposed formation of a lake or beach management district and hear objections to the proposed formation as provided in RCW 36.61.050. The committee or officer shall make a recommendation to the full legislative authority, which need not hold a public hearing on the proposed creation of the lake or beach management district. The full county legislative authority by resolution may approve or disapprove the recommendation and submit the question of creating the lake or beach management district to the property owners as provided in RCW 36.61.070 through 36.61.100. [2008 c 301 § 8; 1985 c 398 § 10.]

36.61.070 Creation of district—Submittal of question to landowners. (1) After the public hearing, the county legislative authority may adopt a resolution submitting the question of creating the lake or beach management district to the owners of land within the proposed lake or beach management district, including publicly owned land, if the county legislative authority finds that it is in the public interest to create the lake or beach management district and the financing of the lake or beach improvement and maintenance activities is feasible. The resolution shall also include: (a) A plan describing the proposed lake or beach improvement and maintenance activities which avoid adverse impacts on fish and wildlife and provide for appropriate measures to protect and enhance fish and wildlife; (b) the number of years the lake or beach management district will exist; (c) the amount to be raised by special assessments or rates and charges; (d) if special assessments are to be imposed, whether the special assessments shall be imposed annually for the duration of the lake or beach management district or only once with the possibility of installments being imposed and lake or beach management bonds being issued, or both, and, if both types of special assessments are proposed to be imposed, the lake or beach improvement or maintenance activities proposed to be financed by each type of special assessment; (e) if rates and charges are to be imposed, a description of the proposed rates and charges and the possibility of revenue bonds being issued that are payable from the rates and charges; and (f) the estimated special assessment or rate and charge proposed to be imposed on each parcel included in the proposed lake or beach management district.

(2) No lake or beach management district may be created by a county that includes territory located in another county without the approval of the legislative authority of the other county. [2014 c 85 § 4; 2008 c 301 § 9; 1987 c 432 § 5; 1985 c 398 § 6.]

36.61.080 Creation of district—Submittal of question to landowners—Mail ballot. (1) A ballot shall be mailed to each owner or reputed owner of any lot, tract, parcel of land, or other property within the proposed lake management district, including publicly owned land, which ballot shall contain the following proposition:

"Shall lake management district No. . . . be formed?
Yes
No"

(2) A ballot shall be mailed to each owner or reputed owner of any lot, tract, parcel of land, or other property

within the proposed beach management district, including publicly owned land, which ballot shall contain the following proposition:

"Shall beach management district No. . . . be formed?
 Yes
 No"

(3) In addition, the ballot shall contain appropriate spaces for the signatures of the landowner or landowners, or officer authorized to cast such a ballot. Each ballot shall include a description of the property owner's property and the estimated special assessment, or rate and charge, proposed to be imposed upon the property. A copy of the instructions and the resolution submitting the question to the landowners shall also be included. [2008 c 301 § 10; 1987 c 432 § 6; 1985 c 398 § 7.]

36.61.090 Creation of district—Submittal of question to landowners—Balloting—Conditions. The balloting shall be subject to the following conditions, which shall be included in the instructions mailed with each ballot, as provided in RCW 36.61.080: (1) All ballots must be signed by the owner or reputed owner of property according to the assessor's tax rolls; (2) each ballot must be returned to the county legislative authority not later than 5:00 p.m. of a specified day, which shall be at least twenty but not more than thirty days after the ballots are mailed; (3) each property owner shall mark his or her ballot for or against the creation of the proposed lake or beach management district, with the ballot weighted so that the property owner has one vote for each dollar of estimated special assessment or rate and charge proposed to be imposed on his or her property; and (4) the valid ballots shall be tabulated and a simple majority of the votes cast shall determine whether the proposed lake or beach management district shall be approved or rejected. [2008 c 301 § 11; 1987 c 432 § 7; 1985 c 398 § 8.]

36.61.100 Creation of district—Submittal of question to landowners—Majority vote required—Adoption of ordinance. If the proposal receives a simple majority vote in favor of creating the lake or beach management district, the county legislative authority shall adopt an ordinance creating the lake or beach management district and may proceed with establishing the special assessments or rates and charges, collecting the special assessments or rates and charges, and performing the lake or beach improvement or maintenance activities. If a proposed lake management district includes more than one lake and its adjacent areas, the lake management district may only be established if the proposal receives a simple majority vote in favor of creating it by the voters on each lake and its adjacent areas. The county legislative authority shall publish a notice in a newspaper of general circulation in a lake or beach management district indicating that such an ordinance has been adopted within ten days of the adoption of the ordinance.

The ballots shall be available for public inspection after they are counted. [2008 c 301 § 12; 1987 c 432 § 8; 1985 c 398 § 9.]

36.61.110 Creation of district—Limitations on appeals. No lawsuit may be maintained challenging the

jurisdiction or authority of the county legislative authority to proceed with the lake or beach improvement and maintenance activities and creating the lake or beach management district or in any way challenging the validity of the actions or decisions or any proceedings relating to the actions or decisions unless the lawsuit is served and filed no later than forty days after publication of a notice that the ordinance has been adopted ordering the lake or beach improvement and maintenance activities and creating the lake or beach management district. Written notice of the appeal shall be filed with the county legislative authority and clerk of the superior court in the county in which the property is situated. [2008 c 301 § 13; 1985 c 398 § 11.]

36.61.115 Limitation on special assessments, rates, and charges. A special assessment, or rate and charge, on any lot, tract, parcel of land, or other property shall not be increased beyond one hundred ten percent of the estimated special assessment, or rate and charge, proposed to be imposed as provided in the resolution adopted in RCW 36.61.070, unless the creation of a lake or beach management district is approved under another mailed ballot election that reflects the weighted voting arising from such increases. [2008 c 301 § 14; 1987 c 432 § 9.]

36.61.120 Special assessment roll—Adoption—Public hearing. After a lake or beach management district is created, the county shall prepare a proposed special assessment roll. A separate special assessment roll shall be prepared for annual special assessments if both annual special assessments and special assessments paid at one time are imposed. The proposed special assessment roll shall list: (1) Each separate lot, tract, parcel of land, or other property in the lake or beach management district; (2) the acreage of such property, and the number of feet of lake or beach frontage, if any; (3) the name and address of the owner or reputed owner of each lot, tract, parcel of land, or other property as shown on the tax rolls of the county assessor; and (4) the special assessment proposed to be imposed on each lot, tract, parcel of land, or other property, or the annual special assessments proposed to be imposed on each lot, tract, parcel of land, or other property.

At the time, date, and place fixed for a public hearing, the county legislative authority shall act as a board of equalization and hear objections to the special assessment roll, and at the times to which the public hearing may be adjourned, the county legislative authority may correct, revise, raise, lower, change, or modify the special assessment roll or any part thereof, or set the proposed special assessment roll aside and order a new proposed special assessment roll to be prepared. The county legislative authority shall confirm and approve a special assessment roll by adoption of a resolution.

If a proposed special assessment roll is amended to raise any special assessment appearing thereon or to include omitted property, a new public hearing shall be held. The new public hearing shall be limited to considering the increased special assessments or omitted property. Notices shall be sent to the owners or reputed owners of the affected property in the same manner and form and within the time provided for the original notice.

Objections to a proposed special assessment roll must be made in writing, shall clearly state the grounds for objections, and shall be filed with the governing body prior to the public hearing. Objections to a special assessment or annual special assessments that are not made as provided in this section shall be deemed waived and shall not be considered by the governing body or a court on appeal. [2008 c 301 § 15; 1985 c 398 § 12.]

36.61.130 Special assessment roll—Public hearing—Legislative authority may delegate responsibility—Appeals. A county legislative authority may adopt an ordinance providing for a committee of itself, or an officer, to hear objections to the special assessment roll, act as a board of equalization, and make recommendations to the full county legislative authority, which need not hold a public hearing on the special assessment roll. The ordinance shall provide a process by which an appeal may be made in writing to the full county legislative authority by a person protesting his or her special assessment or annual special assessments as confirmed by the committee or officer. The full county legislative authority by resolution shall approve the special assessment roll, modify and approve the special assessment roll as a result of hearing objections, or reject the special assessment roll and return it to the committee or officer for further work and recommendations. No objection to the decision of the full county legislative authority approving the special assessment roll may be considered by a court unless an objection to the decision has been timely filed with the county legislative authority as provided in this section. [1985 c 398 § 13.]

36.61.140 Special assessment roll—Public hearing—Notice—Contents. Notice of the original public hearing on the proposed special assessment roll, and any public hearing held as a result of raising special assessments or including omitted property, shall be published and mailed to the owner or reputed owner of the property as provided in RCW 36.61.040 for the public hearing on the formation of the lake or beach management district. However, the notice need only provide the total amount to be collected by the special assessment roll and shall state that: (1) A public hearing on the proposed special assessment roll will be held, giving the time, date, and place of the public hearing; (2) the proposed special assessment roll is available for public perusal, giving the times and location where the proposed special assessment roll is available for public perusal; (3) objections to the proposed special assessment must be in writing, include clear grounds for objections, and must be filed prior to the public hearing; and (4) failure to so object shall be deemed to waive an objection.

Notices mailed to the owners or reputed owners shall additionally indicate the amount of special assessment ascribed to the particular lot, tract, parcel of land, or other property owned by the person so notified. [2008 c 301 § 16; 1985 c 398 § 14.]

36.61.150 Special assessment roll—Appeal to superior and appellate courts—Procedure. The decision of a county legislative authority upon any objection to the special assessment roll may be appealed to the superior court only if the objection had been timely made in the manner prescribed

in this chapter. The appeal shall be made within ten days after publication of a notice that the resolution confirming the special assessment roll has been adopted by filing written notice of the appeal with the county legislative authority and the clerk of the superior court in the county in which the real property is situated. The notice of appeal shall describe the property and set forth the objections of the appellant to the special assessment. Within ten days from the filing of such notice of appeal with the clerk of the superior court, the appellant shall file with the clerk of the court a transcript consisting of the special assessment roll and his or her objections thereto, together with the resolution confirming such special assessment roll and the record of the county legislative authority with reference to the special assessment or annual special assessments, which transcript, upon payment of the necessary fees therefor, shall be furnished by an officer of the county and by him or her certified to contain full, true, and correct copies of all matters and proceedings required to be included in the transcript. Such fees shall be the same as the fees payable to the county clerk for the preparation and certification of transcripts on appeal to the supreme court or the court of appeals in civil actions.

At the time of the filing of the notice of appeal with the clerk of the superior court a sufficient bond in the penal sum of two hundred dollars, with a surety or sureties thereon as provided by law for appeals in civil cases, shall be filed conditioned to prosecute such appeal without delay, and if unsuccessful, to pay all costs incurred by the county because of the appeal. The court may order the appellant, upon application therefor, to execute and file such additional bond or bonds as the necessity of the case may require.

Within three days after such transcript is filed in the superior court, the appellant shall give written notice to the county legislative authority that such transcript is filed. The notice shall state a time, not less than three days from the service thereof, when the appellant will call up the cause for hearing.

The superior court shall, at this time or at such further time as may be fixed by order of the court, hear and determine such appeal without a jury, and such cause shall have preference over all civil causes pending in the court, except proceedings under an act relating to eminent domain in such county and actions of forcible entry and detainer. The judgment of the court shall confirm, correct, modify, or annul the special assessment or annual special assessments insofar as the same affects the property of the appellant. A certified copy of the decision of the court shall be filed with the officer having custody of the special assessment roll, and he or she shall modify and correct such special assessment roll in accordance with the decision.

An appeal shall lie to the supreme court or the court of appeals from the judgment of the superior court, as in other cases, however, such appeal must be taken within fifteen days after the date of the entry of the judgment of the superior court, and the record and opening brief of the appellant in the cause shall be filed in the supreme court or the court of appeals within sixty days after the appeal is taken by notice as provided in this section. The time for filing the record and serving and filing of briefs may be extended by order of the superior court, or by stipulation of the parties concerned. The supreme court or the court of appeals on such appeal may

correct, modify, confirm, or annul the special assessment or annual special assessments insofar as the same affects the property of the appellant. A certified copy of the order of the supreme court or the court of appeals upon such appeal shall be filed with the officer having custody of such special assessment roll, who shall thereupon modify and correct such special assessment roll in accordance with such decision. [1985 c 398 § 15.]

36.61.160 Special assessments—Calculation. Whenever special assessments are imposed, all property included within a lake or beach management district shall be considered to be the property specially benefited by the lake or beach improvement or maintenance activities and shall be the property upon which special assessments are imposed to pay the costs and expenses of the lake or beach improvement or maintenance activities, or such part of the costs and expenses as may be chargeable against the property specially benefited. The special assessments shall be imposed on property in accordance with the special benefits conferred on the property up to but not in excess of the total costs and expenses of the lake or beach improvement or maintenance activities as provided in the special assessment roll.

Special assessments may be measured by front footage, acreage, the extent of improvements on the property, or any other factors that are deemed to fairly reflect special benefits, including those authorized under RCW 35.51.030. Special assessments may be calculated by using more than one factor. Zones around the public improvement may be used that reflect different levels of benefit in each zone that are measured by a front footage, acreage, the extent of improvements, or other factors.

Public property, including property owned by the state of Washington, shall be subject to special assessments to the same extent that private property is subject to the special assessments, except no lien shall extend to public property. [2008 c 301 § 17; 1987 c 432 § 10; 1985 c 398 § 16.]

36.61.170 Special assessments—Limitations. (1) The total annual special assessments may not exceed the estimated cost of the lake or beach improvement or maintenance activities proposed to be financed by such special assessments, as specified in the resolution of intention. The total of special assessments imposed in a lake or beach management district that are of the nature of special assessments imposed in a local improvement district shall not exceed one hundred fifty percent of the estimated total cost of the lake or beach improvement or maintenance activities that are proposed to be financed by the lake or beach management district as specified in the resolution of intention.

(2) After a lake or beach management district has been created, the resolution of intention may be amended to increase or otherwise modify the amount to be financed by the lake or beach management district by using the same procedure in which a lake or beach management district is created, including landowner approvals consistent with the procedures established in RCW 36.61.080 through 36.61.100. [2014 c 85 § 10; 2008 c 301 § 18; 1985 c 398 § 17.]

36.61.180 Special assessments—Modification. Whenever annual special assessments are being imposed, the
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county legislative authority may modify the level of annual special assessments imposed by conforming with the procedures and subject to the limitations included in RCW 36.61.120 through 36.61.170. [1985 c 398 § 18.]

36.61.190 Special assessments—Collection—Notice. Special assessments and installments on any special assessment shall be collected by the county treasurer.

The county treasurer shall publish a notice indicating that the special assessment roll has been confirmed and that the special assessments are to be collected. The notice shall indicate the duration of the lake or beach management district and shall describe whether the special assessments will be paid in annual payments for the duration of the lake or beach management district, or whether the full special assessments will be payable at one time, with the possibility of periodic installments being paid and lake or beach management bonds being issued, or both.

If the special assessments are to be payable at one time, the notice additionally shall indicate that all or any portion of the special assessments may be paid within thirty days from the date of publication of the first notice without penalty or interest. This notice shall be published in a newspaper of general circulation in the lake or beach management district.

Within ten days of the first newspaper publication, the county treasurer shall notify each owner or reputed owner of property whose name appears on the special assessment roll, at the address shown on the special assessment roll, for each item of property described on the list: (1) Whether one special assessment payable at one time or special assessments payable annually have been imposed; (2) the amount of the property subject to the special assessment or annual special assessments; and (3) the total amount of the special assessments due at one time, or annual amount of special assessments due. If the special assessment is due at one time, the notice shall also describe the thirty-day period during which the special assessment may be paid without penalty, interest, or cost. [2008 c 301 § 19; 1985 c 398 § 19.]

36.61.200 Special assessments—Payment period—Interest and penalty. If the special assessments are to be payable at one time, all or any portion of any special assessment may be paid without interest, penalty, or costs during this thirty-day period and placed into a special fund to defray the costs of the lake or beach improvement or maintenance activities. The remainder shall be paid in installments as provided in a resolution adopted by the county legislative authority, but the last installment shall be due at least two years before the maximum term of the bonds issued to pay for the improvements or maintenance. The installments shall include amounts sufficient to redeem the bonds issued to pay for the lake or beach improvement and maintenance activities. A twenty-day period shall be allowed after the due date of any installment within which no interest, penalty, or costs on the installment may be imposed.

The county shall establish by ordinance an amount of interest that will be imposed on late special assessments imposed annually or at once, and on installments of a special assessment. The ordinance shall also specify the penalty, in addition to the interest, that will be imposed on a late annual special assessment, special assessment, or installment which

shall not be less than five percent of the delinquent special assessment or installment.

The owner of any lot, tract, parcel of land, or other property charged with a special assessment may redeem it from all liability for the unpaid amount of the installments by paying, to the county treasurer, the remaining portion of the installments that is attributable to principal on the lake or beach management district bonds. [2008 c 301 § 20; 1985 c 398 § 20.]

36.61.210 Special assessments—Subdivision of land—Segregation of assessment. Whenever any land against which there has been levied any special assessment or annual special assessments by any county has been sold in part, subdivided, or short subdivided, the county legislative authority may order a segregation of the special assessment or annual special assessments. If an installment has been made, the segregation shall apportion the remaining installments on the parts or lots created.

Any person desiring to have such a special assessment or annual special assessments against a tract of land segregated to apply to smaller parts thereof shall apply to the county legislative authority which levied the special assessment or annual special assessments. If the county legislative authority determines that a segregation should be made, it shall by resolution order the county treasurer to segregate the special assessment or annual special assessments on the original assessment roll as directed in the resolution. The segregation shall be made as nearly as possible on the same basis as the original special assessment or annual special assessments were levied, and the total of the segregated parts of the special assessment or annual special assessments shall equal the amount of the special assessment or annual special assessments unpaid before segregation. The resolution shall describe the original tract and the amount and date of the original special assessment or annual special assessments and shall define the boundaries of the divided parts and the amount of the special assessment or annual special assessments chargeable to each part. A certified copy of the resolution shall be delivered to the county treasurer who shall proceed to segregate the special assessment or annual special assessments upon being tendered a fee of three dollars for each tract of land for which a segregation is to be made. In addition to such charge the county legislative authority may require as a condition to the order of segregation that the person seeking it pay the local government the reasonable engineering and clerical costs incident to making the segregation. [1985 c 398 § 21.]

36.61.220 Special assessments—Filing with county treasurer. Within thirty days after a county creates a lake or beach management district, the county shall cause to be filed with the county treasurer, a description of the lake or beach improvement and maintenance activities proposed that the lake or beach management district finances, the lake or beach management district number, and a copy of the diagram or print showing the boundaries of the lake or beach management district and preliminary special assessment roll or abstract of the same showing thereon the lots, tracts, parcels of land, and other property that will be specially benefited thereby and the estimated cost and expense of such lake or

beach improvement and maintenance activities to be borne by each lot, tract, parcel of land, or other property. The treasurer shall immediately post the proposed special assessment roll upon his or her index of special assessments against the properties affected by the lake or beach improvement or maintenance activities. [2014 c 85 § 5; 2008 c 301 § 21; 1985 c 398 § 22.]

36.61.230 Special assessments—Lien created. The special assessment or annual special assessments imposed upon the respective lots, tracts, parcels of land, and other property in the special assessment roll or annual special assessment roll confirmed by resolution of the county legislative authority for the purpose of paying the cost and expense in whole or in part of any lake or beach improvement or maintenance activities shall be a lien upon the property assessed from the time the special assessment roll is placed in the hands of the county treasurer for collection, but as between the grantor and grantee, or vendor and vendee of any real property, when there is no express agreement as to payment of the special assessments against the real property, the lien of such special assessments shall attach thirty days after the filing of the diagram or print and the estimated cost and expense of such lake or beach improvement or maintenance activities to be borne by each lot, tract, parcel of land, or other property, as provided in RCW 36.61.220. Interest and penalty shall be included in and shall be a part of the special assessment lien. No lien shall extend to public property subjected to special assessments.

The special assessment lien shall be paramount and superior to any other lien or encumbrance theretofore or thereafter created except a lien for general taxes. [2008 c 301 § 22; 1985 c 398 § 23.]

36.61.240 Special assessments—Lien—Validity—Foreclosure. Special assessments shall be valid and enforceable as such and the lien thereof on the property assessed shall be valid if the county legislative authority in making the special assessments acted in good faith and without fraud. Delinquent special assessments or installments shall be foreclosed in the same manner as special assessments are foreclosed under chapter 36.94 RCW. Public property subject to special assessments shall not be subject to liens. [1985 c 398 § 24.]

36.61.250 Special assessments—Legislative authority may stop—Exceptions. Except when lake or beach management district bonds are outstanding or when an existing contract might otherwise be impaired, the county legislative authority may stop the imposition of annual special assessments if, in its opinion, the public interest will be served by such action. [2014 c 85 § 6; 1985 c 398 § 25.]

36.61.260 Bonds. (1) Counties may issue lake or beach management district revenue bonds in accordance with this section. Lake or beach management district bonds may be issued to obtain money sufficient to cover that portion of the special assessments that are not paid within the thirty-day period provided in RCW 36.61.190.

(2) Whenever lake or beach management district revenue bonds are proposed to be issued, the county legislative

authority shall create a special fund or funds for the lake or beach management district from which all or a portion of the costs of the lake or beach improvement and maintenance activities shall be paid. Lake or beach management district bonds shall not be issued in excess of the costs and expenses of the lake or beach improvement and maintenance activities and shall not be issued prior to twenty days after the thirty days allowed for the payment of special assessments without interest or penalties.

(3) Lake or beach management district revenue bonds shall be exclusively payable from the special fund or funds and from a guaranty fund that the county may have created out of a portion of proceeds from the sale of the lake or beach management district bonds.

(4)(a) Lake or beach management district revenue bonds shall not constitute a general indebtedness of the county issuing the bond nor an obligation, general or special, of the state. The owner of any lake or beach management district revenue bond shall not have any claim for the payment thereof against the county that issues the bonds except for: (i) With respect to revenue bonds payable from special assessments, payment from the special assessments made for the lake or beach improvement or maintenance activities for which the lake or beach management district bond was issued and from the special fund or funds, and a lake or beach management district guaranty fund, that may have been created; and (ii) with respect to revenue bonds payable from rates and charges, payment from rates and charges deposited in the special fund or funds that the county may have created for that purpose. Revenue bonds may be payable from both special assessments and from rates and charges. The county shall not be liable to the owner of any lake or beach management district bond for any loss to a lake or beach management district guaranty fund occurring in the lawful operation of the fund. The owner of a lake or beach management district bond shall not have any claim against the state arising from the lake or beach management district bond, rates and charges, special assessments, or guaranty fund. Tax revenues shall not be used to secure or guarantee the payment of the principal or interest on lake or beach management district bonds. Notwithstanding the provisions of this subsection, nothing in this section may be interpreted as limiting a county's issuance of bonds pursuant to RCW 36.67.010 in order to assist in the financing of improvements to lakes or beaches located within or partially within the boundaries of the county, including without limitation lakes or beaches located within a lake or beach management district.

(b) The substance of the limitations included in this subsection (4) shall be plainly printed, written, engraved, or reproduced on: (i) Each lake or beach management district bond that is a physical instrument; (ii) the official notice of sale; and (iii) each official statement associated with the lake or beach management district bonds.

(5) If the county fails to make any principal or interest payments on any lake or beach management district bond or to promptly collect any special assessment securing lake or beach management district revenue bonds when due, the owner of the lake or beach management district revenue bond may obtain a writ of mandamus from any court of competent jurisdiction requiring the county to collect the special assessments, foreclose on the related lien, and make payments out

of the special fund or guaranty fund if one exists. Any number of owners of lake or beach management districts may join as plaintiffs.

(6) A county may create a lake or beach management district bond guaranty fund for each issue of lake or beach management district bonds. The guaranty fund shall only exist for the life of the lake or beach management district bonds with which it is associated. A portion of the bond proceeds may be placed into a guaranty fund. Unused moneys remaining in the guaranty fund during the last two years of the installments shall be used to proportionally reduce the required level of installments and shall be transferred into the special fund into which installment payments are placed. A county may, in the discretion of the legislative authority of the county, deposit amounts into a lake or beach management district bond guaranty fund from any money legally available for that purpose. Any amounts remaining in the guaranty fund after the repayment of all revenue bonds secured thereby and the payment of assessment installments, may be applied to lake or beach improvement and maintenance activities or to other district purposes.

(7) Lake or beach management district bonds shall be issued and sold in accordance with chapter 39.46 RCW. The authority to create a special fund or funds shall include the authority to create accounts within a fund. [2014 c 85 § 7; 2008 c 301 § 23; 2000 c 184 § 6; 1985 c 398 § 26.]

Additional notes found at www.leg.wa.gov

36.61.270 Imposition of rates and charges. Whenever rates and charges are to be imposed in a lake or beach management district, the county legislative authority shall prepare a roll of rates and charges that includes those matters required to be included in a special assessment roll and shall hold a public hearing on the proposed roll of rates and charges as provided under RCW 36.61.120 through 36.61.150 for a special assessment roll. The county legislative authority shall have full jurisdiction and authority to fix, alter, regulate, and control the rates and charges imposed by a lake or beach management district and may classify the rates or charges by any reasonable factor or factors, including benefit, use, front footage, acreage, the extent of improvements on the property, the type of improvements on the property, uses to which the property is put, service to be provided, and any other reasonable factor or factors. The flexibility to establish rates and charges includes the authority to reduce rates and charges on property owned by low-income persons.

Except as provided in this section, the collection of rates and charges, lien status of unpaid rates and charges, and method of foreclosing on such liens shall be subject to the provisions of chapter 36.94 RCW. Public property, including state property, shall be subject to the rates and charges to the same extent that private property is subject to them, except that liens may not be foreclosed on the public property, and the procedure for imposing such rates and charges on state property shall conform with the procedure provided for in chapter 79.44 RCW concerning the imposition of special assessments upon state property. The total amount of rates and charges cannot exceed the cost of lake or beach improvement or maintenance activities proposed to be financed by such rates and charges, as specified in the resolution of intention. Revenue bonds exclusively payable from the rates and

charges may be issued by the county under chapter 39.46 RCW. [2008 c 301 § 24; 1987 c 432 § 11.]

36.61.280 Beach management districts—Purpose—

Plan. (1) Beach management districts may be created for the purpose of controlling and removing aquatic plants or vegetation. These districts must develop a plan for these activities, in consultation with appropriate federal, state, and local agencies. The plan must include an element addressing nutrient loading from land use activities in a subbasin that is a tributary to the area targeted for management. The plan must be consistent with the action agenda approved by the Puget Sound partnership, where applicable.

(2) Plans for the control and removal of aquatic plants or vegetation must, to the greatest extent possible, meet the following requirements:

(a) Avoid or minimize the excess removal of living and nonliving nontarget native vegetation and organisms;

(b) Avoid or minimize management activities that will result in compacting beach sand, gravel, and substrate;

(c) Minimize adverse impacts to: (i) The project site when disposing of excessive accumulations of vegetation; and (ii) other areas of the beach or deep water environment; and

(d) Retain all natural habitat features on the beach, including retaining trees, stumps, logs, and large rocks in their natural location.

(3) Seaweed removal under this section may only occur on the shore of a saltwater body that lies between the extreme low tide and the ordinary high water mark, as those terms are defined in RCW 90.58.030.

(4) The control or removal of native aquatic plants or vegetation shall be authorized in the following areas:

(a) Beaches or near shore areas located within at least one mile of a ferry terminal that are in a county with a population of one million or more residents; and

(b) Beaches or near shore areas in a city that meets the following:

(i) Is adjacent to Puget Sound;

(ii) Has at least eighty-five thousand residents;

(iii) Shares a common boundary with a neighboring county; and

(iv) Is in a county with a population of one million or more residents. [2008 c 301 § 2.]

36.61.290 Acquisition of real property or property rights—Limitations and requirements.

A proposal to acquire real property or property rights within or outside of a lake or beach management district in accordance with RCW 36.61.020 is subject to the following limitations and requirements: (1) The real property or property rights proposed for acquisition must be in a county located west of the crest of the Cascade mountain range that plans under RCW 36.70A.040 and has a population of more than forty thousand and fewer than sixty-five thousand persons as of April 1, 2013, as determined by the office of financial management; and (2) prior to the acquisition of real property or property rights, the proposal must have the written approval of a majority of the property owners of the district, as determined by the tax rolls of the county assessor. [2014 c 85 § 3.]

36.61.300 Acquisition of real property or property rights—County authority. (1) In connection with the acquisition of real property or property rights within or outside a lake or beach management district, a county may: (a) Own real property and property rights, including without limitation conservation easements; (b) transfer real property and property rights to another state or local governmental entity; (c) contract with a public or private entity, including without limitation a financial institution with trust powers, a municipal corporation, or a nonprofit corporation, to hold real property or property rights such as conservation easements in trust for the purposes of the lake and beach management district, and, in connection with those services, to pay the reasonable costs of that financial institution or nonprofit corporation; (d) monitor and enforce the terms of a real property right such as a conservation easement, or for that purpose to contract with a public or private entity, including without limitation a financial institution with trust powers, a municipal corporation, or a nonprofit corporation; (e) impose terms, conditions, and encumbrances upon real property or property rights acquired in respect of a lake or beach management district, and amend the same; and (f) accept gifts, grants, and loans in connection with the acquisition of real property and property rights for lake or beach management district purposes.

(2) If a county contracts with a financial institution, municipal corporation, or nonprofit corporation to hold that property or property rights in trust for purposes of the district, the terms of the contract must provide that the financial institution, municipal corporation, or nonprofit corporation may not sell, pledge, or hypothecate the property or property rights for any purpose, and must further provide for the return of the property or property rights back to the county in the event of a material breach of the terms of the contract.

(3) Before a lake or beach management district in existence as of June 12, 2014, exercises the powers set forth in this section, the legislative authority of the county must provide for an amended resolution of intention and modify the plan for the district, with a public hearing, all as provided in RCW 36.61.050. [2014 c 85 § 9.]

36.61.310 Dissolution—Procedure and conditions.

(1) Except when lake or beach management district bonds are outstanding or when an existing contract might otherwise be impaired, a lake or beach management district may be dissolved either by: The county legislative authority upon a finding that the purposes of the district have been accomplished; or a vote of the property owners within the district, if proposed by the legislative authority of the county or through the filing of a sufficient petition signed by the owners of at least twenty percent of the acreage within the district.

(2) If the question of dissolution of a district is submitted to property owners, the balloting is subject to the following conditions, which must be included in the instructions mailed with each ballot, as provided in RCW 36.61.080:

(a) A ballot must be mailed to each owner or reputed owner of any lot, tract, parcel of land, or other property within the district, with the ballot weighted so that a property owner has one vote for each dollar of special assessment or rates and charges imposed on his or her property;

(b) A ballot must be signed by the owner or reputed owner of property according to the assessor's tax rolls;

(c) Each ballot must be returned to the county legislative authority no later than 5:00 p.m. of a specified day, which must be at least twenty, but not more than thirty days after the ballots are mailed; and

(d) Each property owner must mark his or her ballot for or against the dissolution of the district.

(3) If, following the tabulation of the valid ballots, a simple majority of the votes cast are in favor of dissolving the district, the district must be dissolved on the date established in the ballot proposition.

(4) A county, although not separately responsible for satisfying the financial obligations of a dissolved district, has full authority to continue imposing special assessments, rates, and charges for a dissolved district until all financial obligations of the district incurred prior to its dissolution have been extinguished or retired. [2014 c 85 § 11.]

Chapter 36.62 RCW HOSPITALS

Sections

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County and city tuberculosis hospitals: Chapter 70.30 RCW.

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Public hospital districts, county participation: Chapter 70.44 RCW.

Sexually transmitted diseases, control and treatment of: Chapter 70.24 RCW.

Utilization of, for state medical care: Chapter 74.09 RCW.

36.62.010 Authority to establish. The legislative authority of any county may establish, provide, and maintain hospitals for the care and treatment of the indigent, sick, injured, or infirm, and for this purpose the county legislative authority may:

(1) Purchase or lease real property or use lands already owned by the county;

(2) Erect all necessary buildings, make all necessary improvements and repairs and alter any existing building for the use of said hospitals;

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(3) Use county moneys, levy taxes, and issue bonds as authorized by law, to raise a sufficient amount of money to cover the cost of procuring the site, constructing and operating hospitals, and for the maintenance thereof and all other necessary and proper expenses; and

(4) Accept and hold in trust for the county any grant of land, gift or bequest of money, or any donation for the benefit of the purposes of this chapter, and apply the same in accordance with the terms of the gift. [1984 c 26 § 1; 1963 c 4 § 36.62.010. Prior: 1947 c 228 § 1, part; 1925 ex.s. c 174 § 1, part; Rem. Supp. 1947 § 6090-1, part.]

36.62.030 Hospital may be jointly owned and operated. Any number of counties or any county and any city in which the county seat of the county is situated may contract one with the other for the joint purchase, acquisition, ownership, control, and disposition of land and other property suitable as a site for a county hospital. [1963 c 4 § 36.62.030. Prior: 1947 c 228 § 1, part; 1925 ex.s. c 174 § 1, part; Rem. Supp. 1947 § 6090-1, part.]

36.62.040 Contract for joint hospital. All contracts made in pursuance hereof shall be for such period of time and upon such terms and conditions as shall be agreed upon. The contract shall fully set forth the amount of money to be contributed by the county and city towards the acquisition of such site and the improvement thereof and the manner in which the property shall be improved and the character of the building or buildings to be erected thereon. It may provide for the amount of money to be contributed annually by the county and city for the upkeep and maintenance of the property and the building or buildings thereon, or it may provide for the relative proportion of such expense, which the county and city shall annually pay. The contract may specify the parts of such building or buildings which shall be set apart for the exclusive use and occupation of the county and city. The money to be contributed by the county or city may be raised by a sale of bonds of such county or city or by general taxation. Any such county or city now possessing funds or having funds available for a county or city hospital from a sale of bonds or otherwise may contract for the expenditure of such funds, as herein provided. Such contract shall be made only after a proper resolution or ordinance of the county legislative authority and ordinance of the city have been passed specifically authorizing it. The contract when made shall be binding upon the county and city during its existence or until it is modified or abrogated by mutual consent evidenced by appropriate legislation. A site with or without buildings may be contributed in lieu of money at a valuation to be agreed upon. [1984 c 26 § 2; 1963 c 4 § 36.62.040. Prior: (i) 1925 ex.s. c 174 § 2; RRS § 6090-2. (ii) 1947 c 228 § 1, part; 1925 ex.s. c 174 § 1, part; Rem. Supp. 1947 § 6090-1, part.]

36.62.050 Petition to establish—Beds limited. When it is proposed to establish such hospital, a petition shall be presented to the county legislative authority, signed by three hundred or more resident taxpayers of the county, requesting the county legislative authority to submit to the electors the proposition to issue bonds for the purpose of procuring a site, and erecting, equipping, and maintaining such hospital, and specifying the amount of bonds proposed to be issued for that

purpose and the number of hospital beds. [1984 c 26 § 3; 1963 c 4 § 36.62.050. Prior: 1925 ex.s. c 174 § 3; RRS § 6090-3.]

36.62.060 Bond election. Upon presentation of the petition, the county legislative authority may submit to the voters of the county at the next general election the question of issuing bonds and levying a tax for such hospital. [1984 c 26 § 4; 1963 c 4 § 36.62.060. Prior: 1925 ex.s. c 174 § 4; RRS § 6090-4.]

36.62.070 Issuance of bonds—Terms. The bonds issued for such hospital shall not have maturities in excess of twenty years. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 26; 1984 c 26 § 5; 1983 c 167 § 72; 1970 ex.s. c 56 § 49; 1969 ex.s. c 232 § 26; 1963 c 4 § 36.62.070. Prior: 1925 ex.s. c 174 § 5; RRS § 6090-5.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Additional notes found at www.leg.wa.gov

36.62.090 Tax levy for maintenance. If the hospital is established, the county legislative authority, at the time of levying general taxes, may levy a tax, not to exceed fifty cents per thousand dollars of assessed value in any one year, for the maintenance of the hospital. [1984 c 26 § 6; 1973 1st ex.s. c 195 § 37; 1963 c 4 § 36.62.090. Prior: 1925 ex.s. c 174 § 6; RRS § 6090-6.]

Additional notes found at www.leg.wa.gov

36.62.100 Admission of patients—Liability for support. Patients shall be admitted to such hospitals in accordance with policies to be proposed by the board of trustees and approved by the county legislative authority. The policies shall provide, within the resources available to the hospital, that admission of patients shall not be dependent upon their ability to pay. Whenever a patient has been admitted to the hospital and in accordance with rules established by the board of trustees, the hospital may determine the person's ability to pay for the care provided by the hospital, render billings for the care, and take necessary steps to obtain payment for the costs of the care from the person, from the person's estate, or from any persons or organizations legally liable for the person's support. [1984 c 26 § 7; 1963 c 4 § 36.62.100. Prior: 1945 c 62 § 1; 1925 ex.s. c 174 § 8; Rem. Supp. 1945 § 6090-8.]

36.62.110 Board of trustees—Membership. Whenever any county, or any county and city jointly, or two or more counties jointly, establish a hospital for the care and treatment of the indigent, sick, injured, or infirm, under the provisions of this chapter, and such hospital is completed and ready for operation, the county legislative authority of the county in which the institution is located shall appoint thirteen persons as trustees for the institution. The thirteen trustees, together with the additional trustees required by RCW 36.62.130, if any, shall constitute a board of trustees for such hospital. [1984 c 26 § 8; 1967 ex.s. c 36 § 2; 1963 c 4 § 36.62.110. Prior: 1931 c 139 § 1, part; RRS § 6090-9, part.]

Additional notes found at www.leg.wa.gov

36.62.120 Board of trustees—Initial appointment—Terms of office. The first members of the board of trustees of such institution shall be appointed by the county legislative authority within thirty days after the institution has been completed and is ready for operation. The county legislative authority appointing the initial members shall appoint three members for one-year terms, three members for two-year terms, three members for three-year terms, and four members for four-year terms, and until their successors are appointed and qualified, and thereafter their successors shall be appointed for terms of four years and until their successors are appointed and qualified: PROVIDED, That the continuation of a member past the expiration date of the term shall not change the commencement date of the term of the succeeding member. Each term of the initial trustees shall be deemed to commence on the first day of August following the appointment but shall also include the period intervening between the appointment and the first day of August following the appointment.

For an institution which is already in existence on June 7, 1984, the county legislative authority shall appoint within thirty days of June 7, 1984, three additional members for one-year terms, two additional members for two-year terms, and two additional members for three-year terms, and until their successors are appointed and qualified, and thereafter their successors shall be appointed for terms of four years and until their successors are appointed and qualified: PROVIDED FURTHER, That the continuation of an additional member past the expiration date of the term shall not change the commencement date of the term of the succeeding member. Each term of the initial additional members shall be deemed to commence on the first day of August of the year of appointment but shall also include the period intervening between the appointment and the first day of August of the year of the appointment.

Upon expiration of the terms of current members, the successors to current members shall be appointed for four-year terms and until their successors are appointed and qualified: AND PROVIDED FURTHER, That the continuation of a successor to a current member past the expiration date of the term shall not change the commencement date of the term of the succeeding member. Each term of the initial successors to current members shall be deemed to commence on the first day of August following the expiration of a current term but shall also include the period intervening between the appointment and the first day of August of the year of the appointment. [1984 c 26 § 9; 1963 c 4 § 36.62.120. Prior: (i) 1931 c 139 § 1, part; RRS § 6090-9, part. (ii) 1931 c 139 § 4, part; RRS § 6090-12, part.]

36.62.130 Board of trustees—Additional trustees for joint hospital. In case two or more counties establish a hospital jointly, the thirteen members of the board of trustees shall be chosen as provided from the county in which the institution is located and each county legislative authority of the other county or counties which contributed to the establishment of the hospital shall appoint two additional members of the board of trustees. The regular term of each of the two additional members shall be four years and until their successors are appointed and qualified. Such additional members shall be residents of the respective counties from which they

are appointed and shall otherwise possess the same qualifications as other trustees. The first term of office of the persons first appointed as additional members shall be fixed by the county legislative authority of the county in which said hospital or institution is located, but shall not be for more than four years. [1984 c 26 § 10; 1963 c 4 § 36.62.130. Prior: 1931 c 139 § 1, part; RRS § 6090-9, part.]

36.62.140 Board of trustees—Qualifications of trustees. No person shall be eligible for appointment as a trustee who holds or has held during the period of two years immediately prior to appointment any salaried office or position in any office, department, or branch of the government which established or maintained the hospital. [1984 c 26 § 11; 1963 c 4 § 36.62.140. Prior: 1931 c 139 § 2; RRS § 6090-10.]

36.62.150 Board of trustees—Removal of trustee—Procedure. The county legislative authority which appointed a member of the board of trustees may remove the member for cause and in the manner provided in this section. Notice shall be provided by the county appointing authority to the trustee and the board of trustees generally. The notice shall set forth reasons which justify removal. The trustee shall be provided opportunity for a hearing before the county appointing authority: PROVIDED, That three consecutive unexcused absences from regular meetings of the board of trustees shall be deemed cause for removal of a trustee without hearing. Any trustee removed for a cause other than three consecutive unexcused absences may appeal the removal within twenty days of the order of removal by seeking a writ of review before the superior court pursuant to chapter 7.16 RCW. Removal shall disqualify the trustee from subsequent reappointment. [1984 c 26 § 12; 1963 c 4 § 36.62.150. Prior: 1933 c 174 § 1, part; 1931 c 139 § 3, part; RRS § 6090-11, part.]

36.62.160 Board of trustees—Vacancies. Any vacancy in the board of trustees shall be filled by appointment by the county legislative authority making the original appointment, and such appointee shall hold office for the remainder of the term of the trustee replaced. [1984 c 26 § 13; 1963 c 4 § 36.62.160. Prior: 1933 c 174 § 1, part; 1931 c 139 § 3, part; RRS § 6090-11, part.]

36.62.170 Board of trustees—Quorum. A majority of the trustees shall constitute a quorum for the transaction of business. [1984 c 26 § 14; 1963 c 4 § 36.62.170. Prior: 1931 c 139 § 4, part; RRS § 6090-12, part.]

36.62.180 Board of trustees—Powers and duties. The board of trustees shall:

(1) Have general supervision and care of such hospitals and institutions and the buildings and grounds thereof and power to do everything necessary to the proper maintenance and operation thereof within the limits of approved budgets and the appropriations authorized;

(2) Elect from among its members a president and vice president;

(3) Adopt bylaws and rules for its own guidance and for the government of the hospital;

(2014 Ed.)

(4) Prepare annually a budget covering both hospital operations and capital projects, in accordance with the provisions of applicable law, and file such budgets with the county treasurer or if the hospital has been established by more than one county, with the county treasurer of each county, and if a city has contributed to the establishment of the hospital, with the official of the city charged by law with the preparation of the city budget; and

(5) File with the legislative authority of each county and city contributing to the establishment of such hospital, at a time to be determined by the county legislative authority of the county in which the hospital is located, a report covering the proceedings of the board with reference to the hospital during the preceding twelve months and an annual financial report and statement. [1984 c 26 § 15; 1963 c 4 § 36.62.180. Prior: 1945 c 118 § 1, part; 1931 c 139 § 7, part; Rem. Supp. 1945 § 6090-15, part.]

36.62.190 Board of trustees—Authority to accept gifts and bequests. The board of trustees may accept property by gift, devise, bequest, or otherwise for the use of such institution, except that acceptance of any interest in real property shall be by prior authorization by the county. [1984 c 26 § 16; 1963 c 4 § 36.62.190. Prior: (i) 1945 c 118 § 1, part; 1931 c 139 § 7, part; Rem. Supp. 1945 § 6090-15, part. (ii) 1931 c 139 § 8; RRS § 6090-16.]

36.62.200 Board of trustees—Trustees not compensated—Contract interest barred—Reimbursement for travel expenses. No trustee shall receive any compensation or emolument whatever for services as trustee; nor shall any trustee have or acquire any personal interest in any lease or contract whatsoever, made by the county or board of trustees with respect to such hospital or institution: PROVIDED, That each member of a board of trustees of a county hospital may be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended: PROVIDED FURTHER, That, in addition, trustees of a county hospital shall be reimbursed for travel expenses for traveling from their home to a trustee meeting at a rate provided for in RCW 43.03.060 as now existing or hereafter amended. [1984 c 26 § 17; 1979 ex.s. c 17 § 1; 1963 c 4 § 36.62.200. Prior: 1931 c 139 § 5; RRS § 6090-13.]

36.62.210 Superintendent—Appointment—Salary. The board of trustees shall appoint a superintendent who shall be appointed for an indefinite time and be removable at the will of the board of trustees. Appointments and removals shall be by resolution, introduced at a regular meeting and adopted at a subsequent regular meeting by a majority vote. The superintendent shall receive such salary as the board of trustees shall fix by resolution. [1984 c 26 § 18; 1963 c 4 § 36.62.210. Prior: 1945 c 118 § 1, part; 1931 c 139 § 7, part; Rem. Supp. 1945 § 6090-15, part.]

36.62.230 Superintendent—Duties. The superintendent shall be the chief executive officer of the hospital or institution and shall perform all administrative services necessary to the efficient and economical conduct of the hospital or institution and the admission and proper care of persons properly entitled to the services thereof as provided by law or

by the rules and regulations of the board of trustees. [1984 c 26 § 19; 1963 c 4 § 36.62.230. Prior: 1931 c 139 § 9; RRS § 6090-17.]

36.62.252 County hospital fund—Established—Purpose—Monthly report. Every county which maintains a county hospital or infirmary shall establish a "county hospital fund" into which fund shall be deposited all unrestricted moneys received from any source for hospital or infirmary services including money received for services to recipients of public assistance and other persons without income and resources sufficient to secure such services. The county may maintain other funds for restricted moneys. Obligations incurred by the hospital shall be paid from such funds by the county treasurer in the same manner as general county obligations are paid. The county treasurer shall furnish to the county legislative authority a monthly report of receipts and disbursements in the county hospital funds which report shall also show the balance of cash on hand. [1984 c 26 § 20; 1971 ex.s. c 277 § 1; 1967 ex.s. c 36 § 3; 1963 c 4 § 36.62.252. Prior: 1961 c 144 § 1; 1951 c 256 § 1.]

Additional notes found at www.leg.wa.gov

36.62.270 Supplementary budget. In the event that additional funds are needed for the operation of a county hospital or infirmary, the county legislative authority shall have authority to adopt a supplemental budget. Such supplemental budget shall set forth the amount and sources of funds and the items of expenditure involved. [1984 c 26 § 21; 1971 ex.s. c 277 § 2; 1963 c 4 § 36.62.270. Prior: 1951 c 256 § 3.]

36.62.290 Contracts between board of regents of state universities and hospital board of trustees for medical services and teaching and research activities. Whenever any county, or any county and city jointly, or two or more counties jointly, establish a hospital under the provisions of this chapter, the board of trustees of the hospital is empowered, with the approval of the county legislative authority, to enter into a contract with the board of regents of a state university to provide hospital services, including management under the direction of a hospital administrator for the hospital, to provide for the rendering of medical services in connection with the hospital and to provide for the conduct of teaching and research activities by the university in connection with the hospital. Any such board of regents is empowered to enter into such a contract, to provide such hospital services, and to provide for the rendition of such medical services and for the carrying on of teaching and research in connection with such a hospital. If such a contract is entered into, the provisions of RCW 36.62.210 and 36.62.230 shall not be applicable during the term of the contract and all of the powers, duties and functions vested in the superintendent in this chapter shall be vested in the board of trustees. The board of trustees shall provide for such conditions and controls in the contract as it shall deem to be in the community interest. [1984 c 26 § 22; 1967 ex.s. c 36 § 1.]

Additional notes found at www.leg.wa.gov

36.62.300 Work ordered and materials purchased. All work ordered and materials purchased by a hospital shall

be subject to the requirements established in RCW 70.44.140 for public hospital districts. [1991 c 363 § 76.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Chapter 36.63 RCW JAILS

Sections

36.63.255 Transfer of convicted felon to state institution pending appeal.

City and county jails act—Bond issue: Chapters 70.48 and 70.48A RCW.

Use of strip and body cavity searches in correctional facilities: RCW 10.79.060 through 10.79.110.

36.63.255 Transfer of convicted felon to state institution pending appeal. Any person imprisoned in a county jail pending the appeal of his or her conviction of a felony and who has not obtained bail bond pending his or her appeal shall be transferred after thirty days but within forty days from the date judgment was entered against him or her to a state institution for felons designated by the secretary of corrections: PROVIDED, That when good cause is shown, a superior court judge may order the prisoner detained in the county jail beyond said forty days for an additional period not to exceed ten days. [2009 c 549 § 4099; 1981 c 136 § 60; 1969 ex.s. c 4 § 2; 1969 c 103 § 2.]

Additional notes found at www.leg.wa.gov

Chapter 36.64 RCW JOINT GOVERNMENTAL ACTIVITIES

Sections

36.64.010 Joint courthouse and city hall.

36.64.020 Joint courthouse and city hall—Terms of contract.

36.64.030 Joint courthouse and city hall—Approval of contract.

36.64.040 Joint courthouse and city hall—Funds, how provided.

36.64.050 Joint armory sites.

36.64.060 Joint canal construction.

36.64.070 Counties with populations of two hundred ten thousand or more—Contracts with cities concerning buildings and related improvements.

36.64.080 Conferences to study regional and governmental problems—Counties and cities may establish—Subjects—Recommendations.

36.64.090 Conferences to study regional and governmental problems—Articles—Officers—Agents and employees.

36.64.100 Conferences to study regional and governmental problems—Contracts with other governmental agencies—Grants and gifts—Consultants.

36.64.110 Conferences to study regional and governmental problems—Public purpose—Contributions to support by municipal corporations.

Care, support, and relief of needy persons: RCW 74.04.040.

Cemetery facilities as: RCW 68.52.192, 68.52.193.

Cities and towns

agreements with county for planning, establishing, construction, and maintenance of streets: Chapter 35.77 RCW.

city may contribute to support of county in which city owned utility plant located: RCW 35.21.420.

community renewal: RCW 35.21.660, 35.81.130.

Combined city-county health departments: Chapter 70.08 RCW.

County and city tuberculosis hospitals: Chapter 70.30 RCW.

County public works project, department of transportation cooperation: RCW 47.08.070.

County roads: RCW 47.04.080.

County superintendent of schools, consolidation of office into joint county district: Chapter 28A.310 RCW.

Diking and drainage, intercounty districts: Chapter 85.24 RCW.

Elevators, escalators, like conveyances, municipal governing over: RCW 70.87.050.

Executive conditional sales contracts for purchase of property for park and library purposes: RCW 39.30.010.

Fire protection districts, county contracts with: RCW 52.12.031.

Flood control
by counties jointly: Chapter 86.13 RCW.
county participation with flood control district: RCW 86.24.040.
county participation with state and federal governments: Chapter 86.24 RCW.
districts (1937 act): Chapter 86.09 RCW.
maintenance, county participation with state: Chapter 86.26 RCW.

Franchises across joint bridges: RCW 47.56.256.

Health districts as: Chapter 70.46 RCW.

Highways, construction, benefit of, cooperative agreements, prevention or minimization of flood damages: RCW 47.28.140.

Housing authorities, cooperation between: RCW 35.82.100.

Housing cooperation law: Chapter 35.83 RCW.

Intercounty rural library districts: Chapter 27.12 RCW.

Intercounty weed districts: Chapter 17.06 RCW.

Intergovernmental disposition of property: RCW 39.33.010.

Interlocal cooperation act: Chapter 39.34 RCW.

Joint aid river and harbor improvements: RCW 88.32.230, 88.32.235.

Joint county teachers' institutes: Chapter 28A.415 RCW.

Joint hospitals: RCW 36.62.030.

Joint operations by political subdivisions, deposit and control of funds: RCW 43.09.285.

Joint planning for improvement of navigable stream: RCW 88.32.240, 88.32.250.

Limited access facilities, cooperative agreements: RCW 47.52.090.

Metropolitan municipal corporations: Chapter 35.58 RCW.

Mosquito control
districts: Chapter 17.28 RCW.
generally: Chapter 70.22 RCW.

Motor vehicles, removal of when disabled and impounding: RCW 46.55.113.

Municipal airports: Chapters 14.07 and 14.08 RCW.

Operating agencies (electricity, water resources): Chapter 43.52 RCW.

Pesticide application, agreements authorized: RCW 17.21.300.

Port districts
contracts with: RCW 53.08.240.
ownership of improvements by with county: RCW 53.20.030.

Public assistance, joint county administration: RCW 74.04.180.

Public health pooling fund: RCW 70.12.030 through 70.12.070.

Reclamation districts of one million acres: Chapter 89.30 RCW.

Regional libraries: Chapter 27.12 RCW.

Regional planning commission: RCW 35.63.070.

River and harbor improvements by counties jointly: RCW 88.32.180 through 88.32.220.

Roads and bridges, limited access facilities: Chapter 47.52 RCW.

Soil and water conservation districts, county cooperation with: RCW 89.08.341.

Taxes, property
collection of: Chapter 84.56 RCW.
revaluation program: Chapter 84.41 RCW.

Toll bridges
state boundary, county participation: RCW 47.56.042.
tunnels and ferries: Chapter 47.56 RCW.

Traffic schools: Chapter 46.83 RCW.

Transfer of real property or contract for use for park and recreational purposes: RCW 39.33.060.

Washington clean air act: Chapter 70.94 RCW.

World fair or exposition participation: Chapter 35.60 RCW.

36.64.010 Joint courthouse and city hall. If the county seat of a county is in an incorporated city, the county and city may contract, one with the other, for the joint purchase, acquisition, leasing, ownership, control, and disposition of land and other property suitable as a site for a county courthouse and city hall and for the joint construction, ownership, control, and disposition of a building or buildings thereon for the use by such county and city as a county courthouse and city hall. Any county or city owning a site or any interest therein, or a site with buildings thereon, may, upon such terms as appear fair and just to the board of county commissioners of such county and to the legislative body of such city, contract with reference to the joint ownership, acquisition, leasing, control, improvement, and occupation of such property. [1963 c 4 § 36.64.010. Prior: 1913 c 90 § 1; RRS § 3992.]

36.64.020 Joint courthouse and city hall—Terms of contract. A contract made in pursuance of RCW 36.64.010 shall fully set forth the amount of money to be contributed by each towards acquisition of the site and the improvement thereof and the manner in which such property shall be improved and the character of the building or buildings to be erected thereon. The contract may provide for the amount of money to be contributed annually by each for the upkeep and maintenance of the property and the building or buildings thereon, or it may provide for the relative proportion of such expense which such county and city shall annually pay. The contract shall specify the parts of such building or buildings which shall be set apart for the exclusive use and occupation of each. [1963 c 4 § 36.64.020. Prior: 1913 c 90 § 2; RRS § 3993.]

36.64.030 Joint courthouse and city hall—Approval of contract. The contract between a county and a city shall be made only after a proper resolution of the board of county commissioners of the county and a proper ordinance of the city have been passed specifically authorizing it. The contract shall be binding upon the county and the city during the term thereof, or until it is modified or abrogated by mutual consent evidenced by a proper resolution and ordinance of the county and city. [1963 c 4 § 36.64.030. Prior: 1913 c 90 § 4; RRS § 3995.]

36.64.040 Joint courthouse and city hall—Funds, how provided. The money to be contributed by a county or a city or both may be raised by a sale of its bonds, or by general taxation. Any county or city possessing funds or having funds available for a county courthouse or city hall from the sale of bonds or otherwise, may contract for the expenditure of such funds. [1963 c 4 § 36.64.040. Prior: 1913 c 90 § 3; RRS § 3994.]

36.64.050 Joint armory sites. Any city or county in the state may expend money from its current expense funds in payment in whole or in part for an armory site whenever the legislature has authorized the construction of an armory within such city or county. [1963 c 4 § 36.64.050. Prior: 1913 c 91 § 1; RRS § 3996.]

36.64.060 Joint canal construction. Whenever the county legislative authority of a county with a population of one hundred twenty-five thousand or more deems it for the interest of the county to construct or to aid the United States in constructing a canal to connect any bodies of water within the county, such county may construct such canal or aid the United States in constructing it and incur indebtedness for such purpose to an amount not exceeding five hundred thousand dollars and issue its negotiable bonds therefor in the manner and form provided in RCW 36.67.010. Such construction or aid in construction is a county purpose. [1991 c 363 § 77; 1985 c 7 § 105; 1983 c 3 § 78; 1963 c 4 § 36.64.060. Prior: (i) 1907 c 158 § 1; RRS § 9664. (ii) 1907 c 158 § 2; RRS § 9665.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.64.070 Counties with populations of two hundred ten thousand or more—Contracts with cities concerning buildings and related improvements. Any county with a population of two hundred ten thousand or more may contract with any city or cities within such county for the financing, erection, ownership, use, lease, operation, control or maintenance of any building or buildings, including open spaces, off-street parking facilities for the use of county and city employees and persons doing business with such county or city, plazas and other improvements incident thereto, for county or city, or combined county-city, or other public use. Property for such buildings and related improvements may be acquired by either such county or city or by both by lease, purchase, donation, exchange, and/or gift or by eminent domain in the manner provided by law for the exercise of such power by counties and cities respectively and any property acquired hereunder, together with the improvements thereon, may be sold, exchanged or leased, as the interests of said county, city or cities may from time to time require. [1991 c 363 § 78; 1965 c 24 § 1.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.64.080 Conferences to study regional and governmental problems—Counties and cities may establish—Subjects—Recommendations. The boards of county commissioners of any county and any counties contiguous thereto and the governing body of any cities and/or towns within said counties may establish and organize a regional agency hereinafter referred to as a conference, for the purpose of studying regional and governmental problems of mutual interest and concern, including but not limited to, facility studies on highways, transit, airports, ports or harbor development, water supply and distribution, codes and ordinances, governmental finances, flood control, air and water pollution, recommendations of sites for schools and educational institutions, hospitals and health facilities, parks and recreation, public buildings, land use and drainage; and to formulate recommendations for review and action by the member counties and/or cities legislative body. [1965 ex.s. c 84 § 1.]

Youth agencies, joint establishment: RCW 35.21.630.

36.64.090 Conferences to study regional and governmental problems—Articles—Officers—Agents and

employees. The governing bodies of the counties and cities so associated in a conference shall adopt articles of association and bylaws, select a chair and such other officers as they may determine, and may employ and discharge such agents and employees as the officers deem convenient to carry out the purposes of the conference. [2009 c 549 § 4100; 1965 ex.s. c 84 § 2.]

36.64.100 Conferences to study regional and governmental problems—Contracts with other governmental agencies—Grants and gifts—Consultants. The conference is authorized to contract generally and to enter into any contract with the federal government, the state, any municipal corporation and/or other governmental agency for the purpose of conducting the study of regional problems of mutual concern, and shall have the power to receive grants and gifts in furtherance of the program. The conference may retain consultants if deemed advisable. [1965 ex.s. c 84 § 3.]

36.64.110 Conferences to study regional and governmental problems—Public purpose—Contributions to support by municipal corporations. The formation of the conference is hereby declared to be a public purpose, and any municipal corporation may contribute to the expenses of such conference pursuant to the budgetary laws of the municipal corporations and such bylaws as may be adopted by the conference: PROVIDED, That services and facilities may be provided by a municipal corporation in lieu of assessment. [1965 ex.s. c 84 § 4.]

Chapter 36.65 RCW COMBINED CITY AND COUNTY MUNICIPAL CORPORATIONS

Sections

36.65.010	Intent.
36.65.020	School districts to be retained as separate political subdivisions.
36.65.030	Tax on net income prohibited.
36.65.040	Method of allocating state revenues.
36.65.050	Fire protection or law enforcement units—Binding arbitration in collective bargaining.
36.65.060	Public employee retirement or disability benefits not affected.

36.65.010 Intent. It is the intent of the legislature in enacting this chapter to provide for the implementation and clarification of Article XI, section 16 of the state Constitution, which authorizes the formation of combined city and county municipal corporations.

"City-county," as used in this chapter, means a combined city and county municipal corporation under Article XI, section 16 of the state Constitution. [1984 c 91 § 1.]

36.65.020 School districts to be retained as separate political subdivisions. Recognizing the paramount duty of the state to provide for the common schools under Article IX, sections 1 and 2 of the state Constitution, school districts shall be retained as separate political subdivisions within the city-county. [1984 c 91 § 2.]

36.65.030 Tax on net income prohibited. A county, city, or city-county shall not levy a tax on net income. [1984 c 91 § 3.]

36.65.040 Method of allocating state revenues. The method of allocating state revenues shall not be modified for a period of one year from the date the initial officers of the city-county assume office. During the one-year period, state revenue shares shall be calculated as if the preexisting county, cities, and special purpose districts had continued as separate entities. However, distributions of the revenue to the consolidated entities shall be made to the city-county. [1984 c 91 § 4.]

36.65.050 Fire protection or law enforcement units—Binding arbitration in collective bargaining. If the city-county government includes a fire protection or law enforcement unit that was, prior to the formation of the city-county, governed by a state statute providing for binding arbitration in collective bargaining, then the entire fire protection or law enforcement unit of the city-county shall be governed by that statute. [1984 c 91 § 5.]

36.65.060 Public employee retirement or disability benefits not affected. The formation of a city-county shall not have the effect of reducing, restricting, or limiting retirement or disability benefits of any person employed by or retired from a municipal corporation, or who had a vested right in any state or local retirement system, prior to the formation of the city-county. [1984 c 91 § 6.]

36.67.010 Authority to contract indebtedness—Limitations. A county may contract indebtedness for general county purposes subject to the limitations on indebtedness provided for in RCW 39.36.020(2). Bonds evidencing such indebtedness shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 27; 1971 c 76 § 1; 1970 ex.s. c 42 § 17; 1963 c 4 § 36.67.010. Prior: 1890 p 37 § 1; RRS § 5575.]

Purpose—1984 c 186: See note following RCW 39.46.110.
Validation requirement: RCW 39.40.010.

36.67.060 Bond retirement. Bonds issued under this chapter shall be retired by an annual tax levy and by any other moneys lawfully available and pledged therefor. [1984 c 186 § 28; 1983 c 167 § 77; 1975 1st ex.s. c 188 § 1; 1963 c 4 § 36.67.060. Prior: (i) 1890 p 39 § 6; RRS § 5580. (ii) 1890 p 39 § 7; RRS § 5581.]

Purpose—1984 c 186: See note following RCW 39.46.110.
Additional notes found at www.leg.wa.gov

36.67.070 Payment of interest. Any coupons for the payment of interest on the bonds shall be considered for all purposes as warrants drawn upon the current expense fund of the county issuing bonds, and if when presented to the treasurer of the county no funds are in the treasury to pay them, the treasurer shall indorse the coupons as presented for payment, in the same manner as county warrants are indorsed, and thereafter they shall bear interest at the same rate as county warrants presented and unpaid. If there are no funds in the treasury to make payment on a bond not having coupons, the interest payment shall continue bearing interest at the bond rate until it is paid, unless otherwise provided in the proceedings authorizing the sale of the bonds. [1983 c 167 § 78; 1963 c 4 § 36.67.070. Prior: 1890 p 39 § 8; RRS § 5582.]

Additional notes found at www.leg.wa.gov

**Chapter 36.67 RCW
LIMITATION OF INDEBTEDNESS—
COUNTY BONDS**

Sections

- 36.67.010 Authority to contract indebtedness—Limitations.
- 36.67.060 Bond retirement.
- 36.67.070 Payment of interest.

REVENUE BONDS

- 36.67.500 "This chapter" means RCW 36.67.510 through 36.67.570.
- 36.67.510 Revenue bonds authorized.
- 36.67.520 When issued—Amounts—Purposes—Costs and expenses.
- 36.67.530 Form—Terms—Interest—Execution and signatures.
- 36.67.540 Special funds, creation and use—Use of tax revenue prohibited—Bonds are negotiable instruments—Statement on face—Remedy for failure to set aside revenue.
- 36.67.550 Covenants—Law and resolutions constitute contract with holders—Remedies.
- 36.67.560 Funding and refunding.
- 36.67.570 Liberal construction—Effect of other acts.

Airport purposes, bonds for: Chapter 14.08 RCW.

Alternative authority to issue revenue bonds: RCW 39.46.150, 39.46.160.

Bond elections, vote required: Chapter 39.40 RCW.

Bonds

*as security for city depository: RCW 35.38.040.
form, sale, terms of sale, payment, etc.: Chapter 39.44 RCW.
sale to federal government at private sale: Chapter 39.48 RCW.*

Funding indebtedness in counties: Chapter 39.52 RCW.

Funds for reserve purposes may be included in issue amount: RCW 39.44.140.

Housing authority act, bonds issued under: Chapter 35.82 RCW.

Industrial development revenue bonds: Chapter 39.84 RCW.

Juvenile detention facilities, bonds for: Chapter 13.16 RCW.

Limitation of indebtedness of taxing districts (counties): Chapter 39.36 RCW.

State funds, investment in county bonds authorized: RCW 43.84.080.

Validation of bonds and financing proceedings: Chapter 39.90 RCW.

(2014 Ed.)

REVENUE BONDS

36.67.500 "This chapter" means RCW 36.67.510 through 36.67.570. As used in RCW 36.67.500 through 36.67.570 "this chapter" means RCW 36.67.510 through 36.67.570. [1965 c 142 § 8.]

36.67.510 Revenue bonds authorized. The county legislative authority of any county is hereby authorized for the purpose of carrying out the lawful powers granted to the counties by the laws of the state to contract indebtedness and to issue revenue bonds evidencing such indebtedness in conformity with this chapter. Such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 79; 1965 c 142 § 1.]

Additional notes found at www.leg.wa.gov

36.67.520 When issued—Amounts—Purposes—Costs and expenses. All such revenue bonds authorized under the terms of this chapter may be issued and sold by the counties from time to time and in such amounts as is deemed necessary by the legislative authority of each county to provide sufficient funds for the carrying out of all county powers, without limiting the generality thereof, including the following: Acquisition; construction; reconstruction; mainte-

nance; repair; additions; operations of parks and recreations; flood control facilities; pollution facilities; parking facilities as a part of a courthouse or combined county-city building facility; and any other county purpose from which revenues can be derived. Included in the costs thereof shall be any necessary engineering, inspection, accounting, fiscal, and legal expenses, the cost of issuance of bonds, including printing, engraving, and advertising and other similar expenses, payment of interest on such bonds during the construction of such facilities and a period no greater than one year after such construction is completed, and the proceeds of such bond issue are hereby made available for all such purposes. Revenue bonds may also be issued to refund revenue bonds or general obligation bonds which are issued for any of the purposes specified in this section. [1981 c 313 § 12; 1969 ex.s. c 8 § 2; 1965 c 142 § 2.]

Parking facilities as part of courthouse or county-city building: RCW 36.01.080.

Additional notes found at www.leg.wa.gov

36.67.530 Form—Terms—Interest—Execution and signatures. (1) When revenue bonds are issued for authorized purposes, said bonds shall be either registered as to principal only or as to principal and interest as provided in RCW 39.46.030, or shall be bearer bonds; shall be in such denominations, shall be numbered, shall bear such date, shall be payable at such time or times up to a maximum period of not to exceed thirty years and payable at the office of the county treasurer, and such other places as determined by the county legislative authority of the county; shall bear interest payable and evidenced to maturity on bonds not registered as to interest by coupons attached to said bonds bearing a coupon interest rate or rates as authorized by the county legislative authority; shall be executed by the chair of the county legislative authority, and attested by the clerk of the legislative authority, and the seal of such legislative authority shall be affixed to each bond, but not to any coupon; and may have facsimile signatures of the chair and the clerk imprinted on each bond and any interest coupons in lieu of original signatures and the facsimile seal imprinted on each bond.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [2009 c 549 § 4101; 1983 c 167 § 80; 1981 c 313 § 13; 1970 ex.s. c 56 § 50; 1969 ex.s. c 232 § 27; 1965 c 142 § 3.]

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Additional notes found at www.leg.wa.gov

36.67.540 Special funds, creation and use—Use of tax revenue prohibited—Bonds are negotiable instruments—Statement on face—Remedy for failure to set aside revenue. Bonds issued under the provisions of this chapter shall be payable solely out of the operating revenues of the county. Such bonds shall be authorized by resolution adopted by the county legislative authority, which resolution shall create a special fund or funds into which the county legislative authority may obligate and bind the county to set aside and pay any part or parts of, or all of, or a fixed proportion of, or fixed amounts of gross revenue received by the county from moneys for services or activities as stated in the resolution, for the purpose of paying the principal of and interest on such

bonds as the same shall become due, and if deemed necessary to maintain adequate reserves therefor. Such fund or funds shall be drawn upon solely for the purpose of paying the principal and interest upon the bonds issued pursuant to this chapter.

The bonds shall be negotiable instruments within the provision and intent of the negotiable instruments law of this state, even though they shall be payable solely from such special fund or funds, and the tax revenue of the county may not be used to pay, secure, or guarantee the payment of the principal of and interest on such bonds. The bonds and any coupons attached thereto shall state upon their face that they are payable solely from such special fund or funds. If the county fails to set aside and pay into such fund or funds, the payments provided for in such resolution, the owner of any such bonds may bring suit to compel compliance with the provisions of the resolution. [1983 c 167 § 81; 1965 c 142 § 4.]

Additional notes found at www.leg.wa.gov

36.67.550 Covenants—Law and resolutions constitute contract with holders—Remedies. The board of county commissioners may provide covenants as it may deem necessary to secure the payment of the principal of and interest on such bonds and may, but shall not be required to, include covenants to create a reserve fund or account and to authorize the payment or deposit of certain moneys therein for the purpose of securing the payment of such principal and interest; to establish, maintain, and collect rates, charges, fees, rentals, and the like on the facilities and service the income of which is pledged for the payment of such bonds, sufficient to pay or secure the payment of such principal and interest and to maintain an adequate coverage over annual debt service; and to make any and all other covenants not inconsistent with the provisions of this chapter which will increase the marketability of such bonds. The board may also provide that revenue bonds payable out of the same source or sources may later be sold on a parity with any revenue bonds being issued and sold. The provisions of this chapter and any resolution or resolutions providing for the authorization, issuance, and sale of such bonds shall constitute a contract with the holder of such bonds, and the provisions thereof shall be enforceable by any owner or holder of such bonds by mandamus or any appropriate suit, action or proceeding at law or in equity in any court of competent jurisdiction. [1965 c 142 § 5.]

36.67.560 Funding and refunding. (1) The county legislative authority of any county may by resolution, from time to time, provide for the issuance of funding or refunding revenue bonds to fund or refund any outstanding revenue bonds and any interest and premiums due thereon at or before the maturity of such bonds, and parts or all of various series and issues of outstanding revenue bonds in the amount thereof to be funded or refunded. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

The county legislative authority shall create a special fund for the sole purpose of paying the principal of and interest on such funding or refunding revenue bonds, into which fund the legislative authority shall obligate and bind the county to set aside and pay any part or parts of, or all of, or a

fixed proportion of, or a fixed amount of the revenue of the facility of the county sufficient to pay such principal and interest as the same shall become due, and if deemed necessary to maintain adequate reserves therefor.

Such funding or refunding bonds shall be negotiable instruments within the provisions and intent of the negotiable instruments law of this state, and the tax revenue of the county may not be used to pay, secure, or guarantee the payment of the principal of and interest on such bonds.

The county may exchange such funding or refunding bonds for the bonds, and any coupons being funded or refunded, or it may sell such funding or refunding bonds in the manner, at such price and at such rate or rates of interest as the legislative authority shall deem to be for the best interest of the county and its inhabitants, either at public or private sale.

The provisions of this chapter relating to the terms, conditions, covenants, issuance, and sale of revenue bonds shall be applicable to such funding or refunding bonds except as may be otherwise specifically provided in this section.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 82; 1970 ex.s. c 56 § 51; 1969 ex.s. c 232 § 28; 1965 c 142 § 6.]

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Additional notes found at www.leg.wa.gov

36.67.570 Liberal construction—Effect of other acts.

This chapter shall be complete authority for the issuance of the revenue bonds hereby authorized, and shall be liberally construed to accomplish its purposes. Any restrictions, limitations or regulations relative to the issuance of such revenue bonds contained in any other act shall not apply to the bonds issued under this chapter. Any act inconsistent herewith shall be deemed modified to conform with the provisions of this chapter for the purpose of this chapter only. [1965 c 142 § 7.]

Chapter 36.68 RCW

PARKS AND RECREATIONAL FACILITIES

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State parks and recreation commission: Chapter 79A.05 RCW.

Transfer of real property or contract for use for park and recreational purposes: RCW 39.33.060.

36.68.010 Counties may establish park and playground systems—Disposition of surplus park property.

Counties may establish park and playground systems for public recreational purposes and for such purposes shall have the power to acquire lands, buildings and other facilities by gift, purchase, lease, devise, bequest and condemnation. A county may lease or sell any park property, buildings or facilities surplus to its needs, or no longer suitable for park purposes: PROVIDED, That such park property shall be subject to the requirements and provisions of notice, hearing, bid or intergovernmental transfer as provided in chapter 36.34 RCW: PROVIDED FURTHER, That nothing in this section shall be construed as authorizing any county to sell any property which such county acquired by condemnation for park or playground or other public recreational purposes on or after January 1, 1960, until held for five years or more after such acquisition: PROVIDED FURTHER, That funds acquired from the lease or sale of any park property, buildings or facilities shall be placed in the park and recreation fund to be used for capital purposes. [1963 c 4 § 36.68.010. Prior: 1961 c 92 § 1; 1949 c 94 § 1; Rem. Supp. 1949 § 3991-14.]

36.68.020 Programs of public recreation. Counties may conduct programs of public recreation, and in any such

program property or facilities owned by any individual, group or organization, whether public or private, may be utilized by consent of the owner. [1963 c 4 § 36.68.020. Prior: 1949 c 94 § 2; Rem. Supp. 1949 § 3991-15.]

36.68.030 Park and recreation board—Composition.

Each county may form a county park and recreation board composed of seven members, who shall be appointed by the board of county commissioners to serve without compensation. [1969 ex.s. c 176 § 93; 1963 c 4 § 36.68.030. Prior: 1949 c 94 § 3; Rem. Supp. 1949 § 3991-16.]

36.68.040 Park and recreation board—Terms of members. For the appointive positions on the county park and recreation board the initial terms shall be two years for two positions, four years for two positions, and six years for the remaining positions plus the period in each instance to the next following June 30th; thereafter the term for each appointive position shall be six years and shall end on June 30th. [1969 ex.s. c 176 § 94; 1963 c 4 § 36.68.040. Prior: 1949 c 94 § 4; Rem. Supp. 1949 § 3991-17.]

36.68.050 Park and recreation board—Removal of members—Vacancies. Any appointed county park and recreation board member may be removed by a majority vote of the board of county commissioners either for cause or upon the joint written recommendation of five members of the county park and recreation board. Vacancies on the county park and recreation board shall be filled by appointment, made by the board of county commissioners for the unexpired portions of the terms vacated. [1963 c 4 § 36.68.050. Prior: 1949 c 94 § 5; Rem. Supp. 1949 § 3991-18.]

36.68.060 Park and recreation board—Powers and duties. The county park and recreation board:

(1) Shall elect its officers, including a chair, vice chair and secretary, and such other officers as it may determine it requires.

(2) Shall hold regular public meetings at least monthly.

(3) Shall adopt rules for transaction of business and shall keep a written record of its meetings, resolutions, transactions, findings and determinations, which record shall be a public record.

(4) Shall initiate, direct, and administer county recreational activities, and shall select and employ a county park and recreation superintendent and such other properly qualified employees as it may deem desirable.

(5) Shall improve, operate, and maintain parks, playgrounds, and other recreational facilities, together with all structures and equipment useful in connection therewith, and may recommend to the board of county commissioners acquisition of real property.

(6) Shall promulgate and enforce reasonable rules and regulations deemed necessary in the operation of parks, playgrounds, and other recreational facilities, and may recommend to the board of county commissioners adoption of any rules or regulations requiring enforcement by legal process which relate to parks, playgrounds, or other recreational facilities.

(7) Shall each year submit to the board of county commissioners for approval a proposed budget for the following

year in the manner provided by law for the preparation and submission of budgets by elective or appointive county officials.

(8) May, subject to the approval of the board of county commissioners, enter into contracts with any other municipal corporation, governmental or private agency for the conduct of park and recreational programs. [2009 c 549 § 4102; 1963 c 4 § 36.68.060. Prior: 1949 c 94 § 6; Rem. Supp. 1949 § 3991-19.]

36.68.070 Park and recreation fund. In counties in which county park and recreation boards are formed, a county park and recreation fund shall be established. Into this fund shall be placed the allocation as the board of county commissioners annually appropriates thereto, together with miscellaneous revenues derived from the operation of parks, playgrounds, and other recreational facilities, as well as grants, gifts, and bequests for park or recreational purposes. All expenditures shall be disbursed from this fund by the county park and recreation board, and all balances remaining in this fund at the end of any year shall be carried over in such fund to the succeeding year. [1963 c 4 § 36.68.070. Prior: 1949 c 94 § 7; Rem. Supp. 1949 § 3991-20.]

36.68.080 Penalty for violations of regulations. (1) Except as otherwise provided in this section, any person violating any rules or regulations adopted by the board of county commissioners relating to parks, playgrounds, or other recreational facilities is guilty of a misdemeanor.

(2)(a) Except as provided in (b) of this subsection, violation of such a rule or regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction.

(b) Violation of such a rule or regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor. [2003 c 53 § 205; 1979 ex.s. c 136 § 36; 1963 c 4 § 36.68.080. Prior: 1949 c 94 § 8; Rem. Supp. 1949 § 3991-21.]

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

Additional notes found at www.leg.wa.gov

36.68.090 Counties authorized to build, improve, operate and maintain, etc., parks, playgrounds, gymnasiums, swimming pools, beaches, stadiums, golf courses, etc., and other recreational facilities—Regulation—Charges for use. Any county, acting through its board of county commissioners, is empowered to build, construct, care for, control, supervise, improve, operate and maintain parks, playgrounds, gymnasiums, swimming pools, field houses, bathing beaches, stadiums, golf courses, automobile race tracks and drag strips, coliseums for the display of spectator sports, public campgrounds, boat ramps and launching sites, public hunting and fishing areas, arboretums, bicycle and bridle paths, and other recreational facilities, and to that end may make, promulgate and enforce such rules and regulations regarding the use thereof, and make such charges for the use thereof, as may be deemed by said board to be reasonable. [1967 ex.s. c 144 § 11.]

Authority to establish park and playground systems: RCW 36.68.010.

Stadiums, powers of cities and counties to acquire and operate: Chapter 67.28 RCW.

Additional notes found at www.leg.wa.gov

36.68.100 Moorage facilities—Regulations authorized—Port charges, delinquency—Abandoned vessels, public sale. See RCW 53.08.310 and 53.08.320.

36.68.110 Counties authorized to permit public libraries on land used for park and recreation purposes. A county, acting through its county legislative authority, is authorized to permit the location of public libraries on land owned by the county that is used for park and recreation purposes, unless a covenant or other binding restriction precludes such uses. [1993 c 84 § 1.]

36.68.120 Community athletics programs—Sex discrimination prohibited. The antidiscrimination provisions of RCW 49.60.500 apply to community athletics programs and facilities operated, conducted, or administered by a park and recreation service area. [2009 c 467 § 8.]

Findings—Declaration—2009 c 467: See note following RCW 49.60.500.

PARK AND RECREATION SERVICE AREAS

36.68.400 Creation authorized—Purposes—Taxing districts—Powers. Any county shall have the power to create park and recreation service areas for the purpose of financing, acquiring, constructing, improving, maintaining, or operating any park, senior citizen activities centers, zoos, aquariums, and recreational facilities as defined in RCW 36.69.010 which shall be owned or leased by the county and administered as other county parks or shall be owned or leased and administered by a city or town or shall be owned or leased and administered by the park and recreation service area. A park and recreation service area may purchase athletic equipment and supplies, and provide for the upkeep of park buildings, grounds and facilities, and provide custodial, recreational and park program personnel at any park or recreational facility owned or leased by the service area or a county, city, or town. A park and recreation service area shall be a quasi-municipal corporation, an independent taxing "authority" within the meaning of section 1, Article 7 of the Constitution, and a "taxing district" within the meaning of section 2, Article 7 of the Constitution.

A park and recreation service area shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, to accept and expend or use gifts, grants, and donations, and to sue and be sued as well as all other powers that may now or hereafter be specifically conferred by statute.

The members of the county legislative authority, acting ex officio and independently, shall compose the governing body of any park and recreation service area which is created within the county: PROVIDED, That where a park and recreation service area includes an incorporated city or town within the county, the park and recreation service area may be governed as provided in an interlocal agreement adopted pursuant to chapter 39.34 RCW. The voters of a park and rec-

reation service area shall be all registered voters residing within the service area.

A multicounty park and recreation service area shall be governed as provided in an interlocal agreement adopted pursuant to chapter 39.34 RCW. [1988 c 82 § 1; 1985 c 253 § 1; 1981 c 210 § 1; 1965 ex.s. c 76 § 1; 1963 c 218 § 1.]

Contracts with community service organizations for public improvements: RCW 35.21.278.

Dissolution of inactive special purpose districts: Chapter 36.96 RCW.

May acquire property for park, recreational, viewpoint, greenbelt, conservation, historic, scenic, or view purposes: RCW 36.34.340.

Parks, county commissioners may designate name of: RCW 36.32.430.

Additional notes found at www.leg.wa.gov

36.68.410 May be initiated by resolution or petition. Park and recreation service areas may be initiated in any unincorporated area of any county by resolution adopted by the county legislative authority or by a petition signed by ten percent of the registered voters within the proposed park and recreation service area. Incorporated areas may be included under RCW 36.68.610 and 36.68.620. [1981 c 210 § 2; 1965 ex.s. c 76 § 2; 1963 c 218 § 2.]

Additional notes found at www.leg.wa.gov

36.68.420 Resolution or petition—Contents. Any resolution or petition initiating a proposed park and recreation service area shall set forth the boundaries of the service area with certainty, describe the purpose or purposes for which the service area is to be formed, and contain an estimate of the initial cost of any capital improvements or services to be authorized in the service area.

"Initial costs" as used herein shall include the estimated cost during the first year of operation of:

- (1) Land to be acquired or leased for neighborhood park purposes by the service area to establish a park or park facility specified in the resolution or petition;
- (2) Capital improvements specified in the objectives or purposes of the service area;
- (3) Forming the service area; and
- (4) Personnel, maintenance or operation of any park facility within the service area as specified by the resolution or petition. [1981 c 210 § 3; 1963 c 218 § 3.]

Additional notes found at www.leg.wa.gov

36.68.430 Petitions—Verification of signatures. Petitions shall be submitted to the county auditor who shall verify the signatures thereon to determine that the petition has been signed by the requisite number of persons who are registered voters within the proposed service area. If the petition is found not to have the requisite number of signatures, it shall be returned to the petitioners. If the petition is found to be sufficient, the auditor shall so certify and transmit the same to the board of county commissioners. [1963 c 218 § 4.]

36.68.440 Feasibility and cost studies—Public hearing—Notice. Upon accepting a petition to form a park and recreation service area, or upon passage of a resolution to establish such a service area, the county legislative authority shall order a full investigation for the purpose or purposes of the proposed service area to determine the feasibility of forming the same and to determine the estimated initial costs

involved in obtaining the objectives set forth in the petition or resolution. The reports on the feasibility and the cost of the proposed service area shall be made available to the county legislative authority, and copies of such reports shall be filed with the clerk of the county legislative authority not more than eighty days after the county legislative authority first directs that the studies and reports be undertaken. The county legislative authority shall also provide by resolution that within twenty days after receiving the reports a public hearing shall be held at the county seat or at some convenient location within the proposed service area. At least five days before the hearing, the county legislative authority shall give notice of the hearing not less than twice in a legal newspaper of general circulation in the county. The notice shall describe the boundaries of the proposed service area, the purpose or purposes of the proposed service area, the estimated initial costs, indicate that the reports and other materials prepared at the order of the county legislative authority are available in the office of the clerk of the county legislative authority for the study and review of any interested party, and set the time, date and place of the hearing. [1981 c 210 § 4; 1963 c 218 § 5.]

Additional notes found at www.leg.wa.gov

36.68.450 Hearing procedure—Inclusion of property—Examination of reports—Recess. At the hearing, the county legislative authority shall first provide for an explanation of the objectives of the proposed park and recreation service area and the estimated initial costs thereof. The county legislative authority shall permit any resident or property owner of the proposed service area to appear and be heard, and may permit property owners in contiguous areas to include their property within the proposed service area in the event that they make their request for inclusion in writing. The county legislative authority shall examine all reports on the feasibility of the proposed service area and its initial costs and may, if they deem it necessary, recess the hearing for not more than twenty days to obtain any additional information necessary to arrive at the findings provided for in RCW 36.68.420. [1981 c 210 § 5; 1963 c 218 § 6.]

Additional notes found at www.leg.wa.gov

36.68.460 Findings of county commissioners—Dismissal of proceedings, limitation on subsequent initiation. At the conclusion of a hearing, the board of county commissioners shall make the following findings:

(1) Whether or not the service area's objectives fit within the general framework of the county's comprehensive park plan and general park policies.

(2) The exact boundaries of the service area: The board shall be empowered to modify the boundaries as originally defined in the petition or resolution initiating the proposed service area: PROVIDED, That the boundaries of the service area may not be enlarged unless the property owners within the area to be added consent to their inclusion in writing; or unless the board gives the property owners of the area to be added, written notice, mailed to their regular permanent residences as shown on the latest records of the county auditor, five days prior to a regular or continued hearing upon the formation of the proposed service area.

[Title 36 RCW—page 162]

(3) A full definition or explanation of the nature of improvements or services to be financed by the proposed service area.

(4) Whether or not the objectives of the service area are feasible.

(5) The number or name of the service area.

If satisfactory findings cannot be made by the board, the petition or resolution shall be dismissed, and no petition or resolution embracing the same area may be accepted or heard for at least two years. [1963 c 218 § 7.]

36.68.470 Resolution ordering election—Election procedure—Formation. (1) Upon making findings under the provisions of RCW 36.68.460, the county legislative authority shall, by resolution, order an election of the voters of the proposed park and recreation service area to determine if the service area shall be formed. The county legislative authority shall in their resolution direct the county auditor to set the election to be held at the next general election or at a special election held for such purpose; describe the purposes of the proposed service area; set forth the estimated cost of any initial improvements or services to be financed by the service area should it be formed; describe the method of financing the initial improvements or services described in the resolution or petition; and order that notice of election be published in a newspaper of general circulation in the county at least twice prior to the election date.

(2) A proposition to form a park and recreation service area shall be submitted to the voters of the proposed service area. Upon approval by a majority of the voters voting on the proposition, a park and recreation service area shall be established. The proposition submitted to the voters by the county auditor on the ballot shall be in substantially the following form:

FORMATION OF PARK AND
RECREATION SERVICE AREA

Shall a park and recreation service area be established for the area described in a resolution of the legislative authority of county, adopted on the day of 19. . . . , to provide financing for neighborhood park facilities, improvements, and services?

Yes No

[1981 c 210 § 6; 1963 c 218 § 8.]

Additional notes found at www.leg.wa.gov

36.68.480 Property tax levies or bond retirement levies—Election. If the petition or resolution initiating the formation of the proposed park and recreation service area proposes that the initial capital or operational costs are to be financed by regular property tax levies for a six-year period as authorized by RCW 36.68.525, or an annual excess levy, or that proposed capital costs are to be financed by the issuance of general obligation bonds and bond retirement levies, a proposition or propositions for such purpose or purposes shall be submitted to the voters of the proposed service area at the same election. A proposition or propositions for regular property tax levies for a six-year period as authorized by RCW 36.68.525, an annual excess levy, or the issuance of general obligation bonds and bond retirement levies, may

(2014 Ed.)

also be submitted to the voters at any general or special election. [1984 c 131 § 7; 1981 c 210 § 7; 1973 1st ex.s. c 195 § 38; 1963 c 218 § 9.]

Purpose—1984 c 131 §§ 3-9: See note following RCW 29A.36.210.

Additional notes found at www.leg.wa.gov

36.68.490 Annual excess levy or bond retirement levies—Election procedure—Vote required. In order for the annual excess tax levy proposition or bond retirement levies proposition to be approved, voters exceeding in number at least sixty percent of the number of voters who cast ballots for the office of county legislative authority within the park and recreation area, or within the proposed service area, in the last preceding general election for that office must cast ballots on the tax levy proposition, and of all the votes cast at the election at least sixty percent of said votes must approve the annual excess tax levy or the bond retirement levies. [1981 c 210 § 8; 1963 c 218 § 10.]

Additional notes found at www.leg.wa.gov

36.68.500 Resolution declaring formation—Treasurer—Disbursement procedure. If the formation of the service area is approved by the voters, the county legislative authority shall by resolution declare the service area to be formed and direct the county treasurer to be the treasurer of the service area. Expenditures of the service area shall be made upon warrants drawn by the county auditor pursuant to vouchers approved by the governing body of the service area. [1981 c 210 § 9; 1963 c 218 § 11.]

Additional notes found at www.leg.wa.gov

36.68.510 Local service area fund. If the service area is formed, there shall be created in the office of the county treasurer a local service area fund with such accounts as the treasurer may find convenient, or as the state auditor may direct, into which shall be deposited all revenues received by the service area from tax levy, from gifts or donations, and from service or admission charges. Such fund shall be designated "(name of county) service area No. . . . fund." Or "(name of district) service area fund." Special accounts shall be established within the fund for the deposit of the proceeds of each bond issue made for the construction of a specified project or improvement, and there shall also be established special accounts, within the fund for the deposit of revenues raised by special levy or derived from other specific revenues, to be used exclusively for the retirement of an outstanding bond issue or for paying the interest or service charges on any bond issue. [1963 c 218 § 12.]

36.68.520 Annual excess property tax levy—General obligation bonds. (1) A park and recreation service area shall have the power to levy annual excess levies upon the property included within the service area if authorized at a special election called for the purpose in the manner prescribed by section 2, Article VII of the Constitution and by RCW 84.52.052 for operating funds, capital outlay funds, and cumulative reserve funds.

(2) A park and recreation service area may issue general obligation bonds for capital purposes only, not to exceed an amount, together with any outstanding nonvoter approved general obligation indebtedness, equal to three-eighths of one

percent of the value of the taxable property within the service area. Additionally, a park and recreation service area may issue general obligation bonds, together with any outstanding voter approved and nonvoter approved general indebtedness, equal to two and one-half percent of the value of the taxable property within the service area, as the term "value of the taxable property" is defined in RCW 39.36.015, when such bonds are approved by the voters of the service area at a special election called for the purpose in accordance with the provisions of Article VIII, section 6 of the Constitution. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW.

Bonds may be retired by excess property tax levies when such levies are approved by the voters at a special election in accordance with the provisions of Article VII, section 2 of the Constitution and RCW 84.52.056.

Any elections shall be held as provided in RCW 39.36.050. [1994 c 156 § 4. Prior: 1984 c 186 § 29; 1984 c 131 § 8; (1983 c 167 § 271 repealed by 1984 c 186 § 70; and repealed by 1984 c 131 § 10); 1983 c 167 § 83; 1981 c 210 § 10; 1973 1st ex.s. c 195 § 39; 1970 ex.s. c 42 § 19; 1963 c 218 § 13.]

Intent—1994 c 156: See note following RCW 36.69.140.

Purpose—1984 c 186: See note following RCW 39.46.110.

Purpose—1984 c 131 §§ 3-9: See note following RCW 29A.36.210.

Additional notes found at www.leg.wa.gov

36.68.525 Six-year regular property tax levies—Limitations—Election. A park and recreation service area may impose regular property tax levies in an amount equal to sixty cents or less per thousand dollars of assessed value of property in the service area in each year for six consecutive years when specifically authorized so to do by a majority of at least three-fifths of the voters thereof approving a proposition authorizing the levies submitted not more than twelve months prior to the date on which the proposed initial levy is to be made and not oftener than twice in such twelve month period, either at a special election or at the regular election of the service area, at which election the number of voters voting "yes" on the proposition must constitute three-fifths of a number equal to forty percent of the number of voters voting in the service area at the last preceding general election when the number of voters voting on the proposition does not exceed forty percent of the number of voters voting in such taxing district in the last preceding general election; or by a majority of at least three-fifths of the voters thereof voting on the proposition if the number of voters voting on the proposition exceeds forty per centum of the number of voters voting in such taxing district in the last preceding general election. A proposition authorizing such tax levies may not be submitted by a park and recreation service area more than twice in any twelve-month period. Ballot propositions must conform with RCW 29A.36.210. If a park and recreation service area is levying property taxes, which in combination with property taxes levied by other taxing districts result in taxes in excess of the limitation provided for in RCW 84.52.043(2), the park and recreation service area property tax levy must be reduced or eliminated as provided in RCW 84.52.010. [2010 c 106 § 302; 1994 c 156 § 5; 1984 c 131 § 9.]

Effective date—2010 c 106: See note following RCW 35.102.145.

Intent—1994 c 156: See note following RCW 36.69.140.

Purpose—1984 c 131 §§ 3-9: See note following RCW 29A.36.210.

36.68.527 Community revitalization financing—Public improvements. In addition to other authority that a park and recreation service area possesses, a park and recreation service area may provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a park and recreation service area to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 14.]

Additional notes found at www.leg.wa.gov

36.68.530 Budgets—Appropriations—Accumulation of reserves. The governing body of each park and recreation service area shall annually compile a budget for each service area in a form prescribed by the state auditor for the ensuing calendar year which shall, to the extent that anticipated income is actually realized, constitute the appropriations for the service area. The budget may include an amount to accumulate a reserve for a stated capital purpose. In compiling the budget, all available funds and anticipated income shall be taken into consideration, including contributions or contractual payments from school districts, cities, or towns, county or any other governmental entity, gifts and donations, special tax levy, fees and charges, proceeds of bond issues, and cumulative reserve funds. [1995 c 301 § 67; 1981 c 210 § 11; 1963 c 218 § 14.]

Additional notes found at www.leg.wa.gov

36.68.541 Employees. Park and recreation service areas may hire employees and may fund all or a portion of the salaries and benefits of county park employees who perform work on county park and recreation facilities within the service area and may fund all or a portion of the salaries and benefits of city or town park employees who perform work on city or town park and recreation facilities within the service area. [1988 c 82 § 2; 1981 c 210 § 12.]

Additional notes found at www.leg.wa.gov

36.68.550 Use and admission fees and charges. A park and recreation service area may impose and collect use fees or other direct charges on facilities financed, acquired, and operated by the park and recreation service area. The county legislative authority may allow admission fees or other direct charges which are paid by persons using county park facilities located within a park and recreation service area to be transferred to a park and recreation service area. Such direct charges to users may be made for the use of or admission to swimming pools, field houses, tennis and handball courts, bathhouses, swimming beaches, boat launching, storage or moorage facilities, ski lifts, picnic areas and other similar recreation facilities, and for parking lots used in conjunction with such facilities. All funds collected under the provisions of this section shall be deposited to the fund of the service area established in the office of the county treasurer, to be disbursed under the service area budget as approved by

the governing body of the park and recreation service area. [1988 c 82 § 3; 1981 c 210 § 13; 1963 c 218 § 16.]

Additional notes found at www.leg.wa.gov

36.68.555 Eminent domain. A park and recreation service area may exercise the power of eminent domain to obtain property for its authorized purposes in a manner consistent with the power of eminent domain of the county in which the park and recreation service area is located. [1988 c 82 § 8.]

36.68.560 Concessions. The county legislative authority may transfer the proceeds from concessions for food and other services accruing to the county from park or park facilities which are located in a park and recreation service area to the fund of the service area in the office of the county treasurer to be disbursed under the service area budget. [1981 c 210 § 14; 1963 c 218 § 17.]

Additional notes found at www.leg.wa.gov

36.68.570 Use of funds—Purchases. A park and recreation service area may reimburse the county for any charge incurred by the county current expense fund which is properly an expense of the service area, including reasonable administrative costs incurred by the offices of county treasurer and the county auditor in providing accounting, clerical or other services for the benefit of the service area. The county legislative authority may, where a county purchasing department has been established, provide for the purchase of all supplies and equipment for a park and recreation service area through the department. The park and recreation service area may contract with the county to administer purchasing. [1988 c 82 § 4; 1981 c 210 § 15; 1963 c 218 § 18.]

Additional notes found at www.leg.wa.gov

36.68.580 Ownership of parks and facilities—Expenditure of funds budgeted for park purposes. Any park facility or park acquired, improved or otherwise financed in whole or in part by park and recreation service area funds shall be owned by the park service area and/or the county and/or the city or town in which the park or facility is located. The county may make expenditures from its current expense funds budgeted for park purposes for the maintenance, operation or capital improvement of any county park or park facility acquired, improved, or otherwise financed in whole or in part by park and recreation service area funds. Similarly, a city or town may make expenditures for any city or town park or park facility acquired, improved, or otherwise financed in whole or in part by park and recreation service area funds. [1988 c 82 § 5; 1981 c 210 § 16; 1963 c 218 § 19.]

Additional notes found at www.leg.wa.gov

36.68.590 Purpose—Level of services—General park programs. The purpose of RCW 36.68.400 et seq. shall be to provide a higher level of park services and shall not in any way diminish the right of a county to provide a general park program financed from current expense funds. [1963 c 218 § 20.]

36.68.600 Use of park and recreation service area funds in exercise of powers enumerated in chapter 67.20

RCW. A park and recreation service area may exercise any of the powers enumerated in chapter 67.20 RCW with respect to any park and recreation facility financed in whole or part from park and recreation service area funds. [1988 c 82 § 6; 1981 c 210 § 17; 1963 c 218 § 21.]

Parks, bathing beaches, public camps: Chapter 67.20 RCW.

Additional notes found at www.leg.wa.gov

36.68.610 Area which may be included—Inclusion of area within city or town—Procedure. A park and recreation service area may include any unincorporated area in the state, and when any part of the proposed district lies within the corporate limits of any city or town said resolution or petition shall be accompanied by a certified copy of a resolution of the governing body of said city or town, approving inclusion of the area within the corporate limits of the city or town. [1973 c 65 § 1.]

36.68.620 Enlargement by inclusion of additional area—Procedure. After a park and recreation service area has been organized, an additional area may be added by the same procedure within the proposed additional area as is provided herein for the organization of a park and recreation service area, and all electors within both the organized park and recreation service area and the proposed additional territory shall vote upon the proposition for enlargement. [1973 c 65 § 2.]

Chapter 36.69 RCW

PARK AND RECREATION DISTRICTS

(Formerly: Recreation districts act)

Sections

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Contracts with community service organizations for public improvements: RCW 35.21.278.

RCW 39.33.060 to govern on sales by water-sewer district for park and recreational purposes: RCW 57.08.140.

Transfer of real property or contract for use for park and recreational purposes: RCW 39.33.060.

36.69.010 Park and recreation districts authorized—"Recreational facilities" defined. Park and recreation districts are hereby authorized to be formed as municipal corporations for the purpose of providing leisure time activities and facilities and recreational facilities, of a nonprofit nature as a public service to the residents of the geographical areas included within their boundaries.

The term "recreational facilities" means parks, playgrounds, gymnasiums, swimming pools, field houses, bathing beaches, stadiums, golf courses, automobile race tracks and drag strips, coliseums for the display of spectator sports, public campgrounds, boat ramps and launching sites, public hunting and fishing areas, arboretums, bicycle and bridle paths, senior citizen centers, community centers, and other recreational facilities. [1991 c 363 § 79; 1990 c 32 § 1; 1972 ex.s. c 94 § 1; 1969 c 26 § 1; 1967 c 63 § 1; 1963 c 4 § 36.69.010. Prior: 1961 c 272 § 1; 1959 c 304 § 1; 1957 c 58 § 1.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.69.020 Formation of district by petition—Procedure. The formation of a park and recreation district shall be initiated by a petition designating the boundaries thereof by metes and bounds, or by describing the land to be included therein by townships, ranges and legal subdivisions. Such petition shall set forth the object of the district and state that it will be conducive to the public welfare and convenience, and that it will be a benefit to the area therein. Such petition shall be signed by not less than fifteen percent of the registered voters residing within the area so described. The name of a person who has signed the petition may not be withdrawn from the petition after the petition has been filed.

The petition shall be filed with the auditor of the county within which the proposed district is located, accompanied by

an obligation signed by two or more petitioners, agreeing to pay the cost of the publication of the notice provided for in RCW 36.69.040. The county auditor shall, within thirty days from the date of filing the petition, examine the signatures and certify to the sufficiency or insufficiency thereof.

If the petition is found to contain a sufficient number of signatures of qualified persons, the auditor shall transmit it, together with a certificate of sufficiency attached thereto, to the county legislative authority, which shall by resolution entered upon its minutes receive it and fix a day and hour when the legislative authority will publicly hear the petition, as provided in RCW 36.69.040. [1994 c 223 § 42; 1969 c 26 § 2; 1967 c 63 § 2; 1963 c 4 § 36.69.020. Prior: 1961 c 272 § 2; 1959 c 304 § 2; 1957 c 58 § 2.]

36.69.030 Area which may be included—Resolution of governing body of city or town. A park and recreation district may include any unincorporated area in the state and, when any part of the proposed district lies within the corporate limits of any city or town, said petition shall be accompanied by a certified copy of a resolution of the governing body of said city or town, approving inclusion of the area within the corporate limits of the city or town. [1969 c 26 § 3; 1967 c 63 § 3; 1963 c 4 § 36.69.030. Prior: 1961 c 272 § 3; 1959 c 304 § 3; 1957 c 58 § 3.]

36.69.040 Hearing on petition—Notice. The board of county commissioners shall set a time for a hearing on the petition for the formation of a park and recreation district to be held not more than sixty days following the receipt of such petition. Notice of hearing shall be given by publication three times, at intervals of not less than one week, in a newspaper of general circulation within the county. Such notice shall state the time and place of hearing and describe particularly the area proposed to be included within the district. [1963 c 4 § 36.69.040. Prior: 1957 c 58 § 4.]

36.69.050 Boundaries—Name—Inclusion, exclusion of lands. The board of county commissioners shall designate a name for and fix the boundaries of the proposed district following such hearing. No land shall be included in the boundaries as fixed by the county commissioners which was not described in the petition, unless the owners of such land shall consent in writing thereto.

The board of county commissioners shall eliminate from the boundaries of the proposed district land which they find will not be benefited by inclusion therein. [1963 c 4 § 36.69.050. Prior: 1957 c 58 § 5.]

36.69.065 Election for formation—Inclusion of proposition for tax levy or issuance of bonds. If the petition or resolution initiating the formation of the proposed park and recreation district proposes that the initial capital or operational costs are to be financed by regular property tax levies for a *five-year period as authorized by RCW 36.69.145, or an annual excess levy, or that proposed capital costs are to be financed by the issuance of general obligation bonds and bond retirement levies, a proposition or propositions for such purpose or purposes shall be submitted to the voters of the proposed park and recreation district at the same election. A proposition or propositions for regular property tax levies for

a *five-year period as authorized by RCW 36.69.145, an annual excess levy, or the issuance of general obligation bonds and bond retirement levies, may also be submitted to the voters at any general or special election. The ballot proposition or propositions authorizing the imposition of a tax levy or levies, or issuance of general obligation bonds and imposition of tax levies, shall be null and void if the park and recreation district was not authorized to be formed. [1989 c 184 § 1.]

*Reviser's note: 1994 c 156 § 3 amended RCW 36.69.145 to authorize a six-year period.

36.69.070 Elections—Procedures—Terms. A ballot proposition authorizing the formation of the proposed park and recreation district shall be submitted to the voters of the proposed district for their approval or rejection at the next general state election occurring sixty or more days after the county legislative authority fixes the boundaries of the proposed district. Notices of the election for the formation of the park and recreation district shall state generally and briefly the purpose thereof and shall give the boundaries of the proposed district and name the day of the election and the hours during which the polls will be open. The proposition to be submitted to the voters shall be stated in such manner that the voters may indicate yes or no upon the proposition of forming the proposed park and recreation district.

The initial park and recreation commissioners shall be elected at the same election, but this election shall be null and void if the district is not authorized to be formed. No primary shall be held to nominate candidates for the initial commissioner positions. Candidates shall run for specific commissioner positions. A special filing period shall be opened as provided in *RCW 29.15.170 and 29.15.180. The person who receives the greatest number of votes for each commissioner position shall be elected to that position. The three persons who are elected receiving the greatest number of votes shall be elected to four-year terms of office if the election is held in an odd-numbered year or three-year terms of office if the election is held in an even-numbered year. The other two persons who are elected shall be elected to two-year terms of office if the election is held in an odd-numbered year or one-year terms of office if the election is held in an even-numbered year. The initial commissioners shall take office immediately upon being elected and qualified, but the length of such terms shall be computed from the first day of January in the year following this election. [1994 c 223 § 43; 1979 ex.s. c 126 § 28; 1963 c 4 § 36.69.070. Prior: 1959 c 304 § 4; 1957 c 58 § 7.]

*Reviser's note: RCW 29.15.170 and 29.15.180 were recodified as RCW 29A.24.170 and 29A.24.180 pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.24.170 and 29A.24.180 were subsequently repealed by 2004 c 271 § 193. Later enactment of RCW 29A.24.170 and 29A.24.180, see RCW 29A.24.171 and 29A.24.181, respectively.

Purpose—1979 ex.s. c 126: See RCW 29A.60.280(1).

36.69.080 Election results. If a majority of all votes cast upon the proposition favors the formation of the district, the county legislative authority shall, by resolution, declare the territory organized as a park and recreation district under the designated name. [1994 c 223 § 44; 1979 ex.s. c 126 § 29; 1963 c 4 § 36.69.080. Prior: 1957 c 58 § 8.]

Purpose—1979 ex.s. c 126: See RCW 29A.60.280(1).

36.69.090 Commissioners—Terms—Election procedures. A park and recreation district shall be governed by a board of five commissioners. Except for the initial commissioners, all commissioners shall be elected to staggered four-year terms of office and shall serve until their successors are elected and qualified and assume office in accordance with *RCW 29.04.170. Candidates shall run for specific commissioner positions.

Elections for park and recreation district commissioners shall be held biennially in conjunction with the general election in each odd-numbered year. Elections shall be held in accordance with the provisions of **Title 29 RCW dealing with general elections, except that there shall be no primary to nominate candidates. All persons filing and qualifying shall appear on the general election ballot and the person receiving the largest number of votes for each position shall be elected. [1996 c 324 § 2; 1994 c 223 § 45; 1987 c 53 § 1; 1979 ex.s. c 126 § 30; 1963 c 200 § 18; 1963 c 4 § 36.69.090. Prior: 1957 c 58 § 9.]

Reviser's note: *(1) RCW 29.04.170 was recodified as RCW 29A.20.040 pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.20.040 was subsequently recodified as RCW 29A.60.280 pursuant to 2013 c 11 § 93.

***(2) Title 29 RCW was repealed and/or recodified pursuant to 2003 c 111, effective July 1, 2004. See Title 29A RCW.

Purpose—1979 ex.s. c 126: See RCW 29A.60.280(1).

36.69.100 Commissioners—Vacancies. Vacancies on the board of park and recreation commissioners shall occur and shall be filled as provided in chapter 42.12 RCW. [1994 c 223 § 46; 1963 c 4 § 36.69.100. Prior: 1957 c 58 § 10.]

36.69.110 Commissioners—Compensation, expenses. The park and recreation commissioners shall receive no compensation for their services but shall receive necessary expenses in attending meetings of the board or when otherwise engaged on district business. [1963 c 4 § 36.69.110. Prior: 1957 c 58 § 11.]

36.69.120 Commissioners—Duties. The park and recreation district board of commissioners shall:

- (1) Elect its officers including a chair, vice chair, secretary, and such other officers as it may determine it requires;
- (2) Hold regular public meetings at least monthly;
- (3) Adopt policies governing transaction of board business, keeping of records, resolutions, transactions, findings and determinations, which shall be of public record;
- (4) Initiate, direct and administer district park and recreation activities, and select and employ such properly qualified employees as it may deem necessary. [2009 c 549 § 4103; 1963 c 4 § 36.69.120. Prior: 1957 c 58 § 12.]

36.69.130 Powers of districts. Park and recreation districts shall have such powers as are necessary to carry out the purpose for which they are created, including, but not being limited to, the power: (1) To acquire and hold real and personal property; (2) to dispose of real and personal property only by unanimous vote of the district commissioners; (3) to make contracts; (4) to sue and be sued; (5) to borrow money to the extent and in the manner authorized by this chapter; (6) to grant concessions; (7) to make or establish charges, fees, rates, rentals and the like for the use of facilities (including

recreational facilities) or for participation; (8) to make and enforce rules and regulations governing the use of property, facilities or equipment and the conduct of persons thereon; (9) to contract with any municipal corporation, governmental, or private agencies for the conduct of park and recreation programs; (10) to operate jointly with other governmental units any facilities or property including participation in the acquisition; (11) to hold in trust or manage public property useful to the accomplishment of their objectives; (12) to establish cumulative reserve funds in the manner and for the purposes prescribed by law for cities; (13) to acquire, construct, reconstruct, maintain, repair, add to, and operate recreational facilities; and, (14) to make improvements or to acquire property by the local improvement method in the manner prescribed by this chapter: PROVIDED, That such improvement or acquisition is within the scope of the purposes granted to such park and recreation district. [1972 ex.s. c 94 § 2; 1969 c 26 § 4; 1967 c 63 § 4; 1963 c 4 § 36.69.130. Prior: 1961 c 272 § 4; 1959 c 304 § 5; 1957 c 58 § 13.]

36.69.140 Excess levies authorized—Bonds—Interest bearing warrants. (1) A park and recreation district shall have the power to levy excess levies upon the property included within the district, in the manner prescribed by Article VII, section 2, of the Constitution and by RCW 84.52.052 for operating funds, capital outlay funds, and cumulative reserve funds.

(2) A park and recreation district may issue general obligation bonds for capital purposes only, not to exceed an amount, together with any outstanding nonvoter approved general obligation indebtedness equal to three-eighths of one percent of the value of the taxable property within such district, as the term "value of the taxable property" is defined in RCW 39.36.015. A park and recreation district may additionally issue general obligation bonds, together with outstanding voter approved and nonvoter approved general obligation indebtedness, equal to one and one-fourth percent of the value of the taxable property within the district, as the term "value of the taxable property" is defined in RCW 39.36.015, when such bonds are approved by three-fifths of the voters of the district at a general or special election called for that purpose and may provide for the retirement thereof by levies in excess of dollar rate limitations in accordance with the provisions of RCW 84.52.056. When authorized by the voters of the district, the district may issue interest bearing warrants payable out of and to the extent of excess levies authorized in the year in which the excess levy was approved. These elections shall be held as provided in RCW 39.36.050. Such bonds and warrants shall be issued and sold in accordance with chapter 39.46 RCW. [1994 c 156 § 2; 1984 c 186 § 30; 1983 c 167 § 84; 1981 c 210 § 19; 1977 ex.s. c 90 § 1; 1973 1st ex.s. c 195 § 40; 1970 ex.s. c 42 § 20; 1969 c 26 § 5; 1967 c 63 § 5; 1963 c 4 § 36.69.140. Prior: 1961 c 272 § 5; 1959 c 304 § 6; 1957 c 58 § 14.]

Intent—1994 c 156: "The intent of the legislature by enacting sections 2 through 5, chapter 156, Laws of 1994 is:

(1) To allow park and recreation districts and park and recreation service areas to place more than one excess levy on the same ballot, allowing districts and service areas to give voters the opportunity to vote on separate issues, such as for operating and capital funds, at the same election, thereby reducing election costs; and

(2) To increase the amount a park and recreation district or park and

recreation service area may collect through a six-year property tax levy from a maximum of fifteen cents per thousand dollars of assessed value to a maximum of sixty cents per thousand dollars of assessed value. This would allow for a more stable funding source for park and recreation districts and park and recreation service areas at a realistic tax rate and reduce the need for holding excess levy elections on an annual or biannual [biennial] basis. In addition, it would level out the collection of taxes over each of six years rather than the practice now of collecting in one year to fund two years." [1994 c 156 § 1.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Additional notes found at www.leg.wa.gov

36.69.145 Six-year regular property tax levies—Limitations—Election. (1) A park and recreation district may impose regular property tax levies in an amount equal to sixty cents or less per thousand dollars of assessed value of property in the district in each year for six consecutive years when specifically authorized so to do by a majority of at least three-fifths of the voters thereof approving a proposition authorizing the levies submitted at a special election or at the regular election of the district, at which election the number of voters voting "yes" on the proposition must constitute three-fifths of a number equal to forty per centum of the number of voters voting in such district at the last preceding general election when the number of voters voting on the proposition does not exceed forty per centum of the number of voters voting in such taxing district in the last preceding general election; or by a majority of at least three-fifths of the voters thereof voting on the proposition if the number of voters voting on the proposition exceeds forty per centum of the number of voters voting in such taxing district in the last preceding general election. A proposition authorizing the tax levies may not be submitted by a park and recreation district more than twice in any twelve-month period. Ballot propositions must conform with RCW 29A.36.210. In the event a park and recreation district is levying property taxes, which in combination with property taxes levied by other taxing districts subject to the one percent limitation provided for in Article 7, section 2, of our state Constitution result in taxes in excess of the limitation provided for in RCW 84.52.043(2), the park and recreation district property tax levy must be reduced or eliminated as provided in RCW 84.52.010.

(2) The limitation in RCW 84.55.010 does not apply to the first levy imposed under this section following the approval of the levies by the voters under subsection (1) of this section. [2010 c 106 § 303; 1994 c 156 § 3; 1984 c 131 § 6; 1981 c 210 § 18.]

Effective date—2010 c 106: See note following RCW 35.102.145.

Intent—1994 c 156: See note following RCW 36.69.140.

Purpose—1984 c 131 §§ 3-9: See note following RCW 29A.36.210.

36.69.147 Community revitalization financing—Public improvements. In addition to other authority that a park and recreation district possesses, a park and recreation district may provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a park and recreation district to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 15.]

Additional notes found at www.leg.wa.gov

36.69.150 District treasurer—Warrants—Vouchers. The county treasurer of the county in which the district shall be located shall be the treasurer of the district, and expenditures shall be made upon warrants drawn by the county auditor pursuant to vouchers approved by the board of park and recreation commissioners. [1963 c 4 § 36.69.150. Prior: 1957 c 58 § 16.]

36.69.160 Budget. The board of park and recreation commissioners of each park and recreation district shall annually compile a budget, in form prescribed by the state auditor, for the ensuing calendar year, and which shall, to the extent that anticipated income is actually realized, constitute the appropriations for the district. The budget may include an amount to accumulate a reserve for a stated capital purpose. In compiling the budget, all available funds and anticipated income shall be taken into consideration, including contributions or contractual payments from school districts, cities or towns, county, or any other governmental unit; gifts and donations; special tax levy; assessments; fees and charges; proceeds of bond issues; cumulative reserve funds. [1995 c 301 § 68; 1963 c 4 § 36.69.160. Prior: 1957 c 58 § 17.]

36.69.170 Expenditures. Expenditures shall be made solely in accordance with the budget, and should revenues accrue at a rate below the anticipated amounts, the board of park and recreation commissioners shall reduce expenditures accordingly: PROVIDED, That the board may, by unanimous vote, authorize such expenditures, or authorize expenditures in excess of those budgeted, if sufficient revenue to pay such expenditures is derived by the levy of the district or if provided by other governmental agencies specifically for such purposes. [1963 c 4 § 36.69.170. Prior: 1957 c 58 § 18.]

36.69.180 Violation of rules—Penalty. (1) Except as otherwise provided in this section, the violation of any of the rules or regulations of a park and recreation district adopted by its board for the preservation of order, control of traffic, protection of life or property, or for the regulation of the use of park property is a misdemeanor.

(2)(a) Except as provided in (b) of this subsection, violation of such a rule or regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction.

(b) Violation of such a rule or regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor. [2003 c 53 § 206; 1979 ex.s. c 136 § 37; 1963 c 4 § 36.69.180. Prior: 1957 c 58 § 19.]

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

Additional notes found at www.leg.wa.gov

36.69.190 Additional area may be added to district. After a park and recreation district has been organized, an additional area may be added by the same procedure within the proposed additional area as is provided herein for the organization of a park and recreation district, except that no first commissioners shall be nominated by the board of county commissioners or elected, and all electors within both

the organized park and recreation district and the proposed additional territory shall vote upon the proposition for enlargement. [1969 c 26 § 6; 1967 c 63 § 6; 1963 c 4 § 36.69.190. Prior: 1961 c 272 § 6; 1959 c 304 § 7; 1957 c 58 § 20.]

36.69.200 L.I.D.'s—Authorization—Assessments, warrants, bonds—County treasurer's duties. (1) Whenever the board of park and recreation commissioners of any district shall determine that any proposed capital improvement would be of special benefit to all or to any portion of the district, it may establish local improvement districts within its territory; levy special assessments under the mode of annual installments extending over a period not exceeding twenty years, on all property specially benefited by a local improvement, on the basis of special benefits to pay in whole or in part the damage or costs of any improvements ordered in the district; and issue local improvement bonds in the improvement district to be repaid by the collection of local improvement assessments. The method of establishment, levying, collection and enforcement of such assessments and issuance and redemption of local improvement warrants and bonds and the provisions regarding the conclusiveness of the assessment roll and the review by the superior court of any objections thereto shall be as provided for the levying, collection, and enforcement of local improvement assessments and the issuance of local improvement bonds by cities and towns, insofar as consistent herewith. The duties devolving upon the city treasurer are hereby imposed upon the county treasurer for the purposes hereof. The mode of assessment shall be determined by the board. Such bonds may be in any form, including coupon bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 85; 1983 c 3 § 80; 1963 c 4 § 36.69.200. Prior: 1957 c 58 § 21.]

Local improvements, supplemental authority: Chapter 35.51 RCW.

Additional notes found at www.leg.wa.gov

36.69.210 L.I.D.'s—Initiation by resolution or petition. Local improvement districts may be initiated either (1) by resolution of the board of park and recreation commissioners, or, (2) by petition signed by the owners (according to the county auditor's records) of at least fifty-one percent of the area of land within the limits of the local improvement district to be created. [1963 c 4 § 36.69.210. Prior: 1957 c 58 § 22.]

36.69.220 L.I.D.'s—Procedure when by resolution. If the board of park and recreation commissioners desires to initiate the formation of a local improvement district by resolution, it shall first pass a resolution declaring its intention to order such improvement, setting forth the nature and territorial extent of such proposed improvement, designating the number of the proposed local improvement district and describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed district, and fixing a date, time and place for a

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public hearing on the formation of the proposed local district. [1963 c 4 § 36.69.220. Prior: 1957 c 58 § 23.]

36.69.230 L.I.D.'s—Procedure when by petition—Publication of notice of intent by either resolution or petition. If such local improvement district is initiated by petition, such petition shall set forth the nature and territorial extent of the proposed improvement requested to be ordered and the fact that the signers thereof are the owners (according to the records of the county auditor) of at least fifty-one percent of the area of land within the limits of the local improvement district to be created. Upon the filing of such petition the board of park and recreation commissioners shall determine whether it is sufficient, and the board's determination thereof shall be conclusive upon all persons. No person shall withdraw his or her name from the petition after it has been filed with the board. If the board shall find the petition to be sufficient, it shall proceed to adopt a resolution declaring its intention to order the improvement petitioned for, setting forth the nature and territorial extent of said improvement, designating the number of the proposed local district and describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed local district, and fixing a date, time and place for a public hearing on the formation of the proposed local district.

The resolution of intention, whether adopted on the initiative of the board or pursuant to a petition of the property owners, shall be published in at least two consecutive issues of a newspaper of general circulation in the proposed local district, the date of the first publication to be at least fifteen days prior to the date fixed by such resolution for hearing before the board. [2009 c 549 § 4104; 1963 c 4 § 36.69.230. Prior: 1957 c 58 § 24.]

36.69.240 L.I.D.'s—Notice—Contents. Notice of the adoption of the resolution of intention shall be given each owner or reputed owner of any lot, tract, parcel of land or other property within the proposed improvement district by mailing said notice at least fifteen days before the date fixed for the public hearing to the owner or reputed owner of the property as shown on the tax rolls of the county treasurer at the address shown thereon. The notice shall refer to the resolution of intention and designate the proposed improvement district by number. Said notice shall also set forth the nature of the proposed improvement, the total estimated cost, the proportion of total cost to be borne by assessments, the estimated amount of the cost and expense of such improvement to be borne by the particular lot, tract or parcel, the date, time and place of the hearing before the board of park and recreation commissioners; and in the case of improvements initiated by resolution, the notice shall also state that all persons desiring to object to the formation of the proposed district must file their written protests with the secretary of the board before the time fixed for said public hearing. [1963 c 4 § 36.69.240. Prior: 1957 c 58 § 25.]

36.69.245 L.I.D.'s—Notice must contain statement that assessments may vary from estimates. Any notice given to the public or to the owners of specific lots, tracts, or

parcels of land relating to the formation of a local improvement district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property. [1989 c 243 § 4.]

36.69.250 L.I.D.'s—Public hearing—Inclusion, exclusion of property. Whether the improvement is initiated by petition or resolution, the board of park and recreation commissioners shall conduct a public hearing at the time and place designated in the notice to property owners. At this hearing the board shall hear objections from any person affected by the formation of the local district and may make such changes in the boundaries of the district or such modifications in the plans for the proposed improvement as shall be deemed necessary: PROVIDED, That the board may not change the boundaries of the district to include or exclude property not previously included or excluded without first passing a new resolution of intention and giving a new notice to property owners in the manner and form and within the time herein provided for the original notice. [1963 c 4 § 36.69.250. Prior: 1957 c 58 § 26.]

36.69.260 L.I.D.'s—Protests—Procedure—Jurisdiction of board. After said hearing the board of park and recreation commissioners shall have jurisdiction to overrule protests and proceed with any such improvement initiated by petition or resolution: PROVIDED, That the jurisdiction of the board to proceed with any improvement initiated by resolution shall be divested by a protest filed with the secretary of the board prior to said public hearing for the improvement signed by the owners of the property within the proposed local improvement district which is subject to sixty percent or more of the cost of the improvement as shown and determined by the preliminary estimates and assessment roll of the proposed improvement district. [1963 c 4 § 36.69.260. Prior: 1957 c 58 § 27.]

36.69.270 L.I.D.'s—Powers and duties of board upon formation. If the board of park and recreation commissioners finds that the district should be formed, it shall by resolution order the improvement, adopt detailed plans of the local improvement district and declare the estimated cost thereof, acquire all necessary land therefor, pay all damages caused thereby, and commence in the name of the park and recreation district such eminent domain proceedings as may be necessary to entitle the district to proceed with the work. The board shall thereupon proceed with the work and file with the county treasurer its roll levying special assessments in the amount to be paid by special assessment against the property situated within the improvement district in proportion to the special benefits to be derived by the property therein from the improvement. [1963 c 4 § 36.69.270. Prior: 1957 c 58 § 28.]

36.69.280 L.I.D.'s—Assessment roll—Procedure for approval—Objections. Before approval of the roll a notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the local district, stating that the roll is on file and open to inspection in the office of the secretary, and fixing the time, not less than fifteen or more than thirty days from the date of the first publication of

the notice within which protests must be filed with the secretary against any assessments shown thereon, and fixing a time when a hearing will be held by the board of park and recreation commissioners on the protests. Notice shall also be given by mailing, at least fifteen days before the hearing, a similar notice to the owners or reputed owners of the land in the local district as they appear on the books of the treasurer of the county in which the park and recreation district is located. At the hearing, or any adjournment thereof, the commissioners may correct, change or modify the roll, or any part thereof, or set aside the roll and order a new assessment, and may then by resolution approve it. If an assessment is raised a new notice similar to the first shall be given, after which final approval of the roll may be made. When property has been entered originally upon the roll and the assessment thereon is not raised, no objection thereto shall be considered by the commissioners or by any court on appeal unless the objection is made in writing at, or prior, to the date fixed for the original hearing upon the roll. [1963 c 4 § 36.69.280. Prior: 1957 c 58 § 29.]

36.69.290 L.I.D.'s—Segregation of assessments—Power of board. Whenever any land against which there has been levied any special assessment by any park and recreation district shall have been sold in part or subdivided, the board of park and recreation commissioners of such district shall have the power to order a segregation of the assessment. [1963 c 4 § 36.69.290. Prior: 1957 c 58 § 30.]

36.69.300 L.I.D.'s—Segregation of assessments—Procedure—Fee, charges. Any person desiring to have such a special assessment against a tract of land segregated to apply to smaller parts thereof shall apply to the board of park and recreation commissioners of the park and recreation district which levied the assessment. If the board determines that a segregation should be made, it shall by resolution order the county treasurer to make segregation on the original assessment roll as directed in the resolution. The segregation shall be made as nearly as possible on the same basis as the original assessment was levied, and the total of the segregated parts of the assessment shall equal the assessment before segregation. The resolution shall describe the original tract, the amount and date of the original assessment, and shall define the boundaries of the divided parts and the amount of the assessment chargeable to each part. A certified copy of the resolution shall be delivered to the county treasurer who shall proceed to make the segregation ordered upon being tendered a fee of three dollars for each tract of land for which a segregation is to be made. In addition to such charge the board may require as a condition to the order of segregation that the person seeking it pay the district the reasonable engineering and clerical costs incident to making the segregation. [1963 c 4 § 36.69.300. Prior: 1957 c 58 § 31.]

36.69.305 L.I.D.'s—Acquisition of property subject to unpaid or delinquent assessments by state or political subdivision—Payment of lien or installments. See RCW 79.44.190.

36.69.310 Dissolution. Any park and recreation district formed under the provisions of this chapter may be dissolved

in the manner provided in chapter 53.48 RCW, relating to port districts.

In order to facilitate the dissolution of a park and recreation district, such a district may declare its intent to dissolve and may name a successor taxing district. It may transfer any lands, facilities, equipment, other interests in real or personal property, or interests under contracts, leases, or similar agreements to the successor district, and may take all action necessary to enable the successor district to assume any indebtedness of the park and recreation district relating to the transferred property and interests. [2005 c 226 § 3; 1963 c 4 § 36.69.310. Prior: 1957 c 58 § 32.]

Application—Effective date—2005 c 226: See notes following RCW 35.61.290.

Alternative procedure for dissolution of special districts: Chapter 36.96 RCW.

36.69.320 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years. See chapter 57.90 RCW.

36.69.350 Board authorized to contract indebtedness and issue revenue bonds. The board of parks and recreation commissioners is hereby authorized for the purpose of carrying out the lawful powers granted to park and recreation districts by the laws of the state to contract indebtedness and to issue revenue bonds evidencing such indebtedness in conformity with this chapter. [1972 ex.s. c 94 § 3.]

36.69.360 Revenue bonds—Authorized purposes. All such revenue bonds authorized under the terms of this chapter may be issued and sold by the district from time to time and in such amounts as is deemed necessary by the board of park and recreation commissioners of each district to provide sufficient funds for the carrying out of all district powers, without limiting the generality thereof, including the following: Acquisition; construction; reconstruction; maintenance; repair; additions; operations of recreational facilities; parking facilities as a part of a recreational facility; and any other district purpose from which revenues can be derived. Included in the costs thereof shall be any necessary engineering, inspection, accounting, fiscal, and legal expenses, the cost of issuance of bonds, including printing, engraving and advertising and other similar expenses, and the proceeds of such bond issue are hereby made available for all such purposes. [1972 ex.s. c 94 § 4.]

Alternative authority to issue revenue bonds: RCW 39.46.150, 39.46.160.

Funds for reserve purposes may be included in issue amount: RCW 39.44.140.

36.69.370 Revenue bonds—Issuance, form, seal, etc. (1) When revenue bonds are issued for authorized purposes, said bonds shall be either registered as to principal only or principal and interest as provided in RCW 39.46.030 or shall be bearer bonds; shall be in such denominations, shall be numbered, shall bear such date, shall be payable at such time or times up to a maximum period of not to exceed thirty years and payable as determined by the park and recreation commissioners of the district; shall bear interest payable semiannually; shall be executed by the chair of the board of park and recreation commissioners, and attested by the secretary of the

board, and the seal of such board shall be affixed to each bond, but not to any coupon; and may have facsimile signatures of the chair and the secretary imprinted on any interest coupons in lieu of original signatures.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [2009 c 549 § 4105; 1983 c 167 § 86; 1972 ex.s. c 94 § 5.]

Additional notes found at www.leg.wa.gov

36.69.380 Resolution to authorize bonds—Contents. Bonds issued under the provisions of this chapter shall be payable solely out of the operating revenues of the park and recreation district. Such bonds shall be authorized by resolution adopted by the board of park and recreation commissioners, which resolution shall create a special fund or funds into which the board of park and recreation commissioners may obligate and bind the district to set aside and pay any part or parts of, or all of, or a fixed proportion of, or fixed amounts of gross revenue received by the district from moneys for services or activities as stated in the resolution, for the purpose of paying the principal of and interest on such bonds as the same shall become due, and if deemed necessary to maintain adequate reserves therefor. Such fund or funds shall be drawn upon solely for the purpose of paying the principal and interest upon the bonds issued pursuant to this chapter.

The bonds shall be negotiable instruments within the provision and intent of the negotiable instruments law of this state, even though they shall be payable solely from such special fund or funds, and the tax revenue of the district may not be used to pay, secure, or guarantee the payment of the principal of and interest on such bonds. The bonds and any coupons attached thereto shall state upon their face that they are payable solely from such special fund or funds. If the county fails to set aside and pay into such fund or funds, the payments provided for in such resolution, the owner of any such bonds may bring suit to compel compliance with the provisions of the resolution. [1983 c 167 § 87; 1972 ex.s. c 94 § 6.]

Additional notes found at www.leg.wa.gov

36.69.390 Payment of bonds—Covenants—Enforcement. The board of park and recreation commissioners may provide covenants as it may deem necessary to secure the payment of the principal of and interest on such bonds and may, but shall not be required to, include covenants to create a reserve fund or account and to authorize the payment or deposit of certain moneys therein for the purpose of securing the payment of such principal and interest; to establish, maintain, and collect rates, charges, fees, rentals, and the like on the facilities and service the income of which is pledged for the payment of such bonds, sufficient to pay or secure the payment of such principal and interest and to maintain an adequate coverage over annual debt service; and to make any and all other covenants not inconsistent with the provisions of this chapter which will increase the marketability of such bonds. The board may also provide that revenue bonds payable out of the same source or sources may later be sold on a parity with any revenue bonds being issued and sold. The provisions of this chapter and any resolution or resolutions providing for the authorization, issuance, and sale of such bonds shall constitute a contract with the owner of such

bonds, and the provisions thereof shall be enforceable by any owner of such bonds by mandamus or any appropriate suit, action or proceeding at law or in equity in any court of competent jurisdiction. [1983 c 167 § 88; 1972 ex.s. c 94 § 7.]

Additional notes found at www.leg.wa.gov

36.69.400 Funding, refunding bonds. (1) The board of parks and recreation commissioners of any district may by resolution, from time to time, provide for the issuance of funding or refunding revenue bonds to fund or refund any outstanding revenue bonds and any interest and premiums due thereon at or before the maturity of such bonds, and parts or all of various series and issues of outstanding revenue bonds in the amount thereof to be funded or refunded.

The board shall create a special fund for the sole purpose of paying the principal of and interest on such funding or refunding revenue bonds, into which fund the board shall obligate and bind the district to set aside and pay any part or parts of, or all of, or a fixed proportion of, or a fixed amount of the revenue of the recreational facility of the district sufficient to pay such principal and interest as the same shall become due, and if deemed necessary to maintain adequate reserves therefor.

Such funding or refunding bonds shall be negotiable instruments within the provisions and intent of the negotiable instruments law of this state, and the tax revenue of the district may not be used to pay, secure, or guarantee the payment of the principal of and interest on such bonds. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

The district may exchange such funding or refunding bonds for the bonds, and any coupons being funded or refunded, or it may sell such funding or refunding bonds in the manner, at such price and at such rate or rates of interest as the board shall deem to be for the best interest of the district and its inhabitants, either at public or private sale.

The provisions of this chapter relating to the terms, conditions, covenants, issuance, and sale of revenue bonds shall be applicable to such funding or refunding bonds except as may be otherwise specifically provided in this section.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 89; 1972 ex.s. c 94 § 8.]

Additional notes found at www.leg.wa.gov

36.69.410 Authority for issuance of bonds—Construction. This chapter shall be complete authority for the issuance of the revenue bonds hereby authorized, and shall be liberally construed to accomplish its purposes. Any restrictions, limitations or regulations relative to the issuance of such revenue bonds contained in any other act shall not apply to the bonds issued under this chapter. Any act inconsistent herewith shall be deemed modified to conform with the provisions of this chapter for the purpose of this chapter only. [1972 ex.s. c 94 § 9.]

36.69.420 Joint park and recreation district—Authorization. A park and recreation district may be formed encompassing portions of two or more counties. Such a district shall be known as a joint park and recreation district and shall have all powers and duties of a park and recreation dis-

trict. The procedures established in this chapter for the formation of a park and recreation district shall be followed in the formation of a joint park and recreation district except as otherwise provided by RCW 36.69.430, 36.69.440, and 36.69.450. [1979 ex.s. c 11 § 1.]

Additional notes found at www.leg.wa.gov

36.69.430 Joint park and recreation district—Formation—Petition. The formation of a joint park and recreation district shall be initiated by a petition as prescribed in RCW 36.69.020. The petition shall be filed with the county auditor of one of the counties within which a portion of the proposed joint district is located. A copy of the petition shall be filed with the county auditor of the other county or counties within which a portion of the proposed joint district is located. The county auditors shall jointly certify the sufficiency or insufficiency of the petition to the legislative authorities of the counties. [1979 ex.s. c 11 § 2.]

Additional notes found at www.leg.wa.gov

36.69.440 Joint park and recreation district—Formation—Hearing—Boundaries—Election. (1) If the petition filed under RCW 36.69.430 is found to contain a sufficient number of signatures, the legislative authority of each county shall set a time for a hearing on the petition for the formation of a park and recreation district as prescribed in RCW 36.69.040.

(2) At the public hearing the legislative authority for each county shall fix the boundaries for that portion of the proposed park and recreation district that lies within the county as provided in RCW 36.69.050. Each county shall notify the other county or counties of the determination of the boundaries within ten days.

(3) If the territories created by the county legislative authorities are not contiguous, a joint park and recreation district shall not be formed. If the territories are contiguous, the county containing the portion of the proposed joint district having the larger population shall determine the name of the proposed joint district.

(4) The proposition for the formation of the proposed joint park and recreation district shall be submitted to the voters of the district at the next general election, which election shall be conducted as required by RCW 36.69.070 and 36.69.080. [1994 c 223 § 47; 1979 ex.s. c 11 § 3.]

Additional notes found at www.leg.wa.gov

36.69.450 Joint park and recreation district—Duties of county officers. For all purposes essential to the maintenance, operation, and administration of a joint park and recreation district, including the apportionment of any funds, the county in which a joint park and recreation district shall be considered as belonging shall be the county containing the largest population of the joint district. Whenever the laws relating to park and recreation districts provide for an action by a county officer, the action, if required to be performed on behalf of a joint park and recreation district, shall be performed by the proper officer of the county to which the joint district belongs, except as otherwise provided by law. This delegation of authority extends but is not limited to:

(1) The declaration by the county legislative authority of the election results, as required by RCW 36.69.080;

(2) The filing of declarations of candidacy with the county auditor under RCW 36.69.090;

(3) The issuance of warrants by the county treasurer under RCW 36.69.150;

(4) The duties of the county treasurer and auditor in the establishment and operation of a local improvement district under RCW 36.69.200, 36.69.220, 36.69.240, and 36.69.300. If the local improvement district is located wholly within any one of the participating counties, then the officers of that county shall perform the duties relating to that local improvement district; and

(5) Receipt by the county treasurer of payments of revenue bonds under RCW 36.69.370. [1979 ex.s. c 11 § 4.]

Additional notes found at www.leg.wa.gov

36.69.460 Joint park and recreation district—Population determinations. Population determinations for the purposes of RCW 36.69.440 and 36.69.450 shall be made by the office of financial management. [1979 ex.s. c 11 § 5.]

Additional notes found at www.leg.wa.gov

36.69.500 Community athletics programs—Sex discrimination prohibited. The antidiscrimination provisions of RCW 49.60.500 apply to community athletics programs and facilities operated, conducted, or administered by a park and recreation district. [2009 c 467 § 9.]

Findings—Declarations—2009 c 467: See note following RCW 49.60.500.

36.69.900 Short title. This chapter may be cited as the "Recreation Districts Act for Counties." [1969 c 26 § 7; 1967 c 63 § 7; 1963 c 4 § 36.69.900. Prior: 1961 c 272 § 7; 1959 c 304 § 9; 1957 c 58 § 33.]

**Chapter 36.70 RCW
PLANNING ENABLING ACT**

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Acquisition of interests in land for conservation, protection, preservation, or open space purposes by counties: RCW 64.04.130.

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36.70.010 Purpose and intent. The purpose and intent of this chapter is to provide the authority for, and the procedures to be followed in, guiding and regulating the physical development of a county or region through correlating both public and private projects and coordinating their execution with respect to all subject matters utilized in developing and servicing land, all to the end of assuring the highest standards of environment for living, and the operation of commerce, industry, agriculture and recreation, and assuring maximum economies and conserving the highest degree of public health, safety, morals and welfare. [1963 c 4 § 36.70.010. Prior: 1959 c 201 § 1.]

36.70.015 Expenditure of funds declared public purpose. Regional planning under the provisions of this chapter is hereby declared to be a proper public purpose for the expenditure of the funds of counties, school districts, public utility districts, housing authorities, port districts, cities or towns or any other public organization interested in regional planning. [1963 c 4 § 36.70.015. Prior: 1961 c 232 § 6.]

36.70.020 Definitions. The following words or terms as used in this chapter shall have the following meaning unless a different meaning is clearly indicated by the context:

- (1) "Approval by motion" is a means by which a board, through other than by ordinance, approves and records recognition of a comprehensive plan or amendments thereto.
- (2) "Board" means the board of county commissioners.
- (3) "Certification" means the affixing on any map or by adding to any document comprising all or any portion of a comprehensive plan a record of the dates of action thereon by the commission and by the board, together with the signatures of the officer or officers authorized by ordinance to so sign.

(4) "Commission" means a county or regional planning commission.

(5) "Commissioners" means members of a county or regional planning commission.

(6) "Comprehensive plan" means the policies and proposals approved and recommended by the planning agency or initiated by the board and approved by motion by the board (a) as a beginning step in planning for the physical development of the county; (b) as the means for coordinating county programs and services; (c) as a source of reference to aid in developing, correlating, and coordinating official regulations and controls; and (d) as a means for promoting the general welfare. Such plan shall consist of the required elements set forth in RCW 36.70.330 and may also include the optional elements set forth in RCW 36.70.350 which shall serve as a policy guide for the subsequent public and private development and official controls so as to present all proposed developments in a balanced and orderly relationship to existing physical features and governmental functions.

(7) "Conditional use" means a use listed among those classified in any given zone but permitted to locate only after review by the board of adjustment, or zoning adjutor if there be such, and the granting of a conditional use permit imposing such performance standards as will make the use compatible with other permitted uses in the same vicinity and zone and assure against imposing excessive demands upon public utilities, provided the county ordinances specify the standards and criteria that shall be applied.

(8) "Department" means a planning department organized and functioning as any other department in any county.

(9) "Element" means one of the various categories of subjects, each of which constitutes a component part of the comprehensive plan.

(10) "Ex officio member" means a member of the commission who serves by virtue of his or her official position as head of a department specified in the ordinance creating the commission.

(11) "Official controls" means legislatively defined and enacted policies, standards, precise detailed maps and other criteria, all of which control the physical development of a county or any part thereof or any detail thereof, and are the means of translating into regulations and ordinances all or any part of the general objectives of the comprehensive plan. Such official controls may include, but are not limited to, ordinances establishing zoning, subdivision control, platting, and adoption of detailed maps.

(12) "Ordinance" means a legislative enactment by a board; in this chapter the word, "ordinance", is synonymous with the term "resolution", as representing a legislative enactment by a board of county commissioners.

(13) "Planning agency" means (a) a planning commission, together with its staff members, employees and consultants, or (b) a department organized and functioning as any other department in any county government together with its planning commission.

(14) "Variance." A variance is the means by which an adjustment is made in the application of the specific regulations of a zoning ordinance to a particular piece of property, which property, because of special circumstances applicable to it, is deprived of privileges commonly enjoyed by other properties in the same vicinity and zone and which adjust-

ment remedies disparity in privileges. [2009 c 549 § 4106; 1963 c 4 § 36.70.020. Prior: 1959 c 201 § 2.]

36.70.025 "Solar energy system" defined. As used in this chapter, "solar energy system" means any device or combination of devices or elements which rely upon direct sunlight as an energy source, including but not limited to any substance or device which collects sunlight for use in:

- (1) The heating or cooling of a structure or building;
- (2) The heating or pumping of water;
- (3) Industrial, commercial, or agricultural processes; or
- (4) The generation of electricity.

A solar energy system may be used for purposes in addition to the collection of solar energy. These uses include, but are not limited to, serving as a structural member or part of a roof of a building or structure and serving as a window or wall. [1979 ex.s. c 170 § 9.]

Local governments authorized to encourage and protect solar energy systems: RCW 64.04.140.

Additional notes found at www.leg.wa.gov

36.70.030 Commission—Creation. By ordinance a board may create a planning commission and provide for the appointment by the commission of a director of planning. [1963 c 4 § 36.70.030. Prior: 1959 c 201 § 3.]

36.70.040 Department—Creation—Creation of commission to assist department. By ordinance a board may, as an alternative to and in lieu of the creation of a planning commission as provided in RCW 36.70.030, create a planning department which shall be organized and function as any other department of the county. When such department is created, the board shall also create a planning commission which shall assist the planning department in carrying out its duties, including assistance in the preparation and execution of the comprehensive plan and recommendations to the department for the adoption of official controls and/or amendments thereto. To this end, the planning commission shall conduct such hearings as are required by this chapter and shall make findings and conclusions therefrom which shall be transmitted to the department which shall transmit the same on to the board with such comments and recommendations it deems necessary. [1963 c 4 § 36.70.040. Prior: 1959 c 201 § 4.]

36.70.050 Authority for planning. Upon the creation of a planning agency as authorized in RCW 36.70.030 and 36.70.040, a county may engage in a planning program as defined by this chapter. Two or more counties may jointly engage in a planning program as defined herein for their combined areas. [1963 c 4 § 36.70.050. Prior: 1959 c 201 § 5.]

36.70.060 Regional planning commission—Appointment and powers. A county or a city may join with one or more other counties, cities and towns, and/or with one or more school districts, public utility districts, private utilities, housing authorities, port districts, or any other private or public organizations interested in regional planning to form and organize a regional planning commission and provide for the administration of its affairs. Such regional planning commission may carry on a planning program involving the same subjects and procedures provided by this chapter for planning

by counties, provided this authority shall not include enacting official controls other than by the individual participating municipal corporations. The authority to initiate a regional planning program, define the boundaries of the regional planning district, specify the number, method of appointment and terms of office of members of the regional planning commission and provide for allocating the cost of financing the work shall be vested individually in the governing bodies of the participating municipal corporations.

Any regional planning commission or municipal corporation participating in any regional planning district is authorized to receive grants-in-aid from, or enter into reasonable agreement with any department or agency of the government of the United States or of the state of Washington to arrange for the receipt of federal funds and state funds for planning in the interests of furthering the planning program. [1963 c 4 § 36.70.060. Prior: 1961 c 232 § 1; 1959 c 201 § 6.]

Commission as employer for retirement system purposes: RCW 41.40.010.

36.70.070 Commission—Composition. Whenever a commission is created by a county, it shall consist of five, seven, or nine members as may be provided by ordinance: PROVIDED, That where a commission, on June 10, 1959, is operating with more than nine members, no further appointments shall be made to fill vacancies for whatever cause until the membership of the commission is reduced to five, seven or nine, whichever is the number specified by the county ordinance under this chapter. Departments of a county may be represented on the commission by the head of such departments as are designated in the ordinance creating the commission, who shall serve in an ex officio capacity, but such ex officio members shall not exceed one of a five-member commission, two of a seven-member commission, or three of a nine-member commission. At no time shall there be more than three ex officio members serving on a commission: PROVIDED FURTHER, That in lieu of one ex officio member, only, one employee of the county other than a department head may be appointed to serve as a member of the commission. [1963 c 4 § 36.70.070. Prior: 1959 c 201 § 7.]

36.70.080 Commission—Appointment—County. The members of a commission shall be appointed by the chair of the board with the approval of a majority of the board: PROVIDED, That each member of the board shall submit to the chair a list of nominees residing in his or her commissioner district, and the chair shall make his or her appointments from such lists so that as nearly as mathematically possible, each commissioner district shall be equally represented on the commission. [2009 c 549 § 4107; 1963 c 4 § 36.70.080. Prior: 1959 c 201 § 8.]

36.70.090 Commission—Membership—Terms—Existing commissions. When a commission is created after June 10, 1959, the first terms of the members of the commission consisting of five, seven, and nine members, respectively, other than ex officio members, shall be as follows:

- (1) For a five-member commission—one, shall be appointed for one year; one, for two years; one, for three years; and two, for four years.

(2) For a seven-member commission—one, shall be appointed for one year; two, for two years; two, for three years; and two, for four years.

(3) For a nine-member commission—two, shall be appointed for one year; two, for two years; two, for three years; and three, for four years.

Thereafter, the successors to the first member shall be appointed for four year terms: PROVIDED, That where the commission includes one ex officio member, the number of appointive members first appointed for a four year term shall be reduced by one; if there are to be two ex officio members, the number of appointive members for the three year and four year terms shall each be reduced by one; if there are to be three ex officio members, the number of appointive members for the four year term, the three year term, and the two year term shall each be reduced by one. The term of an ex officio member shall correspond to his or her official tenure: PROVIDED FURTHER, That where a commission, on the effective date of this chapter, is operating with members appointed for longer than four year terms, such members shall serve out the full term for which they were appointed, but their successors, if any, shall be appointed for four year terms. [2009 c 549 § 4108; 1963 c 4 § 36.70.090. Prior: 1959 c 201 § 9.]

36.70.100 Commission—Vacancies. Vacancies occurring for any reason other than the expiration of the term shall be filled by appointment for the unexpired portion of the term except if, on June 10, 1959, the unexpired portion of a term is for more than four years the vacancy shall be filled for a period of time that will obtain the maximum staggered terms, but shall not exceed four years. Vacancies shall be filled from the same commissioner district as that of the vacating member. [1963 c 4 § 36.70.100. Prior: 1959 c 201 § 10.]

36.70.110 Commission—Removal. After public hearing, any appointee member of a commission may be removed by the chair of the board, with the approval of the board, for inefficiency, neglect of duty, or malfeasance in office. [2009 c 549 § 4109; 1963 c 4 § 36.70.110. Prior: 1959 c 201 § 11.]

36.70.120 Commission—Officers. Each commission shall elect its chair and vice chair from among the appointed members. The commission shall appoint a secretary who need not be a member of the commission. [2009 c 549 § 4110; 1963 c 4 § 36.70.120. Prior: 1959 c 201 § 12.]

36.70.130 Planning agency—Meetings. Each planning agency shall hold not less than one regular meeting in each month: PROVIDED, That if no matters over which the planning agency has jurisdiction are pending upon its calendar, a meeting may be canceled. [1963 c 4 § 36.70.130. Prior: 1959 c 201 § 13.]

36.70.140 Planning agency—Rules and records. Each planning agency shall adopt rules for the transaction of its business and shall keep a public record of its transactions, findings, and determinations. [1963 c 4 § 36.70.140. Prior: 1959 c 201 § 14.]

36.70.150 Planning agency—Joint meetings. Two or more county planning agencies in any combination may hold

joint meetings and by approval of their respective boards may have the same chair. [2009 c 549 § 4111; 1963 c 4 § 36.70.150. Prior: 1959 c 201 § 15.]

36.70.160 Director—Appointment. If a director of planning is provided for, he or she shall be appointed:

(1) By the commission when a commission is created under RCW 36.70.030;

(2) If a planning department is established as provided in RCW 36.70.040, then he or she shall be appointed by the board. [2009 c 549 § 4112; 1963 c 4 § 36.70.160. Prior: 1959 c 201 § 16.]

36.70.170 Director—Employees. The director of planning shall be authorized to appoint such employees as are necessary to perform the duties assigned to him or her within the budget allowed. [2009 c 549 § 4113; 1963 c 4 § 36.70.170. Prior: 1959 c 201 § 17.]

36.70.180 Joint director. The boards of two or more counties or the legislative bodies of other political subdivisions or special districts may jointly engage a single director of planning and may authorize him or her to employ such other personnel as may be necessary to carry out the joint planning program. [2009 c 549 § 4114; 1963 c 4 § 36.70.180. Prior: 1959 c 201 § 18.]

36.70.190 Special services. Each planning agency, subject to the approval of the board, may employ or contract with the planning consultants or other specialists for such services as it requires. [1963 c 4 § 36.70.190. Prior: 1959 c 201 § 19.]

36.70.200 Board of adjustment—Creation—Zoning adjustor. Whenever a board shall have created a planning agency, it shall also by ordinance, coincident with the enactment of a zoning ordinance, create a board of adjustment, and may establish the office of zoning adjustor: PROVIDED, That any county that has prior to June 10, 1959, enacted a zoning ordinance, shall, within ninety days thereof, create a board of adjustment. [1963 c 4 § 36.70.200. Prior: 1959 c 201 § 20.]

36.70.210 Board of adjustment—Membership—Quorum. A board of adjustment shall consist of five or seven members as may be provided by ordinance, and a majority of the members shall constitute a quorum for the transaction of all business. [1965 ex.s. c 24 § 1; 1963 c 4 § 36.70.210. Prior: 1959 c 201 § 21.]

36.70.220 Board of adjustment—Appointment—Appointment of zoning adjustor. The members of a board of adjustment and the zoning adjustor shall be appointed in the same manner as provided for the appointment of commissioners in RCW 36.70.080. One member of the board of adjustment may be an appointee member of the commission. [1963 c 4 § 36.70.220. Prior: 1959 c 201 § 22.]

36.70.230 Board of adjustment—Terms. If the board of adjustment is to consist of three members, when it is first appointed after June 10, 1959, the first terms shall be as follows: One shall be appointed for one year; one, for two years;

and one, for three years. If it consists of five members, when it is first appointed after June 10, 1959, the first terms shall be as follows: One shall be appointed for one year; one, for two years; one, for three years; one, for four years; and one, for six years. Thereafter the terms shall be for six years and until their successors are appointed and qualified. [1963 c 4 § 36.70.230. Prior: 1959 c 201 § 23.]

36.70.240 Board of adjustment—Vacancies. Vacancies in the board of adjustment shall be filled by appointment in the same manner in which the commissioners are appointed in RCW 36.70.080. Appointment shall be for the unexpired portion of the term. [1963 c 4 § 36.70.240. Prior: 1959 c 201 § 24.]

36.70.250 Board of adjustment—Removal. Any member of the board of adjustment may be removed by the chair of the board with the approval of the board for inefficiency, neglect of duty or malfeasance in office. [2009 c 549 § 4115; 1963 c 4 § 36.70.250. Prior: 1959 c 201 § 25.]

36.70.260 Board of adjustment—Organization. The board of adjustment shall elect a chair and vice chair from among its members. The board of adjustment shall appoint a secretary who need not be a member of the board. [2009 c 549 § 4116; 1963 c 4 § 36.70.260. Prior: 1959 c 201 § 26.]

36.70.270 Board of adjustment—Meetings. The board of adjustment shall hold not less than one regular meeting in each month of each year: PROVIDED, That if no issues over which the board has jurisdiction are pending upon its calendar, a meeting may be canceled. [1963 c 4 § 36.70.270. Prior: 1959 c 201 § 27.]

36.70.280 Board of adjustment—Rules and records. The board of adjustment shall adopt rules for the transaction of its business and shall keep a public record of its transactions, findings and determinations. [1963 c 4 § 36.70.280. Prior: 1959 c 201 § 28.]

36.70.290 Appropriation for planning agency, board of adjustment. The board shall provide the funds, equipment and accommodations necessary for the work of the planning agency. Such appropriations may include funds for joint ventures as set forth in RCW 36.70.180. The expenditures of the planning agency, exclusive of gifts, shall be within the amounts appropriated for the respective purposes. The provisions herein for financing the work of the planning agencies shall also apply to the board of adjustment and the zoning adjustor. [1963 c 4 § 36.70.290. Prior: 1959 c 201 § 29.]

36.70.300 Accept gifts. The planning agency of a county may accept gifts in behalf of the county to finance any planning work authorized by law. [1963 c 4 § 36.70.300. Prior: 1959 c 201 § 30.]

36.70.310 Conference and travel expenses—Commission members and staff. Members of planning agencies shall inform themselves on matter affecting the functions and duties of planning agencies. For that purpose, and when

authorized, such members may attend planning conferences, meetings of planning executives or of technical bodies; hearings on planning legislation or matters relating to the work of the planning agency. The reasonable travel expenses, registration fees and other costs incident to such attendance at such meetings and conferences shall be charges upon the funds allocated to the planning agency. In addition, members of a commission may also receive reasonable travel expenses to and from their usual place of business to the place of a regular meeting of the commission. The planning agency may, when authorized, pay dues for membership in organizations specializing in the subject of planning. The planning agency may, when authorized, subscribe to technical publications pertaining to planning. [1963 c 4 § 36.70.310. Prior: 1959 c 201 § 31.]

36.70.315 Public notice—Identification of affected property. Any notice made under chapter 36.70 RCW that identifies affected property may identify this affected property without using a legal description of the property including, but not limited to, identification by an address, written description, vicinity sketch, or other reasonable means. [1988 c 168 § 11.]

36.70.317 Statement of restrictions applicable to real property. (1) A property owner may make a written request for a statement of restrictions applicable to a single parcel, tract, lot, or block of real property located in an unincorporated portion of a county to the county in which the real property is located.

(2) Within thirty days of the receipt of the request, the county shall provide the owner, by registered mail, with a statement of restrictions as described in subsection (3) of this section.

(3) The statement of restrictions shall include the following:

- (a) The zoning currently applicable to the real property;
- (b) Pending zoning changes currently advertised for public hearing that would be applicable to the real property;

(c) Any designations made by the county pursuant to chapter 36.70A RCW of any portion of the real property as agricultural land, forest land, mineral resource land, wetland, an area with a critical recharging effect on aquifers used for potable water, a fish and wildlife habitat conservation area, a frequently flooded area, and as a geological hazardous area; and

(d) If information regarding the designations listed in (c) of this subsection are not readily available, inform the owner of the procedure by which the owner can obtain that site-specific information from the county.

(4) If a county fails to provide the statement of restrictions within thirty days after receipt of the written request, the owner shall be awarded recovery of all attorneys' fees and costs incurred in any successful application for a writ of mandamus to compel production of a statement.

(5) For purposes of this section:

(a) "Owner" means any vested owner or any person holding the buyer's interest under a recorded real estate contract in which the seller is the vested owner; and

(b) "Real property" means a parcel, tract, lot or block: (i) Containing a single-family residence that is occupied by the

owner or a member of his or her family, or rented to another by the owner; or (ii) five acres or less in size.

(6) This section does not affect the vesting of permits or development rights.

Nothing in this section shall be deemed to create any liability on the part of a county. [1996 c 206 § 8.]

Findings—1996 c 206: See note following RCW 43.05.030.

Additional notes found at www.leg.wa.gov

36.70.320 Comprehensive plan. Each planning agency shall prepare a comprehensive plan for the orderly physical development of the county, or any portion thereof, and may include any land outside its boundaries which, in the judgment of the planning agency, relates to planning for the county. The plan shall be referred to as the comprehensive plan, and, after hearings by the commission and approval by motion of the board, shall be certified as the comprehensive plan. Amendments or additions to the comprehensive plan shall be similarly processed and certified.

Any comprehensive plan adopted for a portion of a county shall not be deemed invalid on the ground that the remainder of the county is not yet covered by a comprehensive plan. *This 1973 amendatory act shall also apply to comprehensive plans adopted for portions of a county prior to April 24, 1973. [1973 1st ex.s. c 172 § 1; 1963 c 4 § 36.70.320. Prior: 1959 c 201 § 32.]

*Reviser's note: "This 1973 amendatory act" refers to 1973 1st ex.s. c 172 § 1.

36.70.330 Comprehensive plan—Required elements. The comprehensive plan shall consist of a map or maps, and descriptive text covering objectives, principles and standards used to develop it, and shall include each of the following elements:

(1) A land use element which designates the proposed general distribution and general location and extent of the uses of land for agriculture, housing, commerce, industry, recreation, education, public buildings and lands, and other categories of public and private use of land, including a statement of the standards of population density and building intensity recommended for the various areas in the jurisdiction and estimates of future population growth in the area covered by the comprehensive plan, all correlated with the land use element of the comprehensive plan. The land use element shall also provide for protection of the quality and quantity of groundwater used for public water supplies and shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute Puget Sound or waters entering Puget Sound;

(2) A circulation element consisting of the general location, alignment and extent of major thoroughfares, major transportation routes, trunk utility lines, and major terminal facilities, all of which shall be correlated with the land use element of the comprehensive plan;

(3) Any supporting maps, diagrams, charts, descriptive material and reports necessary to explain and supplement the above elements. [1985 c 126 § 3; 1984 c 253 § 3; 1963 c 4 § 36.70.330. Prior: 1959 c 201 § 33.]

36.70.340 Comprehensive plan—Amplification of required elements. When the comprehensive plan containing the mandatory subjects as set forth in RCW 36.70.330 shall have been approved by motion by the board and certified, it may thereafter be progressively amplified and augmented in scope by expanding and increasing the general provisions and proposals for all or any one of the required elements set forth in RCW 36.70.330 and by adding provisions and proposals for the optional elements set forth in RCW 36.70.350. The comprehensive plan may also be amplified and augmented in scope by progressively including more completely planned areas consisting of natural homogeneous communities, distinctive geographic areas, or other types of districts having unified interests within the total area of the county. In no case shall the comprehensive plan, whether in its entirety or area by area or subject by subject be considered to be other than in such form as to serve as a guide to the later development and adoption of official controls. [1963 c 4 § 36.70.340. Prior: 1959 c 201 § 34.]

36.70.350 Comprehensive plan—Optional elements. A comprehensive plan may include—

(1) a conservation element for the conservation, development and utilization of natural resources, including water and its hydraulic force, forests, water sheds, soils, rivers and other waters, harbors, fisheries, wild life, minerals and other natural resources,

(2) a solar energy element for encouragement and protection of access to direct sunlight for solar energy systems,

(3) a recreation element showing a comprehensive system of areas and public sites for recreation, natural reservations, parks, parkways, beaches, playgrounds and other recreational areas, including their locations and proposed development,

(4) a transportation element showing a comprehensive system of transportation, including general locations of rights-of-way, terminals, viaducts and grade separations. This element of the plan may also include port, harbor, aviation and related facilities,

(5) a transit element as a special phase of transportation, showing proposed systems of rail transit lines, including rapid transit in any form, and related facilities,

(6) a public services and facilities element showing general plans for sewerage, refuse disposal, drainage and local utilities, and rights-of-way, easements and facilities for such services,

(7) a public buildings element, showing general locations, design and arrangements of civic and community centers, and showing locations of public schools, libraries, police and fire stations and all other public buildings,

(8) a housing element, consisting of surveys and reports upon housing conditions and needs as a means of establishing housing standards to be used as a guide in dealings with official controls related to land subdivision, zoning, traffic, and other related matters,

(9) a renewal and/or redevelopment element comprising surveys, locations, and reports for the elimination of slums and other blighted areas and for community renewal and/or redevelopment, including housing sites, business and industrial sites, public building sites and for other purposes authorized by law,

(10) a plan for financing a capital improvement program,

(11) as a part of a comprehensive plan the commission may prepare, receive and approve additional elements and studies dealing with other subjects which, in its judgment, relate to the physical development of the county. [1979 ex.s. c 170 § 10; 1963 c 4 § 36.70.350. Prior: 1959 c 201 § 35.]

"Solar energy system" defined: RCW 36.70.025.

Additional notes found at www.leg.wa.gov

36.70.360 Comprehensive plan—Cooperation with affected agencies. During the formulation of the comprehensive plan, and especially in developing a specialized element of such comprehensive plan, the planning agency may cooperate to the extent it deems necessary with such authorities, departments or agencies as may have jurisdiction over the territory or facilities for which plans are being made, to the end that maximum correlation and coordination of plans may be secured and properly located sites for all public purposes may be indicated on the comprehensive plan. [1963 c 4 § 36.70.360. Prior: 1959 c 201 § 36.]

36.70.370 Comprehensive plan—Filing of copies. Whenever a planning agency has developed a comprehensive plan, or any addition or amendment thereto, covering any land outside of the boundaries of the county as provided in RCW 36.70.320, copies of any features of the comprehensive plan extending into an adjoining jurisdiction shall for purposes of information be filed with such adjoining jurisdiction. [1963 c 4 § 36.70.370. Prior: 1959 c 201 § 37.]

36.70.380 Comprehensive plan—Public hearing required. Before approving all or any part of the comprehensive plan or any amendment, extension or addition thereto, the commission shall hold at least one public hearing and may hold additional hearings at the discretion of the commission. [1963 c 4 § 36.70.380. Prior: 1959 c 201 § 38.]

36.70.390 Comprehensive plan—Notice of hearing. Notice of the time, place and purpose of any public hearing shall be given by one publication in a newspaper of general circulation in the county and in the official gazette, if any, of the county, at least ten days before the hearing. [1963 c 4 § 36.70.390. Prior: 1959 c 201 § 39.]

36.70.400 Comprehensive plan—Approval—Required vote—Record. The approval of the comprehensive plan, or of any amendment, extension or addition thereto, shall be by the affirmative vote of not less than a majority of the total members of the commission. Such approval shall be by a recorded motion which shall incorporate the findings of fact of the commission and the reasons for its action and the motion shall refer expressly to the maps, descriptive, and other matters intended by the commission to constitute the plan or amendment, addition or extension thereto. The indication of approval by the commission shall be recorded on the map and descriptive matter by the signatures of the chair and the secretary of the commission and of such others as the commission in its rules may designate. [2009 c 549 § 4117; 1963 c 4 § 36.70.400. Prior: 1961 c 232 § 2; 1959 c 201 § 40.]

(2014 Ed.)

36.70.410 Comprehensive plan—Amendment. When changed conditions or further studies by the planning agency indicate a need, the commission may amend, extend or add to all or part of the comprehensive plan in the manner provided herein for approval in the first instance. [1963 c 4 § 36.70.410. Prior: 1959 c 201 § 41.]

36.70.420 Comprehensive plan—Referral to board. A copy of a comprehensive plan or any part, amendment, extension of or addition thereto, together with the motion of the planning agency approving the same, shall be transmitted to the board for the purpose of being approved by motion and certified as provided in this chapter. [1963 c 4 § 36.70.420. Prior: 1959 c 201 § 42.]

36.70.430 Comprehensive plan—Board may initiate or change—Notice. When it deems it to be for the public interest, or when it considers a change in the recommendations of the planning agency to be necessary, the board may initiate consideration of a comprehensive plan, or any element or part thereof, or any change in or addition to such plan or recommendation. The board shall first refer the proposed plan, change or addition to the planning agency for a report and recommendation. Before making a report and recommendation, the commission shall hold at least one public hearing on the proposed plan, change or addition. Notice of the time and place and purpose of the hearing shall be given by one publication in a newspaper of general circulation in the county and in the official gazette, if any, of the county, at least ten days before the hearing. [1963 c 4 § 36.70.430. Prior: 1959 c 201 § 43.]

36.70.440 Comprehensive plan—Board may approve or change—Notice. After the receipt of the report and recommendations of the planning agency on the matters referred to in RCW 36.70.430, or after the lapse of the prescribed time for the rendering of such report and recommendation by the commission, the board may approve by motion and certify such plan, change or addition without further reference to the commission: PROVIDED, That the plan, change or addition conforms either to the proposal as initiated by the county or the recommendation thereon by the commission: PROVIDED FURTHER, That if the planning agency has failed to report within a ninety day period, the board shall hold at least one public hearing on the proposed plan, change or addition. Notice of the time, place and purpose of the hearing shall be given by one publication in a newspaper of general circulation in the county and in the official gazette, if any, of the county, at least ten days before the hearing. Thereafter, the board may proceed to approve by motion and certify the proposed comprehensive plan or any part, amendment or addition thereto. [1963 c 4 § 36.70.440. Prior: 1959 c 201 § 44.]

36.70.450 Planning agency—Relating projects to comprehensive plan. After a board has approved by motion and certified all or parts of a comprehensive plan for a county or for any part of a county, the planning agency shall use such plan as the basic source of reference and as a guide in reporting upon or recommending any proposed project, public or private, as to its purpose, location, form, alignment and tim-

ing. The report of the planning agency on any project shall indicate wherein the proposed project does or does not conform to the purpose of the comprehensive plan and may include proposals which, if effected, would make the project conform. If the planning agency finds that a proposed project reveals the justification or necessity for amending the comprehensive plan or any part of it, it may institute proceedings to accomplish such amendment, and in its report to the board on the project shall note that appropriate amendments to the comprehensive plan, or part thereof, are being initiated. [1963 c 4 § 36.70.450. Prior: 1959 c 201 § 45.]

36.70.460 Planning agency—Annual report. After all or part of the comprehensive plan of a county has been approved by motion and certified, the planning agency shall render an annual report to the board on the status of the plan and accomplishments thereunder. [1963 c 4 § 36.70.460. Prior: 1959 c 201 § 46.]

36.70.470 Planning agency—Promotion of public interest in plan. Each planning agency shall endeavor to promote public interest in, and understanding of, the comprehensive plan and its purpose, and of the official controls related to it. [1963 c 4 § 36.70.470. Prior: 1959 c 201 § 47.]

36.70.480 Planning agency—Cooperation with agencies. Each planning agency shall, to the extent it deems necessary, cooperate with officials and agencies, public utility companies, civic, educational, professional and other organizations and citizens generally with relation to carrying out the purpose of the comprehensive plan. [1963 c 4 § 36.70.480. Prior: 1959 c 201 § 48.]

36.70.490 Information to be furnished agency. Upon request, all public officials or agencies shall furnish to the planning agency within a reasonable time such available information as is required for the work of the planning agency. [1963 c 4 § 36.70.490. Prior: 1959 c 201 § 49.]

36.70.493 Manufactured housing communities—Prohibitions of county due to community status as a nonconforming use. (1) After June 10, 2004, a county may designate a manufactured housing community as a nonconforming use, but may not order the removal or phased elimination of an existing manufactured housing community because of its status as a nonconforming use.

(2) A county may not prohibit the entry or require the removal of a manufactured/mobile home, park model, or recreational vehicle authorized in a manufactured housing community under chapter 59.20 RCW on the basis of the community's status as a nonconforming use. [2011 c 158 § 11; 2004 c 210 § 3.]

Transfer of residual funds to manufactured home installation training account—2011 c 158: See note following RCW 43.22A.100.

36.70.495 Planning regulations—Copies provided to county assessor. By July 31, 1997, a county planning under RCW 36.70A.040 shall provide to the county assessor a copy of the county's comprehensive plan and development regulations in effect on July 1st of that year and shall thereafter provide any amendments to the plan and regulations that were

adopted before July 31st of each following year. [1996 c 254 § 5.]

36.70.500 Right of entry—Commission or planning staff. In the performance of their functions and duties, duly authorized members of a commission or planning staff may enter upon any land and make examinations and surveys: PROVIDED, That such entries, examinations and surveys do not damage or interfere with the use of the land by those persons lawfully entitled to the possession thereof. [1963 c 4 § 36.70.500. Prior: 1959 c 201 § 50.]

36.70.510 Special referred matters—Reports. By general or special rule the board creating a planning agency may provide that other matters shall be referred to the planning agency before final action is taken thereupon by the board or officer having final authority on the matter, and final action thereon shall not be taken upon the matter so referred until the planning agency has submitted its report within such period of time as the board shall designate. In reporting upon the matters referred to in this section the planning agency may make such investigations, maps, reports and recommendations as it deems desirable. [1963 c 4 § 36.70.510. Prior: 1959 c 201 § 51.]

36.70.520 Required submission of capital expenditure projects. At least five months before the end of each fiscal year each county officer, department, board or commission and each governmental body whose jurisdiction lies entirely within the county, except incorporated cities and towns, whose functions include preparing and recommending plans for, or constructing major public works, shall submit to the respective planning agency a list of the proposed public works being recommended for initiation or construction during the ensuing fiscal year. [1963 c 4 § 36.70.520. Prior: 1959 c 201 § 52.]

36.70.530 Relating capital expenditure projects to comprehensive plan. The planning agency shall list all such matters referred to in RCW 36.70.520 and shall prepare for and submit a report to the board which report shall set forth how each proposed project relates to all other proposed projects on the list and to all features in the comprehensive plan both as to location and timing. The planning agency shall report to the board through the planning director if there be such. [1963 c 4 § 36.70.530. Prior: 1959 c 201 § 53.]

36.70.540 Referral procedure—Reports. Whenever a county legislative authority has approved by motion and certified all or part of a comprehensive plan, no road, square, park or other public ground or open space shall be acquired by dedication or otherwise and no public building or structure shall be constructed or authorized to be constructed in the area to which the comprehensive plan applies until its location, purpose and extent has been submitted to and reported upon by the planning agency. The report by the planning agency shall set forth the manner and the degree to which the proposed project does or does not conform to the objectives of the comprehensive plan. If final authority is vested by law in some governmental officer or body other than the county legislative authority, such officer or governmental body shall

report the project to the planning agency and the planning agency shall render its report to such officer or governmental body. In both cases the report of the planning agency shall be advisory only. Failure of the planning agency to report on such matter so referred to it within forty days or such longer time as the county legislative authority or other governmental officer or body may indicate, shall be deemed to be approval. [1991 c 363 § 80; 1963 c 4 § 36.70.540. Prior: 1959 c 201 § 54.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.70.545 Development regulations—Consistency with comprehensive plan. Beginning July 1, 1992, the development regulations of each county that does not plan under RCW 36.70A.040 shall not be inconsistent with the county's comprehensive plan. For the purposes of this section, "development regulations" has the same meaning as set forth in RCW 36.70A.030. [1990 1st ex.s. c 17 § 24.]

Additional notes found at www.leg.wa.gov

36.70.547 General aviation airports—Siting of incompatible uses. Every county, city, and town in which there is located a general aviation airport that is operated for the benefit of the general public, whether publicly owned or privately owned public use, shall, through its comprehensive plan and development regulations, discourage the siting of incompatible uses adjacent to such general aviation airport. Such plans and regulations may only be adopted or amended after formal consultation with: Airport owners and managers, private airport operators, general aviation pilots, ports, and the aviation division of the department of transportation. All proposed and adopted plans and regulations shall be filed with the aviation division of the department of transportation within a reasonable time after release for public consideration and comment. Each county, city, and town may obtain technical assistance from the aviation division of the department of transportation to develop plans and regulations consistent with this section.

Any additions or amendments to comprehensive plans or development regulations required by this section may be adopted during the normal course of land-use proceedings.

This section applies to every county, city, and town, whether operating under chapter 35.63, 35A.63, 36.70, [or] 36.70A RCW, or under a charter. [1996 c 239 § 2.]

36.70.550 Official controls. From time to time, the planning agency may, or if so requested by the board shall, cause to be prepared official controls which, when adopted by ordinance by the board, will further the objectives and goals of the comprehensive plan. The planning agency may also draft such regulations, programs and legislation as may, in its judgment, be required to preserve the integrity of the comprehensive plan and assure its systematic execution, and the planning agency may recommend such plans, regulations, programs and legislation to the board for adoption. [1963 c 4 § 36.70.550. Prior: 1959 c 201 § 55.]

36.70.560 Official controls—Forms of controls. Official controls may include:

(1) Maps showing the exact boundaries of zones within each of which separate controls over the type and degree of permissible land uses are defined;

(2) Maps for streets showing the exact alignment, gradients, dimensions and other pertinent features, and including specific controls with reference to protecting such accurately defined future rights-of-way against encroachment by buildings, other physical structures or facilities;

(3) Maps for other public facilities, such as parks, playgrounds, civic centers, etc., showing exact location, size, boundaries and other related features, including appropriate regulations protecting such future sites against encroachment by buildings and other physical structures or facilities;

(4) Specific regulations and controls pertaining to other subjects incorporated in the comprehensive plan or establishing standards and procedures to be employed in land development including, but not limited to, subdividing of land and the approval of land plats and the preservation of streets and lands for other public purposes requiring future dedication or acquisition and general design of physical improvements, and the encouragement and protection of access to direct sunlight for solar energy systems. [1979 ex.s. c 170 § 11; 1963 c 4 § 36.70.560. Prior: 1959 c 201 § 56.]

"Solar energy system" defined: RCW 36.70.025.

Additional notes found at www.leg.wa.gov

36.70.570 Official controls—Adoption. Official controls shall be adopted by ordinance and shall further the purpose and objectives of a comprehensive plan and parts thereof. [1963 c 4 § 36.70.570. Prior: 1959 c 201 § 57.]

36.70.580 Official controls—Public hearing by commission. Before recommending an official control or amendment to the board for adoption, the commission shall hold at least one public hearing. [1963 c 4 § 36.70.580. Prior: 1959 c 201 § 58.]

36.70.590 Official controls—Notice of hearing. Notice of the time, place and purpose of the hearing shall be given by one publication in a newspaper of general circulation in the county and in the official gazette, if any, of the county at least ten days before the hearing. The board may prescribe additional methods for providing notice. [1963 c 4 § 36.70.590. Prior: 1959 c 201 § 59.]

36.70.600 Official controls—Recommendation to board—Required vote. The recommendation to the board of any official control or amendments thereto by the planning agency shall be by the affirmative vote of not less than a majority of the total members of the commission. Such approval shall be by a recorded motion which shall incorporate the findings of fact of the commission and the reasons for its action and the motion shall refer expressly to the maps, descriptive and other matters intended by the commission to constitute the plan, or amendment, addition or extension thereto. The indication of approval by the commission shall be recorded on the map and descriptive matter by the signatures of the chair and the secretary of the commission and of such others as the commission in its rules may designate. [2009 c 549 § 4118; 1963 c 4 § 36.70.600. Prior: 1961 c 232 § 3; 1959 c 201 § 60.]

36.70.610 Official controls—Reference to board. A copy of any official control or amendment recommended pursuant to RCW 36.70.550, 36.70.560, 36.70.570 and 36.70.580 shall be submitted to the board not later than fourteen days following the action by the commission and shall be accompanied by the motion of the planning agency approving the same, together with a statement setting forth the factors considered at the hearing, and analysis of findings considered by the commission to be controlling. [1963 c 4 § 36.70.610. Prior: 1961 c 232 § 4; 1959 c 201 § 61.]

36.70.620 Official controls—Action by board. Upon receipt of any recommended official control or amendment thereto, the board shall at its next regular public meeting set the date for a public meeting where it may, by ordinance, adopt or reject the official control or amendment. [1963 c 4 § 36.70.620. Prior: 1959 c 201 § 62.]

36.70.630 Official controls—Board to conduct hearing, adopt findings prior to incorporating changes in recommended control. If after considering the matter at a public meeting as provided in RCW 36.70.620 the board deems a change in the recommendations of the planning agency to be necessary, the change shall not be incorporated in the recommended control until the board shall conduct its own public hearing, giving notice thereof as provided in RCW 36.70.590, and it shall adopt its own findings of fact and statement setting forth the factors considered at the hearing and its own analysis of findings considered by it to be controlling. [1963 c 4 § 36.70.630. Prior: 1961 c 232 § 5; 1959 c 201 § 63.]

36.70.640 Official controls—Board may initiate. When it deems it to be for the public interest, the board may initiate consideration of an ordinance establishing an official control, or amendments to an existing official control, including those specified in RCW 36.70.560. The board shall first refer the proposed official control or amendment to the planning agency for report which shall, thereafter, be considered and processed in the same manner as that set forth in RCW 36.70.630 regarding a change in the recommendation of the planning agency. [1963 c 4 § 36.70.640. Prior: 1959 c 201 § 64.]

36.70.650 Board final authority. The report and recommendation by the planning agency, whether on a proposed control initiated by it, whether on a matter referred back to it by the board for further report, or whether on a matter initiated by the board, shall be advisory only and the final determination shall rest with the board. [1963 c 4 § 36.70.650. Prior: 1959 c 201 § 65.]

36.70.660 Procedures for adoption of controls limited to planning matters. The provisions of this chapter with references to the procedures to be followed in the adoption of official controls shall apply only to establishing official controls pertaining to subjects set forth in RCW 36.70.560. [1963 c 4 § 36.70.660. Prior: 1959 c 201 § 66.]

36.70.670 Enforcement—Official controls. The board may determine and establish administrative rules and proce-

dures for the application and enforcement of official controls, and may assign or delegate such administrative functions, powers and duties to such department or official as may be appropriate. [1963 c 4 § 36.70.670. Prior: 1959 c 201 § 67.]

36.70.675 Child care facilities—Review of need and demand—Adoption of ordinances. Each county that does not provide for the siting of family day care homes in zones that are designated for single-family or other residential uses, and for the siting of mini-day care centers and day care centers in zones that are designated for any residential or commercial uses, shall conduct a review of the need and demand for child care facilities, including the cost of any conditional or special use permit that may be required. The review shall be completed by August 30, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the *department of community development by September 30, 1990.

On or before June 30, 1991, each municipality that plans and zones under this chapter shall have adopted an ordinance or ordinances that are necessary to implement the findings of this review, if the findings indicate that such changes are necessary, or shall notify the *department of community development as to why such implementing ordinances were not adopted. [1989 c 335 § 6.]

***Reviser's note:** Powers, duties, and functions of the department of community development and the department of trade and economic development were transferred to the department of community, trade, and economic development by 1993 c 280, effective July 1, 1994. The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Findings—Purpose—Severability—1989 c 335: See notes following RCW 35.63.170.

Definitions for RCW 36.70.675: See RCW 35.63.170.

36.70.677 Accessory apartments. Any local government, as defined in RCW 43.63A.215, that is planning under this chapter shall comply with RCW 43.63A.215(3). [1993 c 478 § 10.]

36.70.678 Conditional and special use permit applications by parties licensed or certified by the department of social and health services or the department of corrections—Mediation prior to appeal required. A final decision by a hearing examiner involving a conditional or special use permit application under this chapter that is requested by a party that is licensed or certified by the department of social and health services or the department of corrections is subject to mediation under RCW 35.63.260 before an appeal may be filed. [1998 c 119 § 3.]

36.70.680 Subdividing and platting. The planning agency shall review all proposed land plats and subdivisions and make recommendations to the board thereon with reference to approving, or recommending any modifications necessary to assure conformance to the general purposes of the comprehensive plan and to standards and specifications established by state law or local controls. [1963 c 4 § 36.70.680. Prior: 1959 c 201 § 68.]

36.70.690 County improvements. No county shall improve any street or lay or authorize the laying of sewers or

connections or other improvements to be laid in any street within any territory for which the board has adopted an official control in the form of precise street map or maps, until the matter has been referred to the planning agency by the department or official having jurisdiction for a report thereon and a copy of the report has been filed with the department or official making the reference unless one of the following conditions apply:

- (1) The street has been accepted, opened, or has otherwise received legal status of a public street;
- (2) It corresponds with and conforms to streets shown on the official controls applicable to the subject;
- (3) It corresponds with and conforms to streets shown on a subdivision (land plat) approved by the board. [1963 c 4 § 36.70.690. Prior: 1959 c 201 § 69.]

36.70.695 Development regulations—Jurisdictions specified—Electric vehicle infrastructure. (1) By July 1, 2010, the development regulations of any jurisdiction with a population over six hundred thousand or with a state capitol within its borders planning under this chapter must allow electric vehicle infrastructure as a use in all areas within one mile of Interstate 5, Interstate 90, Interstate 405, or state route number 520, except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(2) By July 1, 2011, or six months after the distribution required under RCW 43.31.970 occurs, whichever is later, the development regulations of any jurisdiction planning under this chapter must allow electric vehicle infrastructure as a use in all areas within one mile of Interstate 5, Interstate 90, Interstate 405, or state route number 520, except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(3) By July 1, 2011, or six months after the distribution required under RCW 43.31.970 occurs, whichever is later, the development regulations of any jurisdiction planning under this chapter must allow battery charging stations as a use in all areas except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(4) Counties are authorized to adopt incentive programs to encourage the retrofitting of existing structures with the electrical outlets capable of charging electric vehicles. Incentives may include bonus height, site coverage, floor area ratio, and transferable development rights for use in urban growth areas.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations.

(d) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(6) If federal funding for public investment in electric vehicles, electric vehicle infrastructure, or alternative fuel distribution infrastructure is not provided by February 1, 2010, subsection (1) of this section is null and void. [2009 c 459 § 11.]

Finding—Purpose—2009 c 459: See note following RCW 47.80.090.
Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.

36.70.700 Planning agency—Time limit for report. Failure of the planning agency to report on the matters referred to in RCW 36.70.690 within forty days after the reference, or such longer period as may be designated by the board, department or official making the reference, shall be deemed to be approval of such matter. [1963 c 4 § 36.70.700. Prior: 1959 c 201 § 70.]

36.70.710 Final authority. Reports and recommendations by the planning agency on all matters shall be advisory only, and final determination shall rest with the administrative body, official, or the board whichever has authority to decide under applicable law. [1963 c 4 § 36.70.710. Prior: 1959 c 201 § 71.]

36.70.720 Prerequisite for zoning. Zoning maps as an official control may be adopted only for areas covered by a comprehensive plan containing not less than a land use element and a circulation element. Zoning ordinances and maps adopted prior to June 10, 1959, are hereby validated, provided only that at the time of their enactment the comprehensive plan for the county existed according to law applicable at that time. [1963 c 4 § 36.70.720. Prior: 1959 c 201 § 72.]

36.70.730 Text without map. The text of a zoning ordinance may be prepared and adopted in the absence of a comprehensive plan providing no zoning map or portion of a zoning map may be adopted thereunder until there has been compliance with the provisions of RCW 36.70.720. [1963 c 4 § 36.70.730. Prior: 1959 c 201 § 73.]

36.70.740 Zoning map—Progressive adoption. Because of practical considerations, the total area of a county to be brought under the control of zoning may be divided into areas possessing geographical, topographical or urban iden-

tity and such divisions may be progressively and separately officially mapped. [1963 c 4 § 36.70.740. Prior: 1959 c 201 § 74.]

36.70.750 Zoning—Types of regulations. Any board, by ordinance, may establish classifications, within each of which, specific controls are identified, and which will:

(1) Regulate the use of buildings, structures, and land as between agriculture, industry, business, residence, and other purposes;

(2) Regulate location, height, bulk, number of stories and size of buildings and structures; the size of yards, courts, and other open spaces; the density of population; the percentage of a lot which may be occupied by buildings and structures; and the area required to provide off-street facilities for the parking of motor vehicles. [1963 c 4 § 36.70.750. Prior: 1959 c 201 § 75.]

36.70.755 Residential care facilities—Review of need and demand—Adoption of ordinances. Each county that does not provide for the siting of residential care facilities in zones that are designated for single-family or other residential uses, shall conduct a review of the need and demand for the facilities, including the cost of any conditional or special use permit that may be required. The review shall be completed by August 30, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the *department of community development by September 30, 1990.

On or before June 30, 1991, each municipality that plans and zones under this chapter shall have adopted an ordinance or ordinances that are necessary to implement the findings of this review, if the findings indicate that such changes are necessary, or shall notify the *department of community development as to why such implementing ordinances were not adopted. [1989 c 427 § 38.]

*Reviser's note: Powers, duties, and functions of the department of community development and the department of trade and economic development were transferred to the department of community, trade, and economic development by 1993 c 280, effective July 1, 1994. The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Additional notes found at www.leg.wa.gov

36.70.757 Family day-care provider's home facility—County may not prohibit in residential or commercial area—Conditions. (1) Except as provided in subsections (2) and (3) of this section, no county may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice that prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's facility serving twelve or fewer children.

(2) A county may require that the facility: (a) Comply with all building, fire, safety, health code, and business licensing requirements; (b) conform to lot size, building size, setbacks, and lot coverage standards applicable to the zoning district except if the structure is a legal nonconforming structure; (c) is certified by the department of early learning licensor as providing a safe passenger loading area; (d) include signage, if any, that conforms to applicable regulations; and (e) limit hours of operations to facilitate neighborhood com-

patibility, while also providing appropriate opportunity for persons who use family day-care who work a nonstandard work shift.

(3) A county may also require that the family day-care provider, before state licensing, require proof of written notification by the provider that the immediately adjoining property owners have been informed of the intent to locate and maintain such a facility. If a dispute arises between neighbors and the day-care provider over licensing requirements, the licensor may provide a forum to resolve the dispute.

(4) This section may not be construed to prohibit a county from imposing zoning conditions on the establishment and maintenance of a family day-care provider's home serving twelve or fewer children in an area zoned for residential or commercial use, if the conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not precluded. As used in this section, "family day-care provider" is as defined in RCW 43.215.010. [2007 c 17 § 12; 2003 c 286 § 2.]

36.70.760 Establishing zones. For the purpose set forth in RCW 36.70.750 the county may divide a county, or portions thereof, into zones which, by number, shape, area and classification are deemed to be best suited to carry out the purposes of this chapter. [1963 c 4 § 36.70.760. Prior: 1959 c 201 § 76.]

36.70.770 All regulations shall be uniform in each zone. All regulations shall be uniform in each zone, but the regulations in one zone may differ from those in other zones. [1963 c 4 § 36.70.770. Prior: 1959 c 201 § 77.]

36.70.780 Classifying unmapped areas. After the adoption of the first map provided for in RCW 36.70.740, and pending the time that all property within a county can be precisely zoned through the medium of a zoning map, all properties not so precisely zoned by map shall be given a classification affording said properties such broad protective controls as may be deemed appropriate and necessary to serve public and private interests. Such controls shall be clearly set forth in the zoning ordinance in the form of a zone classification, and such classification shall apply to such areas until they shall have been included in the detailed zoning map in the manner provided for the adoption of a zoning map. [1963 c 4 § 36.70.780. Prior: 1959 c 201 § 78.]

36.70.790 Interim zoning. If the planning agency in good faith, is conducting or intends to conduct studies within a reasonable time for the purpose of, or is holding a hearing for the purpose of, or has held a hearing and has recommended to the board the adoption of any zoning map or amendment or addition thereto, or in the event that new territory for which no zoning may have been adopted as set forth in RCW 36.70.800 may be annexed to a county, the board, in order to protect the public safety, health and general welfare may, after report from the commission, adopt as an emergency measure a temporary interim zoning map the purpose of which shall be to so classify or regulate uses and related matters as constitute the emergency. [1963 c 4 § 36.70.790. Prior: 1959 c 201 § 79.]

36.70.795 Moratoria, interim zoning controls—Public hearing—Limitation on length. A board that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the board received a recommendation on the matter from the commission or department. If the board does not adopt findings of fact justifying its action before this hearing, then the board shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal. [1992 c 207 § 4.]

36.70.800 Procedural amendments—Zoning ordinance. An amendment to the text of a zoning ordinance which does not impose, remove or modify any regulation theretofore existing and affecting the zoning status of land shall be processed in the same manner prescribed by this chapter for the adoption of an official control except that no public hearing shall be required either by the commission or the board. [1963 c 4 § 36.70.800. Prior: 1959 c 201 § 80.]

36.70.810 Board of adjustment—Authority. The board of adjustment, subject to appropriate conditions and safeguards as provided by the zoning ordinance or the ordinance establishing the board of adjustment, if there be such, shall hear and decide:

(1) Applications for conditional uses or other permits when the zoning ordinance sets forth the specific uses to be made subject to conditional use permits and establishes criteria for determining the conditions to be imposed;

(2) Application for variances from the terms of the zoning ordinance: PROVIDED, That any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which subject property is situated, and that the following circumstances are found to apply;

(a) because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance is found to deprive subject property of rights and privileges enjoyed by other properties in the vicinity and under identical zone classification;

(b) that the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which subject property is situated.

(3) Appeals, where it is alleged by the applicant that there is error in any order, requirement, permit, decision, or determination made by an administrative official in the

administration or enforcement of this chapter or any ordinance adopted pursuant to it. [1963 c 4 § 36.70.810. Prior: 1959 c 201 § 81.]

36.70.820 Board of adjustment—Quasi-judicial powers. The board of adjustment may also exercise such other quasi-judicial powers as may be granted by county ordinance. [1963 c 4 § 36.70.820. Prior: 1959 c 201 § 82.]

36.70.830 Board of adjustment—Appeals—Time limit. Appeals may be taken to the board of adjustment by any person aggrieved, or by any officer, department, board or bureau of the county affected by any decision of an administrative official. Such appeals shall be filed in writing in duplicate with the board of adjustment within twenty days of the date of the action being appealed. [1963 c 4 § 36.70.830. Prior: 1959 c 201 § 83.]

36.70.840 Board of adjustment—Notice of time and place of hearing on conditional permit. Upon the filing of an application for a conditional use permit or a variance as set forth in RCW 36.70.810, the board of adjustment shall set the time and place for a public hearing on such matter, and written notice thereof shall be addressed through the United States mail to all property owners of record within a radius of three hundred feet of the exterior boundaries of subject property. The written notice shall be mailed not less than twelve days prior to the hearing. [1963 c 4 § 36.70.840. Prior: 1959 c 201 § 84.]

36.70.850 Board of adjustment—Appeal—Notice of time and place. Upon the filing of an appeal from an administrative determination, or from the action of the zoning adjustor, the board of adjustment shall set the time and place at which the matter will be considered. At least a ten day notice of such time and place together with one copy of the written appeal, shall be given to the official whose decision is being appealed. At least ten days notice of the time and place shall also be given to the adverse parties of record in the case. The officer from whom the appeal is being taken shall forthwith transmit to the board of adjustment all of the records pertaining to the decision being appealed from, together with such additional written report as he or she deems pertinent. [2009 c 549 § 4119; 1963 c 4 § 36.70.850. Prior: 1959 c 201 § 85.]

36.70.860 Board of adjustment—Scope of authority on appeal. In exercising the powers granted by RCW 36.70.810 and 36.70.820, the board of adjustment may, in conformity with this chapter, reverse or affirm, wholly or in part, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as should be made and, to that end, shall have all the powers of the officer from whom the appeal is taken, insofar as the decision on the particular issue is concerned. [1963 c 4 § 36.70.860. Prior: 1959 c 201 § 86.]

36.70.870 Zoning adjustor—Powers and duties. If the office of zoning adjustor is established as provided in this chapter, all of the provisions of this chapter defining the pow-

ers, duties, and procedures of the board of adjustment shall also apply to the zoning adjustor. [1963 c 4 § 36.70.870. Prior: 1959 c 201 § 87.]

36.70.880 Zoning adjustor—Action final unless appealed. The action by the zoning adjustor on all matters coming before him or her shall be final and conclusive unless within ten days after the zoning adjustor has made his or her order, requirement, decision or determination, an appeal in writing is filed with the board of adjustment. Such an appeal may be taken by the original applicant, or by opponents of record in the case. [2009 c 549 § 4120; 1963 c 4 § 36.70.880. Prior: 1959 c 201 § 88.]

36.70.890 Board of adjustment—Action final—Writs. The action by the board of adjustment on an application for a conditional use permit or a variance, or on an appeal from the decision of the zoning adjustor or an administrative officer shall be final and conclusive unless within ten days from the date of said action the original applicant or an adverse party makes application to a court of competent jurisdiction for a writ of certiorari, a writ of prohibition or a writ of mandamus. [1963 c 4 § 36.70.890. Prior: 1959 c 201 § 89.]

36.70.900 Inclusion of findings of fact. Both the board of adjustment and the zoning adjustor shall, in making an order, requirement, decision or determination, include in a written record of the case the findings of fact upon which the action is based. [1963 c 4 § 36.70.900. Prior: 1959 c 201 § 90.]

36.70.910 Short title. This chapter shall be known as the "Planning Enabling Act of the State of Washington". [1963 c 4 § 36.70.910. Prior: 1959 c 201 § 91.]

36.70.920 Duties and responsibilities imposed by other acts. Any duties and responsibilities which by other acts are imposed upon a planning commission shall, after June 10, 1959, be performed by a planning agency however constituted. [1963 c 4 § 36.70.920. Prior: 1959 c 201 § 92.]

36.70.930 Chapter alternative method. This chapter shall not repeal, amend, or modify any other law providing for planning methods but shall be deemed an alternative method providing for such purpose. [1963 c 4 § 36.70.930. Prior: 1959 c 201 § 93.]

36.70.940 Elective adoption. Any county or counties presently operating under the provisions of chapter 35.63 RCW may elect to operate henceforth under the provisions of this chapter. Such election shall be effected by the adoption of an ordinance under the procedure prescribed by RCW 36.32.120(7), and by compliance with the provisions of this chapter. [1963 c 4 § 36.70.940. Prior: 1959 c 201 § 94.]

36.70.970 Hearing examiner system—Adoption authorized—Alternative—Functions—Procedures. (1) As an alternative to those provisions of this chapter relating to powers or duties of the planning commission to hear and issue recommendations on applications for plat approval and applications for amendments to the zoning ordinance, the

county legislative authority may adopt a hearing examiner system under which a hearing examiner or hearing examiners may hear and issue decisions on proposals for plat approval and for amendments to the zoning ordinance when the amendment which is applied for is not of general applicability. In addition, the legislative authority may vest in a hearing examiner the power to hear and decide those issues it believes should be reviewed and decided by a hearing examiner, including but not limited to:

(a) Applications for conditional uses, variances, shore-line permits, or any other class of applications for or pertaining to development of land or land use;

(b) Appeals of administrative decisions or determinations; and

(c) Appeals of administrative decisions or determinations pursuant to chapter 43.21C RCW.

The legislative authority shall prescribe procedures to be followed by a hearing examiner.

Any county which vests in a hearing examiner the authority to hear and decide conditional uses and variances shall not be required to have a zoning adjustor or board of adjustment.

(2) Each county legislative authority electing to use a hearing examiner pursuant to this section shall by ordinance specify the legal effect of the decisions made by the examiner. Such legal effect may vary for the different classes of applications decided by the examiner but shall include one of the following:

(a) The decision may be given the effect of a recommendation to the legislative authority;

(b) The decision may be given the effect of an administrative decision appealable within a specified time limit to the legislative authority; or

(c) Except in the case of a rezone, the decision may be given the effect of a final decision of the legislative authority.

(3) Each final decision of a hearing examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision. Such findings and conclusions shall also set forth the manner in which the decision would carry out and conform to the county's comprehensive plan and the county's development regulations. Each final decision of a hearing examiner, unless a longer period is mutually agreed to in writing by the applicant and the hearing examiner, shall be rendered within ten working days following conclusion of all testimony and hearings. [1995 c 347 § 425; 1994 c 257 § 9; 1977 ex.s. c 213 § 3.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Additional notes found at www.leg.wa.gov

36.70.980 Conformance with chapter 43.97 RCW required. With respect to the National Scenic Area, as defined in the Columbia River Gorge National Scenic Area Act, P.L. 99-663, the exercise of any power or authority by a county or city pursuant to this chapter shall be subject to and in conformity with the requirements of chapter 43.97 RCW, including the Interstate Compact adopted by RCW 43.97.015, and with the management plan regulations and ordinances adopted by the Columbia River Gorge commission pursuant to the Compact. [1987 c 499 § 9.]

36.70.982 Fish enhancement projects—County's liability. A county is not liable for adverse impacts resulting from a fish enhancement project that meets the criteria of RCW 77.55.181 and has been permitted by the department of fish and wildlife. [2014 c 120 § 13; 2003 c 39 § 19; 1998 c 249 § 8.]

Findings—Purpose—Report—Effective date—1998 c 249: See notes following RCW 77.55.181.

36.70.990 Treatment of residential structures occupied by persons with handicaps. No county may enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals. As used in this section, "handicaps" are as defined in the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3602). [1993 c 478 § 22.]

36.70.992 Watershed restoration projects—Permit processing—Fish habitat enhancement project. (1) A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510.

(2) A fish habitat enhancement project meeting the criteria of RCW 77.55.181 shall be reviewed and approved according to the provisions of RCW 77.55.181. [2014 c 120 § 14; 2003 c 39 § 20; 1998 c 249 § 7; 1995 c 378 § 10.]

Findings—Purpose—Report—Effective date—1998 c 249: See notes following RCW 77.55.181.

Chapter 36.70A RCW

GROWTH MANAGEMENT—PLANNING BY SELECTED COUNTIES AND CITIES

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Regional transportation planning: Chapter 47.80 RCW.

Subdivision and short subdivision requirements: RCW 58.17.060, 58.17.110.

36.70A.010 Legislative findings. The legislature finds that uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state. It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning. Further, the legislature finds that it is in the public interest that economic development programs be shared with communities experiencing insufficient economic growth. [1990 1st ex.s. c 17 § 1.]

36.70A.011 Findings—Rural lands. The legislature finds that this chapter is intended to recognize the importance of rural lands and rural character to Washington's economy, its people, and its environment, while respecting regional differences. Rural lands and rural-based economies enhance the economic desirability of the state, help to preserve traditional economic activities, and contribute to the state's overall quality of life.

The legislature finds that to retain and enhance the job base in rural areas, rural counties must have flexibility to create opportunities for business development. Further, the legislature finds that rural counties must have the flexibility to retain existing businesses and allow them to expand. The legislature recognizes that not all business developments in rural

counties require an urban level of services; and that many businesses in rural areas fit within the definition of rural character identified by the local planning unit.

Finally, the legislature finds that in defining its rural element under RCW 36.70A.070(5), a county should foster land use patterns and develop a local vision of rural character that will: Help preserve rural-based economies and traditional rural lifestyles; encourage the economic prosperity of rural residents; foster opportunities for small-scale, rural-based employment and self-employment; permit the operation of rural-based agricultural, commercial, recreational, and tourist businesses that are consistent with existing and planned land use patterns; be compatible with the use of the land by wildlife and for fish and wildlife habitat; foster the private stewardship of the land and preservation of open space; and enhance the rural sense of community and quality of life. [2002 c 212 § 1.]

36.70A.020 Planning goals. The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040. The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

(1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

(2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

(3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

(4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

(5) Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

(6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

(7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

(8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the con-

servation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

(9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

(11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

(13) Historic preservation. Identify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance. [2002 c 154 § 1; 1990 1st ex.s. c 17 § 2.]

36.70A.030 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

(2) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by *RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

(3) "City" means any city or town, including a code city.

(4) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

(5) "Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas. "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

(6) "Department" means the department of commerce.

(7) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regu-

lation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

(8) "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under *RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forest land to other uses.

(9) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

(10) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

(11) "Minerals" include gravel, sand, and valuable metallic substances.

(12) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(13) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(14) "Recreational land" means land so designated under **RCW 36.70A.1701 and that, immediately prior to this designation, was designated as agricultural land of long-term commercial significance under RCW 36.70A.170. Recreational land must have playing fields and supporting facilities existing before July 1, 2004, for sports played on grass playing fields.

(15) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

(16) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

(17) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

(18) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

(19) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(20) "Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110.

(21) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally cre-

ated from nonwetland areas created to mitigate conversion of wetlands. [2012 c 21 § 1. Prior: 2009 c 565 § 22; 2005 c 423 § 2; 1997 c 429 § 3; 1995 c 382 § 9; prior: 1994 c 307 § 2; 1994 c 257 § 5; 1990 1st ex.s. c 17 § 3.]

Reviser's note: *(1) RCW 84.33.100 through 84.33.118 were repealed or decodified by 2001 c 249 §§ 15 and 16. RCW 84.33.120 was repealed by 2001 c 249 § 16 and by 2003 c 170 § 7.

** (2) RCW 36.70A.1701 expired June 30, 2006.

Intent—2005 c 423: "The legislature recognizes the need for playing fields and supporting facilities for sports played on grass as well as the need to preserve agricultural land of long-term commercial significance. With thoughtful and deliberate planning, and adherence to the goals and requirements of the growth management act, both needs can be met.

The legislature acknowledges the state's interest in preserving the agricultural industry and family farms, and recognizes that the state's rich and productive lands enable agricultural production. Because of its unique qualities and limited quantities, designated agricultural land of long-term commercial significance is best suited for agricultural and farm uses, not recreational uses.

The legislature acknowledges also that certain local governments have either failed or neglected to properly plan for population growth and the sufficient number of playing fields and supporting facilities needed to accommodate this growth. The legislature recognizes that citizens responded to this lack of planning, fields, and supporting facilities by constructing nonconforming fields and facilities on agricultural lands of long-term commercial significance. It is the intent of the legislature to permit the continued existence and use of these fields and facilities in very limited circumstances if specific criteria are satisfied within a limited time frame. It is also the intent of the legislature to grant this authorization without diminishing the designation and preservation requirements of the growth management act pertaining to Washington's invaluable farmland." [2005 c 423 § 1.]

Effective date—2005 c 423: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2005]." [2005 c 423 § 7.]

Finding—Intent—1994 c 307: "The legislature finds that it is in the public interest to identify and provide long-term conservation of those productive natural resource lands that are critical to and can be managed economically and practically for long-term commercial production of food, fiber, and minerals. Successful achievement of the natural resource industries' goal set forth in RCW 36.70A.020 requires the conservation of a land base sufficient in size and quality to maintain and enhance those industries and the development and use of land use techniques that discourage uses incompatible to the management of designated lands. The 1994 amendment to RCW 36.70A.030(8) (section 2(8), chapter 307, Laws of 1994) is intended to clarify legislative intent regarding the designation of forest lands and is not intended to require every county that has already complied with the interim forest land designation requirement of RCW 36.70A.170 to review its actions until the adoption of its comprehensive plans and development regulations as provided in RCW 36.70A.060(3)." [1994 c 307 § 1.]

Additional notes found at www.leg.wa.gov

36.70A.035 Public participation—Notice provisions.

(1) The public participation requirements of this chapter shall include notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, school districts, and organizations of proposed amendments to comprehensive plans and development regulation. Examples of reasonable notice provisions include:

- (a) Posting the property for site-specific proposals;
- (b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located or that will be affected by the proposal;
- (c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;
- (d) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and

(e) Publishing notice in agency newsletters or sending notice to agency mailing lists, including general lists or lists for specific proposals or subject areas.

(2)(a) Except as otherwise provided in (b) of this subsection, if the legislative body for a county or city chooses to consider a change to an amendment to a comprehensive plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the county's or city's procedures, an opportunity for review and comment on the proposed change shall be provided before the local legislative body votes on the proposed change.

(b) An additional opportunity for public review and comment is not required under (a) of this subsection if:

(i) An environmental impact statement has been prepared under chapter 43.21C RCW for the pending resolution or ordinance and the proposed change is within the range of alternatives considered in the environmental impact statement;

(ii) The proposed change is within the scope of the alternatives available for public comment;

(iii) The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;

(iv) The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or

(v) The proposed change is to a resolution or ordinance enacting a moratorium or interim control adopted under RCW 36.70A.390.

(3) This section is prospective in effect and does not apply to a comprehensive plan, development regulation, or amendment adopted before July 27, 1997. [1999 c 315 § 708; 1997 c 429 § 9.]

Additional notes found at www.leg.wa.gov

36.70A.040 Who must plan—Summary of requirements—Resolution for partial planning—Development regulations must implement comprehensive plans. (1) Each county that has both a population of fifty thousand or more and, until May 16, 1995, has had its population increase by more than ten percent in the previous ten years or, on or after May 16, 1995, has had its population increase by more than seventeen percent in the previous ten years, and the cities located within such county, and any other county regardless of its population that has had its population increase by more than twenty percent in the previous ten years, and the cities located within such county, shall conform with all of the requirements of this chapter. However, the county legislative authority of such a county with a population of less than fifty thousand population may adopt a resolution removing the county, and the cities located within the county, from the requirements of adopting comprehensive land use plans and development regulations under this chapter if this resolution is adopted and filed with the department by December 31, 1990, for counties initially meeting this set of criteria, or within sixty days of the date the office of financial management certifies that a county meets this set of criteria under subsection (5) of this section. For the purposes of this subsection, a county not currently planning under this chapter is not required to include in its population count those persons con-

finied in a correctional facility under the jurisdiction of the department of corrections that is located in the county.

Once a county meets either of these sets of criteria, the requirement to conform with all of the requirements of this chapter remains in effect, even if the county no longer meets one of these sets of criteria.

(2)(a) The county legislative authority of any county that does not meet either of the sets of criteria established under subsection (1) of this section may adopt a resolution indicating its intention to have subsection (1) of this section apply to the county. Each city, located in a county that chooses to plan under this subsection, shall conform with all of the requirements of this chapter. Once such a resolution has been adopted, the county and the cities located within the county remain subject to all of the requirements of this chapter, unless the county subsequently adopts a withdrawal resolution for partial planning pursuant to (b)(i) of this subsection.

(b)(i) Until December 31, 2015, the legislative authority of a county may adopt a resolution removing the county and the cities located within the county from the requirements to plan under this section if:

(A) The county has a population, as estimated by the office of financial management, of twenty thousand or fewer inhabitants at any time between April 1, 2010, and April 1, 2015;

(B) The county has previously adopted a resolution indicating its intention to have subsection (1) of this section apply to the county;

(C) At least sixty days prior to adopting a resolution for partial planning, the county provides written notification to the legislative body of each city within the county of its intent to consider adopting the resolution; and

(D) The legislative bodies of at least sixty percent of those cities having an aggregate population of at least seventy-five percent of the incorporated county population have not: Adopted resolutions opposing the action by the county; and provided written notification of the resolutions to the county.

(ii) Upon adoption of a resolution for partial planning under (b)(i) of this subsection:

(A) The county and the cities within the county are, except as provided otherwise, no longer obligated to plan under this section; and

(B) The county may not, for a minimum of ten years from the date of adoption of the resolution, adopt another resolution indicating its intention to have subsection (1) of this section apply to the county.

(c) The adoption of a resolution for partial planning under (b)(i) of this subsection does not nullify or otherwise modify the requirements for counties and cities established in RCW 36.70A.060, 36.70A.070(5) and associated development regulations, 36.70A.170, and 36.70A.172.

(3) Any county or city that is initially required to conform with all of the requirements of this chapter under subsection (1) of this section shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a countywide planning policy under RCW 36.70A.210; (b) the county and each city located within the county shall designate critical areas, agricultural lands, forest lands, and mineral resource lands, and adopt development regulations conserving these designated agricultural lands, forest lands, and

mineral resource lands and protecting these designated critical areas, under RCW 36.70A.170 and 36.70A.060; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; [and] (d) if the county has a population of fifty thousand or more, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan on or before July 1, 1994, and if the county has a population of less than fifty thousand, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan by January 1, 1995, but if the governor makes written findings that a county with a population of less than fifty thousand or a city located within such a county is not making reasonable progress toward adopting a comprehensive plan and development regulations the governor may reduce this deadline for such actions to be taken by no more than one hundred eighty days. Any county or city subject to this subsection may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(4) Any county or city that is required to conform with all the requirements of this chapter, as a result of the county legislative authority adopting its resolution of intention under subsection (2) of this section, shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a county-wide planning policy under RCW 36.70A.210; (b) the county and each city that is located within the county shall adopt development regulations conserving agricultural lands, forest lands, and mineral resource lands it designated under RCW 36.70A.060 within one year of the date the county legislative authority adopts its resolution of intention; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; and (d) the county and each city that is located within the county shall adopt a comprehensive plan and development regulations that are consistent with and implement the comprehensive plan not later than four years from the date the county legislative authority adopts its resolution of intention, but a county or city may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(5) If the office of financial management certifies that the population of a county that previously had not been required to plan under subsection (1) or (2) of this section has changed sufficiently to meet either of the sets of criteria specified under subsection (1) of this section, and where applicable, the county legislative authority has not adopted a resolution removing the county from these requirements as provided in subsection (1) of this section, the county and each city within such county shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a countywide planning policy under RCW 36.70A.210; (b) the county and each city located within the county shall adopt development regulations under RCW 36.70A.060 conserving agricultural lands, forest lands, and mineral resource lands it

designated within one year of the certification by the office of financial management; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; and (d) the county and each city located within the county shall adopt a comprehensive land use plan and development regulations that are consistent with and implement the comprehensive plan within four years of the certification by the office of financial management, but a county or city may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(6) A copy of each document that is required under this section shall be submitted to the department at the time of its adoption.

(7) Cities and counties planning under this chapter must amend the transportation element of the comprehensive plan to be in compliance with this chapter and chapter 47.80 RCW no later than December 31, 2000. [2014 c 147 § 1; 2000 c 36 § 1; 1998 c 171 § 1; 1995 c 400 § 1; 1993 sp.s. c 6 § 1; 1990 1st ex.s. c 17 § 4.]

Additional notes found at www.leg.wa.gov

36.70A.045 Phasing of comprehensive plan submittal. The department may adopt a schedule to permit phasing of comprehensive plan submittal for counties and cities planning under RCW 36.70A.040. This schedule shall not permit a comprehensive plan to be submitted greater than one hundred eighty days past the date that the plan was required to be submitted and shall be used to facilitate expeditious review and interjurisdictional coordination of comprehensive plans and development regulations. [1991 sp.s. c 32 § 15.]

36.70A.050 Guidelines to classify agriculture, forest, and mineral lands and critical areas. (1) Subject to the definitions provided in RCW 36.70A.030, the department shall adopt guidelines, under chapter 34.05 RCW, no later than September 1, 1990, to guide the classification of: (a) Agricultural lands; (b) forest lands; (c) mineral resource lands; and (d) critical areas. The department shall consult with the department of agriculture regarding guidelines for agricultural lands, the department of natural resources regarding forest lands and mineral resource lands, and the department of ecology regarding critical areas.

(2) In carrying out its duties under this section, the department shall consult with interested parties, including but not limited to: (a) Representatives of cities; (b) representatives of counties; (c) representatives of developers; (d) representatives of builders; (e) representatives of owners of agricultural lands, forest lands, and mining lands; (f) representatives of local economic development officials; (g) representatives of environmental organizations; (h) representatives of special districts; (i) representatives of the governor's office and federal and state agencies; and (j) representatives of Indian tribes. In addition to the consultation required under this subsection, the department shall conduct public hearings in the various regions of the state. The department shall consider the public input obtained at such public hearings when adopting the guidelines.

(3) The guidelines under subsection (1) of this section shall be minimum guidelines that apply to all jurisdictions, but also shall allow for regional differences that exist in Washington state. The intent of these guidelines is to assist counties and cities in designating the classification of agricultural lands, forest lands, mineral resource lands, and critical areas under RCW 36.70A.170.

(4) The guidelines established by the department under this section regarding classification of forest lands shall not be inconsistent with guidelines adopted by the department of natural resources. [1990 1st ex.s. c 17 § 5.]

36.70A.060 Natural resource lands and critical areas—Development regulations. (1)(a) Each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.040. Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

(b) Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within five hundred feet of, lands designated as agricultural lands, forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. The notice for mineral resource lands shall also inform that an application might be made for mining-related activities, including mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.

(c) Each county that adopts a resolution of partial planning under RCW 36.70A.040(2)(b), and each city within such county, shall adopt development regulations within one year after the adoption of the resolution of partial planning to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsection (1)(c) must comply with the requirements governing regulations adopted under (a) of this subsection.

(d)(i) A county that adopts a resolution of partial planning under RCW 36.70A.040(2)(b) and that is not in compliance with the planning requirements of this section, RCW 36.70A.040(4), 36.70A.070(5), 36.70A.170, and 36.70A.172 at the time the resolution is adopted must, by January 30, 2017, apply for a determination of compliance from the department finding that the county's development regulations, including development regulations adopted to protect critical areas, and comprehensive plans are in compliance with the requirements of this section, RCW 36.70A.040(4),

36.70A.070(5), 36.70A.170, and 36.70A.172. The department must approve or deny the application for a determination of compliance within one hundred twenty days of its receipt or by June 30, 2017, whichever date is earlier.

(ii) If the department denies an application under (d)(i) of this subsection, the county and each city within is obligated to comply with all requirements of this chapter and the resolution for partial planning adopted under RCW 36.70A.040(2)(b) is no longer in effect.

(iii) A petition for review of a determination of compliance under (d)(i) of this subsection may only be appealed to the growth management hearings board within sixty days of the issuance of the decision by the department.

(iv) In the event of a filing of a petition in accordance with (d)(iii) of this subsection, the county and the department must equally share the costs incurred by the department for defending an approval of determination of compliance that is before the growth management hearings board.

(v) The department may implement this subsection [(1)](d) by adopting rules related to determinations of compliance. The rules may address, but are not limited to: The requirements for applications for a determination of compliance; charging of costs under (d)(iv) of this subsection; procedures for processing applications; criteria for the evaluation of applications; issuance and notice of department decisions; and applicable timelines.

(2) Each county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW 36.70A.170. For counties and cities that are required or choose to plan under RCW 36.70A.040, such development regulations shall be adopted on or before September 1, 1991. For the remainder of the counties and cities, such development regulations shall be adopted on or before March 1, 1992.

(3) Such counties and cities shall review these designations and development regulations when adopting their comprehensive plans under RCW 36.70A.040 and implementing development regulations under RCW 36.70A.120 and may alter such designations and development regulations to insure consistency.

(4) Forest land and agricultural land located within urban growth areas shall not be designated by a county or city as forest land or agricultural land of long-term commercial significance under RCW 36.70A.170 unless the city or county has enacted a program authorizing transfer or purchase of development rights. [2014 c 147 § 2; 2005 c 423 § 3; 1998 c 286 § 5; 1991 sp.s. c 32 § 21; 1990 1st ex.s. c 17 § 6.]

Intent—Effective date—2005 c 423: See notes following RCW 36.70A.030.

36.70A.070 Comprehensive plans—Mandatory elements. The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140.

Each comprehensive plan shall include a plan, scheme, or design for each of the following:

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, general aviation airports, public utilities, public facilities, and other land uses. The land use element shall include population densities, building intensities, and estimates of future population growth. The land use element shall provide for protection of the quality and quantity of groundwater used for public water supplies. Wherever possible, the land use element should consider utilizing urban planning approaches that promote physical activity. Where applicable, the land use element shall review drainage, flooding, and storm water runoff in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) A housing element ensuring the vitality and character of established residential neighborhoods that: (a) Includes an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth; (b) includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; (c) identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the community.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

(4) A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the plan-

ning goals in RCW 36.70A.020 and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

(i) Containing or otherwise controlling rural development;

(ii) Assuring visual compatibility of rural development with the surrounding rural area;

(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;

(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and groundwater resources; and

(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) A commercial, industrial, residential, shoreline, or mixed-use area shall be subject to the requirements of (d)(iv) of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection.

(B) Any development or redevelopment other than an industrial area or an industrial use within a mixed-use area or an industrial area under this subsection (5)(d)(i) must be principally designed to serve the existing and projected rural population.

(C) Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas. Development and redevelopment may include changes in use from vacant land or a previously existing use so long as the new use conforms to the requirements of this subsection (5);

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-

scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Rural counties may allow the expansion of small-scale businesses as long as those small-scale businesses conform with the rural character of the area as defined by the local government according to RCW 36.70A.030(15). Rural counties may also allow new small-scale businesses to utilize a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area as defined by the local government according to RCW 36.70A.030(15). Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominantly by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary, the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries, such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter;

(B) On the date the county adopted a resolution under RCW 36.70A.040(2), in a county that is planning under all of the provisions of this chapter under RCW 36.70A.040(2); or

(C) On the date the office of financial management certifies the county's population as provided in RCW 36.70A.040(5), in a county that is planning under all of the provisions of this chapter pursuant to RCW 36.70A.040(5).

(e) Exception. This subsection shall not be interpreted to permit in the rural area a major industrial development or a master planned resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.

(6) A transportation element that implements, and is consistent with, the land use element.

(a) The transportation element shall include the following subelements:

(i) Land use assumptions used in estimating travel;

(ii) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(iii) Facilities and services needs, including:

(A) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the city or county's jurisdictional boundaries;

(B) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(C) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the office of financial management's ten-year investment program. The concurrency requirements of (b) of this subsection do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in (b) of this subsection;

(D) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(E) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(F) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(iv) Finance, including:

(A) An analysis of funding capability to judge needs against probable funding resources;

(B) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the ten-year investment program developed by the office of financial management as required by RCW 47.05.030;

(C) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(v) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(vi) Demand-management strategies;

(vii) Pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles.

(b) After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies. For the purposes of this subsection (6), "concurrent with the development" means that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

(c) The transportation element described in this subsection (6), the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems, and the ten-year investment program required by RCW 47.05.030 for the state, must be consistent.

(7) An economic development element establishing local goals, policies, objectives, and provisions for economic growth and vitality and a high quality of life. The element shall include: (a) A summary of the local economy such as population, employment, payroll, sectors, businesses, sales, and other information as appropriate; (b) a summary of the strengths and weaknesses of the local economy defined as the commercial and industrial sectors and supporting factors such as land use, transportation, utilities, education, workforce, housing, and natural/cultural resources; and (c) an identification of policies, programs, and projects to foster economic growth and development and to address future needs. A city that has chosen to be a residential community is exempt from the economic development element requirement of this subsection.

(8) A park and recreation element that implements, and is consistent with, the capital facilities plan element as it relates to park and recreation facilities. The element shall include: (a) Estimates of park and recreation demand for at least a ten-year period; (b) an evaluation of facilities and service needs; and (c) an evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

(9) It is the intent that new or amended elements required after January 1, 2002, be adopted concurrent with the scheduled update provided in RCW 36.70A.130. Requirements to incorporate any such new or amended elements shall be null and void until funds sufficient to cover applicable local gov-

ernment costs are appropriated and distributed by the state at least two years before local government must update comprehensive plans as required in RCW 36.70A.130. [2010 1st sp.s. c 26 § 6; 2005 c 360 § 2; (2005 c 477 § 1 expired August 31, 2005); 2004 c 196 § 1; 2003 c 152 § 1. Prior: 2002 c 212 § 2; 2002 c 154 § 2; 1998 c 171 § 2; 1997 c 429 § 7; 1996 c 239 § 1; prior: 1995 c 400 § 3; 1995 c 377 § 1; 1990 1st ex.s. c 17 § 7.]

Expiration date—2005 c 477 § 1: "Section 1 of this act expires August 31, 2005." [2005 c 477 § 3.]

Effective date—2005 c 477: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 13, 2005]." [2005 c 477 § 2.]

Findings—Intent—2005 c 360: "The legislature finds that regular physical activity is essential to maintaining good health and reducing the rates of chronic disease. The legislature further finds that providing opportunities for walking, biking, horseback riding, and other regular forms of exercise is best accomplished through collaboration between the private sector and local, state, and institutional policymakers. This collaboration can build communities where people find it easy and safe to be physically active. It is the intent of the legislature to promote policy and planning efforts that increase access to inexpensive or free opportunities for regular exercise in all communities around the state." [2005 c 360 § 1.]

Additional notes found at www.leg.wa.gov

36.70A.080 Comprehensive plans—Optional elements. (1) A comprehensive plan may include additional elements, items, or studies dealing with other subjects relating to the physical development within its jurisdiction, including, but not limited to:

- (a) Conservation;
- (b) Solar energy; and
- (c) Recreation.

(2) A comprehensive plan may include, where appropriate, subarea plans, each of which is consistent with the comprehensive plan.

(3)(a) Cities that qualify as a receiving city may adopt a comprehensive plan element and associated development regulations that apply within receiving areas under chapter 39.108 RCW.

(b) For purposes of this subsection, the terms "receiving city" and "receiving area" have the same meanings as provided in RCW 39.108.010. [2011 c 318 § 801; 1990 1st ex.s. c 17 § 8.]

Rules—2011 c 318: See note following RCW 39.108.005.

36.70A.085 Comprehensive plans—Port elements. (1) Comprehensive plans of cities that have a marine container port with annual operating revenues in excess of sixty million dollars within their jurisdiction must include a container port element.

(2) Comprehensive plans of cities that include all or part of a port district with annual operating revenues in excess of twenty million dollars may include a marine industrial port element. Prior to adopting a marine industrial port element under this subsection (2), the commission of the applicable port district must adopt a resolution in support of the proposed element.

(3) Port elements adopted under subsections (1) and (2) of this section must be developed collaboratively between the city and the applicable port, and must establish policies and programs that:

(a) Define and protect the core areas of port and port-related industrial uses within the city;

(b) Provide reasonably efficient access to the core area through freight corridors within the city limits; and

(c) Identify and resolve key land use conflicts along the edge of the core area, and minimize and mitigate, to the extent practicable, incompatible uses along the edge of the core area.

(4) Port elements adopted under subsections (1) and (2) of this section must be:

(a) Completed and approved by the city according to the schedule specified in RCW 36.70A.130; and

(b) Consistent with the economic development, transportation, and land use elements of the city's comprehensive plan, and consistent with the city's capital facilities plan.

(5) In adopting port elements under subsections (1) and (2) of this section, cities and ports must: Ensure that there is consistency between the port elements and the port comprehensive scheme required under chapters 53.20 and 53.25 RCW; and retain sufficient planning flexibility to secure emerging economic opportunities.

(6) In developing port elements under subsections (1) and (2) of this section, a city may utilize one or more of the following approaches:

(a) Creation of a port overlay district that protects container port uses;

(b) Use of industrial land banks;

(c) Use of buffers and transition zones between incompatible uses;

(d) Use of joint transportation funding agreements;

(e) Use of policies to encourage the retention of valuable warehouse and storage facilities;

(f) Use of limitations on the location or size, or both, of nonindustrial uses in the core area and surrounding areas; and

(g) Use of other approaches by agreement between the city and the port.

(7) The *department of community, trade, and economic development must provide matching grant funds to cities meeting the requirements of subsection (1) of this section to support development of the required container port element.

(8) Any planned improvements identified in port elements adopted under subsections (1) and (2) of this section must be transmitted by the city to the transportation commission for consideration of inclusion in the statewide transportation plan required under RCW 47.01.071. [2009 c 514 § 2.]

*Reviser's note: The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Findings—Intent—2009 c 514: "(1) The legislature finds that Washington's marine container ports operate within a complex system of marine terminal operations, truck and train transportation corridors, and industrial services that together support a critical amount of our state and national economy, including key parts of our state's manufacturing and agricultural sectors, and directly create thousands of high-wage jobs throughout our region.

(2) The legislature further finds that the container port services are increasingly challenged by the conversion of industrial properties to nonindustrial uses, leading to competing and incompatible uses that can hinder port operations, restrict efficient movement of freight, and limit the opportunity for improvements to existing port-related facilities.

(3) It is the intent of the legislature to ensure that local land use decisions are made in consideration of the long-term and widespread economic contribution of our international container ports and related industrial lands and transportation systems, and to ensure that container ports continue to function effectively alongside vibrant city waterfronts." [2009 c 514 § 1.]

(2014 Ed.)

36.70A.090 Comprehensive plans—Innovative techniques. A comprehensive plan should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit developments, and the transfer of development rights. [1990 1st ex.s. c 17 § 9.]

36.70A.100 Comprehensive plans—Must be coordinated. The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with which the county or city has, in part, common borders or related regional issues. [1990 1st ex.s. c 17 § 10.]

36.70A.103 State agencies required to comply with comprehensive plans. State agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to this chapter except as otherwise provided in RCW 71.09.250 (1) through (3), 71.09.342, and 72.09.333.

The provisions of chapter 12, Laws of 2001 2nd sp. sess. do not affect the state's authority to site any other essential public facility under RCW 36.70A.200 in conformance with local comprehensive plans and development regulations adopted pursuant to chapter 36.70A RCW. [2002 c 68 § 15; 2001 2nd sp.s. c 12 § 203; 1991 sp.s. c 32 § 4.]

Purpose—Severability—Effective date—2002 c 68: See notes following RCW 36.70A.200.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

36.70A.106 Comprehensive plans—Development regulations—Transmittal to state—Amendments—Expedited review. (1) Each county and city proposing adoption of a comprehensive plan or development regulations under this chapter shall notify the department of its intent to adopt such plan or regulations at least sixty days prior to final adoption. State agencies including the department may provide comments to the county or city on the proposed comprehensive plan, or proposed development regulations, during the public review process prior to adoption.

(2) Each county and city planning under this chapter shall transmit a complete and accurate copy of its comprehensive plan or development regulations to the department within ten days after final adoption.

(3)(a) Any amendments for permanent changes to a comprehensive plan or development regulation that are proposed by a county or city to its adopted plan or regulations shall be submitted to the department in the same manner as initial plans and development regulations under this section. Any amendments to a comprehensive plan or development regulations that are adopted by a county or city shall be transmitted to the department in the same manner as the initial plans and regulations under this section.

(b) Each county and city planning under this chapter may request expedited review for any amendments for permanent changes to a development regulation. Upon receiving a request for expedited review, and after consultation with other state agencies, the department may grant expedited review if the department determines that expedited review

does not compromise the state's ability to provide timely comments related to compliance with the goals and requirements of this chapter or on other matters of state interest. Cities and counties may adopt amendments for permanent changes to a development regulation immediately following the granting of the request for expedited review by the department. [2004 c 197 § 1; 1991 sp.s. c 32 § 8.]

36.70A.108 Comprehensive plans—Transportation element—Multimodal transportation improvements and strategies. (1) The transportation element required by RCW 36.70A.070 may include, in addition to improvements or strategies to accommodate the impacts of development authorized under RCW 36.70A.070(6)(b), multimodal transportation improvements or strategies that are made concurrent with the development. These transportation improvements or strategies may include, but are not limited to, measures implementing or evaluating:

(a) Multiple modes of transportation with peak and non-peak hour capacity performance standards for locally owned transportation facilities; and

(b) Modal performance standards meeting the peak and nonpeak hour capacity performance standards.

(2) Nothing in this section or RCW 36.70A.070(6)(b) shall be construed as prohibiting a county or city planning under RCW 36.70A.040 from exercising existing authority to develop multimodal improvements or strategies to satisfy the concurrency requirements of this chapter.

(3) Nothing in this section is intended to affect or otherwise modify the authority of jurisdictions planning under RCW 36.70A.040. [2005 c 328 § 1.]

36.70A.110 Comprehensive plans—Urban growth areas. (1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350.

(2) Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period, except for those urban growth areas contained totally within a national historical reserve. As part of this planning process, each city within the county must include areas sufficient to accommodate the broad range of needs and uses that will accompany the projected urban growth including, as appropriate, medical, governmental, institutional, commercial, service, retail, and other nonresidential uses.

Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. In the case of

urban growth areas contained totally within a national historical reserve, the city may restrict densities, intensities, and forms of urban growth as determined to be necessary and appropriate to protect the physical, cultural, or historic integrity of the reserve. An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.

Within one year of July 1, 1990, each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040, shall begin consulting with each city located within its boundaries and each city shall propose the location of an urban growth area. Within sixty days of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall begin this consultation with each city located within its boundaries. The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located. If such an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated the area an urban growth area. A city may object formally with the department over the designation of the urban growth area within which it is located. Where appropriate, the department shall attempt to resolve the conflicts, including the use of mediation services.

(3) Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas. Urban growth may also be located in designated new fully contained communities as defined by RCW 36.70A.350.

(4) In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.

(5) On or before October 1, 1993, each county that was initially required to plan under RCW 36.70A.040(1) shall adopt development regulations designating interim urban growth areas under this chapter. Within three years and three months of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall adopt development regulations designating interim urban growth areas under this chapter. Adoption of the interim urban growth areas may only occur after public notice; public hearing; and compliance with the state environmental policy

act, chapter 43.21C RCW, and under this section. Such action may be appealed to the growth management hearings board under RCW 36.70A.280. Final urban growth areas shall be adopted at the time of comprehensive plan adoption under this chapter.

(6) Each county shall include designations of urban growth areas in its comprehensive plan.

(7) An urban growth area designated in accordance with this section may include within its boundaries urban service areas or potential annexation areas designated for specific cities or towns within the county.

(8)(a) Except as provided in (b) of this subsection, the expansion of an urban growth area is prohibited into the one hundred year floodplain of any river or river segment that: (i) Is located west of the crest of the Cascade mountains; and (ii) has a mean annual flow of one thousand or more cubic feet per second as determined by the department of ecology.

(b) Subsection (8)(a) of this section does not apply to:

(i) Urban growth areas that are fully contained within a floodplain and lack adjacent buildable areas outside the floodplain;

(ii) Urban growth areas where expansions are precluded outside floodplains because:

(A) Urban governmental services cannot be physically provided to serve areas outside the floodplain; or

(B) Expansions outside the floodplain would require a river or estuary crossing to access the expansion; or

(iii) Urban growth area expansions where:

(A) Public facilities already exist within the floodplain and the expansion of an existing public facility is only possible on the land to be included in the urban growth area and located within the floodplain; or

(B) Urban development already exists within a floodplain as of July 26, 2009, and is adjacent to, but outside of, the urban growth area, and the expansion of the urban growth area is necessary to include such urban development within the urban growth area; or

(C) The land is owned by a jurisdiction planning under this chapter or the rights to the development of the land have been permanently extinguished, and the following criteria are met:

(I) The permissible use of the land is limited to one of the following: Outdoor recreation; environmentally beneficial projects, including but not limited to habitat enhancement or environmental restoration; storm water facilities; flood control facilities; or underground conveyances; and

(II) The development and use of such facilities or projects will not decrease flood storage, increase storm water runoff, discharge pollutants to fresh or salt waters during normal operations or floods, or increase hazards to people and property.

(c) For the purposes of this subsection (8), "one hundred year floodplain" means the same as "special flood hazard area" as set forth in WAC 173-158-040 as it exists on July 26, 2009. [2010 c 211 § 1. Prior: 2009 c 342 § 1; 2009 c 121 § 1; 2004 c 206 § 1; 2003 c 299 § 5; 1997 c 429 § 24; 1995 c 400 § 2; 1994 c 249 § 27; 1993 sp.s. c 6 § 2; 1991 sp.s. c 32 § 29; 1990 1st ex.s. c 17 § 11.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Additional notes found at www.leg.wa.gov

(2014 Ed.)

36.70A.115 Comprehensive plans and development regulations must provide sufficient land capacity for development. Counties and cities that are required or choose to plan under RCW 36.70A.040 shall ensure that, taken collectively, adoption of and amendments to their comprehensive plans and/or development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, including the accommodation of, as appropriate, the medical, governmental, educational, institutional, commercial, and industrial facilities related to such growth, as adopted in the applicable countywide planning policies and consistent with the twenty-year population forecast from the office of financial management. [2009 c 121 § 3; 2003 c 333 § 1.]

36.70A.120 Planning activities and capital budget decisions—Implementation in conformity with comprehensive plan. Each county and city that is required or chooses to plan under RCW 36.70A.040 shall perform its activities and make capital budget decisions in conformity with its comprehensive plan. [1993 sp.s. c 6 § 3; 1990 1st ex.s. c 17 § 12.]

Additional notes found at www.leg.wa.gov

36.70A.130 Comprehensive plans—Review procedures and schedules—Amendments. (1)(a) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. Except as otherwise provided, a county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section.

(b) Except as otherwise provided, a county or city not planning under RCW 36.70A.040 shall take action to review and, if needed, revise its policies and development regulations regarding critical areas and natural resource lands adopted according to this chapter to ensure these policies and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefor.

(c) The review and evaluation required by this subsection shall include, but is not limited to, consideration of critical area ordinances and, if planning under RCW 36.70A.040, an analysis of the population allocated to a city or county from the most recent ten-year population forecast by the office of financial management.

(d) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.

(2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amend-

ments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year, except that, until December 31, 2015, the program shall provide for consideration of amendments of an urban growth area in accordance with RCW 36.70A.1301 once every year. "Updates" means to review and revise, if needed, according to subsection (1) of this section, and the deadlines in subsections (4) and (5) of this section or in accordance with the provisions of subsection (6) of this section. Amendments may be considered more frequently than once per year under the following circumstances:

(i) The initial adoption of a subarea plan. Subarea plans adopted under this subsection (2)(a)(i) must clarify, supplement, or implement jurisdiction-wide comprehensive plan policies, and may only be adopted if the cumulative impacts of the proposed plan are addressed by appropriate environmental review under chapter 43.21C RCW;

(ii) The development of an initial subarea plan for economic development located outside of the one hundred year floodplain in a county that has completed a state-funded pilot project that is based on watershed characterization and local habitat assessment;

(iii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW;

(iv) The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget; or

(v) The adoption of comprehensive plan amendments necessary to enact a planned action under *RCW 43.21C.031(2), provided that amendments are considered in accordance with the public participation program established by the county or city under this subsection (2)(a) and all persons who have requested notice of a comprehensive plan update are given notice of the amendments and an opportunity to comment.

(b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with the growth management hearings board or with the court.

(3)(a) Each county that designates urban growth areas under RCW 36.70A.110 shall review, according to the schedules established in subsection (5) of this section, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

(b) The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to

accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection may be combined with the review and evaluation required by RCW 36.70A.215.

(4) Except as provided in subsection (6) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:

(a) On or before December 1, 2004, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;

(b) On or before December 1, 2005, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;

(c) On or before December 1, 2006, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and

(d) On or before December 1, 2007, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(5) Except as otherwise provided in subsections (6) and (8) of this section, following the review of comprehensive plans and development regulations required by subsection (4) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:

(a) On or before June 30, 2015, and every eight years thereafter, for King, Pierce, and Snohomish counties and the cities within those counties;

(b) On or before June 30, 2016, and every eight years thereafter, for Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties;

(c) On or before June 30, 2017, and every eight years thereafter, for Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, and Yakima counties and the cities within those counties; and

(d) On or before June 30, 2018, and every eight years thereafter, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(6)(a) Nothing in this section precludes a county or city from conducting the review and evaluation required by this section before the deadlines established in subsections (4) and (5) of this section. Counties and cities may begin this process early and may be eligible for grants from the department, subject to available funding, if they elect to do so.

(b) A county that is subject to a deadline established in subsection (4)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the thirty-six months following the deadline established in subsection (4) of this section: The county has a population of less than fifty thousand and has had its population increase by no more than seventeen percent in the ten years preceding the deadline established in subsection (4) of this section as of that date.

(c) A city that is subject to a deadline established in subsection (4)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the thirty-six months following the deadline established in subsection (4) of this section: The city has a population of no more than five thousand and has had its population increase by the greater of either no more than one hundred persons or no more than seventeen percent in the ten years preceding the deadline established in subsection (4) of this section as of that date.

(d) A county or city that is subject to a deadline established in subsection (4)(d) of this section and that meets the criteria established in (b) or (c) of this subsection may comply with the requirements of subsection (4)(d) of this section at any time within the thirty-six months after the extension provided in (b) or (c) of this subsection.

(e) A county that is subject to a deadline established in subsection (5)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the twenty-four months following the deadline established in subsection (5) of this section: The county has a population of less than fifty thousand and has had its population increase by no more than seventeen percent in the ten years preceding the deadline established in subsection (5) of this section as of that date.

(f) A city that is subject to a deadline established in subsection (5)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the twenty-four months following the deadline established in subsection (5) of this section: The city has a population of no more than five thousand and has had its population increase by the greater of either no more than one hundred persons or no more than seventeen percent in the ten years preceding the deadline established in subsection (5) of this section as of that date.

(g) State agencies are encouraged to provide technical assistance to the counties and cities in the review of critical area ordinances, comprehensive plans, and development regulations.

(7)(a) The requirements imposed on counties and cities under this section shall be considered "requirements of this chapter" under the terms of RCW 36.70A.040(1). Only those counties and cities that meet the following criteria may receive grants, loans, pledges, or financial guarantees under chapter 43.155 or 70.146 RCW:

(i) Complying with the deadlines in this section;

(ii) Demonstrating substantial progress towards compliance with the schedules in this section for development regulations that protect critical areas; or

(iii) Complying with the extension provisions of subsection (6)(b), (c), or (d) of this section.

(b) A county or city that is fewer than twelve months out of compliance with the schedules in this section for development regulations that protect critical areas is making substantial progress towards compliance. Only those counties and cities in compliance with the schedules in this section may receive preference for grants or loans subject to the provisions of RCW 43.17.250.

(8)(a) Except as otherwise provided in (c) of this subsection, if a participating watershed is achieving benchmarks and goals for the protection of critical areas functions and

values, the county is not required to update development regulations to protect critical areas as they specifically apply to agricultural activities in that watershed.

(b) A county that has made the election under RCW 36.70A.710(1) may only adopt or amend development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed if:

(i) A work plan has been approved for that watershed in accordance with RCW 36.70A.725;

(ii) The local watershed group for that watershed has requested the county to adopt or amend development regulations as part of a work plan developed under RCW 36.70A.720;

(iii) The adoption or amendment of the development regulations is necessary to enable the county to respond to an order of the growth management hearings board or court;

(iv) The adoption or amendment of development regulations is necessary to address a threat to human health or safety; or

(v) Three or more years have elapsed since the receipt of funding.

(c) Beginning ten years from the date of receipt of funding, a county that has made the election under RCW 36.70A.710(1) must review and, if necessary, revise development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed in accordance with the review and revision requirements and timeline in subsection (5) of this section. This subsection (8)(c) does not apply to a participating watershed that has determined under RCW 36.70A.720(2)(c)(ii) that the watershed's goals and benchmarks for protection have been met. [2012 c 191 § 1. Prior: 2011 c 360 § 16; 2011 c 353 § 2; prior: 2010 c 216 § 1; 2010 c 211 § 2; 2009 c 479 § 23; 2006 c 285 § 2; prior: 2005 c 423 § 6; 2005 c 294 § 2; 2002 c 320 § 1; 1997 c 429 § 10; 1995 c 347 § 106; 1990 1st ex.s. c 17 § 13.]

***Reviser's note:** The requirements for a planned action were moved by 2012 1st sp.s. c 1 from RCW 43.21C.031 to RCW 43.21C.440.

Intent—2011 c 353: "It is the legislature's intent to provide local governments with more time to meet certain statutory requirements. Many cities and counties in Washington are facing revenue shortfalls, higher expenses, and more difficulty with borrowing money as a result of the economic downturn. The effects of the economic downturn on the budgets of local governments will be felt most deeply from 2010 to 2012. Local governments are facing the combined impact of decreased tax revenues, a falloff in state and federal aid, and increased demand for social services. With the loss of tax revenue and state and federal aid, local governments are being forced to make significant cuts that will eliminate jobs, curtail essential services, and increase the number of people in need. Additionally, local governments are struggling to comply with certain statutory requirements. Local governments want to comply with these statutory requirements, but with budget constraints, they need more time to do so. The legislature does not intend to remove any existing statutory requirement, but rather modify the time under which a local government must meet certain statutory requirements." [2011 c 353 § 1.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

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

Intent—2006 c 285: "There is a statewide interest in maintaining coordinated planning as called for in the legislative findings of the growth management act, RCW 36.70A.010. It is the intent of the legislature that smaller, slower-growing counties and cities be provided with flexibility in meeting the requirements to review local plans and development regulations in RCW 36.70A.130, while ensuring coordination and consistency with the plans of neighboring cities and counties." [2006 c 285 § 1.]

Intent—Effective date—2005 c 423: See notes following RCW 36.70A.030.

Intent—2005 c 294: "The legislature recognizes the importance of appropriate and meaningful land use measures and that such measures are critical to preserving and fostering the quality of life enjoyed by Washingtonians. The legislature recognizes also that the growth management act requires counties and cities to review and, if needed, revise their comprehensive plans and development regulations on a cyclical basis. These requirements, which often require significant compliance efforts by local governments are, in part, an acknowledgment of the continual changes that occur within the state, and the need to ensure that land use measures reflect the collective wishes of its citizenry.

The legislature acknowledges that only those jurisdictions in compliance with the review and revision schedules of the growth management act are eligible to receive funds from the public works assistance and water quality accounts in the state treasury. The legislature further recognizes that some jurisdictions that are not yet in compliance with these review and revision schedules have demonstrated substantial progress towards compliance.

The legislature, therefore, intends to grant jurisdictions that are not in compliance with requirements for development regulations that protect critical areas, but are demonstrating substantial progress towards compliance with these requirements, twelve months of additional eligibility to receive grants, loans, pledges, or financial guarantees from the public works assistance and water quality accounts in the state treasury. The legislature intends to specify, however, that only counties and cities in compliance with the review and revision schedules of the growth management act may receive preference for financial assistance from these accounts." [2005 c 294 § 1.]

Effective date—2005 c 294: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 5, 2005]." [2005 c 294 § 3.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Definitions: See RCW 36.70A.703.

RCW 36.70A.130(2) does not apply to master planned locations in industrial land banks: RCW 36.70A.367(2)(c).

Additional notes found at www.leg.wa.gov

36.70A.1301 Request to amend urban growth area—Timing—Criteria. (Expires December 31, 2015.) (1) The legislative authority of a city planning under RCW 36.70A.040 may request, as part of the county's annual comprehensive plan amendment process, that the applicable county legislative authority amend the urban growth area within which the city is located. A request must meet the county's application deadline for that year's comprehensive plan amendment process. A determination to honor, modify, or reject a request under this section must be issued by the county, as part of the county's annual comprehensive plan amendment process.

(2) Urban growth area amendment requests under this subsection:

(a) May only occur in counties located east of the crest of the Cascade mountain range that have more than one hundred thousand and fewer than two hundred thousand residents;

(b) Must be for the purpose of increasing the amount of territory within the amended urban growth area that is zoned for industrial purposes and the additional land is needed to meet the city's and county's documented needs for additional industrial land to serve their planned population growth;

(c) May not increase the amount of territory within the amended urban growth area by an amount exceeding seven percent of the total area within the requesting city. Land area determinations under this subsection (2)(c) must be made on a per occurrence, noncumulative basis;

(d) Must be preceded by a completed development proposal and phased master plan for the area to which the amendment applies and a capital facilities plan with identi-

fied funding sources to provide the public facilities and services needed to serve the area; and

(e) Are null and void if the applicable development proposal has not been wholly or partially implemented within five years of the amendment, or if the area to which the amendment applies has not been annexed within five years of the amendment.

(3) Nothing in this section limits or otherwise modifies the authority of counties and cities to enter into interlocal agreements under chapter 39.34 RCW for planning costs incurred by a county in accordance with a request under this section.

(4) This section expires December 31, 2015. [2012 c 191 § 2.]

36.70A.131 Mineral resource lands—Review of related designations and development regulations. As part of the review required by RCW 36.70A.130(1), a county or city shall review its mineral resource lands designations adopted pursuant to RCW 36.70A.170 and mineral resource lands development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060. In its review, the county or city shall take into consideration:

(1) New information made available since the adoption or last review of its designations or development regulations, including data available from the department of natural resources relating to mineral resource deposits; and

(2) New or modified model development regulations for mineral resource lands prepared by the department of natural resources, the *department of community, trade, and economic development, or the Washington state association of counties. [1998 c 286 § 7.]

*Reviser's note: The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

36.70A.140 Comprehensive plans—Ensure public participation. Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments. In enacting legislation in response to the board's decision pursuant to RCW 36.70A.300 declaring part or all of a comprehensive plan or development regulation invalid, the county or city shall provide for public participation that is appropriate and effective under the circumstances presented by the board's order. Errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed. [1995 c 347 § 107; 1990 1st ex.s. c 17 § 14.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

36.70A.150 Identification of lands useful for public purposes. Each county and city that is required or chooses to prepare a comprehensive land use plan under RCW 36.70A.040 shall identify lands useful for public purposes such as utility corridors, transportation corridors, landfills, sewage treatment facilities, storm water management facilities, recreation, schools, and other public uses. The county shall work with the state and the cities within its borders to identify areas of shared need for public facilities. The jurisdictions within the county shall prepare a prioritized list of lands necessary for the identified public uses including an estimated date by which the acquisition will be needed.

The respective capital acquisition budgets for each jurisdiction shall reflect the jointly agreed upon priorities and time schedule. [1991 c 322 § 23; 1990 1st ex.s. c 17 § 15.]

Findings—Intent—1991 c 322: See notes following RCW 86.12.200.

36.70A.160 Identification of open space corridors—Purchase authorized. Each county and city that is required or chooses to prepare a comprehensive land use plan under RCW 36.70A.040 shall identify open space corridors within and between urban growth areas. They shall include lands useful for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030. Identification of a corridor under this section by a county or city shall not restrict the use or management of lands within the corridor for agricultural or forest purposes. Restrictions on the use or management of such lands for agricultural or forest purposes imposed after identification solely to maintain or enhance the value of such lands as a corridor may occur only if the county or city acquires sufficient interest to prevent development of the lands or to control the resource development of the lands. The requirement for acquisition of sufficient interest does not include those corridors regulated by the interstate commerce commission, under provisions of 16 U.S.C. Sec. 1247(d), 16 U.S.C. Sec. 1248, or 43 U.S.C. Sec. 912. Nothing in this section shall be interpreted to alter the authority of the state, or a county or city, to regulate land use activities.

The city or county may acquire by donation or purchase the fee simple or lesser interests in these open space corridors using funds authorized by RCW 84.34.230 or other sources. [1992 c 227 § 1; 1990 1st ex.s. c 17 § 16.]

36.70A.165 Property designated as greenbelt or open space—Not subject to adverse possession. The legislature recognizes that the preservation of urban greenbelts is an integral part of comprehensive growth management in Washington. The legislature further recognizes that certain greenbelts are subject to adverse possession action which, if carried out, threaten the comprehensive nature of this chapter. Therefore, a party shall not acquire by adverse possession property that is designated as a plat greenbelt or open space area or that is dedicated as open space to a public agency or to a bona fide homeowner's association. [1997 c 429 § 41.]

Additional notes found at www.leg.wa.gov

36.70A.170 Natural resource lands and critical areas—Designations. (1) On or before September 1, 1991, each county, and each city, shall designate where appropriate:

(a) Agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products;

(b) Forest lands that are not already characterized by urban growth and that have long-term significance for the commercial production of timber;

(c) Mineral resource lands that are not already characterized by urban growth and that have long-term significance for the extraction of minerals; and

(d) Critical areas.

(2) In making the designations required by this section, counties and cities shall consider the guidelines established pursuant to RCW 36.70A.050. [1990 1st ex.s. c 17 § 17.]

36.70A.171 Playing fields—Compliance with this chapter. In accordance with RCW 36.70A.030, 36.70A.060, *36.70A.1701, and 36.70A.130, playing fields and supporting facilities existing before July 1, 2004, on designated recreational lands shall be considered in compliance with the requirements of this chapter. [2005 c 423 § 5.]

*Reviser's note: RCW 36.70A.1701 expired June 30, 2006.

Intent—Effective date—2005 c 423: See notes following RCW 36.70A.030.

36.70A.172 Critical areas—Designation and protection—Best available science to be used. (1) In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

(2) If it determines that advice from scientific or other experts is necessary or will be of substantial assistance in reaching its decision, the growth management hearings board may retain scientific or other expert advice to assist in reviewing a petition under RCW 36.70A.290 that involves critical areas. [2010 c 211 § 3; 1995 c 347 § 105.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

36.70A.175 Wetlands to be delineated in accordance with manual. Wetlands regulated under development regulations adopted pursuant to this chapter shall be delineated in accordance with the manual adopted by the department pursuant to RCW 90.58.380. [1995 c 382 § 12.]

36.70A.177 Agricultural lands—Innovative zoning techniques—Accessory uses. (1) A county or a city may use a variety of innovative zoning techniques in areas designated as agricultural lands of long-term commercial significance under RCW 36.70A.170. The innovative zoning techniques should be designed to conserve agricultural lands and encourage the agricultural economy. Except as provided in subsection (3) of this section, a county or city should encourage nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes.

(2) Innovative zoning techniques a county or city may consider include, but are not limited to:

(a) Agricultural zoning, which limits the density of development and restricts or prohibits nonfarm uses of agricultural land and may allow accessory uses, including nonagricultural accessory uses and activities, that support, promote, or sustain agricultural operations and production, as provided in subsection (3) of this section;

(b) Cluster zoning, which allows new development on one portion of the land, leaving the remainder in agricultural or open space uses;

(c) Large lot zoning, which establishes as a minimum lot size the amount of land necessary to achieve a successful farming practice;

(d) Quarter/quarter zoning, which permits one residential dwelling on a one-acre minimum lot for each one-sixteenth of a section of land; and

(e) Sliding scale zoning, which allows the number of lots for single-family residential purposes with a minimum lot size of one acre to increase inversely as the size of the total acreage increases.

(3) Accessory uses allowed under subsection (2)(a) of this section shall comply with the following:

(a) Accessory uses shall be located, designed, and operated so as to not interfere with, and to support the continuation of, the overall agricultural use of the property and neighboring properties, and shall comply with the requirements of this chapter;

(b) Accessory uses may include:

(i) Agricultural accessory uses and activities, including but not limited to the storage, distribution, and marketing of regional agricultural products from one or more producers, agriculturally related experiences, or the production, marketing, and distribution of value-added agricultural products, including support services that facilitate these activities; and

(ii) Nonagricultural accessory uses and activities as long as they are consistent with the size, scale, and intensity of the existing agricultural use of the property and the existing buildings on the site. Nonagricultural accessory uses and activities, including new buildings, parking, or supportive uses, shall not be located outside the general area already developed for buildings and residential uses and shall not otherwise convert more than one acre of agricultural land to nonagricultural uses; and

(c) Counties and cities have the authority to limit or exclude accessory uses otherwise authorized in this subsection (3) in areas designated as agricultural lands of long-term commercial significance.

(4) This section shall not be interpreted to limit agricultural production on designated agricultural lands. [2006 c 147 § 1; 2004 c 207 § 1; 1997 c 429 § 23.]

Additional notes found at www.leg.wa.gov

36.70A.180 Chapter implementation—Intent. It is the intent of the legislature that counties and cities required to adopt a comprehensive plan under RCW 36.70A.040(1) begin implementing this chapter on or before July 1, 1990, including but not limited to: (1) Inventorying, designating, and conserving agricultural, forest, and mineral resource lands, and critical areas; and (2) considering the modification or adoption of comprehensive land use plans and develop-

ment regulations implementing the comprehensive land use plans. It is also the intent of the legislature that funds be made available to counties and cities beginning July 1, 1990, to assist them in meeting the requirements of this chapter. [2012 1st sp.s. c 5 § 3; 1990 1st ex.s. c 17 § 19.]

36.70A.190 Technical assistance, procedural criteria, grants, and mediation services. (1) The department shall establish a program of technical and financial assistance and incentives to counties and cities to encourage and facilitate the adoption and implementation of comprehensive plans and development regulations throughout the state.

(2) The department shall develop a priority list and establish funding levels for planning and technical assistance grants both for counties and cities that plan under RCW 36.70A.040. Priority for assistance shall be based on a county's or city's population growth rates, commercial and industrial development rates, the existence and quality of a comprehensive plan and development regulations, and other relevant factors.

(3) The department shall develop and administer a grant program to provide direct financial assistance to counties and cities for the preparation of comprehensive plans under this chapter. The department may establish provisions for county and city matching funds to conduct activities under this subsection. Grants may be expended for any purpose directly related to the preparation of a county or city comprehensive plan as the county or city and the department may agree, including, without limitation, the conducting of surveys, inventories and other data gathering and management activities, the retention of planning consultants, contracts with regional councils for planning and related services, and other related purposes.

(4) The department shall establish a program of technical assistance:

(a) Utilizing department staff, the staff of other state agencies, and the technical resources of counties and cities to help in the development of comprehensive plans required under this chapter. The technical assistance may include, but not be limited to, model land use ordinances, regional education and training programs, and information for local and regional inventories; and

(b) Adopting by rule procedural criteria to assist counties and cities in adopting comprehensive plans and development regulations that meet the goals and requirements of this chapter. These criteria shall reflect regional and local variations and the diversity that exists among different counties and cities that plan under this chapter.

(5) The department shall provide mediation services to resolve disputes between counties and cities regarding, among other things, coordination of regional issues and designation of urban growth areas.

(6) The department shall provide planning grants to enhance citizen participation under RCW 36.70A.140. [1991 sp.s. c 32 § 3; 1990 1st ex.s. c 17 § 20.]

36.70A.200 Siting of essential public facilities—Limitation on liability. (1) The comprehensive plan of each county and city that is planning under RCW 36.70A.040 shall include a process for identifying and siting essential public facilities. Essential public facilities include those facilities

that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, regional transit authority facilities as defined in RCW 81.112.020, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.

(2) Each county and city planning under RCW 36.70A.040 shall, not later than September 1, 2002, establish a process, or amend its existing process, for identifying and siting essential public facilities and adopt or amend its development regulations as necessary to provide for the siting of secure community transition facilities consistent with statutory requirements applicable to these facilities.

(3) Any city or county not planning under RCW 36.70A.040 shall, not later than September 1, 2002, establish a process for siting secure community transition facilities and adopt or amend its development regulations as necessary to provide for the siting of such facilities consistent with statutory requirements applicable to these facilities.

(4) The office of financial management shall maintain a list of those essential state public facilities that are required or likely to be built within the next six years. The office of financial management may at any time add facilities to the list.

(5) No local comprehensive plan or development regulation may preclude the siting of essential public facilities.

(6) No person may bring a cause of action for civil damages based on the good faith actions of any county or city to provide for the siting of secure community transition facilities in accordance with this section and with the requirements of chapter 12, Laws of 2001 2nd sp. sess. For purposes of this subsection, "person" includes, but is not limited to, any individual, agency as defined in RCW 42.17A.005, corporation, partnership, association, and limited liability entity.

(7) Counties or cities siting facilities pursuant to subsection (2) or (3) of this section shall comply with RCW 71.09.341.

(8) The failure of a county or city to act by the deadlines established in subsections (2) and (3) of this section is not:

(a) A condition that would disqualify the county or city for grants, loans, or pledges under RCW 43.155.070 or 70.146.070;

(b) A consideration for grants or loans provided under RCW 43.17.250(3); or

(c) A basis for any petition under RCW 36.70A.280 or for any private cause of action. [2013 c 275 § 5; 2011 c 60 § 17; 2010 c 62 § 1; 2002 c 68 § 2; 2001 2nd sp.s. c 12 § 205; 1998 c 171 § 3; 1991 sp.s. c 32 § 1.]

Effective date—2011 c 60: See RCW 42.17A.919.

Purpose—2002 c 68: "The purpose of this act is to:

(1) Enable the legislature to act upon the recommendations of the joint select committee on the equitable distribution of secure community transition facilities established in section 225, chapter 12, Laws of 2001 2nd sp. sess.; and

(2) Harmonize the preemption provisions in RCW 71.09.250 with the preemption provisions applying to future secure community transition facilities to reflect the joint select committee's recommendation that the preemption granted for future secure community transition facilities be the same throughout the state." [2002 c 68 § 1.]

(2014 Ed.)

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

36.70A.210 Countywide planning policies. (1) The legislature recognizes that counties are regional governments within their boundaries, and cities are primary providers of urban governmental services within urban growth areas. For the purposes of this section, a "countywide planning policy" is a written policy statement or statements used solely for establishing a countywide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter. This framework shall ensure that city and county comprehensive plans are consistent as required in RCW 36.70A.100. Nothing in this section shall be construed to alter the land-use powers of cities.

(2) The legislative authority of a county that plans under RCW 36.70A.040 shall adopt a countywide planning policy in cooperation with the cities located in whole or in part within the county as follows:

(a) No later than sixty calendar days from July 16, 1991, the legislative authority of each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040 shall convene a meeting with representatives of each city located within the county for the purpose of establishing a collaborative process that will provide a framework for the adoption of a countywide planning policy. In other counties that are required or choose to plan under RCW 36.70A.040, this meeting shall be convened no later than sixty days after the date the county adopts its resolution of intention or was certified by the office of financial management.

(b) The process and framework for adoption of a countywide planning policy specified in (a) of this subsection shall determine the manner in which the county and the cities agree to all procedures and provisions including but not limited to desired planning policies, deadlines, ratification of final agreements and demonstration thereof, and financing, if any, of all activities associated therewith.

(c) If a county fails for any reason to convene a meeting with representatives of cities as required in (a) of this subsection, the governor may immediately impose any appropriate sanction or sanctions on the county from those specified under RCW 36.70A.340.

(d) If there is no agreement by October 1, 1991, in a county that was required or chose to plan under RCW 36.70A.040 as of June 1, 1991, or if there is no agreement within one hundred twenty days of the date the county adopted its resolution of intention or was certified by the office of financial management in any other county that is required or chooses to plan under RCW 36.70A.040, the governor shall first inquire of the jurisdictions as to the reason or reasons for failure to reach an agreement. If the governor deems it appropriate, the governor may immediately request the assistance of the *department of community, trade, and economic development to mediate any disputes that preclude agreement. If mediation is unsuccessful in resolving all disputes that will lead to agreement, the governor may impose appropriate sanctions from those specified under RCW 36.70A.340 on the county, city, or cities for failure to reach an agreement as provided in this section. The governor shall

specify the reason or reasons for the imposition of any sanction.

(e) No later than July 1, 1992, the legislative authority of each county that was required or chose to plan under RCW 36.70A.040 as of June 1, 1991, or no later than fourteen months after the date the county adopted its resolution of intention or was certified by the office of financial management the county legislative authority of any other county that is required or chooses to plan under RCW 36.70A.040, shall adopt a countywide planning policy according to the process provided under this section and that is consistent with the agreement pursuant to (b) of this subsection, and after holding a public hearing or hearings on the proposed countywide planning policy.

(3) A countywide planning policy shall at a minimum, address the following:

(a) Policies to implement RCW 36.70A.110;

(b) Policies for promotion of contiguous and orderly development and provision of urban services to such development;

(c) Policies for siting public capital facilities of a countywide or statewide nature, including transportation facilities of statewide significance as defined in RCW 47.06.140;

(d) Policies for countywide transportation facilities and strategies;

(e) Policies that consider the need for affordable housing, such as housing for all economic segments of the population and parameters for its distribution;

(f) Policies for joint county and city planning within urban growth areas;

(g) Policies for countywide economic development and employment, which must include consideration of the future development of commercial and industrial facilities; and

(h) An analysis of the fiscal impact.

(4) Federal agencies and Indian tribes may participate in and cooperate with the countywide planning policy adoption process. Adopted countywide planning policies shall be adhered to by state agencies.

(5) Failure to adopt a countywide planning policy that meets the requirements of this section may result in the imposition of a sanction or sanctions on a county or city within the county, as specified in RCW 36.70A.340. In imposing a sanction or sanctions, the governor shall specify the reasons for failure to adopt a countywide planning policy in order that any imposed sanction or sanctions are fairly and equitably related to the failure to adopt a countywide planning policy.

(6) Cities and the governor may appeal an adopted countywide planning policy to the growth management hearings board within sixty days of the adoption of the countywide planning policy.

(7) Multicounty planning policies shall be adopted by two or more counties, each with a population of four hundred fifty thousand or more, with contiguous urban areas and may be adopted by other counties, according to the process established under this section or other processes agreed to among the counties and cities within the affected counties throughout the multicounty region. [2009 c 121 § 2; 1998 c 171 § 4; 1994 c 249 § 28; 1993 sp.s. c 6 § 4; 1991 sp.s. c 32 § 2.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Additional notes found at www.leg.wa.gov

36.70A.215 Review and evaluation program. (1)

Subject to the limitations in subsection (7) of this section, a county shall adopt, in consultation with its cities, countywide planning policies to establish a review and evaluation program. This program shall be in addition to the requirements of RCW 36.70A.110, 36.70A.130, and 36.70A.210. In developing and implementing the review and evaluation program required by this section, the county and its cities shall consider information from other appropriate jurisdictions and sources. The purpose of the review and evaluation program shall be to:

(a) Determine whether a county and its cities are achieving urban densities within urban growth areas by comparing growth and development assumptions, targets, and objectives contained in the countywide planning policies and the county and city comprehensive plans with actual growth and development that has occurred in the county and its cities; and

(b) Identify reasonable measures, other than adjusting urban growth areas, that will be taken to comply with the requirements of this chapter.

(2) The review and evaluation program shall:

(a) Encompass land uses and activities both within and outside of urban growth areas and provide for annual collection of data on urban and rural land uses, development, critical areas, and capital facilities to the extent necessary to determine the quantity and type of land suitable for development, both for residential and employment-based activities;

(b) Provide for evaluation of the data collected under (a) of this subsection as provided in subsection (3) of this section. The evaluation shall be completed no later than one year prior to the deadline for review and, if necessary, update of comprehensive plans and development regulations as required by RCW 36.70A.130. The county and its cities may establish in the countywide planning policies indicators, benchmarks, and other similar criteria to use in conducting the evaluation;

(c) Provide for methods to resolve disputes among jurisdictions relating to the countywide planning policies required by this section and procedures to resolve inconsistencies in collection and analysis of data; and

(d) Provide for the amendment of the countywide policies and county and city comprehensive plans as needed to remedy an inconsistency identified through the evaluation required by this section, or to bring these policies into compliance with the requirements of this chapter.

(3) At a minimum, the evaluation component of the program required by subsection (1) of this section shall:

(a) Determine whether there is sufficient suitable land to accommodate the countywide population projection established for the county pursuant to RCW 43.62.035 and the subsequent population allocations within the county and between the county and its cities and the requirements of RCW 36.70A.110;

(b) Determine the actual density of housing that has been constructed and the actual amount of land developed for commercial and industrial uses within the urban growth area since the adoption of a comprehensive plan under this chapter or since the last periodic evaluation as required by subsection (1) of this section; and

(c) Based on the actual density of development as determined under (b) of this subsection, review commercial,

industrial, and housing needs by type and density range to determine the amount of land needed for commercial, industrial, and housing for the remaining portion of the twenty-year planning period used in the most recently adopted comprehensive plan.

(4) If the evaluation required by subsection (3) of this section demonstrates an inconsistency between what has occurred since the adoption of the countywide planning policies and the county and city comprehensive plans and development regulations and what was envisioned in those policies and plans and the planning goals and the requirements of this chapter, as the inconsistency relates to the evaluation factors specified in subsection (3) of this section, the county and its cities shall adopt and implement measures that are reasonably likely to increase consistency during the subsequent five-year period. If necessary, a county, in consultation with its cities as required by RCW 36.70A.210, shall adopt amendments to countywide planning policies to increase consistency. The county and its cities shall annually monitor the measures adopted under this subsection to determine their effect and may revise or rescind them as appropriate.

(5)(a) Not later than July 1, 1998, the department shall prepare a list of methods used by counties and cities in carrying out the types of activities required by this section. The department shall provide this information and appropriate technical assistance to counties and cities required to or choosing to comply with the provisions of this section.

(b) By December 31, 2007, the department shall submit to the appropriate committees of the legislature a report analyzing the effectiveness of the activities described in this section in achieving the goals envisioned by the countywide planning policies and the comprehensive plans and development regulations of the counties and cities.

(6) From funds appropriated by the legislature for this purpose, the department shall provide grants to counties, cities, and regional planning organizations required under subsection (7) of this section to conduct the review and perform the evaluation required by this section.

(7) The provisions of this section shall apply to counties, and the cities within those counties, that were greater than one hundred fifty thousand in population in 1995 as determined by office of financial management population estimates and that are located west of the crest of the Cascade mountain range. Any other county planning under RCW 36.70A.040 may carry out the review, evaluation, and amendment programs and procedures as provided in this section. [2011 c 353 § 3; 1997 c 429 § 25.]

Intent—2011 c 353: See note following RCW 36.70A.130.

Additional notes found at www.leg.wa.gov

36.70A.250 Growth management hearings board—Creation—Members. (1) A growth management hearings board for the state of Washington is created. The board shall consist of seven members qualified by experience or training in matters pertaining to land use law or land use planning and who have experience in the practical application of those matters. All seven board members shall be appointed by the governor, two each residing respectively in the central Puget Sound, eastern Washington, and western Washington regions, plus one board member residing within the state of Washington. At least three members of the board shall be

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admitted to practice law in this state, one each residing respectively in the central Puget Sound, eastern Washington, and western Washington regions. At least three members of the board shall have been a city or county elected official, one each residing respectively in the central Puget Sound, eastern Washington, and western Washington regions. After expiration of the terms of board members on the previously existing three growth management hearings boards, no more than four members of the seven-member board may be members of the same major political party. No more than two members at the time of their appointment or during their term may reside in the same county.

(2) Each member of the board shall be appointed for a term of six years. A vacancy shall be filled by appointment by the governor for the unexpired portion of the term in which the vacancy occurs. Members of the previously existing three growth management hearings boards appointed before July 1, 2010, shall complete their staggered, six-year terms as members of the growth management hearings board created under subsection (1) of this section. The reduction from nine board members on the previously existing three growth management hearings boards to seven total members on the growth management hearings board shall be made through attrition, voluntary resignation, or retirement. [2010 c 211 § 4; 1994 c 249 § 29; 1991 sp.s. c 32 § 5.]

Effective date—2010 c 211: "This act takes effect July 1, 2010." [2010 c 211 § 18.]

Transfer of power, duties, and functions—2010 c 211: "(1) The three growth management hearings boards are abolished and their powers, duties, and functions are transferred to the growth management hearings board.

(2) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the three growth management hearings boards must be delivered to the custody of the growth management hearings board. All office furnishings, office equipment, motor vehicles, and other tangible property in the possession of the three growth management hearings boards must be made available to the growth management hearings board.

(3) All funds, credits, or other assets held by the three growth management hearings boards must, on July 1, 2010, be transferred to the growth management hearings board. Any appropriations made to the three growth management hearings boards must, on July 1, 2010, be transferred and credited to the growth management hearings board. If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(4) All employees of the three growth management hearings boards are transferred to the growth management hearings board. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the growth management hearings board to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(5) This section may not be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the public employment relations commission as provided by law.

(6) All rules and pending business before the three growth management hearings boards must be continued and acted upon by the growth management hearings board. All existing contracts and obligations remain in full force and must be performed by the growth management hearings board.

(7) The transfer of the powers, duties, functions, and personnel of the three growth management hearings boards to the growth management hearings board does not affect the validity of any act performed before July 1, 2010.

(8) All cases decided and all orders previously issued by the three growth management hearings boards remain in full force and effect and are not affected by this act." [2010 c 211 § 17.]

Additional notes found at www.leg.wa.gov

36.70A.252 Growth management hearings board—Consolidation into environmental and land use hearings office. (1) On July 1, 2011, the growth management hearings board is administratively consolidated into the environmental and land use hearings office created in RCW 43.21B.005.

(2) Not later than July 1, 2012, the growth management hearings board consists of seven members qualified by experience or training in matters pertaining to land use law or land use planning, except that the governor may reduce the board to six members if warranted by the board's caseload. All board members must be appointed by the governor, two each residing respectively in the central Puget Sound, eastern Washington, and western Washington regions and shall continue to meet the qualifications set out in *RCW 36.70A.260. The reduction from seven board members to six board members must be made through attrition, voluntary resignation, or retirement. [2010 c 210 § 15.]

*Reviser's note: RCW 36.70A.260 was amended by 2010 c 211 § 5, eliminating the reference to board member qualifications. 2010 c 211 § 4 added board member qualifications to RCW 36.70A.250.

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

36.70A.260 Growth management hearings board—Regional panels. (1) Each petition for review that is filed with the growth management hearings board shall be heard and decided by a regional panel of growth management hearings board members. Regional panels shall be constituted as follows:

(a) Central Puget Sound region. A three-member central Puget Sound panel shall be selected to hear matters pertaining to cities and counties located within the region comprised of King, Pierce, Snohomish, and Kitsap counties.

(b) Eastern Washington region. A three-member eastern Washington panel shall be selected to hear matters pertaining to cities and counties that are required or choose to plan under RCW 36.70A.040 and are located east of the crest of the Cascade mountains.

(c) Western Washington region. A three-member western Washington panel shall be selected to hear matters pertaining to cities and counties that are required or choose to plan under RCW 36.70A.040, are located west of the crest of the Cascade mountains, and are not included in the central Puget Sound region. Skamania county, if it is required or chooses to plan under RCW 36.70A.040, may elect to be included within either the western Washington region or the eastern Washington region.

(2)(a) Each regional panel selected to hear and decide cases shall consist of three board members, at least a majority of whom shall reside within the region in which the case arose, unless such members cannot sit on a particular case because of recusal or disqualification, or unless the board administrative officer determines that there is an emergency including, but not limited to, the unavailability of a board member due to illness, absence, vacancy, or significant workload imbalance. The presiding officer of each case shall reside within the region in which the case arose, unless the board administrative officer determines that there is an emergency.

(b) Except as provided otherwise in this subsection (2)(b), each regional panel must: (i) Include one member admitted to practice law in this state; (ii) include one member who has been a city or county elected official; and (iii) reflect the political composition of the board. The requirements of this subsection (2)(b) may be waived by the board administrative officer due to member unavailability, significant workload imbalances, or other reasons. [2010 c 211 § 5; 1994 c 249 § 30; 1991 sp.s. c 32 § 6.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Additional notes found at www.leg.wa.gov

36.70A.270 Growth management hearings board—Conduct, procedure, and compensation. The growth management hearings board shall be governed by the following rules on conduct and procedure:

(1) Any board member may be removed for inefficiency, malfeasance, and misfeasance in office, under specific written charges filed by the governor. The governor shall transmit such written charges to the member accused and the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Removal of any member of the board by the tribunal shall disqualify such member for reappointment.

(2) Each board member shall receive reimbursement for travel expenses incurred in the discharge of his or her duties in accordance with RCW 43.03.050 and 43.03.060. Each member shall receive an annual salary to be determined by the governor pursuant to RCW 43.03.040. The principal office of the board shall be located in Olympia.

(3) Each board member shall not: (a) Be a candidate for or hold any other public office or trust; (b) engage in any occupation or business interfering with or inconsistent with his or her duty as a board member; and (c) for a period of one year after the termination of his or her board membership, act in a representative capacity before the board on any matter.

(4) A majority of the board shall constitute a quorum for adopting rules necessary for the conduct of its powers and duties or transacting other official business, and may act even though one position of the board is vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The board shall perform all the powers and duties specified in this chapter or as otherwise provided by law.

(5) The board may use one or more hearing examiners to assist the board in its hearing function, to make conclusions of law and findings of fact and, if requested by the board, to make recommendations to the board for decisions in cases before the board. Such hearing examiners must have demonstrated knowledge of land use planning and law. The board shall specify in its rules of practice and procedure, as required by subsection (7) of this section, the procedure and criteria to be employed for designating hearing examiners as a presiding officer. Hearing examiners used by the board shall meet the requirements of subsection (3) of this section. The findings and conclusions of the hearing examiner shall not become final until they have been formally approved by the board. This authorization to use hearing examiners does not

waive the requirement of RCW 36.70A.300 that final orders be issued within one hundred eighty days of board receipt of a petition.

(6) The board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members of the regional panel deciding the particular case and upon being filed at the board's principal office, and shall be open for public inspection at all reasonable times.

(7) All proceedings before the board, any of its members, or a hearing examiner appointed by the board shall be conducted in accordance with such administrative rules of practice and procedure as the board prescribes. The board shall develop and adopt rules of practice and procedure, including rules regarding expeditious and summary disposition of appeals and the assignment of cases to regional panels. The board shall publish such rules and decisions it renders and arrange for the reasonable distribution of the rules and decisions. Except as it conflicts with specific provisions of this chapter, the administrative procedure act, chapter 34.05 RCW, and specifically including the provisions of RCW 34.05.455 governing ex parte communications, shall govern the practice and procedure of the board.

(8) A board member or hearing examiner is subject to disqualification under chapter 34.05 RCW. The rules of practice of the board shall establish procedures by which a party to a hearing conducted before the board may file with the board a motion to disqualify, with supporting affidavit, against a board member or hearing examiner assigned to preside at the hearing.

(9) All members of the board shall meet on at least an annual basis with the objective of sharing information that promotes the goals and purposes of this chapter.

(10) The board shall annually elect one of its members to be the board administrative officer. The duties and responsibilities of the administrative officer include handling day-to-day administrative, budget, and personnel matters on behalf of the board, together with making case assignments to board members in accordance with the board's rules of procedure in order to achieve a fair and balanced workload among all board members. The administrative officer of the board may carry a reduced caseload to allow time for performing the administrative work functions. [2010 c 211 § 6; 2010 c 210 § 16; 1997 c 429 § 11; 1996 c 325 § 1; 1994 c 257 § 1; 1991 sp.s. c 32 § 7.]

Reviser's note: This section was amended by 2010 c 210 § 16 and by 2010 c 211 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Additional notes found at www.leg.wa.gov

36.70A.280 Growth management hearings board—Matters subject to review. (Effective until December 31, 2020.) (1) The growth management hearings board shall hear and determine only those petitions alleging either:

(a) That, except as provided otherwise by this subsection, a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter,

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chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW. Nothing in this subsection authorizes the board to hear petitions alleging noncompliance with *RCW 36.70A.5801;

(b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted;

(c) That the approval of a work plan adopted under RCW 36.70A.735(1)(a) is not in compliance with the requirements of the program established under RCW 36.70A.710;

(d) That regulations adopted under RCW 36.70A.735(1)(b) are not regionally applicable and cannot be adopted, wholly or partially, by another jurisdiction;

(e) That a department certification under RCW 36.70A.735(1)(c) is erroneous; or

(f) That a department determination under RCW 36.70A.060(1)(d) is erroneous.

(2) A petition may be filed only by: (a) The state, or a county or city that plans under this chapter; (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested; (c) a person who is certified by the governor within sixty days of filing the request with the board; or (d) a person qualified pursuant to RCW 34.05.530.

(3) For purposes of this section "person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit thereof, or public or private organization or entity of any character.

(4) To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the board.

(5) When considering a possible adjustment to a growth management planning population projection prepared by the office of financial management, the board shall consider the implications of any such adjustment to the population forecast for the entire state.

The rationale for any adjustment that is adopted by the board must be documented and filed with the office of financial management within ten working days after adoption.

If adjusted by the board, a county growth management planning population projection shall only be used for the planning purposes set forth in this chapter and shall be known as the "board adjusted population projection." None of these changes shall affect the official state and county population forecasts prepared by the office of financial management, which shall continue to be used for state budget and planning purposes. [2014 c 147 § 3; 2011 c 360 § 17; 2010 c 211 § 7; 2008 c 289 § 5; 2003 c 332 § 2; 1996 c 325 § 2; 1995 c 347 § 108; 1994 c 249 § 31; 1991 sp.s. c 32 § 9.]

***Reviser's note:** RCW 36.70A.5801 expired January 1, 2011.

Expiration date—2014 c 147 § 3: "Section 3 of this act expires December 31, 2020." [2014 c 147 § 4.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Findings—2008 c 289: "(1) The legislature recognizes that the implications of a changed climate will affect the people, institutions, and economies of Washington. The legislature also recognizes that it is in the public interest to reduce the state's dependence upon foreign sources of carbon fuels that do

not promote energy independence or the economic strength of the state. The legislature finds that the state, including its counties, cities, and residents, must engage in activities that reduce greenhouse gas emissions and dependence upon foreign oil.

(2) The legislature further recognizes that: (a) Patterns of land use development influence transportation-related greenhouse gas emissions and the need for foreign oil; (b) fossil fuel-based transportation is the largest source of greenhouse gas emissions in Washington; and (c) the state and its residents will not achieve emission reductions established in *RCW 80.80.020 without a significant decrease in transportation emissions.

(3) The legislature, therefore, finds that it is in the public interest of the state to provide appropriate legal authority, where required, and to aid in the development of policies, practices, and methodologies that may assist counties and cities in addressing challenges associated with greenhouse gas emissions and our state's dependence upon foreign oil." [2008 c 289 § 1.]

***Reviser's note:** RCW 80.80.020 was repealed by 2008 c 14 § 13.

Application—2008 c 289: "This act is not intended to amend or affect chapter 353, Laws of 2007." [2008 c 289 § 6.]

Intent—2003 c 332: "This act is intended to codify the Washington State Court of Appeals holding in *Wells v. Western Washington Growth Management Hearings Board*, 100 Wn. App. 657 (2000), by mandating that to establish participation standing under the growth management act, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the growth management hearings board." [2003 c 332 § 1.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Definitions: See RCW 36.70A.703.

Additional notes found at www.leg.wa.gov

36.70A.280 Growth management hearings board—Matters subject to review. (Effective December 31, 2020.)

(1) The growth management hearings board shall hear and determine only those petitions alleging either:

(a) That, except as provided otherwise by this subsection, a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW. Nothing in this subsection authorizes the board to hear petitions alleging noncompliance with *RCW 36.70A.5801;

(b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted;

(c) That the approval of a work plan adopted under RCW 36.70A.735(1)(a) is not in compliance with the requirements of the program established under RCW 36.70A.710;

(d) That regulations adopted under RCW 36.70A.735(1)(b) are not regionally applicable and cannot be adopted, wholly or partially, by another jurisdiction; or

(e) That a department certification under RCW 36.70A.735(1)(c) is erroneous.

(2) A petition may be filed only by: (a) The state, or a county or city that plans under this chapter; (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested; (c) a person who is certified by the governor within sixty days of filing the request with the board; or (d) a person qualified pursuant to RCW 34.05.530.

(3) For purposes of this section "person" means any individual, partnership, corporation, association, state agency,

governmental subdivision or unit thereof, or public or private organization or entity of any character.

(4) To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the board.

(5) When considering a possible adjustment to a growth management planning population projection prepared by the office of financial management, the board shall consider the implications of any such adjustment to the population forecast for the entire state.

The rationale for any adjustment that is adopted by the board must be documented and filed with the office of financial management within ten working days after adoption.

If adjusted by the board, a county growth management planning population projection shall only be used for the planning purposes set forth in this chapter and shall be known as the "board adjusted population projection." None of these changes shall affect the official state and county population forecasts prepared by the office of financial management, which shall continue to be used for state budget and planning purposes. [2011 c 360 § 17; 2010 c 211 § 7; 2008 c 289 § 5; 2003 c 332 § 2; 1996 c 325 § 2; 1995 c 347 § 108; 1994 c 249 § 31; 1991 sp.s. c 32 § 9.]

***Reviser's note:** RCW 36.70A.5801 expired January 1, 2011.

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Findings—2008 c 289: "(1) The legislature recognizes that the implications of a changed climate will affect the people, institutions, and economies of Washington. The legislature also recognizes that it is in the public interest to reduce the state's dependence upon foreign sources of carbon fuels that do not promote energy independence or the economic strength of the state. The legislature finds that the state, including its counties, cities, and residents, must engage in activities that reduce greenhouse gas emissions and dependence upon foreign oil.

(2) The legislature further recognizes that: (a) Patterns of land use development influence transportation-related greenhouse gas emissions and the need for foreign oil; (b) fossil fuel-based transportation is the largest source of greenhouse gas emissions in Washington; and (c) the state and its residents will not achieve emission reductions established in *RCW 80.80.020 without a significant decrease in transportation emissions.

(3) The legislature, therefore, finds that it is in the public interest of the state to provide appropriate legal authority, where required, and to aid in the development of policies, practices, and methodologies that may assist counties and cities in addressing challenges associated with greenhouse gas emissions and our state's dependence upon foreign oil." [2008 c 289 § 1.]

***Reviser's note:** RCW 80.80.020 was repealed by 2008 c 14 § 13.

Application—2008 c 289: "This act is not intended to amend or affect chapter 353, Laws of 2007." [2008 c 289 § 6.]

Intent—2003 c 332: "This act is intended to codify the Washington State Court of Appeals holding in *Wells v. Western Washington Growth Management Hearings Board*, 100 Wn. App. 657 (2000), by mandating that to establish participation standing under the growth management act, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the growth management hearings board." [2003 c 332 § 1.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Definitions: See RCW 36.70A.703.

Additional notes found at www.leg.wa.gov

36.70A.290 Growth management hearings board—Petitions—Evidence.

(1) All requests for review to the growth management hearings board shall be initiated by filing a petition that includes a detailed statement of issues presented for resolution by the board. The board shall render

written decisions articulating the basis for its holdings. The board shall not issue advisory opinions on issues not presented to the board in the statement of issues, as modified by any prehearing order.

(2) All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of this chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days after publication as provided in (a) through (c) of this subsection.

(a) Except as provided in (c) of this subsection, the date of publication for a city shall be the date the city publishes the ordinance, or summary of the ordinance, adopting the comprehensive plan or development regulations, or amendment thereto, as is required to be published.

(b) Promptly after adoption, a county shall publish a notice that it has adopted the comprehensive plan or development regulations, or amendment thereto.

Except as provided in (c) of this subsection, for purposes of this section the date of publication for a county shall be the date the county publishes the notice that it has adopted the comprehensive plan or development regulations, or amendment thereto.

(c) For local governments planning under RCW 36.70A.040, promptly after approval or disapproval of a local government's shoreline master program or amendment thereto by the department of ecology as provided in RCW 90.58.090, the department of ecology shall publish a notice that the shoreline master program or amendment thereto has been approved or disapproved. For purposes of this section, the date of publication for the adoption or amendment of a shoreline master program is the date the department of ecology publishes notice that the shoreline master program or amendment thereto has been approved or disapproved.

(3) Unless the board dismisses the petition as frivolous or finds that the person filing the petition lacks standing, or the parties have filed an agreement to have the case heard in superior court as provided in RCW 36.70A.295, the board shall, within ten days of receipt of the petition, set a time for hearing the matter.

(4) The board shall base its decision on the record developed by the city, county, or the state and supplemented with additional evidence if the board determines that such additional evidence would be necessary or of substantial assistance to the board in reaching its decision.

(5) The board, shall consolidate, when appropriate, all petitions involving the review of the same comprehensive plan or the same development regulation or regulations. [2011 c 277 § 1; 2010 c 211 § 8; 1997 c 429 § 12; 1995 c 347 § 109. Prior: 1994 c 257 § 2; 1994 c 249 § 26; 1991 sp.s. c 32 § 10.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Additional notes found at www.leg.wa.gov

36.70A.295 Growth management hearings board—

Direct judicial review. (1) The superior court may directly review a petition for review filed under RCW 36.70A.290 if all parties to the proceeding before the board have agreed to

direct review in the superior court. The agreement of the parties shall be in writing and signed by all of the parties to the proceeding or their designated representatives. The agreement shall include the parties' agreement to proper venue as provided in RCW 36.70A.300(5). The parties shall file their agreement with the board within ten days after the date the petition is filed, or if multiple petitions have been filed and the board has consolidated the petitions pursuant to RCW 36.70A.300, within ten days after the board serves its order of consolidation.

(2) Within ten days of receiving the timely and complete agreement of the parties, the board shall file a certificate of agreement with the designated superior court and shall serve the parties with copies of the certificate. The superior court shall obtain exclusive jurisdiction over a petition when it receives the certificate of agreement. With the certificate of agreement the board shall also file the petition for review, any orders entered by the board, all other documents in the board's files regarding the action, and the written agreement of the parties.

(3) For purposes of a petition that is subject to direct review, the superior court's subject matter jurisdiction shall be equivalent to that of the board. Consistent with the requirements of the superior court civil rules, the superior court may consolidate a petition subject to direct review under this section with a separate action filed in the superior court.

(4)(a) Except as otherwise provided in (b) and (c) of this subsection, the provisions of RCW 36.70A.280 through 36.70A.330, which specify the nature and extent of board review, shall apply to the superior court's review.

(b) The superior court:

(i) Shall not have jurisdiction to directly review or modify an office of financial management population projection;

(ii) Except as otherwise provided in RCW 36.70A.300(2)(b), shall render its decision on the petition within one hundred eighty days of receiving the certification of agreement; and

(iii) Shall give a compliance hearing under RCW 36.70A.330(2) the highest priority of all civil matters before the court.

(c) An aggrieved party may secure appellate review of a final judgment of the superior court under this section by the supreme court or the court of appeals. The review shall be secured in the manner provided by law for review of superior court decisions in other civil cases.

(5) If, following a compliance hearing, the court finds that the state agency, county, or city is not in compliance with the court's prior order, the court may use its remedial and contempt powers to enforce compliance.

(6) The superior court shall transmit a copy of its decision and order on direct review to the board, the department, and the governor. If the court has determined that a county or city is not in compliance with the provisions of this chapter, the governor may impose sanctions against the county or city in the same manner as if the board had recommended the imposition of sanctions as provided in RCW 36.70A.330.

(7) After the court has assumed jurisdiction over a petition for review under this section, the superior court civil rules shall govern a request for intervention and all other pro-

cedural matters not specifically provided for in this section. [2010 c 211 § 9; 1997 c 429 § 13.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Additional notes found at www.leg.wa.gov

36.70A.300 Final orders. (1) The board shall issue a final order that shall be based exclusively on whether or not a state agency, county, or city is in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW.

(2)(a) Except as provided in (b) of this subsection, the final order shall be issued within one hundred eighty days of receipt of the petition for review, or, if multiple petitions are filed, within one hundred eighty days of receipt of the last petition that is consolidated.

(b) The board may extend the period of time for issuing a decision to enable the parties to settle the dispute if additional time is necessary to achieve a settlement, and (i) an extension is requested by all parties, or (ii) an extension is requested by the petitioner and respondent and the board determines that a negotiated settlement between the remaining parties could resolve significant issues in dispute. The request must be filed with the board not later than seven days before the date scheduled for the hearing on the merits of the petition. The board may authorize one or more extensions for up to ninety days each, subject to the requirements of this section.

(3) In the final order, the board shall either:

(a) Find that the state agency, county, or city is in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

(b) Find that the state agency, county, or city is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW, in which case the board shall remand the matter to the affected state agency, county, or city. The board shall specify a reasonable time not in excess of one hundred eighty days, or such longer period as determined by the board in cases of unusual scope or complexity, within which the state agency, county, or city shall comply with the requirements of this chapter. The board may require periodic reports to the board on the progress the jurisdiction is making towards compliance.

(4)(a) Unless the board makes a determination of invalidity under RCW 36.70A.302, a finding of noncompliance and an order of remand shall not affect the validity of comprehensive plans and development regulations during the period of remand.

(b) Unless the board makes a determination of invalidity, state agencies, commissions, and governing boards may not determine a county, city, or town to be ineligible or otherwise

penalized in the acceptance of applications or the awarding of state agency grants or loans during the period of remand. This subsection (4)(b) applies only to counties, cities, and towns that have: (i) Delayed the initial effective date of the action subject to the petition before the board until after the board issues a final determination; or (ii) within thirty days of receiving notice of a petition for review by the board, delayed or suspended the effective date of the action subject to the petition before the board until after the board issues a final determination.

(5) Any party aggrieved by a final decision of the hearings board may appeal the decision to superior court as provided in RCW 34.05.514 or 36.01.050 within thirty days of the final order of the board. Unless the board makes a determination of invalidity under RCW 36.70A.302, state agencies, commissions, or governing boards shall not penalize counties, cities, or towns during the pendency of an appeal as provided in RCW 43.17.250. [2013 c 275 § 1; 1997 c 429 § 14; 1995 c 347 § 110; 1991 sp.s. c 32 § 11.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Additional notes found at www.leg.wa.gov

36.70A.302 Growth management hearings board—Determination of invalidity—Vesting of development permits—Interim controls. (1) The board may determine that part or all of a comprehensive plan or development regulations are invalid if the board:

(a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;

(b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and

(c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

(2) A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by the county or city or to related construction permits for that project.

(3)(a) Except as otherwise provided in subsection (2) of this section and (b) of this subsection, a development permit application not vested under state or local law before receipt of the board's order by the county or city vests to the local ordinance or resolution that is determined by the board not to substantially interfere with the fulfillment of the goals of this chapter.

(b) Even though the application is not vested under state or local law before receipt by the county or city of the board's order, a determination of invalidity does not apply to a development permit application for:

(i) A permit for construction by any owner, lessee, or contract purchaser of a single-family residence for his or her own use or for the use of his or her family on a lot existing before receipt by the county or city of the board's order,

except as otherwise specifically provided in the board's order to protect the public health and safety;

(ii) A building permit and related construction permits for remodeling, tenant improvements, or expansion of an existing structure on a lot existing before receipt of the board's order by the county or city; and

(iii) A boundary line adjustment or a division of land that does not increase the number of buildable lots existing before receipt of the board's order by the county or city.

(4) If the ordinance that adopts a plan or development regulation under this chapter includes a savings clause intended to revive prior policies or regulations in the event the new plan or regulations are determined to be invalid, the board shall determine under subsection (1) of this section whether the prior policies or regulations are valid during the period of remand.

(5) A county or city subject to a determination of invalidity may adopt interim controls and other measures to be in effect until it adopts a comprehensive plan and development regulations that comply with the requirements of this chapter. A development permit application may vest under an interim control or measure upon determination by the board that the interim controls and other measures do not substantially interfere with the fulfillment of the goals of this chapter.

(6) A county or city subject to a determination of invalidity may file a motion requesting that the board clarify, modify, or rescind the order. The board shall expeditiously schedule a hearing on the motion. At the hearing on the motion, the parties may present information to the board to clarify the part or parts of the comprehensive plan or development regulations to which the final order applies. The board shall issue any supplemental order based on the information provided at the hearing not later than thirty days after the date of the hearing.

(7)(a) If a determination of invalidity has been made and the county or city has enacted an ordinance or resolution amending the invalidated part or parts of the plan or regulation or establishing interim controls on development affected by the order of invalidity, after a compliance hearing, the board shall modify or rescind the determination of invalidity if it determines under the standard in subsection (1) of this section that the plan or regulation, as amended or made subject to such interim controls, will no longer substantially interfere with the fulfillment of the goals of this chapter.

(b) If the board determines that part or parts of the plan or regulation are no longer invalid as provided in this subsection, but does not find that the plan or regulation is in compliance with all of the requirements of this chapter, the board, in its order, may require periodic reports to the board on the progress the jurisdiction is making towards compliance. [2010 c 211 § 10; 1997 c 429 § 16.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Additional notes found at www.leg.wa.gov

36.70A.305 Expedited review. The court shall provide expedited review of a determination of invalidity or an order effectuating a determination of invalidity made or issued under *RCW 36.70A.300. The matter must be set for hearing within sixty days of the date set for submitting the board's

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record, absent a showing of good cause for a different date or a stipulation of the parties. [1996 c 325 § 4.]

***Reviser's note:** The reference to RCW 36.70A.300 appears to refer to the amendments made by 1996 c 325 § 3, which was vetoed by the governor.

Additional notes found at www.leg.wa.gov

36.70A.310 Growth management hearings board—Limitations on appeal by the state. A request for review by the state to the growth management hearings board may be made only by the governor, or with the governor's consent the head of an agency, or by the commissioner of public lands as relating to state trust lands, for the review of whether: (1) A county or city that is required or chooses to plan under RCW 36.70A.040 has failed to adopt a comprehensive plan or development regulations, or countywide planning policies within the time limits established by this chapter; or (2) a county or city that is required or chooses to plan under this chapter has adopted a comprehensive plan, development regulations, or countywide planning policies, that are not in compliance with the requirements of this chapter. [2010 c 211 § 11; 1994 c 249 § 32; 1991 sp.s. c 32 § 12.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Additional notes found at www.leg.wa.gov

36.70A.320 Presumption of validity—Burden of proof—Plans and regulations. (1) Except as provided in subsection (5) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.

(2) Except as otherwise provided in subsection (4) of this section, the burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this chapter is not in compliance with the requirements of this chapter.

(3) In any petition under this chapter, the board, after full consideration of the petition, shall determine whether there is compliance with the requirements of this chapter. In making its determination, the board shall consider the criteria adopted by the department under RCW 36.70A.190(4). The board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter.

(4) A county or city subject to a determination of invalidity made under RCW 36.70A.300 or 36.70A.302 has the burden of demonstrating that the ordinance or resolution it has enacted in response to the determination of invalidity will no longer substantially interfere with the fulfillment of the goals of this chapter under the standard in RCW 36.70A.302(1).

(5) The shoreline element of a comprehensive plan and the applicable development regulations adopted by a county or city shall take effect as provided in chapter 90.58 RCW. [1997 c 429 § 20; 1995 c 347 § 111; 1991 sp.s. c 32 § 13.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Additional notes found at www.leg.wa.gov

36.70A.3201 Growth management hearings board—Legislative intent and finding. The legislature intends that the board applies a more deferential standard of review to

actions of counties and cities than the preponderance of the evidence standard provided for under existing law. In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the board to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community. [2010 c 211 § 12; 1997 c 429 § 2.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Additional notes found at www.leg.wa.gov

36.70A.330 Noncompliance. (1) After the time set for complying with the requirements of this chapter under RCW 36.70A.300(3)(b) has expired, or at an earlier time upon the motion of a county or city subject to a determination of invalidity under RCW 36.70A.300, the board shall set a hearing for the purpose of determining whether the state agency, county, or city is in compliance with the requirements of this chapter.

(2) The board shall conduct a hearing and issue a finding of compliance or noncompliance with the requirements of this chapter and with any compliance schedule established by the board in its final order. A person with standing to challenge the legislation enacted in response to the board's final order may participate in the hearing along with the petitioner and the state agency, county, or city. A hearing under this subsection shall be given the highest priority of business to be conducted by the board, and a finding shall be issued within forty-five days of the filing of the motion under subsection (1) of this section with the board. The board shall issue any order necessary to make adjustments to the compliance schedule and set additional hearings as provided in subsection (5) of this section.

(3) If the board after a compliance hearing finds that the state agency, county, or city is not in compliance, the board shall transmit its finding to the governor. The board may recommend to the governor that the sanctions authorized by this chapter be imposed. The board shall take into consideration the county's or city's efforts to meet its compliance schedule in making the decision to recommend sanctions to the governor.

(4) In a compliance hearing upon petition of a party, the board shall also reconsider its final order and decide, if no determination of invalidity has been made, whether one now should be made under RCW 36.70A.302.

(5) The board shall schedule additional hearings as appropriate pursuant to subsections (1) and (2) of this section. [1997 c 429 § 21; 1995 c 347 § 112; 1991 sp.s. c 32 § 14.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Additional notes found at www.leg.wa.gov

36.70A.335 Order of invalidity issued before July 27, 1997. A county or city subject to an order of invalidity issued before July 27, 1997, by motion may request the board to review the order of invalidity in light of the section 14, chapter 429, Laws of 1997 amendments to RCW 36.70A.300, the section 21, chapter 429, Laws of 1997 amendments to RCW 36.70A.330, and RCW 36.70A.302. If a request is made, the board shall rescind or modify the order of invalidity as necessary to make it consistent with the section 14, chapter 429, Laws of 1997 amendments to RCW 36.70A.300, and to the section 21, chapter 429, Laws of 1997 amendments to RCW 36.70A.330, and RCW 36.70A.302. [1997 c 429 § 22.]

Additional notes found at www.leg.wa.gov

36.70A.340 Noncompliance and sanctions. (Effective until July 1, 2015.) Upon receipt from the board of a finding that a state agency, county, or city is in noncompliance under RCW 36.70A.330, or as a result of failure to meet the requirements of RCW 36.70A.210, the governor may either:

(1) Notify and direct the director of the office of financial management to revise allotments in appropriation levels;

(2) Notify and direct the state treasurer to withhold the portion of revenues to which the county or city is entitled under one or more of the following: The motor vehicle fuel tax, as provided in chapter 82.36 RCW; the transportation improvement account, as provided in RCW 47.26.084; the rural arterial trust account, as provided in RCW 36.79.150; the sales and use tax, as provided in chapter 82.14 RCW; the liquor profit tax, as provided in RCW 66.08.190; and the liquor excise tax, as provided in RCW 82.08.170; or

(3) File a notice of noncompliance with the secretary of state and the county or city, which shall temporarily rescind the county or city's authority to collect the real estate excise tax under RCW 82.46.030 until the governor files a notice rescinding the notice of noncompliance. [2011 c 120 § 2; 1991 sp.s. c 32 § 26.]

36.70A.340 Noncompliance and sanctions. (Effective July 1, 2015.) Upon receipt from the board of a finding that a state agency, county, or city is in noncompliance under RCW 36.70A.330, or as a result of failure to meet the requirements of RCW 36.70A.210, the governor may either:

(1) Notify and direct the director of the office of financial management to revise allotments in appropriation levels;

(2) Notify and direct the state treasurer to withhold the portion of revenues to which the county or city is entitled under one or more of the following: The motor vehicle fuel tax, as provided in chapter 82.38 RCW; the transportation improvement account, as provided in RCW 47.26.084; the rural arterial trust account, as provided in RCW 36.79.150; the sales and use tax, as provided in chapter 82.14 RCW; the liquor profit tax, as provided in RCW 66.08.190; and the liquor excise tax, as provided in RCW 82.08.170; or

(3) File a notice of noncompliance with the secretary of state and the county or city, which temporarily rescinds the county or city's authority to collect the real estate excise tax under RCW 82.46.030 until the governor files a notice rescinding the notice of noncompliance. [2013 c 225 § 604; 2011 c 120 § 2; 1991 sp.s. c 32 § 26.]

Effective date—2013 c 225: See note following RCW 82.38.010.

36.70A.345 Sanctions. The governor may impose a sanction or sanctions specified under RCW 36.70A.340 on: (1) A county or city that fails to designate critical areas, agricultural lands, forest lands, or mineral resource lands under RCW 36.70A.170 by the date such action was required to have been taken; (2) a county or city that fails to adopt development regulations under RCW 36.70A.060 protecting critical areas or conserving agricultural lands, forest lands, or mineral resource lands by the date such action was required to have been taken; (3) a county that fails to designate urban growth areas under RCW 36.70A.110 by the date such action was required to have been taken; and (4) a county or city that fails to adopt its comprehensive plan or development regulations when such actions are required to be taken.

Imposition of a sanction or sanctions under this section shall be preceded by written findings by the governor, that either the county or city is not proceeding in good faith to meet the requirements of the act; or that the county or city has unreasonably delayed taking the required action. The governor shall consult with and communicate his or her findings to the growth management hearings board prior to imposing the sanction or sanctions. For those counties or cities that are not required to plan or have not opted in, the governor in imposing sanctions shall consider the size of the jurisdiction relative to the requirements of this chapter and the degree of technical and financial assistance provided. [2010 c 211 § 13; 1994 c 249 § 33; 1993 sp.s. c 6 § 5.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Additional notes found at www.leg.wa.gov

36.70A.350 New fully contained communities. A county required or choosing to plan under RCW 36.70A.040 may establish a process as part of its urban growth areas, that are designated under RCW 36.70A.110, for reviewing proposals to authorize new fully contained communities located outside of the initially designated urban growth areas.

(1) A new fully contained community may be approved in a county planning under this chapter if criteria including but not limited to the following are met:

(a) New infrastructure is provided for and impact fees are established consistent with the requirements of RCW 82.02.050;

(b) Transit-oriented site planning and traffic demand management programs are implemented;

(c) Buffers are provided between the new fully contained communities and adjacent urban development;

(d) A mix of uses is provided to offer jobs, housing, and services to the residents of the new community;

(e) Affordable housing is provided within the new community for a broad range of income levels;

(f) Environmental protection has been addressed and provided for;

(g) Development regulations are established to ensure urban growth will not occur in adjacent nonurban areas;

(h) Provision is made to mitigate impacts on designated agricultural lands, forest lands, and mineral resource lands;

(i) The plan for the new fully contained community is consistent with the development regulations established for the protection of critical areas by the county pursuant to RCW 36.70A.170.

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(2) New fully contained communities may be approved outside established urban growth areas only if a county reserves a portion of the twenty-year population projection and offsets the urban growth area accordingly for allocation to new fully contained communities that meet the requirements of this chapter. Any county electing to establish a new community reserve shall do so no more often than once every five years as a part of the designation or review of urban growth areas required by this chapter. The new community reserve shall be allocated on a project-by-project basis, only after specific project approval procedures have been adopted pursuant to this chapter as a development regulation. When a new community reserve is established, urban growth areas designated pursuant to this chapter shall accommodate the unreserved portion of the twenty-year population projection.

Final approval of an application for a new fully contained community shall be considered an adopted amendment to the comprehensive plan prepared pursuant to RCW 36.70A.070 designating the new fully contained community as an urban growth area. [1991 sp.s. c 32 § 16.]

36.70A.360 Master planned resorts. (1) Counties that are required or choose to plan under RCW 36.70A.040 may permit master planned resorts which may constitute urban growth outside of urban growth areas as limited by this section. A master planned resort means a self-contained and fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities.

(2) Capital facilities, utilities, and services, including those related to sewer, water, storm water, security, fire suppression, and emergency medical, provided on-site shall be limited to meeting the needs of the master planned resort. Such facilities, utilities, and services may be provided to a master planned resort by outside service providers, including municipalities and special purpose districts, provided that all costs associated with service extensions and capacity increases directly attributable to the master planned resort are fully borne by the resort. A master planned resort and service providers may enter into agreements for shared capital facilities and utilities, provided that such facilities and utilities serve only the master planned resort or urban growth areas.

Nothing in this subsection may be construed as: Establishing an order of priority for processing applications for water right permits, for granting such permits, or for issuing certificates of water right; altering or authorizing in any manner the alteration of the place of use for a water right; or affecting or impairing in any manner whatsoever an existing water right.

All waters or the use of waters shall be regulated and controlled as provided in chapters 90.03 and 90.44 RCW and not otherwise.

(3) A master planned resort may include other residential uses within its boundaries, but only if the residential uses are integrated into and support the on-site recreational nature of the resort.

(4) A master planned resort may be authorized by a county only if:

(a) The comprehensive plan specifically identifies policies to guide the development of master planned resorts;

(b) The comprehensive plan and development regulations include restrictions that preclude new urban or suburban land uses in the vicinity of the master planned resort, except in areas otherwise designated for urban growth under RCW 36.70A.110;

(c) The county includes a finding as a part of the approval process that the land is better suited, and has more long-term importance, for the master planned resort than for the commercial harvesting of timber or agricultural production, if located on land that otherwise would be designated as forest land or agricultural land under RCW 36.70A.170;

(d) The county ensures that the resort plan is consistent with the development regulations established for critical areas; and

(e) On-site and off-site infrastructure and service impacts are fully considered and mitigated. [1998 c 112 § 2; 1991 sp.s. c 32 § 17.]

Intent—1998 c 112: "The primary intent of this act is to give effect to recommendations by the 1994 department of community, trade, and economic development's master planned resort task force by clarifying that master planned resorts may make use of capital facilities, utilities, and services provided by outside service providers, and may enter into agreements for shared facilities with such providers, when all costs directly attributable to the resort, including capacity increases, are fully borne by the resort." [1998 c 112 § 1.]

36.70A.362 Master planned resorts—Existing resort may be included. Counties that are required or choose to plan under RCW 36.70A.040 may include existing resorts as master planned resorts which may constitute urban growth outside of urban growth areas as limited by this section. An existing resort means a resort in existence on July 1, 1990, and developed, in whole or in part, as a significantly self-contained and integrated development that includes short-term visitor accommodations associated with a range of indoor and outdoor recreational facilities within the property boundaries in a setting of significant natural amenities. An existing resort may include other permanent residential uses, conference facilities, and commercial activities supporting the resort, but only if these other uses are integrated into and consistent with the on-site recreational nature of the resort.

An existing resort may be authorized by a county only if:

(1) The comprehensive plan specifically identifies policies to guide the development of the existing resort;

(2) The comprehensive plan and development regulations include restrictions that preclude new urban or suburban land uses in the vicinity of the existing resort, except in areas otherwise designated for urban growth under RCW 36.70A.110 and *36.70A.360(1);

(3) The county includes a finding as a part of the approval process that the land is better suited, and has more long-term importance, for the existing resort than for the commercial harvesting of timber or agricultural production, if located on land that otherwise would be designated as forest land or agricultural land under RCW 36.70A.170;

(4) The county finds that the resort plan is consistent with the development regulations established for critical areas; and

(5) On-site and off-site infrastructure impacts are fully considered and mitigated.

A county may allocate a portion of its twenty-year population projection, prepared by the office of financial management, to the master planned resort corresponding to the projected number of permanent residents within the master planned resort. [1997 c 382 § 1.]

*Reviser's note: RCW 36.70A.360 was amended by 1998 c 112 § 2, changing subsection (1) to subsection (4)(a).

36.70A.365 Major industrial developments. A county required or choosing to plan under RCW 36.70A.040 may establish, in consultation with cities consistent with provisions of RCW 36.70A.210, a process for reviewing and approving proposals to authorize siting of specific major industrial developments outside urban growth areas.

(1) "Major industrial development" means a master planned location for a specific manufacturing, industrial, or commercial business that: (a) Requires a parcel of land so large that no suitable parcels are available within an urban growth area; or (b) is a natural resource-based industry requiring a location near agricultural land, forest land, or mineral resource land upon which it is dependent. The major industrial development shall not be for the purpose of retail commercial development or multitenant office parks.

(2) A major industrial development may be approved outside an urban growth area in a county planning under this chapter if criteria including, but not limited to the following, are met:

(a) New infrastructure is provided for and/or applicable impact fees are paid;

(b) Transit-oriented site planning and traffic demand management programs are implemented;

(c) Buffers are provided between the major industrial development and adjacent nonurban areas;

(d) Environmental protection including air and water quality has been addressed and provided for;

(e) Development regulations are established to ensure that urban growth will not occur in adjacent nonurban areas;

(f) Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands;

(g) The plan for the major industrial development is consistent with the county's development regulations established for protection of critical areas; and

(h) An inventory of developable land has been conducted and the county has determined and entered findings that land suitable to site the major industrial development is unavailable within the urban growth area. Priority shall be given to applications for sites that are adjacent to or in close proximity to the urban growth area.

(3) Final approval of an application for a major industrial development shall be considered an adopted amendment to the comprehensive plan adopted pursuant to RCW 36.70A.070 designating the major industrial development site on the land use map as an urban growth area. Final approval of an application for a major industrial development shall not be considered an amendment to the comprehensive plan for the purposes of RCW 36.70A.130(2) and may be considered at any time. [1995 c 190 § 1.]

36.70A.367 Major industrial developments—Master planned locations. (1) In addition to the major industrial

development allowed under RCW 36.70A.365, a county planning under RCW 36.70A.040 that meets the criteria in subsection (5) of this section may establish, in consultation with cities consistent with provisions of RCW 36.70A.210, a process for designating a bank of no more than two master planned locations for major industrial activity outside urban growth areas.

(2) A master planned location for major industrial developments may be approved through a two-step process: Designation of an industrial land bank area in the comprehensive plan; and subsequent approval of specific major industrial developments through a local master plan process described under subsection (3) of this section.

(a) The comprehensive plan must identify locations suited to major industrial development due to proximity to transportation or resource assets. The plan must identify the maximum size of the industrial land bank area and any limitations on major industrial developments based on local limiting factors, but does not need to specify a particular parcel or parcels of property or identify any specific use or user except as limited by this section. In selecting locations for the industrial land bank area, priority must be given to locations that are adjacent to, or in close proximity to, an urban growth area.

(b) The environmental review for amendment of the comprehensive plan must be at the programmatic level and, in addition to a threshold determination, must include:

(i) An inventory of developable land as provided in RCW 36.70A.365; and

(ii) An analysis of the availability of alternative sites within urban growth areas and the long-term annexation feasibility of sites outside of urban growth areas.

(c) Final approval of an industrial land bank area under this section must be by amendment to the comprehensive plan adopted under RCW 36.70A.070, and the amendment is exempt from the limitation of RCW 36.70A.130(2) and may be considered at any time. Approval of a specific major industrial development within the industrial land bank area requires no further amendment of the comprehensive plan.

(3) In concert with the designation of an industrial land bank area, a county shall also adopt development regulations for review and approval of specific major industrial developments through a master plan process. The regulations governing the master plan process shall ensure, at a minimum, that:

(a) Urban growth will not occur in adjacent nonurban areas;

(b) Development is consistent with the county's development regulations adopted for protection of critical areas;

(c) Required infrastructure is identified and provided concurrent with development. Such infrastructure, however, may be phased in with development;

(d) Transit-oriented site planning and demand management programs are specifically addressed as part of the master plan approval;

(e) Provision is made for addressing environmental protection, including air and water quality, as part of the master plan approval;

(f) The master plan approval includes a requirement that interlocal agreements between the county and service providers, including cities and special purpose districts providing

facilities or services to the approved master plan, be in place at the time of master plan approval;

(g) A major industrial development is used primarily by industrial and manufacturing businesses, and that the gross floor area of all commercial and service buildings or facilities locating within the major industrial development does not exceed ten percent of the total gross floor area of buildings or facilities in the development. The intent of this provision for commercial or service use is to meet the needs of employees, clients, customers, vendors, and others having business at the industrial site, to attract and retain a quality workforce, and to further other public objectives, such as trip reduction. These uses may not be promoted to attract additional clientele from the surrounding area. Commercial and service businesses must be established concurrently with or subsequent to the industrial or manufacturing businesses;

(h) New infrastructure is provided for and/or applicable impact fees are paid to assure that adequate facilities are provided concurrently with the development. Infrastructure may be achieved in phases as development proceeds;

(i) Buffers are provided between the major industrial development and adjacent rural areas;

(j) Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands; and

(k) An open record public hearing is held before either the planning commission or hearing examiner with notice published at least thirty days before the hearing date and mailed to all property owners within one mile of the site.

(4) For the purposes of this section:

(a) "Major industrial development" means a master planned location suitable for manufacturing or industrial businesses that: (i) Requires a parcel of land so large that no suitable parcels are available within an urban growth area; (ii) is a natural resource-based industry requiring a location near agricultural land, forest land, or mineral resource land upon which it is dependent; or (iii) requires a location with characteristics such as proximity to transportation facilities or related industries such that there is no suitable location in an urban growth area. The major industrial development may not be for the purpose of retail commercial development or multitenant office parks.

(b) "Industrial land bank" means up to two master planned locations, each consisting of a parcel or parcels of contiguous land, sufficiently large so as not to be readily available within the urban growth area of a city, or otherwise meeting the criteria contained in (a) of this subsection, suitable for manufacturing, industrial, or commercial businesses and designated by the county through the comprehensive planning process specifically for major industrial use.

(5) This section and the termination provisions specified in subsection (6) of this section apply to a county that at the time the process is established under subsection (1) of this section:

(a) Has a population greater than two hundred fifty thousand and is part of a metropolitan area that includes a city in another state with a population greater than two hundred fifty thousand;

(b) Has a population greater than one hundred forty thousand and is adjacent to another country;

(c) Has a population greater than forty thousand but less than seventy-five thousand and has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by twenty percent; and

- (i) Is bordered by the Pacific Ocean;
- (ii) Is located in the Interstate 5 or Interstate 90 corridor;

or

- (iii) Is bordered by Hood Canal;
- (d) Is east of the Cascade divide; and
- (i) Borders another state to the south; or
- (ii) Is located wholly south of Interstate 90 and borders the Columbia river to the east;

(e) Has an average population density of less than one hundred persons per square mile as determined by the office of financial management, and is bordered by the Pacific Ocean and by Hood Canal; or

(f) Meets all of the following criteria:

(i) Has a population greater than forty thousand but fewer than eighty thousand;

(ii) Has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by twenty percent; and

(iii) Is located in the Interstate 5 or Interstate 90 corridor.

(6) In order to identify and approve locations for industrial land banks, the county shall take action to designate one or more industrial land banks and adopt conforming regulations as provided by subsection (2) of this section on or before the last date to complete that county's next periodic review under RCW 36.70A.130(4) that occurs prior to December 31, 2016. The authority to take action to designate a land bank area in the comprehensive plan expires if not acted upon by the county within the time frame provided in this section. Once a land bank area has been identified in the county's comprehensive plan, the authority of the county to process a master plan or site projects within an approved master plan does not expire.

(7) Any county seeking to designate an industrial land bank under this section must:

(a) Provide countywide notice, in conformity with RCW 36.70A.035, of the intent to designate an industrial land bank. Notice must be published in a newspaper or newspapers of general circulation reasonably likely to reach subscribers in all geographic areas of the county. Notice must be provided not less than thirty days prior to commencement of consideration by the county legislative body; and

(b) Make a written determination of the criteria and rationale used by the legislative body as the basis for siting an industrial land bank under this chapter.

(8) Any location included in an industrial land bank pursuant to section 2, chapter 289, Laws of 1998, section 1, chapter 402, Laws of 1997, and section 2, chapter 167, Laws of 1996 shall remain available for major industrial development according to this section as long as the requirements of this section continue to be satisfied. [2014 c 149 § 1; 2007 c 433 § 1; 2004 c 208 § 1; 2003 c 88 § 1; 2002 c 306 § 1; 2001 c 326 § 1; 1998 c 289 § 2; 1997 c 402 § 1; 1996 c 167 § 2.]

Findings—Purpose—1998 c 289: "The legislature finds that to fulfill the economic development goal of this chapter, it is beneficial to expand the limited authorization for pilot projects for identifying locations for major industrial activity in advance of specific proposals by an applicant. The leg-

islature further finds that land bank availability may provide economically disadvantaged counties the opportunity to attract new industrial activity by offering expeditious siting and therefore promote a community's economic health and vitality. The purpose of this act is to authorize and evaluate additional pilot projects for major industrial activity in economically disadvantaged counties." [1998 c 289 § 1.]

Findings—Purpose—1996 c 167: "In 1995 the legislature addressed the demand for siting of major industrial facilities by passage of Engrossed Senate Bill No. 5019, implementing a process for siting such activities outside urban growth areas. The legislature recognizes that the 1995 act requires consideration of numerous factors necessary to ensure that the community can reasonably accommodate a major industrial development outside an urban growth area.

The legislature finds that the existing case-by-case procedure for evaluating and approving such a site under the 1995 act may operate to a community's economic disadvantage when a firm, for business reasons, must make a business location decision expeditiously. The legislature therefore finds that it would be useful to authorize, on a limited basis, and evaluate a process for identifying locations for major industrial activity in advance of specific proposals by an applicant.

It is the purpose of this act (1) to authorize a pilot project under which a bank of major industrial development locations outside urban growth areas is created for use in expeditiously siting such a development; (2) to evaluate the impact of this process on the county's compliance with chapter 36.70A RCW; and (3) to encourage consolidation and planning, and environmental review procedures under chapter 36.70B RCW." [1996 c 167 § 1.]

Additional notes found at www.leg.wa.gov

36.70A.368 Major industrial developments—Master planned locations—Reclaimed surface coal mine sites. (1) In addition to the major industrial development allowed under RCW 36.70A.365 and 36.70A.367, a county planning under RCW 36.70A.040 that meets the criteria in subsection (2) of this section may establish, in consultation with cities consistent with RCW 36.70A.210, a process for designating a master planned location for major industrial activity outside urban growth areas on lands formerly used or designated for surface coal mining and supporting uses. Once a master planned location is designated, it shall be considered an urban growth area retained for purposes of promoting major industrial activity.

(2) This section applies to a county that, at the time the process is established in subsection (1) of this section, had a surface coal mining operation in excess of three thousand acres that ceased operation after July 1, 2006, and that is located within fifteen miles of the Interstate 5 corridor.

(3) Designation of a master planned location for major industrial activities is an amendment to the comprehensive plan adopted under RCW 36.70A.070, except that RCW 36.70A.130(2) does not apply so that designation of master planned locations may be considered at any time. The process established under subsection (1) of this section for designating a master planned location for one or more major industrial activities must include, but is not limited to, the following comprehensive plan policy criteria:

(a) The master planned location must be located on lands: Formerly used or designated for surface coal mining and supporting uses; that consist of an aggregation of land of one thousand or more acres, which is not required to be contiguous; and that are suitable for manufacturing, industrial, or commercial businesses;

(b) New infrastructure is provided for; and

(c) Environmental review of a proposed designation of a master planned location must be at the programmatic level, as long as the environmental review of a proposed designation

that is being reviewed concurrent with a proposed major industrial activity is at the project level.

(4) Approval of a specific major industrial activity proposed for a master planned location designated under this section is through a local master plan process and does not require further comprehensive plan amendment. The process for reviewing and approving a specific major industrial activity proposed for a master planned location designated under this section must include the following criteria in adopted development regulations:

(a) The site consists of one hundred or more acres of land formerly used or designated for surface coal mining and supporting uses that has been or will be reclaimed as land suitable for industrial development;

(b) Urban growth will not occur in adjacent nonurban areas;

(c) Environmental review of a specific proposed major industrial activity must be conducted as required in chapter 43.21C RCW. Environmental review may be processed as a planned action, as long as it meets the requirements of *RCW 43.21C.031; and

(d) Commercial development within a master planned location must be directly related to manufacturing or industrial uses. Commercial uses shall not exceed ten percent of the total gross floor area of buildings or facilities in the development.

(5) Final approval of the designation of a master planned location designated under subsection (3) of this section is subject to appeal under this chapter. Approval of a specific major industrial activity under subsection (4) of this section is subject to appeal under chapter 36.70C RCW.

(6) RCW 36.70A.365 and 36.70A.367 do not apply to the designation of master planned locations or the review and approval of specific major industrial activities under this section. [2007 c 194 § 1.]

*Reviser's note: The requirements for a planned action were moved by 2012 1st sp.s. c 1 from RCW 43.21C.031 to RCW 43.21C.440.

36.70A.370 Protection of private property. (1) The state attorney general shall establish by October 1, 1991, an orderly, consistent process, including a checklist if appropriate, that better enables state agencies and local governments to evaluate proposed regulatory or administrative actions to assure that such actions do not result in an unconstitutional taking of private property. It is not the purpose of this section to expand or reduce the scope of private property protections provided in the state and federal Constitutions. The attorney general shall review and update the process at least on an annual basis to maintain consistency with changes in case law.

(2) Local governments that are required or choose to plan under RCW 36.70A.040 and state agencies shall utilize the process established by subsection (1) of this section to assure that proposed regulatory or administrative actions do not result in an unconstitutional taking of private property.

(3) The attorney general, in consultation with the Washington state bar association, shall develop a continuing education course to implement this section.

(4) The process used by government agencies shall be protected by attorney client privilege. Nothing in this section grants a private party the right to seek judicial relief requiring

compliance with the provisions of this section. [1991 sp.s. c 32 § 18.]

36.70A.380 Extension of designation date. The department may extend the date by which a county or city is required to designate agricultural lands, forest lands, mineral resource lands, and critical areas under RCW 36.70A.170, or the date by which a county or city is required to protect such lands and critical areas under RCW 36.70A.060, if the county or city demonstrates that it is proceeding in an orderly fashion, and is making a good faith effort, to meet these requirements. An extension may be for up to an additional one hundred eighty days. The length of an extension shall be based on the difficulty of the effort to conform with these requirements. [1991 sp.s. c 32 § 39.]

36.70A.385 Environmental planning pilot projects.

(1) The legislature intends to determine whether the environmental review process mandated under chapter 43.21C RCW may be enhanced and simplified, and coordination improved, when applied to comprehensive plans mandated by this chapter. The department shall undertake pilot projects on environmental review to determine if the review process can be improved by fostering more coordination and eliminating duplicative environmental analysis which is made to assist decision makers approving comprehensive plans pursuant to this chapter. Such pilot projects should be designed and scoped to consider cumulative impacts resulting from plan decisions, plan impacts on environmental quality, impacts on adjacent jurisdictions, and similar factors in sufficient depth to simplify the analysis of subsequent specific projects being carried out pursuant to the approved plan.

(2) The legislature hereby authorizes the department to establish, in cooperation with business, industry, cities, counties, and other interested parties, at least two but not more than four pilot projects, one of which shall be with a county, on enhanced draft and final nonproject environmental analysis of comprehensive plans prepared pursuant to this chapter, for the purposes outlined in subsection (1) of this section. The department may select appropriate geographic subareas within a comprehensive plan if that will best serve the purposes of this section and meet the requirements of chapter 43.21C RCW.

(3) An enhanced draft and final nonproject environmental analysis prepared pursuant to this section shall follow the rules adopted pursuant to chapter 43.21C RCW.

(4) Not later than December 31, 1993, the department shall evaluate the overall effectiveness of the pilot projects under this section regarding preparing enhanced nonproject environmental analysis for the approval process of comprehensive plans and shall:

(a) Provide an interim report of its findings to the legislature with such recommendations as may be appropriate, including the need, if any, for further legislation;

(b) Consider adoption of any further rules or guidelines as may be appropriate to assist counties and cities in meeting requirements of chapter 43.21C RCW when considering comprehensive plans; and

(c) Prepare and circulate to counties and cities such instructional manuals or other information derived from the pilot projects as will assist all counties and cities in meeting

the requirements and objectives of chapter 43.21C RCW in the most expeditious and efficient manner in the process of considering comprehensive plans pursuant to this chapter. [1998 c 245 § 30; 1995 c 399 § 43; 1991 sp.s. c 32 § 20.]

36.70A.390 Moratoria, interim zoning controls—Public hearing—Limitation on length—Exceptions. A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

This section does not apply to the designation of critical areas, agricultural lands, forest lands, and mineral resource lands, under RCW 36.70A.170, and the conservation of these lands and protection of these areas under RCW 36.70A.060, prior to such actions being taken in a comprehensive plan adopted under RCW 36.70A.070 and implementing development regulations adopted under RCW 36.70A.120, if a public hearing is held on such proposed actions. [1992 c 207 § 6.]

36.70A.400 Accessory apartments. Any local government, as defined in RCW 43.63A.215, that is planning under this chapter shall comply with RCW 43.63A.215(3). [1993 c 478 § 11.]

36.70A.410 Treatment of residential structures occupied by persons with handicaps. No county or city that plans or elects to plan under this chapter may enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals. As used in this section, "handicaps" are as defined in the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3602). [1993 c 478 § 23.]

36.70A.420 Transportation projects—Findings—Intent. The legislature recognizes that there are major transportation projects that affect multiple jurisdictions as to economic development, fiscal influence, environmental consequences, land use implications, and mobility of people and goods. The legislature further recognizes that affected jurisdictions have important interests that must be addressed, and

that these jurisdictions' present environmental planning and permitting authority may result in multiple local permits and other requirements being specified for the projects.

The legislature finds that the present permitting system may result in segmented and sequential decisions by local governments that do not optimally serve all the parties with an interest in the decisions. The present system may also make more difficult achieving the consistency among plans and actions that is an important aspect of this chapter.

It is the intent of the legislature to provide for more efficiency and equity in the decisions of local governments regarding major transportation projects by encouraging coordination or consolidation of the processes for reviewing environmental planning and permitting requirements for those projects. The legislature intends that local governments coordinate their regulatory decisions by considering together the range of local, state, and federal requirements for major transportation projects. Nothing in RCW 36.70A.420 or 36.70A.430 alters the authority of cities or counties under any other planning or permitting statute. [1994 c 258 § 1.]

Additional notes found at www.leg.wa.gov

36.70A.430 Transportation projects—Collaborative review process. For counties engaged in planning under this chapter, there shall be established by December 31, 1994, a collaborative process to review and coordinate state and local permits for all transportation projects that cross more than one city or county boundary. This process shall at a minimum, establish a mechanism among affected cities and counties to designate a permit coordinating agency to facilitate multijurisdictional review and approval of such transportation projects. [1994 c 258 § 2.]

Additional notes found at www.leg.wa.gov

36.70A.450 Family day-care provider's home facility—County or city may not prohibit in residential or commercial area—Conditions. (1) Except as provided in subsections (2) and (3) of this section, no county or city may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice that prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's home facility.

(2) A county or city may require that the facility: (a) Comply with all building, fire, safety, health code, and business licensing requirements; (b) conform to lot size, building size, setbacks, and lot coverage standards applicable to the zoning district except if the structure is a legal nonconforming structure; (c) is certified by the department of early learning licenser as providing a safe passenger loading area; (d) include signage, if any, that conforms to applicable regulations; and (e) limit hours of operations to facilitate neighborhood compatibility, while also providing appropriate opportunity for persons who use family day-care and who work a nonstandard work shift.

(3) A county or city may also require that the family day-care provider, before state licensing, require proof of written notification by the provider that the immediately adjoining property owners have been informed of the intent to locate and maintain such a facility. If a dispute arises between neighbors and the family day-care provider over licensing

requirements, the licensor may provide a forum to resolve the dispute.

(4) Nothing in this section shall be construed to prohibit a county or city from imposing zoning conditions on the establishment and maintenance of a family day-care provider's home in an area zoned for residential or commercial use, so long as such conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not precluded. As used in this section, "family day-care provider" is as defined in RCW 43.215.010. [2007 c 17 § 13; 2003 c 286 § 5; 1995 c 49 § 3; 1994 c 273 § 17.]

36.70A.460 Watershed restoration projects—Permit processing—Fish habitat enhancement project. (1) A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510.

(2) A fish habitat enhancement project meeting the criteria of RCW 77.55.181 shall be reviewed and approved according to the provisions of RCW 77.55.181. [2014 c 120 § 15; 2003 c 39 § 21; 1998 c 249 § 11; 1995 c 378 § 11.]

Findings—Purpose—Report—Effective date—1998 c 249: See notes following RCW 77.55.181.

36.70A.470 Project review—Amendment suggestion procedure—Definitions. (1) Project review, which shall be conducted pursuant to the provisions of chapter 36.70B RCW, shall be used to make individual project decisions, not land use planning decisions. If, during project review, a county or city planning under RCW 36.70A.040 identifies deficiencies in plans or regulations:

- (a) The permitting process shall not be used as a comprehensive planning process;
- (b) Project review shall continue; and
- (c) The identified deficiencies shall be docketed for possible future plan or development regulation amendments.

(2) Each county and city planning under RCW 36.70A.040 shall include in its development regulations a procedure for any interested person, including applicants, citizens, hearing examiners, and staff of other agencies, to suggest plan or development regulation amendments. The suggested amendments shall be docketed and considered on at least an annual basis, consistent with the provisions of RCW 36.70A.130.

(3) For purposes of this section, a deficiency in a comprehensive plan or development regulation refers to the absence of required or potentially desirable contents of a comprehensive plan or development regulation. It does not refer to whether a development regulation addresses a project's probable specific adverse environmental impacts which the permitting agency could mitigate in the normal project review process.

(4) For purposes of this section, docketing refers to compiling and maintaining a list of suggested changes to the comprehensive plan or development regulations in a manner that will ensure such suggested changes will be considered by the county or city and will be available for review by the public. [1995 c 347 § 102.]

Findings—Intent—1995 c 347 § 102: "The legislature finds that during project review, a county or city planning under RCW 36.70A.040 is (2014 Ed.)

likely to discover the need to make various improvements in comprehensive plans and development regulations. There is no current requirement or process for applicants, citizens, or agency staff to ensure that these improvements are considered in the plan review process. The legislature also finds that in the past environmental review and permitting of proposed projects have been used to reopen and make land use planning decisions that should have been made through the comprehensive planning process, in part because agency staff and hearing examiners have not been able to ensure consideration of all issues in the local planning process. The legislature further finds that, while plans and regulations should be improved and refined over time, it is unfair to penalize applicants that have submitted permit applications that meet current requirements. It is the intent of the legislature in enacting RCW 36.70A.470 to establish a means by which cities and counties will docket suggested plan or development regulation amendments and ensure their consideration during the planning process." [1995 c 347 § 101.]

Finding—1995 c 347: "The legislature recognizes by this act that the growth management act is a fundamental building block of regulatory reform. The state and local governments have invested considerable resources in an act that should serve as the integrating framework for all other land-use related laws. The growth management act provides the means to effectively combine certainty for development decisions, reasonable environmental protection, long-range planning for cost-effective infrastructure, and orderly growth and development." [1995 c 347 § 1.]

Additional notes found at www.leg.wa.gov

36.70A.480 Shorelines of the state. (1) For shorelines of the state, the goals and policies of the shoreline management act as set forth in RCW 90.58.020 are added as one of the goals of this chapter as set forth in RCW 36.70A.020 without creating an order of priority among the fourteen goals. The goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county or city's development regulations.

(2) The shoreline master program shall be adopted pursuant to the procedures of chapter 90.58 RCW rather than the goals, policies, and procedures set forth in this chapter for the adoption of a comprehensive plan or development regulations.

(3)(a) The policies, goals, and provisions of chapter 90.58 RCW and applicable guidelines shall be the sole basis for determining compliance of a shoreline master program with this chapter except as the shoreline master program is required to comply with the internal consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105.

(b) Except as otherwise provided in (c) of this subsection, development regulations adopted under this chapter to protect critical areas within shorelines of the state apply within shorelines of the state until the department of ecology approves one of the following: A comprehensive master program update, as defined in RCW 90.58.030; a segment of a master program relating to critical areas, as provided in RCW 90.58.090; or a new or amended master program approved by the department of ecology on or after March 1, 2002, as provided in RCW 90.58.080. The adoption or update of development regulations to protect critical areas under this chapter prior to department of ecology approval of a master program update as provided in this subsection is not a comprehensive or segment update to the master program.

(c)(i) Until the department of ecology approves a master program or segment of a master program as provided in (b) of

this subsection, a use or structure legally located within shorelines of the state that was established or vested on or before the effective date of the local government's development regulations to protect critical areas may continue as a conforming use and may be redeveloped or modified if: (A) The redevelopment or modification is consistent with the local government's master program; and (B) the local government determines that the proposed redevelopment or modification will result in no net loss of shoreline ecological functions. The local government may waive this requirement if the redevelopment or modification is consistent with the master program and the local government's development regulations to protect critical areas.

(ii) For purposes of this subsection (3)(c), an agricultural activity that does not expand the area being used for the agricultural activity is not a redevelopment or modification. "Agricultural activity," as used in this subsection (3)(c), has the same meaning as defined in RCW 90.58.065.

(d) Upon department of ecology approval of a shoreline master program or critical area segment of a shoreline master program, critical areas within shorelines of the state are protected under chapter 90.58 RCW and are not subject to the procedural and substantive requirements of this chapter, except as provided in subsection (6) of this section. Nothing in chapter 321, Laws of 2003 or chapter 107, Laws of 2010 is intended to affect whether or to what extent agricultural activities, as defined in RCW 90.58.065, are subject to chapter 36.70A RCW.

(e) The provisions of RCW 36.70A.172 shall not apply to the adoption or subsequent amendment of a local government's shoreline master program and shall not be used to determine compliance of a local government's shoreline master program with chapter 90.58 RCW and applicable guidelines. Nothing in this section, however, is intended to limit or change the quality of information to be applied in protecting critical areas within shorelines of the state, as required by chapter 90.58 RCW and applicable guidelines.

(4) Shoreline master programs shall provide a level of protection to critical areas located within shorelines of the state that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources as defined by department of ecology guidelines adopted pursuant to RCW 90.58.060.

(5) Shorelines of the state shall not be considered critical areas under this chapter except to the extent that specific areas located within shorelines of the state qualify for critical area designation based on the definition of critical areas provided by RCW 36.70A.030(5) and have been designated as such by a local government pursuant to RCW 36.70A.060(2).

(6) If a local jurisdiction's master program does not include land necessary for buffers for critical areas that occur within shorelines of the state, as authorized by *RCW 90.58.030(2)(f), then the local jurisdiction shall continue to regulate those critical areas and their required buffers pursuant to RCW 36.70A.060(2). [2010 c 107 § 2; 2003 c 321 § 5; 1995 c 347 § 104.]

***Reviser's note:** RCW 90.58.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (2)(f) to subsection (2)(d).

Intent—2010 c 107: "(1) The legislature recognizes that Engrossed Substitute House Bill No. 1933, enacted as chapter 321, Laws of 2003, modified the relationship between the shoreline management act and the growth management act. The legislature recognizes also that its 2003 efforts, while

intended to create greater operational clarity between these significant shoreline and land use acts, have been the subject of differing, and occasionally contrary, legal interpretations. This act is intended to affirm and clarify the legislature's intent relating to the provisions of chapter 321, Laws of 2003.

(2) The legislature affirms that development regulations adopted under the growth management act to protect critical areas apply within shorelines of the state as provided in section 2 of this act.

(3) The legislature affirms that the adoption or update of critical area regulations under the growth management act is not automatically an update to the shoreline master program.

(4) The legislature intends for this act to be remedial and curative in nature, and to apply retroactively to July 27, 2003." [2010 c 107 § 1.]

Retroactive application—2010 c 107: "This act is remedial and curative in nature and applies retroactively to July 27, 2003." [2010 c 107 § 5.]

Effective date—2010 c 107: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 18, 2010]." [2010 c 107 § 6.]

Finding—Intent—2003 c 321: See note following RCW 90.58.030.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

36.70A.481 Construction—Chapter 347, Laws of 1995. Nothing in RCW 36.70A.480 shall be construed to authorize a county or city to adopt regulations applicable to shorelands as defined in RCW 90.58.030 that are inconsistent with the provisions of chapter 90.58 RCW. [1995 c 382 § 13.]

36.70A.490 Growth management planning and environmental review fund—Established. The growth management planning and environmental review fund is hereby established in the state treasury. Moneys may be placed in the fund from the proceeds of bond sales, tax revenues, budget transfers, federal appropriations, gifts, or any other lawful source. Moneys in the fund may be spent only after appropriation. Moneys in the fund shall be used to make grants or loans to local governments for the purposes set forth in RCW 43.21C.240, 43.21C.031, or 36.70A.500. Any payment of either principal or interest, or both, derived from loans made from this fund must be deposited into the fund. [2012 1st sp.s. c 1 § 309; 1995 c 347 § 115.]

Finding—Intent—Limitation—Jurisdiction/authority of Indian tribe under act—2012 1st sp.s. c 1: See notes following RCW 77.55.011.

Authority of department of fish and wildlife under act—2012 1st sp.s. c 1: See note following RCW 76.09.040.

Findings—Purpose—1995 c 347 § 115: "(1) The legislature finds that:

(a) As of July 23, 1995, twenty-nine counties and two hundred eight cities are conducting comprehensive planning under the growth management act, chapter 36.70A RCW, which together comprise over ninety percent of the state's population;

(b) Comprehensive plans for many of the jurisdictions were due by July 1, 1994, and the remaining jurisdictions must complete plans under due dates ranging from October 1994 to September 1997;

(c) Concurrently with these comprehensive planning activities, local governments must conduct several other planning requirements under the growth management act, such as the adoption of capital facilities plans, urban growth areas, and development regulations;

(d) Local governments must also comply with the state environmental policy act, chapter 43.21C RCW, in the development of comprehensive plans and development regulations;

(e) The combined activities of comprehensive planning and the state environmental policy act present a serious fiscal burden upon local governments; and

(f) Detailed environmental analysis integrated with comprehensive plans, subarea plans, and development regulations will facilitate planning for and managing growth, allow greater protection of the environment, and benefit both the general public and private property owners.

(2) In order to provide financial assistance to cities and counties planning under chapter 36.70A RCW and to improve the usefulness of plans and integrated environmental analyses, the legislature has created the fund described in RCW 36.70A.490." [1995 c 347 § 114.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

36.70A.500 Growth management planning and environmental review fund—Awarding of grant or loan—Procedures.

(1) The department of commerce shall provide management services for the growth management planning and environmental review fund created by RCW 36.70A.490. The department shall establish procedures for fund management. The department shall encourage participation in the grant or loan program by other public agencies. The department shall develop the grant or loan criteria, monitor the grant or loan program, and select grant or loan recipients in consultation with state agencies participating in the grant or loan program through the provision of grant or loan funds or technical assistance.

(2) A grant or loan may be awarded to a county or city that is required to or has chosen to plan under RCW 36.70A.040 and that is qualified pursuant to this section. The grant or loan shall be provided to assist a county or city in paying for the cost of preparing an environmental analysis under chapter 43.21C RCW, that is integrated with a comprehensive plan, subarea plan, plan element, countywide planning policy, development regulation, monitoring program, or other planning activity adopted under or implementing this chapter that:

(a) Improves the process for project permit review while maintaining environmental quality; or

(b) Encourages use of plans and information developed for purposes of complying with this chapter to satisfy requirements of other state programs.

(3) In order to qualify for a grant or loan, a county or city shall:

(a) Demonstrate that it will prepare an environmental analysis pursuant to chapter 43.21C RCW and subsection (2) of this section that is integrated with a comprehensive plan, subarea plan, plan element, countywide planning policy, development regulations, monitoring program, or other planning activity adopted under or implementing this chapter;

(b) Address environmental impacts and consequences, alternatives, and mitigation measures in sufficient detail to allow the analysis to be adopted in whole or in part by applicants for development permits within the geographic area analyzed in the plan;

(c) Demonstrate that procedures for review of development permit applications will be based on the integrated plans and environmental analysis;

(d) Include mechanisms to monitor the consequences of growth as it occurs in the plan area and to use the resulting data to update the plan, policy, or implementing mechanisms and associated environmental analysis;

(e) Demonstrate substantial progress towards compliance with the requirements of this chapter. A county or city that is more than six months out of compliance with a requirement of this chapter is deemed not to be making substantial progress towards compliance; and

(f) Provide local funding, which may include financial participation by the private sector.

(2014 Ed.)

(4) In awarding grants or loans, the department shall give preference to proposals that include one or more of the following elements:

(a) Financial participation by the private sector, or a public/private partnering approach;

(b) Identification and monitoring of system capacities for elements of the built environment, and to the extent appropriate, of the natural environment;

(c) Coordination with state, federal, and tribal governments in project review;

(d) Furtherance of important state objectives related to economic development, protection of areas of statewide significance, and siting of essential public facilities;

(e) Programs to improve the efficiency and effectiveness of the permitting process by greater reliance on integrated plans and prospective environmental analysis;

(f) Programs for effective citizen and neighborhood involvement that contribute to greater likelihood that planning decisions can be implemented with community support;

(g) Programs to identify environmental impacts and establish mitigation measures that provide effective means to satisfy concurrency requirements and establish project consistency with the plans; or

(h) Environmental review that addresses the impacts of increased density or intensity of comprehensive plans, subarea plans, or receiving areas designated by a city or town under the regional transfer of development rights program in chapter 43.362 RCW.

(5) If the local funding includes funding provided by other state functional planning programs, including open space planning and watershed or basin planning, the functional plan shall be integrated into and be consistent with the comprehensive plan.

(6) State agencies shall work with grant or loan recipients to facilitate state and local project review processes that will implement the projects receiving grants or loans under this section. [2012 1st sp.s. c 1 § 310; 1997 c 429 § 28; 1995 c 347 § 116.]

Finding—Intent—Limitation—Jurisdiction/authority of Indian tribe under act—2012 1st sp.s. c 1: See notes following RCW 77.55.011.

Authority of department of fish and wildlife under act—2012 1st sp.s. c 1: See note following RCW 76.09.040.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Additional notes found at www.leg.wa.gov

36.70A.510 General aviation airports. Adoption and amendment of comprehensive plan provisions and development regulations under this chapter affecting a general aviation airport are subject to RCW 36.70.547. [1996 c 239 § 5.]

36.70A.520 National historic towns—Designation.

Counties that are required or choose to plan under RCW 36.70A.040 may authorize and designate national historic towns that may constitute urban growth outside of urban growth areas as limited by this section. A national historic town means a town or district that has been designated a national historic landmark by the United States secretary of the interior pursuant to 16 U.S.C. 461 et seq., as amended, based on its significant historic urban features, and which his-

torically contained a mix of residential and commercial or industrial uses.

A national historic town may be designated under this chapter by a county only if:

(1) The comprehensive plan specifically identifies policies to guide the preservation, redevelopment, infill, and development of the town;

(2) The comprehensive plan and development regulations specify a mix of residential, commercial, industrial, tourism-recreation, waterfront, or other historical uses, along with other uses, infrastructure, and services which promote the economic sustainability of the town and its historic character. To promote historic preservation, redevelopment, and an economically sustainable community, the town also may include the types of uses that existed at times during its history and is not limited to those present at the time of the historic designation. Portions of the town may include urban densities if they reflect density patterns that existed at times during its history;

(3) The boundaries of the town include all of the area contained in the national historic landmark designation, along with any additional limited areas determined by the county as appropriate for transitional uses and buffering. Provisions for transitional uses and buffering must be compatible with the town's historic character and must protect the existing natural and built environment under the requirements of this chapter within and beyond the additional limited areas, including visual compatibility. The comprehensive plan and development regulations must include restrictions that preclude new urban or suburban land uses in the vicinity of the town, including the additional limited areas, except in areas otherwise designated for urban growth under this chapter;

(4) The development regulations provide for architectural controls and review procedures applicable to the rehabilitation, redevelopment, infill, or new development to promote the historic character of the town;

(5) The county finds that the national historic town is consistent with the development regulations established for critical areas; and

(6) On-site and off-site infrastructure impacts are fully considered and mitigated concurrent with development.

A county may allocate a portion of its twenty-year population projection, prepared by the office of financial management, to the national historic town corresponding to the projected number of permanent residents within the national historic town. [2000 c 196 § 1.]

36.70A.530 Land use development incompatible with military installation not allowed—Revision of comprehensive plans and development regulations. (1) Military installations are of particular importance to the economic health of the state of Washington and it is a priority of the state to protect the land surrounding our military installations from incompatible development.

(2) Comprehensive plans, amendments to comprehensive plans, development regulations, or amendments to development regulations adopted under this section shall be adopted or amended concurrent with the scheduled update provided in RCW 36.70A.130, except that counties and cities identified in RCW 36.70A.130(4)(a) shall comply with this section on or before December 1, 2005, and shall thereafter

comply with this section on a schedule consistent with RCW 36.70A.130(4).

(3) A comprehensive plan, amendment to a plan, a development regulation or amendment to a development regulation, should not allow development in the vicinity of a military installation that is incompatible with the installation's ability to carry out its mission requirements. A city or county may find that an existing comprehensive plan or development regulations are compatible with the installation's ability to carry out its mission requirements.

(4) As part of the requirements of RCW 36.70A.070(1) each county and city planning under RCW 36.70A.040 that has a federal military installation, other than a reserve center, that employs one hundred or more personnel and is operated by the United States department of defense within or adjacent to its border, shall notify the commander of the military installation of the county's or city's intent to amend its comprehensive plan or development regulations to address lands adjacent to military installations to ensure those lands are protected from incompatible development.

(5)(a) The notice provided under subsection (4) of this section shall request from the commander of the military installation a written recommendation and supporting facts relating to the use of land being considered in the adoption of a comprehensive plan or an amendment to a plan. The notice shall provide sixty days for a response from the commander. If the commander does not submit a response to such request within sixty days, the local government may presume that implementation of the proposed plan or amendment will not have any adverse effect on the operation of the installation.

(b) When a county or city intends to amend its development regulations to be consistent with the comprehensive plan elements addressed in (a) of this subsection, notice shall be provided to the commander of the military installation consistent with subsection (4) of this section. The notice shall request from the commander of the military installation a written recommendation and supporting facts relating to the use of land being considered in the amendment to the development regulations. The notice shall provide sixty days for a response from the commander to the requesting government. If the commander does not submit a response to such request within sixty days, the local government may presume that implementation of the proposed development regulation or amendment will not have any adverse effect on the operation of the installation. [2004 c 28 § 2.]

Finding—2004 c 28: "The United States military is a vital component of the Washington state economy. The protection of military installations from incompatible development of land is essential to the health of Washington's economy and quality of life. Incompatible development of land close to a military installation reduces the ability of the military to complete its mission or to undertake new missions, and increases its cost of operating. The department of defense evaluates continued utilization of military installations based upon their operating costs, their ability to carry out missions, and their ability to undertake new missions." [2004 c 28 § 1.]

36.70A.540 Affordable housing incentive programs—Low-income housing units. (1)(a) Any city or county planning under RCW 36.70A.040 may enact or expand affordable housing incentive programs providing for the development of low-income housing units through development regulations or conditions on rezoning or permit decisions, or both, on one or more of the following types of devel-

opment: Residential; commercial; industrial; or mixed-use. An affordable housing incentive program may include, but is not limited to, one or more of the following:

- (i) Density bonuses within the urban growth area;
- (ii) Height and bulk bonuses;
- (iii) Fee waivers or exemptions;
- (iv) Parking reductions; or
- (v) Expedited permitting.

(b) The city or county may enact or expand such programs whether or not the programs may impose a tax, fee, or charge on the development or construction of property.

(c) If a developer chooses not to participate in an optional affordable housing incentive program adopted and authorized under this section, a city, county, or town may not condition, deny, or delay the issuance of a permit or development approval that is consistent with zoning and development standards on the subject property absent incentive provisions of this program.

(2) Affordable housing incentive programs enacted or expanded under this section shall comply with the following:

(a) The incentives or bonuses shall provide for the development of low-income housing units;

(b) Jurisdictions shall establish standards for low-income renter or owner occupancy housing, including income guidelines consistent with local housing needs, to assist low-income households that cannot afford market-rate housing. Low-income households are defined for renter and owner occupancy program purposes as follows:

(i) Rental housing units to be developed shall be affordable to and occupied by households with an income of fifty percent or less of the county median family income, adjusted for family size;

(ii) Owner occupancy housing units shall be affordable to and occupied by households with an income of eighty percent or less of the county median family income, adjusted for family size. The legislative authority of a jurisdiction, after holding a public hearing, may establish lower income levels; and

(iii) The legislative authority of a jurisdiction, after holding a public hearing, may also establish higher income levels for rental housing or for owner occupancy housing upon finding that higher income levels are needed to address local housing market conditions. The higher income level for rental housing may not exceed eighty percent of the county area median family income. The higher income level for owner occupancy housing may not exceed one hundred percent of the county area median family income. These established higher income levels are considered "low-income" for the purposes of this section;

(c) The jurisdiction shall establish a maximum rent level or sales price for each low-income housing unit developed under the terms of a program and may adjust these levels or prices based on the average size of the household expected to occupy the unit. For renter-occupied housing units, the total housing costs, including basic utilities as determined by the jurisdiction, may not exceed thirty percent of the income limit for the low-income housing unit;

(d) Where a developer is utilizing a housing incentive program authorized under this section to develop market rate housing, and is developing low-income housing to satisfy the requirements of the housing incentive program, the

low-income housing units shall be provided in a range of sizes comparable to those units that are available to other residents. To the extent practicable, the number of bedrooms in low-income units must be in the same proportion as the number of bedrooms in units within the entire development. The low-income units shall generally be distributed throughout the development and have substantially the same functionality as the other units in the development;

(e) Low-income housing units developed under an affordable housing incentive program shall be committed to continuing affordability for at least fifty years. A local government, however, may accept payments in lieu of continuing affordability. The program shall include measures to enforce continuing affordability and income standards applicable to low-income units constructed under this section that may include, but are not limited to, covenants, options, or other agreements to be executed and recorded by owners and developers;

(f) Programs authorized under subsection (1) of this section may apply to part or all of a jurisdiction and different standards may be applied to different areas within a jurisdiction or to different types of development. Programs authorized under this section may be modified to meet local needs and may include provisions not expressly provided in this section or RCW 82.02.020;

(g) Low-income housing units developed under an affordable housing incentive program are encouraged to be provided within developments for which a bonus or incentive is provided. However, programs may allow units to be provided in a building located in the general area of the development for which a bonus or incentive is provided; and

(h) Affordable housing incentive programs may allow a payment of money or property in lieu of low-income housing units if the jurisdiction determines that the payment achieves a result equal to or better than providing the affordable housing on-site, as long as the payment does not exceed the approximate cost of developing the same number and quality of housing units that would otherwise be developed. Any city or county shall use these funds or property to support the development of low-income housing, including support provided through loans or grants to public or private owners or developers of housing.

(3) Affordable housing incentive programs enacted or expanded under this section may be applied within the jurisdiction to address the need for increased residential development, consistent with local growth management and housing policies, as follows:

(a) The jurisdiction shall identify certain land use designations within a geographic area where increased residential development will assist in achieving local growth management and housing policies;

(b) The jurisdiction shall provide increased residential development capacity through zoning changes, bonus densities, height and bulk increases, parking reductions, or other regulatory changes or other incentives;

(c) The jurisdiction shall determine that increased residential development capacity or other incentives can be achieved within the identified area, subject to consideration of other regulatory controls on development; and

(d) The jurisdiction may establish a minimum amount of affordable housing that must be provided by all residential

developments being built under the revised regulations, consistent with the requirements of this section. [2009 c 80 § 1; 2006 c 149 § 2.]

Findings—2006 c 149: "The legislature finds that as new market-rate housing developments are constructed and housing costs rise, there is a significant and growing number of low-income households that cannot afford market-rate housing in Washington state. The legislature finds that assistance to low-income households that cannot afford market-rate housing requires a broad variety of tools to address this serious, statewide problem. The legislature further finds that absent any incentives to provide low-income housing, market conditions will result in housing developments in many areas that lack units affordable to low-income households, circumstances that can cause adverse socioeconomic effects.

The legislature encourages cities, towns, and counties to enact or expand affordable housing incentive programs, including density bonuses and other incentives, to increase the availability of low-income housing for renter and owner occupancy that is located in largely market-rate housing developments throughout the community, consistent with local needs and adopted comprehensive plans. While this act establishes minimum standards for those cities, towns, and counties choosing to implement or expand upon an affordable housing incentive program, cities, towns, and counties are encouraged to enact programs that address local circumstances and conditions while simultaneously contributing to the statewide need for additional low-income housing." [2006 c 149 § 1.]

Construction—2006 c 149: "The powers granted in this act are supplemental and additional to the powers otherwise held by local governments, and nothing in this act shall be construed as a limit on such powers. The authority granted in this act shall extend to any affordable housing incentive program enacted or expanded prior to June 7, 2006, if the extension is adopted by the applicable local government in an ordinance or resolution." [2006 c 149 § 4.]

36.70A.550 Aquifer conservation zones. (1) Any city coterminous with, and comprised only of, an island that relies solely on groundwater aquifers for its potable water source and does not have reasonable access to a potable water source outside its jurisdiction may designate one or more aquifer conservation zones.

Aquifer conservation zones may only be designated for the purpose of conserving and protecting potable water sources.

(2) Aquifer conservation zones may not be considered critical areas under this chapter except to the extent that specific areas located within aquifer conservation zones qualify for critical area designation and have been designated as such under RCW 36.70A.060(2).

(3) Any city may consider whether an area is within an aquifer conservation zone when determining the residential density of that particular area. The residential densities within conservation zones, in combination with other densities of the city, must be sufficient to accommodate projected population growth under RCW 36.70A.110.

(4) Nothing in this section may be construed to modify the population accommodation obligations required of jurisdictions under this chapter. [2007 c 159 § 1.]

36.70A.570 Regulation of forest practices. (1) Each county, city, and town assuming regulation of forest practices as provided in RCW 76.09.240 (1) and (2) shall adopt development regulations that:

(a) Protect public resources, as defined in RCW 76.09.020, from material damage or the potential for material damage;

(b) Require appropriate approvals for all phases of the conversion of forest lands, including clearing and grading;

(c) Are guided by the planning goals in RCW 36.70A.020 and by the purposes and policies of the forest practices act as set forth in RCW 76.09.010; and

(d) Are consistent with or supplement development regulations that protect critical areas pursuant to RCW 36.70A.060.

(2) If necessary, each county, city, or town that assumes regulation of forest practices under RCW 76.09.240 shall amend its comprehensive plan to ensure consistency between its comprehensive plan and development regulations.

(3) Before a county, city, or town may regulate forest practices under RCW 76.09.240 (1) and (2), it shall update its development regulations as required by RCW 36.70A.130 and, if applicable, RCW 36.70A.215. Forest practices regulations adopted under RCW 76.09.240 (1) and (2) may be adopted as part of the legislative action taken under RCW 36.70A.130 or 36.70A.215. [2007 c 236 § 2.]

36.70A.695 Development regulations—Jurisdictions specified—Electric vehicle infrastructure. (1) By July 1, 2010, the development regulations of any jurisdiction:

(a) Adjacent to Interstate 5, Interstate 90, Interstate 405, or state route number 520, with a population over twenty thousand, and located in a county with a population over one million five hundred thousand; or

(b) Adjacent to Interstate 5 and located in a county with a population greater than six hundred thousand; or

(c) Adjacent to Interstate 5 and located in a county with a state capitol within its borders;

planning under this chapter must allow electric vehicle infrastructure as a use in all areas except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(2) By July 1, 2011, or six months after the distribution required under RCW 43.31.970 occurs, whichever is later, the development regulations of any jurisdiction adjacent to Interstate 5, Interstate 90, Interstate 405, or state route number 520 planning under this chapter must allow electric vehicle infrastructure as a use in all areas except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(3) By July 1, 2011, or six months after the distribution required under RCW 43.31.970 occurs, whichever is later, the development regulations of any jurisdiction planning under this chapter must allow battery charging stations as a use in all areas except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(4) Cities are authorized to adopt incentive programs to encourage the retrofitting of existing structures with the electrical outlets capable of charging electric vehicles. Incentives may include bonus height, site coverage, floor area ratio, and transferable development rights for use in urban growth areas.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations.

(d) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(6) If federal funding for public investment in electric vehicles, electric vehicle infrastructure, or alternative fuel distribution infrastructure is not provided by February 1, 2010, subsection (1) of this section is null and void. [2009 c 459 § 12.]

Finding—Purpose—2009 c 459: See note following RCW 47.80.090.

Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.

VOLUNTARY STEWARDSHIP PROGRAM

36.70A.700 Purpose—Intent—2011 c 360. (1) The purpose of chapter 360, Laws of 2011 is to establish the voluntary stewardship program as recommended in the report submitted by the William D. Ruckelshaus Center to the legislature as required by chapter 353, Laws of 2007 and chapter 203, Laws of 2010.

(2) It is the intent of chapter 360, Laws of 2011 to:

(a) Promote plans to protect and enhance critical areas within the area where agricultural activities are conducted, while maintaining and improving the long-term viability of agriculture in the state of Washington and reducing the conversion of farmland to other uses;

(b) Focus and maximize voluntary incentive programs to encourage good riparian and ecosystem stewardship as an alternative to historic approaches used to protect critical areas;

(c) Rely upon RCW 36.70A.060 for the protection of critical areas for those counties that do not choose to participate in this program;

(d) Leverage existing resources by relying upon existing work and plans in counties and local watersheds, as well as existing state and federal programs to the maximum extent practicable to achieve program goals;

(2014 Ed.)

(e) Encourage and foster a spirit of cooperation and partnership among county, tribal, environmental, and agricultural interests to better assure the program success;

(f) Improve compliance with other laws designed to protect water quality and fish habitat; and

(g) Rely upon voluntary stewardship practices as the primary method of protecting critical areas and not require the cessation of agricultural activities. [2011 c 360 § 1.]

36.70A.702 Construction. Nothing in RCW 36.70A.700 through 36.70A.760 may be construed to:

(1) Interfere with or supplant the ability of any agricultural operator to work cooperatively with a conservation district or participate in state or federal conservation programs;

(2) Require an agricultural operator to discontinue agricultural activities legally existing before July 22, 2011;

(3) Prohibit the voluntary sale or leasing of land for conservation purposes, either in fee or as an easement;

(4) Grant counties or state agencies additional authority to regulate critical areas on lands used for agricultural activities; and

(5) Limit the authority of a state agency, local government, or landowner to carry out its obligations under any other federal, state, or local law. [2011 c 360 § 15.]

36.70A.703 Definitions. The definitions in this section apply to RCW 36.70A.700 through 36.70A.760 and RCW 36.70A.130 and 36.70A.280 unless the context clearly requires otherwise.

(1) "Agricultural activities" means all agricultural uses and practices as defined in RCW 90.58.065.

(2) "Commission" means the state conservation commission as defined in RCW 89.08.030.

(3) "Director" means the executive director of the state conservation commission.

(4) "Enhance" or "enhancement" means to improve the processes, structure, and functions existing, as of July 22, 2011, of ecosystems and habitats associated with critical areas.

(5) "Participating watershed" means a watershed identified by a county under RCW 36.70A.710(1) to participate in the program.

(6) "Priority watershed" means a geographic area nominated by the county and designated by the commission.

(7) "Program" means the voluntary stewardship program established in RCW 36.70A.705.

(8) "Protect" or "protecting" means to prevent the degradation of functions and values existing as of July 22, 2011.

(9) "Receipt of funding" means the date a county takes legislative action accepting any funds as required in RCW 36.70A.715(1) to implement the program.

(10) "Statewide advisory committee" means the statewide advisory committee created in RCW 36.70A.745.

(11) "Technical panel" means the directors or director designees of the following agencies: The department of fish and wildlife; the department of agriculture; the department of ecology; and the commission.

(12) "Watershed" means a water resource inventory area, salmon recovery planning area, or a subbasin as determined by a county.

(13) "Watershed group" means an entity designated by a county under the provisions of RCW 36.70A.715.

(14) "Work plan" means a watershed work plan developed under the provisions of RCW 36.70A.720. [2011 c 360 § 2.]

36.70A.705 Voluntary stewardship program established—Administered by commission—Agency participation. (1) The voluntary stewardship program is established to be administered by the commission. The program shall be designed to protect and enhance critical areas on lands used for agricultural activities through voluntary actions by agricultural operators.

(2) In administering the program, the commission must:

(a) Establish policies and procedures for implementing the program;

(b) Administer funding for counties to implement the program including, but not limited to, funding to develop strategies and incentive programs and to establish local guidelines for watershed stewardship programs;

(c) Administer the program's technical assistance funds and coordinate among state agencies and other entities for the implementation of the program;

(d) Establish a technical panel;

(e) In conjunction with the technical panel, review and evaluate: (i) Work plans submitted for approval under RCW 36.70A.720(2)(a); and (ii) reports submitted under RCW 36.70A.720(2)(b);

(f) Review and evaluate the program's success and effectiveness and make appropriate changes to policies and procedures for implementing the program, in consultation with the statewide advisory committee and other affected agencies;

(g) Designate priority watersheds based upon the recommendation of the statewide advisory committee. The commission and the statewide advisory committee may only consider watersheds nominated by counties under RCW 36.70A.710. When designating priority watersheds, the commission and the statewide advisory committee shall consider the statewide significance of the criteria listed in RCW 36.70A.710(3);

(h) Provide administrative support for the program's statewide advisory committee in its work. The administrative support must be in collaboration with the department of ecology and other agencies involved in the program;

(i) Maintain a web site about the program that includes times, locations, and agenda information for meetings of the statewide advisory committee;

(j) Report to the legislature on the general status of program implementation by December 1, 2013, and December 1, 2015;

(k) In conjunction with the statewide advisory committee, conduct a review of the program beginning in 2017 and every five years thereafter, and report its findings to the legislature by December 1st; and

(l) Report to the appropriate committees of the legislature in the format provided in RCW 43.01.036.

(3) The department shall assist counties participating in the program to develop plans and development regulations under RCW 36.70A.735(1).

(4) The commission, department, department of agriculture, department of fish and wildlife, department of ecology, and other state agencies as directed by the governor shall:

(a) Cooperate and collaborate to implement the program; and

(b) Develop materials to assist local watershed groups in development of work plans.

(5) State agencies conducting new monitoring to implement the program in a watershed must focus on the goals and benchmarks of the work plan. [2011 c 360 § 3.]

36.70A.710 Critical areas protection—Alternative to RCW 36.70A.060—County's responsibilities—Procedures. (1)(a) As an alternative to protecting critical areas in areas used for agricultural activities through development regulations adopted under RCW 36.70A.060, the legislative authority of a county may elect to protect such critical areas through the program.

(b) In order to participate in the program, within six months after July 22, 2011, the legislative authority of a county must adopt an ordinance or resolution that:

(i) Elects to have the county participate in the program;

(ii) Identifies the watersheds that will participate in the program; and

(iii) Based on the criteria in subsection (4) of this section, nominates watersheds for consideration by the commission as state priority watersheds.

(2) Before adopting the ordinance or resolution under subsection (1) of this section, the county must (a) confer with tribes, and environmental and agricultural interests; and (b) provide notice following the public participation and notice provisions of RCW 36.70A.035 to property owners and other affected and interested individuals, tribes, government agencies, businesses, school districts, and organizations.

(3) In identifying watersheds to participate in the program, a county must consider:

(a) The role of farming within the watershed, including the number and acreage of farms, the economic value of crops and livestock, and the risk of the conversion of farmland;

(b) The overall likelihood of completing a successful program in the watershed; and

(c) Existing watershed programs, including those of other jurisdictions in which the watershed has territory.

(4) In identifying priority watersheds, a county must consider the following:

(a) The role of farming within the watershed, including the number and acreage of farms, the economic value of crops and livestock, and the risk of the conversion of farmland;

(b) The importance of salmonid resources in the watershed;

(c) An evaluation of the biological diversity of wildlife species and their habitats in the geographic region including their significance and vulnerability;

(d) The presence of leadership within the watershed that is representative and inclusive of the interests in the watershed;

(e) Integration of regional watershed strategies, including the availability of a data and scientific review structure related to all types of critical areas;

(f) The presence of a local watershed group that is willing and capable of overseeing a successful program, and that has the operational structures to administer the program effectively, including professional technical assistance staff, and monitoring and adaptive management structures; and

(g) The overall likelihood of completing a successful program in the watershed.

(5) Except as otherwise provided in subsection (9) of this section, beginning with the effective date of the ordinance or resolution adopted under subsection (1) of this section, the program applies to all unincorporated property upon which agricultural activities occur within a participating watershed.

(6)(a) Except as otherwise provided in (b) of this subsection, within two years after July 22, 2011, a county must review and, if necessary, revise development regulations adopted under this chapter to protect critical areas as they specifically apply to agricultural activities:

(i) If the county has not elected to participate in the program, for all unincorporated areas; or

(ii) If the county has elected to participate in the program, for any watershed not participating in the program.

(b) A county that between July 1, 2003, and June 30, 2007, in accordance with RCW 36.70A.130 completed the review of its development regulations as required by RCW 36.70A.130 to protect critical areas as they specifically apply to agricultural activities is not required to review and revise its development regulations until required by RCW 36.70A.130.

(c) After the review and amendment required under (a) of this subsection, RCW 36.70A.130 applies to the subsequent review and amendment of development regulations adopted under this chapter to protect critical areas as they specifically apply to agricultural activities.

(7)(a) A county that has made the election under subsection (1) of this section may withdraw a participating watershed from the program by adopting an ordinance or resolution withdrawing the watershed from the program. A county may withdraw a watershed from the program at the end of three years, five years, or eight years after receipt of funding, or any time after ten years from receipt of funding.

(b) Within eighteen months after withdrawing a participating watershed from the program, the county must review and, if necessary, revise its development regulations that protect critical areas in that watershed as they specifically apply to agricultural activities. The development regulations must protect the critical area functions and values as they existed on July 22, 2011. RCW 36.70A.130 applies to the subsequent review and amendment of development regulations adopted under this chapter to protect critical areas as they specifically apply to agricultural activities.

(8) A county that has made the election under subsection (1) of this section is eligible for a share of the funding made available to implement the program, subject to funding availability from the state.

(9) A county that has made the election under subsection (1) of this section is not required to implement the program in a participating watershed until adequate funding for the program in that watershed is provided to the county. [2011 c 360 § 4.]

(2014 Ed.)

36.70A.715 Funding by commission—County's duties—Watershed group established. (1) When the commission makes funds available to a county that has made the election provided in RCW 36.70A.710(1), the county must within sixty days:

(a) Acknowledge the receipt of funds; and

(b) Designate a watershed group and an entity to administer funds for each watershed for which funding has been provided.

(2) A county must confer with tribes and interested stakeholders before designating or establishing a watershed group.

(3) The watershed group must include broad representation of key watershed stakeholders and, at a minimum, representatives of agricultural and environmental groups and tribes that agree to participate. The county should encourage existing lead entities, watershed planning units, or other integrating organizations to serve as the watershed group.

(4) The county may designate itself, a tribe, or another entity to coordinate the local watershed group. [2011 c 360 § 5.]

36.70A.720 Watershed group's duties—Work plan—Conditional priority funding. (1) A watershed group designated by a county under RCW 36.70A.715 must develop a work plan to protect critical areas while maintaining the viability of agriculture in the watershed. The work plan must include goals and benchmarks for the protection and enhancement of critical areas. In developing and implementing the work plan, the watershed group must:

(a) Review and incorporate applicable water quality, watershed management, farmland protection, and species recovery data and plans;

(b) Seek input from tribes, agencies, and stakeholders;

(c) Develop goals for participation by agricultural operators conducting commercial and noncommercial agricultural activities in the watershed necessary to meet the protection and enhancement benchmarks of the work plan;

(d) Ensure outreach and technical assistance is provided to agricultural operators in the watershed;

(e) Create measurable benchmarks that, within ten years after the receipt of funding, are designed to result in (i) the protection of critical area functions and values and (ii) the enhancement of critical area functions and values through voluntary, incentive-based measures;

(f) Designate the entity or entities that will provide technical assistance;

(g) Work with the entity providing technical assistance to ensure that individual stewardship plans contribute to the goals and benchmarks of the work plan;

(h) Incorporate into the work plan any existing development regulations relied upon to achieve the goals and benchmarks for protection;

(i) Establish baseline monitoring for: (i) Participation activities and implementation of the voluntary stewardship plans and projects; (ii) stewardship activities; and (iii) the effects on critical areas and agriculture relevant to the protection and enhancement benchmarks developed for the watershed;

(j) Conduct periodic evaluations, institute adaptive management, and provide a written report of the status of plans

and accomplishments to the county and to the commission within sixty days after the end of each biennium;

(k) Assist state agencies in their monitoring programs; and

(l) Satisfy any other reporting requirements of the program.

(2)(a) The watershed group shall develop and submit the work plan to the director for approval as provided in RCW 36.70A.725.

(b)(i) Not later than five years after the receipt of funding for a participating watershed, the watershed group must report to the director and the county on whether it has met the work plan's protection and enhancement goals and benchmarks.

(ii) If the watershed group determines the protection goals and benchmarks have been met, and the director concurs under RCW 36.70A.730, the watershed group shall continue to implement the work plan.

(iii) If the watershed group determines the protection goals and benchmarks have not been met, it must propose and submit to the director an adaptive management plan to achieve the goals and benchmarks that were not met. If the director does not approve the adaptive management plan under RCW 36.70A.730, the watershed is subject to RCW 36.70A.735.

(iv) If the watershed group determines the enhancement goals and benchmarks have not been met, the watershed group must determine what additional voluntary actions are needed to meet the benchmarks, identify the funding necessary to implement these actions, and implement these actions when funding is provided.

(c)(i) Not later than ten years after receipt of funding for a participating watershed, and every five years thereafter, the watershed group must report to the director and the county on whether it has met the protection and enhancement goals and benchmarks of the work plan.

(ii) If the watershed group determines the protection goals and benchmarks have been met, and the director concurs under RCW 36.70A.730, the watershed group shall continue to implement the work plan.

(iii) If the watershed group determines the protection goals and benchmarks have not been met, the watershed is subject to RCW 36.70A.735.

(iv) If the watershed group determines the enhancement goals and benchmarks have not been met, the watershed group must determine what additional voluntary actions are needed to meet the benchmarks, identify the funding necessary to implement these actions, and implement these actions when funding is provided.

(3) Following approval of a work plan, a county or watershed group may request a state or federal agency to focus existing enforcement authority in that participating watershed, if the action will facilitate progress toward achieving work plan protection goals and benchmarks.

(4) The commission may provide priority funding to any watershed designated under the provisions of RCW 36.70A.705(2)(g). The director, in consultation with the statewide advisory committee, shall work with the watershed group to develop an accelerated implementation schedule for watersheds that receive priority funding.

(5) Commercial and noncommercial agricultural operators participating in the program are eligible to receive funding and assistance under watershed programs. [2011 c 360 § 6.]

36.70A.725 Technical review of work plan—Time frame for action by director. (1) Upon receipt of a work plan submitted to the director under RCW 36.70A.720(2)(a), the director must submit the work plan to the technical panel for review.

(2) The technical panel shall review the work plan and report to the director within forty-five days after the director receives the work plan. The technical panel shall assess whether at the end of ten years after receipt of funding, the work plan, in conjunction with other existing plans and regulations, will protect critical areas while maintaining and enhancing the viability of agriculture in the watershed.

(3)(a) If the technical panel determines the proposed work plan will protect critical areas while maintaining and enhancing the viability of agriculture in the watershed:

(i) It must recommend approval of the work plan; and

(ii) The director must approve the work plan.

(b) If the technical panel determines the proposed work plan will not protect critical areas while maintaining and enhancing the viability of agriculture in the watershed:

(i) It must identify the reasons for its determination; and

(ii) The director must advise the watershed group of the reasons for disapproval.

(4) The watershed group may modify and resubmit its work plan for review and approval consistent with this section.

(5) If the director does not approve a work plan submitted under this section within two years and nine months after receipt of funding, the director shall submit the work plan to the statewide advisory committee for resolution. If the statewide advisory committee recommends approval, the director must approve the work plan.

(6) If the director does not approve a work plan for a watershed within three years after receipt of funding, the provisions of RCW 36.70A.735(2) apply to the watershed. [2011 c 360 § 7.]

36.70A.730 Report by watershed group—Director consults with statewide advisory committee. (1) Upon receipt of a report by a watershed group under RCW 36.70A.720(2)(b) that the work plan goals and benchmarks have been met, the director must consult with the statewide advisory committee. If the director concurs with the watershed group report, the watershed group shall continue to implement the work plan. If the director does not concur with the watershed group report, the director shall consult with the statewide advisory committee following the procedures in subsection (2) of this section.

(2) If either the director, following receipt of a report under subsection (1) of this section, or the watershed group, in the report submitted to the director under RCW 36.70A.720(2)(b), concludes that the work plan goals and benchmarks for protection have not been met, the director must consult with the statewide advisory committee for a recommendation on how to proceed. If the director, acting upon recommendation from the statewide advisory committee,

determines that the watershed is likely to meet the goals and benchmarks with an additional six months of planning and implementation time, the director must grant an extension. If the director, acting upon a recommendation from the statewide advisory committee, determines that the watershed is unlikely to meet the goals and benchmarks within six months, the watershed is subject to RCW 36.70A.735.

(3) A watershed that fails to meet its goals and benchmarks for protection within the six-month time extension under subsection (2) of this section is subject to RCW 36.70A.735. [2011 c 360 § 8.]

36.70A.735 When work plan is not approved, fails, or is unfunded—County's duties—Rules. (1) Within eighteen months after one of the events in subsection (2) of this section, a county must:

(a) Develop, adopt, and implement a watershed work plan approved by the department that protects critical areas in areas used for agricultural activities while maintaining the viability of agriculture in the watershed. The department shall consult with the departments of agriculture, ecology, and fish and wildlife and the commission, and other relevant state agencies before approving or disapproving the proposed work plan. The appeal of the department's decision under this subsection is subject to appeal under RCW 36.70A.280;

(b) Adopt development regulations previously adopted under this chapter by another local government for the purpose of protecting critical areas in areas used for agricultural activities. Regulations adopted under this subsection (1)(b) must be from a region with similar agricultural activities, geography, and geology and must: (i) Be from Clallam, Clark, King, or Whatcom counties; or (ii) have been upheld by a growth management hearings board or court after July 1, 2011, where the board or court determined that the provisions adequately protected critical areas functions and values in areas used for agricultural activities;

(c) Adopt development regulations certified by the department as protective of critical areas in areas used for agricultural activities as required by this chapter. The county may submit existing or amended regulations for certification. The department must make its decision on whether to certify the development regulations within ninety days after the county submits its request. If the department denies the certification, the county shall take an action under (a), (b), or (d) of this subsection. The department must consult with the departments of agriculture, ecology, and fish and wildlife and the commission before making a certification under this section. The appeal of the department's decision under this subsection (1)(c) is subject to appeal under RCW 36.70A.280; or

(d) Review and, if necessary, revise development regulations adopted under this chapter to protect critical areas as they relate to agricultural activities.

(2) A participating watershed is subject to this section if:

(a) The work plan is not approved by the director as provided in RCW 36.70A.725;

(b) The work plan's goals and benchmarks for protection have not been met as provided in RCW 36.70A.720;

(c) The commission has determined under RCW 36.70A.740 that the county, department, commission, or departments of agriculture, ecology, or fish and wildlife have

not received adequate funding to implement a program in the watershed; or

(d) The commission has determined under RCW 36.70A.740 that the watershed has not received adequate funding to implement the program.

(3) The department shall adopt rules to implement subsection (1)(a) and (c) of this section. [2011 c 360 § 9.]

36.70A.740 Commission's duties—Timelines. (1) By July 31, 2015, the commission must:

(a) In consultation with each county that has elected under RCW 36.70A.710 to participate in the program, determine which participating watersheds received adequate funding to establish and implement the program in a participating watershed by July 1, 2015; and

(b) In consultation with other state agencies, for each participating watershed determine whether state agencies required to take action under the provisions of RCW 36.70A.700 through 36.70A.760 have received adequate funding to support the program by July 1, 2015.

(2) By July 31, 2017, and every two years thereafter, in consultation with each county that has elected under RCW 36.70A.710 to participate in the program and other state agencies, the commission shall determine for each participating watershed whether adequate funding to implement the program was provided during the preceding biennium as provided in subsection (1) of this section.

(3) If the commission determines under subsection (1) or (2) of this section that a participating watershed has not received adequate funding, the watershed is subject to the provisions of RCW 36.70A.735.

(4) In consultation with the statewide advisory committee and other state agencies, not later than August 31, 2015, and each August 31st every two years thereafter, the commission shall report to the legislature and each county that has elected under RCW 36.70A.710 to participate in the program on the participating watersheds that have received adequate funding to establish and implement the program. [2011 c 360 § 10.]

36.70A.745 Statewide advisory committee—Membership. (1)(a) From the nominations made under (b) of this subsection, the commission shall appoint a statewide advisory committee, consisting of: Two persons representing county government, two persons representing agricultural organizations, and two persons representing environmental organizations. The commission, in conjunction with the governor's office, shall also invite participation by two representatives of tribal governments.

(b) Organizations representing county, agricultural, and environmental organizations shall submit nominations of their representatives to the commission within ninety days of July 22, 2011. Members of the statewide advisory committee shall serve two-year terms except that for the first year, one representative from each of the sectors shall be appointed to the statewide advisory committee for a term of one year. Members may be reappointed by the commission for additional two-year terms and replacement members shall be appointed in accordance with the process for selection of the initial members of the statewide advisory committee.

(c) Upon notification of the commission by an appointed member, the appointed member may designate a person to serve as an alternate.

(d) The executive director of the commission shall serve as a nonvoting chair of the statewide advisory committee.

(e) Members of the statewide advisory committee shall serve without compensation and, unless serving as a state officer or employee, are not eligible for reimbursement for subsistence, lodging, and travel expenses under RCW 43.03.050 and 43.03.060.

(2) The role of the statewide advisory committee is to advise the commission and other agencies involved in development and operation of the program. [2011 c 360 § 11.]

36.70A.750 Agricultural operators—Individual stewardship plan. (1) Agricultural operators implementing an individual stewardship plan consistent with a work plan are presumed to be working toward the protection and enhancement of critical areas.

(2) If the watershed group determines that additional or different practices are needed to achieve the work plan's goals and benchmarks, the agricultural operator may not be required to implement those practices but may choose to implement the revised practices on a voluntary basis and is eligible for funding to revise the practices. [2011 c 360 § 12.]

36.70A.755 Implementing the work plan. In developing stewardship practices to implement the work plan, to the maximum extent practical the watershed group should:

(1) Avoid management practices that may have unintended adverse consequences for other habitats, species, and critical areas functions and values; and

(2) Administer the program in a manner that allows participants to be eligible for public or private environmental protection and enhancement incentives while protecting and enhancing critical area functions and values. [2011 c 360 § 13.]

36.70A.760 Agricultural operators—Withdrawal from program. An agricultural operator participating in the program may withdraw from the program and is not required to continue voluntary measures after the expiration of an applicable contract. The watershed group must account for any loss of protection resulting from withdrawals when establishing goals and benchmarks for protection and a work plan under RCW 36.70A.720. [2011 c 360 § 14.]

36.70A.800 Role of growth strategies commission. The growth strategies commission created by executive order shall:

(1) Analyze different methods for assuring that county and city comprehensive plans adopted under chapter 36.70A RCW are consistent with the planning goals under RCW 36.70A.020 and with other requirements of chapter 36.70A RCW;

(2) Recommend to the legislature and the governor by October 1, 1990, a specific structure or process that, among other things:

(a) Ensures county and city comprehensive plans adopted under chapter 36.70A RCW are coordinated and

comply with planning goals and other requirements under chapter 36.70A RCW;

(b) Requires state agencies to comply with this chapter and to consider and be consistent with county and city comprehensive plans in actions by state agencies, including the location, financing, and expansion of transportation systems and other public facilities;

(c) Defines the state role in growth management;

(d) Addresses lands and resources of statewide significance, including to:

(i) Protect these lands and resources of statewide significance by developing standards for their preservation and protection and suggesting the appropriate structure to monitor and enforce the preservation of these lands and resources; and

(ii) Consider the environmental, economic, and social values of the lands and resources with statewide significance;

(e) Identifies potential state funds that may be withheld and incentives that promote county and city compliance with chapter 36.70A RCW;

(f) Increases affordable housing statewide and promotes linkages between land use and transportation;

(g) Addresses vesting of rights; and

(h) Addresses short subdivisions; and

(3) Develop recommendations to provide for the resolution of disputes over urban growth areas between counties and cities, including incorporations and annexations. [1990 1st ex.s. c 17 § 86.]

36.70A.900 Severability—1990 1st ex.s. c 17. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 1st ex.s. c 17 § 88.]

36.70A.901 Part, section headings not law—1990 1st ex.s. c 17. Part and section headings as used in this act do not constitute any part of the law. [1990 1st ex.s. c 17 § 89.]

36.70A.902 Section headings not law—1991 sp.s. c 32. Section headings as used in this act do not constitute any part of the law. [1991 sp.s. c 32 § 40.]

36.70A.903 Transfer of powers, duties, and functions. (1) The powers, duties, and functions of the growth management hearings board are hereby transferred to the environmental and land use hearings office.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the growth management hearings board shall be delivered to the custody of the environmental and land use hearings office. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the growth management hearings board shall be made available to the environmental and land use hearings office. All funds, credits, or other assets held by the growth management hearings board shall be assigned to the environmental and land use hearings office.

(b) Any appropriations made to the growth management hearings board shall, on July 1, 2011, be transferred and credited to the environmental and land use hearings office.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the growth management hearings board are transferred to the jurisdiction of the environmental and land use hearings office. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the environmental and land use hearings office to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All existing rules and all pending cases before the growth management hearings board shall be continued and acted upon by the growth management hearings board located within the environmental and land use hearings office. All pending business, existing contracts, and obligations shall remain in full force and shall be performed by the environmental and land use hearings office.

(5) The transfer of the powers, duties, functions, and personnel of the growth management hearings board shall not affect the validity of any act performed before July 1, 2011.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification. [2010 c 210 § 43.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

36.70A.904 Conflict with federal requirements—2011 c 360. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state. [2011 c 360 § 21.]

Chapter 36.70B RCW LOCAL PROJECT REVIEW

Sections

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36.70B.010 Findings and declaration. The legislature finds and declares the following:

(1) As the number of environmental laws and development regulations has increased for land uses and development, so has the number of required local land use permits, each with its own separate approval process.

(2) The increasing number of local and state land use permits and separate environmental review processes required by agencies has generated continuing potential for conflict, overlap, and duplication between the various permit and review processes.

(3) This regulatory burden has significantly added to the cost and time needed to obtain local and state land use permits and has made it difficult for the public to know how and when to provide timely comments on land use proposals that require multiple permits and have separate environmental review processes. [1995 c 347 § 401.]

36.70B.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Closed record appeal" means an administrative appeal on the record to a local government body or officer, including the legislative body, following an open record hearing on a project permit application when the appeal is on the record with no or limited new evidence or information allowed to be submitted and only appeal argument allowed.

(2) "Local government" means a county, city, or town.

(3) "Open record hearing" means a hearing, conducted by a single hearing body or officer authorized by the local government to conduct such hearings, that creates the local government's record through testimony and submission of evidence and information, under procedures prescribed by the local government by ordinance or resolution. An open record hearing may be held prior to a local government's decision on a project permit to be known as an "open record predecision hearing." An open record hearing may be held on an appeal, to be known as an "open record appeal hearing," if

no open record predecision hearing has been held on the project permit.

(4) "Project permit" or "project permit application" means any land use or environmental permit or license required from a local government for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this subsection.

(5) "Public meeting" means an informal meeting, hearing, workshop, or other public gathering of people to obtain comments from the public or other agencies on a proposed project permit prior to the local government's decision. A public meeting may include, but is not limited to, a design review or architectural control board meeting, a special review district or community council meeting, or a scoping meeting on a draft environmental impact statement. A public meeting does not include an open record hearing. The proceedings at a public meeting may be recorded and a report or recommendation may be included in the local government's project permit application file. [1995 c 347 § 402.]

36.70B.030 Project review—Required elements—Limitations. (1) Fundamental land use planning choices made in adopted comprehensive plans and development regulations shall serve as the foundation for project review. The review of a proposed project's consistency with applicable development regulations, or in the absence of applicable regulations the adopted comprehensive plan, under RCW 36.70B.040 shall incorporate the determinations under this section.

(2) During project review, a local government or any subsequent reviewing body shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project or, in the absence of applicable regulations the adopted comprehensive plan. At a minimum, such applicable regulations or plans shall be determinative of the:

(a) Type of land use permitted at the site, including uses that may be allowed under certain circumstances, such as planned unit developments and conditional and special uses, if the criteria for their approval have been satisfied;

(b) Density of residential development in urban growth areas; and

(c) Availability and adequacy of public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by chapter 36.70A RCW.

(3) During project review, the local government or any subsequent reviewing body shall not reexamine alternatives to or hear appeals on the items identified in subsection (2) of this section, except for issues of code interpretation. As part of its project review process, a local government shall provide a procedure for obtaining a code interpretation as provided in RCW 36.70B.110.

(4) Pursuant to RCW 43.21C.240, a local government may determine that the requirements for environmental analysis and mitigation measures in development regulations and other applicable laws provide adequate mitigation for some or all of the project's specific adverse environmental impacts to which the requirements apply.

(5) Nothing in this section limits the authority of a permitting agency to approve, condition, or deny a project as provided in its development regulations adopted under chapter 36.70A RCW and in its policies adopted under RCW 43.21C.060. Project review shall be used to identify specific project design and conditions relating to the character of development, such as the details of site plans, curb cuts, drainage swales, transportation demand management, the payment of impact fees, or other measures to mitigate a proposal's probable adverse environmental impacts, if applicable.

(6) Subsections (1) through (4) of this section apply only to local governments planning under RCW 36.70A.040. [1995 c 347 § 404.]

Intent—Findings—1995 c 347 §§ 404 and 405: "In enacting RCW 36.70B.030 and 36.70B.040, the legislature intends to establish a mechanism for implementing the provisions of chapter 36.70A RCW regarding compliance, conformity, and consistency of proposed projects with adopted comprehensive plans and development regulations. In order to achieve this purpose the legislature finds that:

(1) Given the extensive investment that public agencies and a broad spectrum of the public are making and will continue to make in comprehensive plans and development regulations for their communities, it is essential that project review start from the fundamental land use planning choices made in these plans and regulations. If the applicable regulations or plans identify the type of land use, specify residential density in urban growth areas, and identify and provide for funding of public facilities needed to serve the proposed development and site, these decisions at a minimum provide the foundation for further project review unless there is a question of code interpretation. The project review process, including the environmental review process under chapter 43.21C RCW and the consideration of consistency, should start from this point and should not reanalyze these land use planning decisions in making a permit decision.

(2) Comprehensive plans and development regulations adopted by local governments under chapter 36.70A RCW and environmental laws and rules adopted by the state and federal government have addressed a wide range of environmental subjects and impacts. These provisions typically require environmental studies and contain specific standards to address various impacts associated with a proposed development, such as building size and location, drainage, transportation requirements, and protection of critical areas. When a permitting agency applies these existing requirements to a proposed project, some or all of a project's potential environmental impacts will be avoided or otherwise mitigated. Through the integrated project review process described in subsection (1) of this section, the local government will determine whether existing requirements, including the applicable regulations or plans, adequately analyze and address a project's environmental impacts. RCW 43.21C.240 provides that project review should not require additional studies or mitigation under chapter 43.21C RCW where existing regulations have adequately addressed a proposed project's probable specific adverse environmental impacts.

(3) Given the hundreds of jurisdictions and agencies in the state and the numerous communities and applicants affected by development regulations and comprehensive plans adopted under chapter 36.70A RCW, it is essential to establish a uniform framework for considering the consistency of a proposed project with the applicable regulations or plan. Consistency should be determined in the project review process by considering four factors found in applicable regulations or plans: The type of land use allowed; the level of development allowed, such as units per acre or other measures of density; infrastructure, such as the adequacy of public facilities and services to serve the proposed project; and the character of the proposed development, such as compliance with specific development standards. This uniform approach corresponds to existing project review practices and will not place a burden on applicants or local government. The legislature intends that this approach should be largely a matter of checking compliance with existing requirements for most projects, which are simple or routine, while more complex

projects may require more analysis. RCW 43.21C.240 and 36.70B.030 establish this uniform framework and also direct state agencies to consult with local government and the public to develop a better format than the current environmental checklist to meet this objective.

(4) When an applicant applies for a project permit, consistency between the proposed project and applicable regulations or plan should be determined through a project review process that integrates land use and environmental impact analysis, so that governmental and public review of the proposed project as required by this chapter, by development regulations under chapter 36.70A RCW, and by the environmental process under chapter 43.21C RCW run concurrently and not separately.

(5) RCW 36.70B.030 and 36.70B.040 address three related needs with respect to how the project review process should address consistency between a proposed project and the applicable regulations or plan:

(a) A uniform framework for the meaning of consistency;

(b) An emphasis on relying on existing requirements and adopted standards, with the use of supplemental authority as specified by chapter 43.21C RCW to the extent that existing requirements do not adequately address a project's specific probable adverse environmental impacts; and

(c) The identification of three basic land use planning choices made in applicable regulations or plans that, at a minimum, serve as a foundation for project review and that should not be reanalyzed during project permitting." [1995 c 347 § 403.]

36.70B.040 Determination of consistency. (1) A proposed project's consistency with a local government's development regulations adopted under chapter 36.70A RCW, or, in the absence of applicable development regulations, the appropriate elements of the comprehensive plan adopted under chapter 36.70A RCW shall be decided by the local government during project review by consideration of:

(a) The type of land use;

(b) The level of development, such as units per acre or other measures of density;

(c) Infrastructure, including public facilities and services needed to serve the development; and

(d) The characteristics of the development, such as development standards.

(2) In deciding whether a project is consistent, the determinations made pursuant to RCW 36.70B.030(2) shall be controlling.

(3) For purposes of this section, the term "consistency" shall include all terms used in this chapter and chapter 36.70A RCW to refer to performance in accordance with this chapter and chapter 36.70A RCW, including but not limited to compliance, conformity, and consistency.

(4) Nothing in this section requires documentation, dictates an agency's procedures for considering consistency, or limits a city or county from asking more specific or related questions with respect to any of the four main categories listed in subsection (1)(a) through (d) of this section.

(5) The *department of community, trade, and economic development is authorized to develop and adopt by rule criteria to assist local governments planning under RCW 36.70A.040 to analyze the consistency of project actions. These criteria shall be jointly developed with the department of ecology. [1997 c 429 § 46; 1995 c 347 § 405.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Intent—Findings—1995 c 347 §§ 404 and 405: See note following RCW 36.70B.030.

Additional notes found at www.leg.wa.gov

36.70B.050 Local government review of project permit applications required—Objectives. Not later than March 31, 1996, each local government shall provide by

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ordinance or resolution for review of project permit applications to achieve the following objectives:

(1) Combine the environmental review process, both procedural and substantive, with the procedure for review of project permits; and

(2) Except for the appeal of a determination of significance as provided in RCW 43.21C.075, provide for no more than one open record hearing and one closed record appeal. [1995 c 347 § 406.]

36.70B.060 Local governments planning under the growth management act to establish integrated and consolidated project permit process—Required elements.

Not later than March 31, 1996, each local government planning under RCW 36.70A.040 shall establish by ordinance or resolution an integrated and consolidated project permit process that may be included in its development regulations. In addition to the elements required by RCW 36.70B.050, the process shall include the following elements:

(1) A determination of completeness to the applicant as required by RCW 36.70B.070;

(2) A notice of application to the public and agencies with jurisdiction as required by RCW 36.70B.110;

(3) Except as provided in RCW 36.70B.140, an optional consolidated project permit review process as provided in RCW 36.70B.120. The review process shall provide for no more than one consolidated open record hearing and one closed record appeal. If an open record predecision hearing is provided prior to the decision on a project permit, the process shall not allow a subsequent open record appeal hearing;

(4) Provision allowing for any public meeting or required open record hearing to be combined with any public meeting or open record hearing that may be held on the project by another local, state, regional, federal, or other agency, in accordance with provisions of RCW *36.70B.090 and 36.70B.110;

(5) A single report stating all the decisions made as of the date of the report on all project permits included in the consolidated permit process that do not require an open record predecision hearing and any recommendations on project permits that do not require an open record predecision hearing. The report shall state any mitigation required or proposed under the development regulations or the agency's authority under RCW 43.21C.060. The report may be the local permit. If a threshold determination other than a determination of significance has not been issued previously by the local government, the report shall include or append this determination;

(6) Except for the appeal of a determination of significance as provided in RCW 43.21C.075, if a local government elects to provide an appeal of its threshold determinations or project permit decisions, the local government shall provide for no more than one consolidated open record hearing on such appeal. The local government need not provide for any further appeal and may provide an appeal for some but not all project permit decisions. If an appeal is provided after the open record hearing, it shall be a closed record appeal before a single decision-making body or officer;

(7) A notice of decision as required by RCW 36.70B.130 and issued within the time period provided in RCW 36.70B.080 and *36.70B.090;

(8) Completion of project review by the local government, including environmental review and public review and any appeals to the local government, within any applicable time periods under *RCW 36.70B.090; and

(9) Any other provisions not inconsistent with the requirements of this chapter or chapter 43.21C RCW. [1995 c 347 § 407.]

*Reviser's note: RCW 36.70B.090 expired June 30, 2000, pursuant to 1998 c 286 § 8.

36.70B.070 Project permit applications—Determination of completeness—Notice to applicant. (1) Within twenty-eight days after receiving a project permit application, a local government planning pursuant to RCW 36.70A.040 shall mail or provide in person a written determination to the applicant, stating either:

(a) That the application is complete; or

(b) That the application is incomplete and what is necessary to make the application complete.

To the extent known by the local government, the local government shall identify other agencies of local, state, or federal governments that may have jurisdiction over some aspect of the application.

(2) A project permit application is complete for purposes of this section when it meets the procedural submission requirements of the local government and is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The determination of completeness shall not preclude the local government from requesting additional information or studies either at the time of the notice of completeness or subsequently if new information is required or substantial changes in the proposed action occur.

(3) The determination of completeness may include the following as optional information:

(a) A preliminary determination of those development regulations that will be used for project mitigation;

(b) A preliminary determination of consistency, as provided under RCW 36.70B.040; or

(c) Other information the local government chooses to include.

(4)(a) An application shall be deemed complete under this section if the local government does not provide a written determination to the applicant that the application is incomplete as provided in subsection (1)(b) of this section.

(b) Within fourteen days after an applicant has submitted to a local government additional information identified by the local government as being necessary for a complete application, the local government shall notify the applicant whether the application is complete or what additional information is necessary. [1995 c 347 § 408; 1994 c 257 § 4. Formerly RCW 36.70A.440.]

Additional notes found at www.leg.wa.gov

36.70B.080 Development regulations—Requirements—Report on implementation costs. (1) Development regulations adopted pursuant to RCW 36.70A.040 must establish and implement time periods for local government actions for each type of project permit application and provide timely and predictable procedures to determine whether a completed project permit application meets the require-

ments of those development regulations. The time periods for local government actions for each type of complete project permit application or project type should not exceed one hundred twenty days, unless the local government makes written findings that a specified amount of additional time is needed to process specific complete project permit applications or project types.

The development regulations must, for each type of permit application, specify the contents of a completed project permit application necessary for the complete compliance with the time periods and procedures.

(2)(a) Counties subject to the requirements of RCW 36.70A.215 and the cities within those counties that have populations of at least twenty thousand must, for each type of permit application, identify the total number of project permit applications for which decisions are issued according to the provisions of this chapter. For each type of project permit application identified, these counties and cities must establish and implement a deadline for issuing a notice of final decision as required by subsection (1) of this section and minimum requirements for applications to be deemed complete under RCW 36.70B.070 as required by subsection (1) of this section.

(b) Counties and cities subject to the requirements of this subsection also must prepare annual performance reports that include, at a minimum, the following information for each type of project permit application identified in accordance with the requirements of (a) of this subsection:

(i) Total number of complete applications received during the year;

(ii) Number of complete applications received during the year for which a notice of final decision was issued before the deadline established under this subsection;

(iii) Number of applications received during the year for which a notice of final decision was issued after the deadline established under this subsection;

(iv) Number of applications received during the year for which an extension of time was mutually agreed upon by the applicant and the county or city;

(v) Variance of actual performance, excluding applications for which mutually agreed time extensions have occurred, to the deadline established under this subsection during the year; and

(vi) The mean processing time and the number standard deviation from the mean.

(c) Counties and cities subject to the requirements of this subsection must:

(i) Provide notice of and access to the annual performance reports through the county's or city's web site; and

(ii) Post electronic facsimiles of the annual performance reports through the county's or city's web site. Postings on a county's or city's web site indicating that the reports are available by contacting the appropriate county or city department or official do not comply with the requirements of this subsection.

If a county or city subject to the requirements of this subsection does not maintain a web site, notice of the reports must be given by reasonable methods, including but not limited to those methods specified in RCW 36.70B.110(4).

(3) Nothing in this section prohibits a county or city from extending a deadline for issuing a decision for a specific proj-

ect permit application for any reasonable period of time mutually agreed upon by the applicant and the local government.

(4) The *department of community, trade, and economic development shall work with the counties and cities to review the potential implementation costs of the requirements of subsection (2) of this section. The department, in cooperation with the local governments, shall prepare a report summarizing the projected costs, together with recommendations for state funding assistance for implementation costs, and provide the report to the governor and appropriate committees of the senate and house of representatives by January 1, 2005. [2004 c 191 § 2; 2001 c 322 § 1; 1995 c 347 § 410; (1995 c 347 § 409 expired July 1, 2000); 1994 c 257 § 3. Formerly RCW 36.70A.065.]

*Reviser's note: The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Findings—Intent—2004 c 191: "The legislature finds that the timely issuance of project permit decisions by local governments serves the public interest. When these decisions, that are often responses to land use and building permit applications, are issued according to specific and locally established time periods and without unnecessary or inappropriate delays, the public enjoys greater efficiency, consistency, and predictability in the permitting process.

The legislature also finds that full access to relevant performance data produced annually by local governments for each type of permit application affords elected officials, project proponents, and the general public the opportunity to review and compare the permit application and processing performance of jurisdictions. Furthermore, the legislature finds that the review and comparison of this data, and the requirement to provide convenient and direct internet access to germane and consistent reports, will likely foster improved methods for processing applications, and issuing project permit decisions in a timely manner.

The legislature, therefore, intends to continue and clarify the requirements for certain jurisdictions to produce and provide access to annual permitting performance reports." [2004 c 191 § 1.]

Development regulations must provide sufficient land capacity for development: RCW 36.70A.115.

Additional notes found at www.leg.wa.gov

36.70B.100 Designation of person or entity to receive determinations and notices. A local government may require the applicant for a project permit to designate a single person or entity to receive determinations and notices required by this chapter. [1995 c 347 § 414.]

36.70B.110 Notice of application—Required elements—Integration with other review procedures—Administrative appeals (as amended by 1997 c 396). (1) Not later than April 1, 1996, a local government planning under RCW 36.70A.040 shall provide a notice of application to the public and the departments and agencies with jurisdiction as provided in this section. If a local government has made a threshold determination ((of significance)) under chapter 43.21C RCW concurrently with the notice of application, the notice of application ((shall)) may be combined with the threshold determination ((of significance)) and the scoping notice for a determination of significance. Nothing in this section prevents a determination of significance and scoping notice from being issued prior to the notice of application.

(2) The notice of application shall be provided within fourteen days after the determination of completeness as provided in RCW 36.70B.070 and include the following in whatever sequence or format the local government deems appropriate:

(a) The date of application, the date of the notice of completion for the application, and the date of the notice of application;

(b) A description of the proposed project action and a list of the project permits included in the application and, if applicable, a list of any studies requested under RCW 36.70B.070 or *36.70B.090;

(c) The identification of other permits not included in the application to the extent known by the local government;

(d) The identification of existing environmental documents that evaluate the proposed project, and, if not otherwise stated on the document providing the notice of application, such as a city land use bulletin, the location where the application and any studies can be reviewed;

(e) A statement of the public comment period, which shall be not less than fourteen nor more than thirty days following the date of notice of application, and statements of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights. A local government may accept public comments at any time prior to the closing of the record of an open record predecision hearing, if any, or, if no open record predecision hearing is provided, prior to the decision on the project permit;

(f) The date, time, place, and type of hearing, if applicable and scheduled at the date of notice of the application;

(g) A statement of the preliminary determination, if one has been made at the time of notice, of those development regulations that will be used for project mitigation and of consistency as provided in RCW 36.70B.040; and

(h) Any other information determined appropriate by the local government.

(3) If an open record predecision hearing is required for the requested project permits, the notice of application shall be provided at least fifteen days prior to the open record hearing.

(4) A local government shall use reasonable methods to give the notice of application to the public and agencies with jurisdiction and may use its existing notice procedures. A local government may use different types of notice for different categories of project permits or types of project actions. If a local government by resolution or ordinance does not specify its method of public notice, the local government shall use the methods provided for in (a) and (b) of this subsection. Examples of reasonable methods to inform the public are:

(a) Posting the property for site-specific proposals;

(b) Publishing notice, including at least the project location, description, type of permit(s) required, comment period dates, and location where the complete application may be reviewed, in the newspaper of general circulation in the general area where the proposal is located or in a local land use newsletter published by the local government;

(c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(d) Notifying the news media;

(e) Placing notices in appropriate regional or neighborhood newspapers or trade journals;

(f) Publishing notice in agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas; and

(g) Mailing to neighboring property owners.

(5) A notice of application shall not be required for project permits that are categorically exempt under chapter 43.21C RCW, unless a public comment period or an open record predecision hearing is required.

(6) A local government shall integrate the permit procedures in this section with environmental review under chapter 43.21C RCW as follows:

(a) Except for a threshold determination ((of significance)), the local government may not issue ((its threshold determination, or issue)) a decision or a recommendation on a project permit until the expiration of the public comment period on the notice of application.

(b) If an open record predecision hearing is required and the local government's threshold determination requires public notice under chapter 43.21C RCW, the local government shall issue its threshold determination at least fifteen days prior to the open record predecision hearing.

(c) Comments shall be as specific as possible.

(7) A local government may combine any hearing on a project permit with any hearing that may be held by another local, state, regional, federal, or other agency provided that the hearing is held within the geographic boundary of the local government. Hearings shall be combined if requested by an applicant, as long as the joint hearing can be held within the time periods specified in *RCW 36.70B.090 or the applicant agrees to the schedule in the event that additional time is needed in order to combine the hearings. All agencies of the state of Washington, including municipal corporations and counties participating in a combined hearing, are hereby authorized to issue joint hearing notices and develop a joint format, select a mutually acceptable hearing body or officer, and take such other actions as may be necessary to hold joint hearings consistent with each of their respective statutory obligations.

(8) All state and local agencies shall cooperate to the fullest extent possible with the local government in holding a joint hearing if requested to do so, as long as:

(a) The agency is not expressly prohibited by statute from doing so;

(b) Sufficient notice of the hearing is given to meet each of the agencies' adopted notice requirements as set forth in statute, ordinance, or rule; and

(c) The agency has received the necessary information about the proposed project from the applicant to hold its hearing at the same time as the local government hearing.

(9) A local government is not required to provide for administrative appeals. If provided, an administrative appeal of the project decision, combined with any environmental determinations, shall be filed within fourteen days after the notice of the decision or after other notice that the decision has been made and is appealable. The local government shall extend the appeal period for an additional seven days, if state or local rules adopted pursuant to chapter 43.21C RCW allow public comment on a determination of nonsignificance issued as part of the appealable project permit decision.

(10) The applicant for a project permit is deemed to be a participant in any comment period, open record hearing, or closed record appeal.

(11) Each local government planning under RCW 36.70A.040 shall adopt procedures for administrative interpretation of its development regulations. [1997 c 396 § 1; 1995 c 347 § 415.]

*Reviser's note: RCW 36.70B.090 expired June 30, 2000, pursuant to 1998 c 286 § 8.

36.70B.110 Notice of application—Required elements—Integration with other review procedures—Administrative appeals (as amended by 1997 c 429). (1) Not later than April 1, 1996, a local government planning under RCW 36.70A.040 shall provide a notice of application to the public and the departments and agencies with jurisdiction as provided in this section. If a local government has made a determination of significance under chapter 43.21C RCW concurrently with the notice of application, the notice of application shall be combined with the determination of significance and scoping notice. Nothing in this section prevents a determination of significance and scoping notice from being issued prior to the notice of application. Nothing in this section or this chapter prevents a lead agency, when it is a project proponent or is funding a project, from conducting its review under chapter 43.21C RCW or from allowing appeals of procedural determinations prior to submitting a project permit application.

(2) The notice of application shall be provided within fourteen days after the determination of completeness as provided in RCW 36.70B.070 and, except as limited by the provisions of subsection (4)(b) of this section, shall include the following in whatever sequence or format the local government deems appropriate:

(a) The date of application, the date of the notice of completion for the application, and the date of the notice of application;

(b) A description of the proposed project action and a list of the project permits included in the application and, if applicable, a list of any studies requested under RCW 36.70B.070 or *36.70B.090;

(c) The identification of other permits not included in the application to the extent known by the local government;

(d) The identification of existing environmental documents that evaluate the proposed project, and, if not otherwise stated on the document providing the notice of application, such as a city land use bulletin, the location where the application and any studies can be reviewed;

(e) A statement of the public comment period, which shall be not less than fourteen nor more than thirty days following the date of notice of application, and statements of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights. A local government may accept public comments at any time prior to the closing of the record of an open record predecision hearing, if any, or, if no open record predecision hearing is provided, prior to the decision on the project permit;

(f) The date, time, place, and type of hearing, if applicable and scheduled at the date of notice of the application;

(g) A statement of the preliminary determination, if one has been made at the time of notice, of those development regulations that will be used for project mitigation and of consistency as provided in RCW (~~36.70B.040~~) 36.70B.030(2); and

(h) Any other information determined appropriate by the local government.

(3) If an open record predecision hearing is required for the requested project permits, the notice of application shall be provided at least fifteen days prior to the open record hearing.

(4) A local government shall use reasonable methods to give the notice of application to the public and agencies with jurisdiction and may use its existing notice procedures. A local government may use different types of notice for different categories of project permits or types of project actions. If a local government by resolution or ordinance does not specify its method

of public notice, the local government shall use the methods provided for in (a) and (b) of this subsection. Examples of reasonable methods to inform the public are:

(a) Posting the property for site-specific proposals;

(b) Publishing notice, including at least the project location, description, type of permit(s) required, comment period dates, and location where the notice of application required by subsection (2) of this section and the complete application may be reviewed, in the newspaper of general circulation in the general area where the proposal is located or in a local land use newsletter published by the local government;

(c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(d) Notifying the news media;

(e) Placing notices in appropriate regional or neighborhood newspapers or trade journals;

(f) Publishing notice in agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas; and

(g) Mailing to neighboring property owners.

(5) A notice of application shall not be required for project permits that are categorically exempt under chapter 43.21C RCW, unless ~~((a public comment period or))~~ an open record predecision hearing is required or an open record appeal hearing is allowed on the project permit decision.

(6) A local government shall integrate the permit procedures in this section with its environmental review under chapter 43.21C RCW as follows:

(a) Except for a determination of significance and except as otherwise expressly allowed in this section, the local government may not issue its threshold determination ~~((or issue a decision or a recommendation on a project permit))~~ until the expiration of the public comment period on the notice of application.

(b) If an open record predecision hearing is required ~~((and the local government's threshold determination requires public notice under chapter 43.21C RCW))~~, the local government shall issue its threshold determination at least fifteen days prior to the open record predecision hearing.

(c) Comments shall be as specific as possible.

(d) A local government is not required to provide for administrative appeals of its threshold determination. If provided, an administrative appeal shall be filed within fourteen days after notice that the determination has been made and is appealable. Except as otherwise expressly provided in this section, the appeal hearing on a determination of nonsignificance shall be consolidated with any open record hearing on the project permit.

(7) At the request of the applicant, a local government may combine any hearing on a project permit with any hearing that may be held by another local, state, regional, federal, or other agency ((provided that)), if:

(a) The hearing is held within the geographic boundary of the local government ((Hearings shall be combined if requested by an applicant, as long as)); and

(b) The joint hearing can be held within the time periods specified in *RCW 36.70B.090 or the applicant agrees to the schedule in the event that additional time is needed in order to combine the hearings. All agencies of the state of Washington, including municipal corporations and counties participating in a combined hearing, are hereby authorized to issue joint hearing notices and develop a joint format, select a mutually acceptable hearing body or officer, and take such other actions as may be necessary to hold joint hearings consistent with each of their respective statutory obligations.

(8) All state and local agencies shall cooperate to the fullest extent possible with the local government in holding a joint hearing if requested to do so, as long as:

(a) The agency is not expressly prohibited by statute from doing so;

(b) Sufficient notice of the hearing is given to meet each of the agencies' adopted notice requirements as set forth in statute, ordinance, or rule; and

(c) The agency has received the necessary information about the proposed project from the applicant to hold its hearing at the same time as the local government hearing.

(9) A local government is not required to provide for administrative appeals. If provided, an administrative appeal of the project decision ~~((combined with))~~ and of any environmental determination((s)) issued at the same time as the project decision, shall be filed within fourteen days after the notice of the decision or after other notice that the decision has been made and is appealable. The local government shall extend the appeal period for an additional seven days, if state or local rules adopted pursuant to chapter 43.21C RCW allow public comment on a determination of nonsignificance issued as part of the appealable project permit decision.

(10) The applicant for a project permit is deemed to be a participant in any comment period, open record hearing, or closed record appeal.

(11) Each local government planning under RCW 36.70A.040 shall adopt procedures for administrative interpretation of its development regulations. [1997 c 429 § 48; 1995 c 347 § 415.]

Reviser's note: *(1) RCW 36.70B.090 expired June 30, 2000, pursuant to 1998 c 286 § 8.

(2) RCW 36.70B.110 was amended twice during the 1997 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Additional notes found at www.leg.wa.gov

36.70B.120 Permit review process. (1) Each local government planning under RCW 36.70A.040 shall establish a permit review process that provides for the integrated and consolidated review and decision on two or more project permits relating to a proposed project action, including a single application review and approval process covering all project permits requested by an applicant for all or part of a project action and a designated permit coordinator. If an applicant elects the consolidated permit review process, the determination of completeness, notice of application, and notice of final decision must include all project permits being reviewed through the consolidated permit review process.

(2) Consolidated permit review may provide different procedures for different categories of project permits, but if a project action requires project permits from more than one category, the local government shall provide for consolidated permit review with a single open record hearing and no more than one closed record appeal as provided in RCW 36.70B.060. Each local government shall determine which project permits are subject to an open record hearing and a closed record appeal. Examples of categories of project permits include but are not limited to:

(a) Proposals that are categorically exempt from chapter 43.21C RCW, such as construction permits, that do not require environmental review or public notice;

(b) Permits that require environmental review, but no open record predecision hearing; and

(c) Permits that require a threshold determination and an open record predecision hearing and may provide for a closed record appeal to a hearing body or officer or to the local government legislative body.

(3) A local government may provide by ordinance or resolution for the same or a different decision maker or hearing body or officer for different categories of project permits. In the case of consolidated project permit review, the local government shall specify which decision makers shall make the decision or recommendation, conduct the hearing, or decide the appeal to ensure that consolidated permit review occurs as provided in this section. The consolidated permit review may combine an open record predecision hearing on one or more permits with an open record appeal hearing on other permits. In such cases, the local government by ordinance or resolution shall specify which project permits, if any, shall be subject to a closed record appeal. [1995 c 347 § 416.]

36.70B.130 Notice of decision—Distribution. A local government planning under RCW 36.70A.040 shall provide a notice of decision that also includes a statement of any threshold determination made under chapter 43.21C RCW and the procedures for administrative appeal, if any. The

notice of decision may be a copy of the report or decision on the project permit application. The notice shall be provided to the applicant and to any person who, prior to the rendering of the decision, requested notice of the decision or submitted substantive comments on the application. The local government shall provide for notice of its decision as provided in RCW 36.70B.110(4), which shall also state that affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation. The local government shall provide notice of decision to the county assessor's office of the county or counties in which the property is situated. [1996 c 254 § 1; 1995 c 347 § 417.]

36.70B.140 Project permits that may be excluded from review. (1) A local government by ordinance or resolution may exclude the following project permits from the provisions of RCW 36.70B.060 through *36.70B.090 and 36.70B.110 through 36.70B.130: Landmark designations, street vacations, or other approvals relating to the use of public areas or facilities, or other project permits, whether administrative or quasi-judicial, that the local government by ordinance or resolution has determined present special circumstances that warrant a review process different from that provided in RCW 36.70B.060 through *36.70B.090 and 36.70B.110 through 36.70B.130.

(2) A local government by ordinance or resolution also may exclude the following project permits from the provisions of RCW 36.70B.060 and 36.70B.110 through 36.70B.130: Lot line or boundary adjustments and building and other construction permits, or similar administrative approvals, categorically exempt from environmental review under chapter 43.21C RCW, or for which environmental review has been completed in connection with other project permits. [1995 c 347 § 418.]

***Reviser's note:** RCW 36.70B.090 expired June 30, 2000, pursuant to 1998 c 286 § 8.

36.70B.150 Local governments not planning under the growth management act may use provisions. A local government not planning under RCW 36.70A.040 may incorporate some or all of the provisions of RCW 36.70B.060 through *36.70B.090 and 36.70B.110 through 36.70B.130 into its procedures for review of project permits or other project actions. [1995 c 347 § 419.]

***Reviser's note:** RCW 36.70B.090 expired June 30, 2000, pursuant to 1998 c 286 § 8.

36.70B.160 Additional project review encouraged—Construction. (1) Each local government is encouraged to adopt further project review provisions to provide prompt, coordinated review and ensure accountability to applicants and the public, including expedited review for project permit applications for projects that are consistent with adopted development regulations and within the capacity of system-wide infrastructure improvements.

(2) Nothing in this chapter is intended or shall be construed to prevent a local government from requiring a preapplication conference or a public meeting by rule, ordinance, or resolution.

(3) Each local government shall adopt procedures to monitor and enforce permit decisions and conditions.

(4) Nothing in this chapter modifies any independent statutory authority for a government agency to appeal a project permit issued by a local government. [1995 c 347 § 420.]

36.70B.170 Development agreements—Authorized.

(1) A local government may enter into a development agreement with a person having ownership or control of real property within its jurisdiction. A city may enter into a development agreement for real property outside its boundaries as part of a proposed annexation or a service agreement. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW.

(2) RCW 36.70B.170 through 36.70B.190 and section 501, chapter 347, Laws of 1995 do not affect the validity of a contract rezone, concomitant agreement, annexation agreement, or other agreement in existence on July 23, 1995, or adopted under separate authority, that includes some or all of the development standards provided in subsection (3) of this section.

(3) For the purposes of this section, "development standards" includes, but is not limited to:

(a) Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;

(b) The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

(c) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;

(d) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;

(e) Affordable housing;

(f) Parks and open space preservation;

(g) Phasing;

(h) Review procedures and standards for implementing decisions;

(i) A build-out or vesting period for applicable standards; and

(j) Any other appropriate development requirement or procedure.

(4) The execution of a development agreement is a proper exercise of county and city police power and contract authority. A development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety. [1995 c 347 § 502.]

Findings—Intent—1995 c 347 §§ 502-506: "The legislature finds that the lack of certainty in the approval of development projects can result in a waste of public and private resources, escalate housing costs for consumers and discourage the commitment to comprehensive planning which would make maximum efficient use of resources at the least economic cost to the public. Assurance to a development project applicant that upon government approval the project may proceed in accordance with existing policies and

regulations, and subject to conditions of approval, all as set forth in a development agreement, will strengthen the public planning process, encourage private participation and comprehensive planning, and reduce the economic costs of development. Further, the lack of public facilities and services is a serious impediment to development of new housing and commercial uses. Project applicants and local governments may include provisions and agreements whereby applicants are reimbursed over time for financing public facilities. It is the intent of the legislature by RCW 36.70B.170 through 36.70B.210 to allow local governments and owners and developers of real property to enter into development agreements." [1995 c 347 § 501.]

36.70B.180 Development agreements—Effect.

Unless amended or terminated, a development agreement is enforceable during its term by a party to the agreement. A development agreement and the development standards in the agreement govern during the term of the agreement, or for all or that part of the build-out period specified in the agreement, and may not be subject to an amendment to a zoning ordinance or development standard or regulation or a new zoning ordinance or development standard or regulation adopted after the effective date of the agreement. A permit or approval issued by the county or city after the execution of the development agreement must be consistent with the development agreement. [1995 c 347 § 503.]

Findings—Intent—1995 c 347 §§ 502-506: See note following RCW 36.70B.170.

36.70B.190 Development agreements—Recording—

Parties and successors bound. A development agreement shall be recorded with the real property records of the county in which the property is located. During the term of the development agreement, the agreement is binding on the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the area covering the property covered by the development agreement. [1995 c 347 § 504.]

Findings—Intent—1995 c 347 §§ 502-506: See note following RCW 36.70B.170.

36.70B.200 Development agreements—Public hearing.

A county or city shall only approve a development agreement by ordinance or resolution after a public hearing. The county or city legislative body or a planning commission, hearing examiner, or other body designated by the legislative body to conduct the public hearing may conduct the hearing. If the development agreement relates to a project permit application, the provisions of chapter 36.70C RCW shall apply to the appeal of the decision on the development agreement. [1995 c 347 § 505.]

Findings—Intent—1995 c 347 §§ 502-506: See note following RCW 36.70B.170.

36.70B.210 Development agreements—Authority to

impose fees not extended. Nothing in RCW 36.70B.170 through 36.70B.200 and section 501, chapter 347, Laws of 1995 is intended to authorize local governments to impose impact fees, inspection fees, or dedications or to require any other financial contributions or mitigation measures except as expressly authorized by other applicable provisions of state law. [1995 c 347 § 506.]

Findings—Intent—1995 c 347 §§ 502-506: See note following RCW 36.70B.170.

36.70B.220 Permit assistance staff. (1) Each county and city having populations of ten thousand or more that plan under RCW 36.70A.040 shall designate permit assistance staff whose function it is to assist permit applicants. An existing employee may be designated as the permit assistance staff.

(2) Permit assistance staff designated under this section shall:

(a) Make available to permit applicants all current local government regulations and adopted policies that apply to the subject application. The local government shall provide counter copies thereof and, upon request, provide copies according to chapter 42.56 RCW. The staff shall also publish and keep current one or more handouts containing lists and explanations of all local government regulations and adopted policies;

(b) Establish and make known to the public the means of obtaining the handouts and related information; and

(c) Provide assistance regarding the application of the local government's regulations in particular cases.

(3) Permit assistance staff designated under this section may obtain technical assistance and support in the compilation and production of the handouts under subsection (2) of this section from the department of commerce. [2010 c 271 § 707; 2005 c 274 § 272; 1996 c 206 § 9.]

Purpose—Effective date—2010 c 271: See notes following RCW 43.330.005.

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Findings—1996 c 206: See note following RCW 43.05.030.

36.70B.230 Planning regulations—Copies provided to county assessor. By July 31, 1997, a local government planning under RCW 36.70A.040 shall provide to the county assessor a copy of the local government's comprehensive plan and development regulations in effect on July 1st of that year and shall thereafter provide any amendments to the plan and regulations that were adopted before July 31st of each following year. [1996 c 254 § 6.]

36.70B.900 Finding—Severability—Part headings and table of contents not law—1995 c 347. See notes following RCW 36.70A.470.

Chapter 36.70C RCW

JUDICIAL REVIEW OF LAND USE DECISIONS

Sections

- 36.70C.005 Short title.
- 36.70C.010 Purpose.
- 36.70C.020 Definitions.
- 36.70C.030 Chapter exclusive means of judicial review of land use decisions—Exceptions.
- 36.70C.040 Commencement of review—Land use petition—Procedure.
- 36.70C.050 Joinder of parties.
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- 36.70C.070 Land use petition—Required elements.
- 36.70C.080 Initial hearing.
- 36.70C.090 Expedited review.
- 36.70C.100 Stay of action pending review.
- 36.70C.110 Record for judicial review—Costs.
- 36.70C.120 Scope of review—Discovery.
- 36.70C.130 Standards for granting relief—Renewable resource projects within energy overlay zones.

- 36.70C.140 Decision of the court.
- 36.70C.900 Finding—Severability—Part headings and table of contents not law—1995 c 347.

36.70C.005 Short title. This chapter may be known and cited as the land use petition act. [1995 c 347 § 701.]

36.70C.010 Purpose. The purpose of this chapter is to reform the process for judicial review of land use decisions made by local jurisdictions, by establishing uniform, expedited appeal procedures and uniform criteria for reviewing such decisions, in order to provide consistent, predictable, and timely judicial review. [1995 c 347 § 702.]

36.70C.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Energy overlay zone" means a formal plan enacted by the county legislative authority that establishes suitable areas for siting renewable resource projects based on currently available resources and existing infrastructure with sensitivity to adverse environmental impact.

(2) "Land use decision" means a final determination by a local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals, on:

(a) An application for a project permit or other governmental approval required by law before real property may be improved, developed, modified, sold, transferred, or used, but excluding applications for permits or approvals to use, vacate, or transfer streets, parks, and similar types of public property; excluding applications for legislative approvals such as area-wide rezones and annexations; and excluding applications for business licenses;

(b) An interpretative or declaratory decision regarding the application to a specific property of zoning or other ordinances or rules regulating the improvement, development, modification, maintenance, or use of real property; and

(c) The enforcement by a local jurisdiction of ordinances regulating the improvement, development, modification, maintenance, or use of real property. However, when a local jurisdiction is required by law to enforce the ordinances in a court of limited jurisdiction, a petition may not be brought under this chapter.

Where a local jurisdiction allows or requires a motion for reconsideration to the highest level of authority making the determination, and a timely motion for reconsideration has been filed, the land use decision occurs on the date a decision is entered on the motion for reconsideration, and not the date of the original decision for which the motion for reconsideration was filed.

(3) "Local jurisdiction" means a county, city, or incorporated town.

(4) "Person" means an individual, partnership, corporation, association, public or private organization, or governmental entity or agency.

(5) "Renewable resources" has the same meaning provided in RCW 19.280.020. [2010 c 59 § 1; 2009 c 419 § 1; 1995 c 347 § 703.]

36.70C.030 Chapter exclusive means of judicial review of land use decisions—Exceptions. (1) This chapter

replaces the writ of certiorari for appeal of land use decisions and shall be the exclusive means of judicial review of land use decisions, except that this chapter does not apply to:

(a) Judicial review of:

(i) Land use decisions made by bodies that are not part of a local jurisdiction;

(ii) Land use decisions of a local jurisdiction that are subject to review by a quasi-judicial body created by state law, such as the shorelines hearings board or the growth management hearings board;

(b) Judicial review of applications for a writ of mandamus or prohibition; or

(c) Claims provided by any law for monetary damages or compensation. If one or more claims for damages or compensation are set forth in the same complaint with a land use petition brought under this chapter, the claims are not subject to the procedures and standards, including deadlines, provided in this chapter for review of the petition. The judge who hears the land use petition may, if appropriate, preside at a trial for damages or compensation.

(2) The superior court civil rules govern procedural matters under this chapter to the extent that the rules are consistent with this chapter. [2010 1st sp.s. c 7 § 38; 2003 c 393 § 17; 1995 c 347 § 704.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

36.70C.040 Commencement of review—Land use petition—Procedure. (1) Proceedings for review under this chapter shall be commenced by filing a land use petition in superior court.

(2) A land use petition is barred, and the court may not grant review, unless the petition is timely filed with the court and timely served on the following persons who shall be parties to the review of the land use petition:

(a) The local jurisdiction, which for purposes of the petition shall be the jurisdiction's corporate entity and not an individual decision maker or department;

(b) Each of the following persons if the person is not the petitioner:

(i) Each person identified by name and address in the local jurisdiction's written decision as an applicant for the permit or approval at issue; and

(ii) Each person identified by name and address in the local jurisdiction's written decision as an owner of the property at issue;

(c) If no person is identified in a written decision as provided in (b) of this subsection, each person identified by name and address as a taxpayer for the property at issue in the records of the county assessor, based upon the description of the property in the application; and

(d) Each person named in the written decision who filed an appeal to a local jurisdiction quasi-judicial decision maker regarding the land use decision at issue, unless the person has abandoned the appeal or the person's claims were dismissed before the quasi-judicial decision was rendered. Persons who later intervened or joined in the appeal are not required to be made parties under this subsection.

(3) The petition is timely if it is filed and served on all parties listed in subsection (2) of this section within twenty-one days of the issuance of the land use decision.

(4) For the purposes of this section, the date on which a land use decision is issued is:

(a) Three days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available;

(b) If the land use decision is made by ordinance or resolution by a legislative body sitting in a quasi-judicial capacity, the date the body passes the ordinance or resolution; or

(c) If neither (a) nor (b) of this subsection applies, the date the decision is entered into the public record.

(5) Service on the local jurisdiction must be by delivery of a copy of the petition to the persons identified by or pursuant to RCW 4.28.080 to receive service of process. Service on other parties must be in accordance with the superior court civil rules or by first-class mail to:

(a) The address stated in the written decision of the local jurisdiction for each person made a party under subsection (2)(b) of this section;

(b) The address stated in the records of the county assessor for each person made a party under subsection (2)(c) of this section; and

(c) The address stated in the appeal to the quasi-judicial decision maker for each person made a party under subsection (2)(d) of this section.

(6) Service by mail is effective on the date of mailing and proof of service shall be by affidavit or declaration under penalty of perjury. [1995 c 347 § 705.]

36.70C.050 Joinder of parties. If the applicant for the land use approval is not the owner of the real property at issue, and if the owner is not accurately identified in the records referred to in RCW 36.70C.040(2) (b) and (c), the applicant shall be responsible for promptly securing the joinder of the owners. In addition, within fourteen days after service each party initially named by the petitioner shall disclose to the other parties the name and address of any person whom such party knows may be needed for just adjudication of the petition, and the petitioner shall promptly name and serve any such person whom the petitioner agrees may be needed for just adjudication. If such a person is named and served before the initial hearing, leave of court for the joinder is not required, and the petitioner shall provide the newly joined party with copies of the pleadings filed before the party's joinder. Failure by the petitioner to name or serve, within the time required by RCW 36.70C.040(3), persons who are needed for just adjudication but who are not identified in the records referred to in RCW 36.70C.040(2)(b), or in RCW 36.70C.040(2)(c) if applicable, shall not deprive the court of jurisdiction to hear the land use petition. [1995 c 347 § 706.]

36.70C.060 Standing. Standing to bring a land use petition under this chapter is limited to the following persons:

(1) The applicant and the owner of property to which the land use decision is directed;

(2) Another person aggrieved or adversely affected by the land use decision, or who would be aggrieved or adversely affected by a reversal or modification of the land use decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present:

(a) The land use decision has prejudiced or is likely to prejudice that person;

(b) That person's asserted interests are among those that the local jurisdiction was required to consider when it made the land use decision;

(c) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the land use decision; and

(d) The petitioner has exhausted his or her administrative remedies to the extent required by law. [1995 c 347 § 707.]

36.70C.070 Land use petition—Required elements.

A land use petition must set forth:

(1) The name and mailing address of the petitioner;

(2) The name and mailing address of the petitioner's attorney, if any;

(3) The name and mailing address of the local jurisdiction whose land use decision is at issue;

(4) Identification of the decision-making body or officer, together with a duplicate copy of the decision, or, if not a written decision, a summary or brief description of it;

(5) Identification of each person to be made a party under RCW 36.70C.040(2) (b) through (d);

(6) Facts demonstrating that the petitioner has standing to seek judicial review under RCW 36.70C.060;

(7) A separate and concise statement of each error alleged to have been committed;

(8) A concise statement of facts upon which the petitioner relies to sustain the statement of error; and

(9) A request for relief, specifying the type and extent of relief requested. [1995 c 347 § 708.]

36.70C.080 Initial hearing. (1) Within seven days after the petition is served on the parties identified in RCW 36.70C.040(2), the petitioner shall note, according to the local rules of superior court, an initial hearing on jurisdictional and preliminary matters. This initial hearing shall be set no sooner than thirty-five days and no later than fifty days after the petition is served on the parties identified in RCW 36.70C.040(2).

(2) The parties shall note all motions on jurisdictional and procedural issues for resolution at the initial hearing, except that a motion to allow discovery may be brought sooner. Where confirmation of motions is required, each party shall be responsible for confirming its own motions.

(3) The defenses of lack of standing, untimely filing or service of the petition, and failure to join persons needed for just adjudication are waived if not raised by timely motion noted to be heard at the initial hearing, unless the court allows discovery on such issues.

(4) The petitioner shall move the court for an order at the initial hearing that sets the date on which the record must be submitted, sets a briefing schedule, sets a discovery schedule if discovery is to be allowed, and sets a date for the hearing or trial on the merits.

(5) The parties may waive the initial hearing by scheduling with the court a date for the hearing or trial on the merits and filing a stipulated order that resolves the jurisdictional and procedural issues raised by the petition, including the issues identified in subsections (3) and (4) of this section.

(6) A party need not file an answer to the petition. [1995 c 347 § 709.]

36.70C.090 Expedited review. The court shall provide expedited review of petitions filed under this chapter. The matter must be set for hearing within sixty days of the date set for submitting the local jurisdiction's record, absent a showing of good cause for a different date or a stipulation of the parties. [1995 c 347 § 710.]

36.70C.100 Stay of action pending review. (1) A petitioner or other party may request the court to stay or suspend an action by the local jurisdiction or another party to implement the decision under review. The request must set forth a statement of grounds for the stay and the factual basis for the request.

(2) A court may grant a stay only if the court finds that:

(a) The party requesting the stay is likely to prevail on the merits;

(b) Without the stay the party requesting it will suffer irreparable harm;

(c) The grant of a stay will not substantially harm other parties to the proceedings; and

(d) The request for the stay is timely in light of the circumstances of the case.

(3) The court may grant the request for a stay upon such terms and conditions, including the filing of security, as are necessary to prevent harm to other parties by the stay. [1995 c 347 § 711.]

36.70C.110 Record for judicial review—Costs. (1) Within forty-five days after entry of an order to submit the record, or within such a further time as the court allows or as the parties agree, the local jurisdiction shall submit to the court a certified copy of the record for judicial review of the land use decision, except that the petitioner shall prepare at the petitioner's expense and submit a verbatim transcript of any hearings held on the matter.

(2) If the parties agree, or upon order of the court, the record shall be shortened or summarized to avoid reproduction and transcription of portions of the record that are duplicative or not relevant to the issues to be reviewed by the court.

(3) The petitioner shall pay the local jurisdiction the cost of preparing the record before the local jurisdiction submits the record to the court. Failure by the petitioner to timely pay the local jurisdiction relieves the local jurisdiction of responsibility to submit the record and is grounds for dismissal of the petition.

(4) If the relief sought by the petitioner is granted in whole or in part the court shall equitably assess the cost of preparing the record among the parties. In assessing costs the court shall take into account the extent to which each party prevailed and the reasonableness of the parties' conduct in agreeing or not agreeing to shorten or summarize the record under subsection (2) of this section. [1995 c 347 § 712.]

36.70C.120 Scope of review—Discovery. (1) When the land use decision being reviewed was made by a quasi-judicial body or officer who made factual determinations in support of the decision and the parties to the quasi-judicial

proceeding had an opportunity consistent with due process to make a record on the factual issues, judicial review of factual issues and the conclusions drawn from the factual issues shall be confined to the record created by the quasi-judicial body or officer, except as provided in subsections (2) through (4) of this section.

(2) For decisions described in subsection (1) of this section, the record may be supplemented by additional evidence only if the additional evidence relates to:

(a) Grounds for disqualification of a member of the body or of the officer that made the land use decision, when such grounds were unknown by the petitioner at the time the record was created;

(b) Matters that were improperly excluded from the record after being offered by a party to the quasi-judicial proceeding; or

(c) Matters that were outside the jurisdiction of the body or officer that made the land use decision.

(3) For land use decisions other than those described in subsection (1) of this section, the record for judicial review may be supplemented by evidence of material facts that were not made part of the local jurisdiction's record.

(4) The court may require or permit corrections of ministerial errors or inadvertent omissions in the preparation of the record.

(5) The parties may not conduct pretrial discovery except with the prior permission of the court, which may be sought by motion at any time after service of the petition. The court shall not grant permission unless the party requesting it makes a prima facie showing of need. The court shall strictly limit discovery to what is necessary for equitable and timely review of the issues that are raised under subsections (2) and (3) of this section. If the court allows the record to be supplemented, the court shall require the parties to disclose before the hearing or trial on the merits the specific evidence they intend to offer. If any party, or anyone acting on behalf of any party, requests records under chapter 42.56 RCW relating to the matters at issue, a copy of the request shall simultaneously be given to all other parties and the court shall take such request into account in fashioning an equitable discovery order under this section. [2005 c 274 § 273; 1995 c 347 § 713.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

36.70C.130 Standards for granting relief—Renewable resource projects within energy overlay zones. (1) The superior court, acting without a jury, shall review the record and such supplemental evidence as is permitted under RCW 36.70C.120. The court may grant relief only if the party seeking relief has carried the burden of establishing that one of the standards set forth in (a) through (f) of this subsection has been met. The standards are:

(a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;

(b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;

(c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;

(d) The land use decision is a clearly erroneous application of the law to the facts;

(e) The land use decision is outside the authority or jurisdiction of the body or officer making the decision; or

(f) The land use decision violates the constitutional rights of the party seeking relief.

(2) In order to grant relief under this chapter, it is not necessary for the court to find that the local jurisdiction engaged in arbitrary and capricious conduct. A grant of relief by itself may not be deemed to establish liability for monetary damages or compensation.

(3) Land use decisions made by a local jurisdiction concerning renewable resource projects within a county energy overlay zone are presumed to be reasonable if they are in compliance with the requirements and standards established by local ordinance for that zone. However, for land use decisions concerning wind power generation projects, either:

(a) The local ordinance for that zone is consistent with the department of fish and wildlife's wind power guidelines; or

(b) The local jurisdiction prepared an environmental impact statement under chapter 43.21C RCW on the energy overlay zone; and

(i) The local ordinance for that zone requires project mitigation, as addressed in the environmental impact statement and consistent with local, state, and federal law;

(ii) The local ordinance for that zone requires site specific fish and wildlife and cultural resources analysis; and

(iii) The local jurisdiction has adopted an ordinance that addresses critical areas under chapter 36.70A RCW.

(4) If a local jurisdiction has taken action and adopted local ordinances consistent with subsection (3)(b) of this section, then wind power generation projects permitted consistently with the energy overlay zone are deemed to have adequately addressed their environmental impacts as required under chapter 43.21C RCW. [2009 c 419 § 2; 1995 c 347 § 714.]

36.70C.140 Decision of the court. The court may affirm or reverse the land use decision under review or remand it for modification or further proceedings. If the decision is remanded for modification or further proceedings, the court may make such an order as it finds necessary to preserve the interests of the parties and the public, pending further proceedings or action by the local jurisdiction. [1995 c 347 § 715.]

36.70C.900 Finding—Severability—Part headings and table of contents not law—1995 c 347. See notes following RCW 36.70A.470.

Chapter 36.71 RCW

PEDDLERS' AND HAWKERS' LICENSES

Sections

36.71.010	Peddler's license—"Peddler" defined.
36.71.020	Peddler's license—Application for and issuance of license.
36.71.030	Peddler's license—Record of applications.

- 36.71.040 Peddler's license—Cancellation of license.
 36.71.050 Peddler's license—Liability of deposit—Lien on.
 36.71.060 Peddler's license—Penalty for peddling without license.
 36.71.070 Hawkers, auctioneers, and barterers must procure license—
 Exceptions.
 36.71.080 Hawkers, auctioneers, and barterers must procure license—
 Issuance of license.
 36.71.090 Farmers, gardeners, etc., peddling own produce exempt from
 license requirements—Exception—Valid direct retail
 endorsement.

36.71.010 Peddler's license—"Peddler" defined. The term "peddler" for the purpose of this chapter includes all persons, both principals and agents, who go from place to place and house to house, carrying for sale and offering for sale or exposal for sale, goods, wares, or merchandise except agricultural, horticultural, or farm products, which they may grow or raise, and except vendors of books, periodicals, or newspapers: PROVIDED, That nothing in this chapter shall apply to peddlers within the limits of any city or town which by ordinance regulates the sale of goods, wares, or merchandise by peddlers. [1963 c 4 § 36.71.010. Prior: 1929 c 110 § 1; 1909 c 214 § 1; RRS § 8353.]

36.71.020 Peddler's license—Application for and issuance of license. Every peddler, before commencing business in any county of the state, shall apply in writing and under oath to the appropriate county official of the county in which he or she proposes to operate for a county license. The application must state the names and residences of the owners or parties in whose interest the business is to be conducted. The applicant at the same time shall file a true statement under oath of the quantity and value of the stock of goods, wares, and merchandise that is in the county for sale or to be kept or exposed for sale in the county, make a special deposit of five hundred dollars, and pay the county license fee as may be fixed under the authority of RCW 36.32.120(3).

The appropriate county official shall thereupon issue to the applicant a peddler's license, authorizing him or her to do business in the county for the term of one year from the date thereof. Every county license shall contain a copy of the application therefor, shall not be transferable, and shall not authorize more than one person to sell goods as a peddler, either by agent or clerk, or in any other way than his or her own proper person. [2009 c 549 § 4121; 1985 c 91 § 3; 1963 c 4 § 36.71.020. Prior: 1927 c 89 § 1; 1909 c 214 § 3; RRS § 8355.]

36.71.030 Peddler's license—Record of applications. The appropriate county official of each county shall keep on file all applications for peddlers' licenses that are issued. All files and records shall be in convenient form and open to public inspection. [1985 c 91 § 4; 1963 c 4 § 36.71.030. Prior: 1909 c 214 § 4; RRS § 8356.]

36.71.040 Peddler's license—Cancellation of license. Upon the expiration and return of a county license, the appropriate county official shall cancel it, indorse thereon the cancellation, and place it on file. After holding the special deposit of the licensee for a period of ninety days from the date of cancellation, he or she shall return the deposit or such portion as may remain in his or her hands after satisfying the

claims made against it. [2009 c 549 § 4122; 1985 c 91 § 5; 1963 c 4 § 36.71.040. Prior: 1909 c 214 § 5; RRS § 8357.]

36.71.050 Peddler's license—Liability of deposit—Lien on. Each deposit made with the county shall be subject to all taxes legally chargeable thereto, to attachment and execution on behalf of the creditors of the licensee whose claims arise in connection with the business done under his or her license, and the county may be held to answer as trustee in any civil action in contract or tort brought against any licensee, and shall pay over, under order of the court or upon execution, such amount of money as the licensee may be chargeable with upon the final determination of the case. Such deposit shall also be subject to the payment of any and all fines and penalties incurred by the licensee through violations of the provisions of RCW 36.71.010, 36.71.020, 36.71.030, 36.71.040 and 36.71.060, which shall be a lien upon the deposit and shall be collected in the manner provided by law. [2009 c 549 § 4123; 1985 c 91 § 6; 1963 c 4 § 36.71.050. Prior: 1909 c 214 § 6; RRS § 8358.]

36.71.060 Peddler's license—Penalty for peddling without license. Every peddler who sells or offers for sale or exposes for sale, at public or private sale any goods, wares, or merchandise without a county license, is guilty of a misdemeanor and shall be punished by imprisonment for not less than thirty days nor more than ninety days or by fine of not less than fifty dollars nor more than two hundred dollars or by both. [2003 c 53 § 207; 1963 c 4 § 36.71.060. Prior: 1909 c 214 § 2; RRS § 8354.]

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

36.71.070 Hawkers, auctioneers, and barterers must procure license—Exceptions. (1) If any person sells any goods, wares, or merchandise, at auction or public outcry, or barter goods, wares or merchandise from traveling boats, wagons, carts or vehicles of any kind, or from any pack, basket or other package carried on foot without first having obtained a license therefor from the board of county commissioners of the county in which such goods are sold or bartered, he or she shall be guilty of a misdemeanor, and upon conviction shall be fined not less than five nor more than fifty dollars, and shall stand committed to the county jail of the county in which the conviction is had until such fine and cost of prosecution are paid, or discharged by due course of law: PROVIDED, That this section shall not be construed as to apply to any seagoing craft or to administrators or executors selling property of deceased persons, or to private individuals selling their household property, or furniture, or farming tools, implements, or livestock, or any produce grown or raised by them, either at public auction or private sale.

(2) Notwithstanding subsection (1) of this section, counties shall not license auctioneers that are licensed by the state under chapter 18.11 RCW. [2009 c 549 § 4124; 1984 c 189 § 6; 1963 c 4 § 36.71.070. Prior: 1879 p 130 § 1; 1873 p 437 § 1; RRS § 8341.]

36.71.080 Hawkers, auctioneers, and barterers must procure license—Issuance of license. The county legislative authority may, by its order, direct the appropriate county

official to issue a license to any person to do any business designated in RCW 36.71.070 for such sum as may be fixed under the authority of RCW 36.32.120(3). [1985 c 91 § 7; 1963 c 4 § 36.71.080. Prior: 1873 p 438 § 3; RRS § 8342.]

36.71.090 Farmers, gardeners, etc., peddling own produce exempt from license requirements—Exception—Valid direct retail endorsement. (1) It shall be lawful for any farmer, gardener, or other person, without license, to sell, deliver, or peddle any fruits, vegetables, berries, eggs, or any farm produce or edibles raised, gathered, produced, or manufactured by such person and no city or town shall pass or enforce any ordinance prohibiting the sale by or requiring license from the producers and manufacturers of farm produce and edibles as defined in this section. However, nothing in this section authorizes any person to sell, deliver, or peddle, without license, in any city or town, any dairy product, meat, poultry, eel, fish, mollusk, or shellfish where a license is required to engage legally in such activity in such city or town.

(2) It is lawful for an individual in possession of a valid direct retail endorsement, as established in RCW 77.65.510, to sell, deliver, or peddle any legally harvested retail-eligible species, as that term is defined in RCW 77.08.010, that is caught, harvested, or collected under rule of the department of fish and wildlife by such a person at a temporary food service establishment, as that term is defined in RCW 69.06.045, and no city, town, or county may pass or enforce an ordinance prohibiting the sale by or requiring additional licenses or permits from the holder of the valid direct retail endorsement. However, this subsection does not prohibit a city, town, or county from inspecting an individual displaying a direct retail endorsement to verify that the person is in compliance with state board of health and local rules for food service operations. [2003 c 387 § 5; 2002 c 301 § 9; 1984 c 25 § 4; 1963 c 4 § 36.71.090. Prior: 1917 c 45 § 1; 1897 c 62 § 1; RRS § 8343.]

Finding—Effective date—2002 c 301: See notes following RCW 77.65.510.

Chapter 36.72 RCW PRINTING

Sections

36.72.071	All county officers to use official county newspaper.
36.72.075	Official county newspaper.
36.72.080	Forms for public blanks, compilation of.
36.72.090	Forms for public blanks, compilation of—Material to be provided by state.

36.72.071 All county officers to use official county newspaper. All county officers shall cause all legal notices and delinquent tax lists to be advertised in the official county newspaper designated by the county legislative authority. [1977 c 34 § 1.]

36.72.075 Official county newspaper. At its first April meeting, the county legislative authority shall let a contract to a legal newspaper qualified under this section to serve as the official county newspaper for the term of one year beginning on the first day of July following. If there be at least one legal newspaper published in the county, the contract shall be let to

a legal newspaper published in the county. If there be no legal newspaper published in the county, the county legislative authority shall let the contract to a legal newspaper published in an adjacent county and having general circulation in the county.

When two or more legal newspapers are qualified under the provisions of this section to be the official county newspaper, the county auditor shall advertise, at least five weeks before the meeting at which the county legislative authority shall let the contract for the official county newspaper, for bid proposals to be submitted by interested qualified legal newspapers. Advertisement of the opportunity to bid shall be mailed to all qualified legal newspapers and shall be published once in the official county newspaper. The advertisement may designate the form which notices shall take, and may require that the successful bidder provide a bond for the correct and faithful performance of the contract.

The county legislative authority shall let the contract to the best and lowest responsible bidder, giving consideration to the question of circulation in awarding the contract, with a view to giving publication of notices the widest publicity. [1977 c 34 § 2.]

36.72.080 Forms for public blanks, compilation of. The state auditor, with the aid and advice of the attorney general shall compile the forms for all public blanks used in the counties of this state in conformity with the general statutes thereof. The various blanks shall be uniform throughout the state. [1963 c 4 § 36.72.080. Prior: 1897 c 35 § 1; RRS § 4078.]

36.72.090 Forms for public blanks, compilation of—Material to be provided by state. The material used in such blank forms and the printing and binding thereof shall be provided for by the state in the same manner and under the same rules and regulations as other public printing is now provided for under the general statutes of this state. [1963 c 4 § 36.72.090. Prior: 1897 c 35 § 2; RRS § 4079.]

Chapter 36.73 RCW TRANSPORTATION BENEFIT DISTRICTS

Sections

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Roads and bridges, service districts: Chapter 36.83 RCW.

36.73.010 Intent. The legislature finds that the citizens of the state can benefit by cooperation of the public and private sectors in addressing transportation needs. This cooperation can be fostered through enhanced capability for cities, towns, and counties to make and fund transportation improvements necessitated by economic development and to improve the performance of the transportation system.

It is the intent of the legislature to encourage joint efforts by the state, local governments, and the private sector to respond to the need for those transportation improvements on state highways, county roads, and city streets. This goal can be better achieved by allowing cities, towns, and counties to establish transportation benefit districts in order to respond to the special transportation needs and economic opportunities resulting from private sector development for the public good. The legislature also seeks to facilitate the equitable participation of private developers whose developments may generate the need for those improvements in the improvement costs. [2005 c 336 § 2; 1987 c 327 § 1.]

Effective date—2005 c 336: See note following RCW 36.73.015.

36.73.015 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "City" means a city or town.
- (2) "District" means a transportation benefit district created under this chapter.
- (3) "Low-income" means household income that is at or below forty-five percent of the median household income, adjusted for household size, for the district in which the fees, taxes, or tolls were imposed.
- (4) "Rebate program" means an optional program established by a transportation benefit district that includes a city with a population of five hundred thousand persons or more for the purpose of providing rebates to low-income individuals for fees, taxes, and/or tolls imposed by such transportation benefit district for: (a) Vehicle fees imposed under RCW 36.73.040(3)(b); (b) sales and use taxes imposed under RCW 36.73.040(3)(a); and/or (c) tolls imposed under RCW 36.73.040(3)(d).
- (5) "Supplemental transportation improvement" or "supplemental improvement" means any project, work, or undertaking to provide public transportation service, in addition to a district's existing or planned voter-approved transportation improvements, proposed by a participating city member of the district under RCW 36.73.180.

(6) "Transportation improvement" means a project contained in the transportation plan of the state, a regional transportation planning organization, city, county, or eligible jurisdiction as identified in RCW 36.73.020(2). A project may include investment in new or existing highways of statewide significance, principal arterials of regional significance, high capacity transportation, public transportation, and other transportation projects and programs of regional or statewide

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significance including transportation demand management. Projects may also include the operation, preservation, and maintenance of these facilities or programs. [2012 c 152 § 1. Prior: 2010 c 251 § 2; 2010 c 105 § 1; 2006 c 311 § 24; 2005 c 336 § 1.]

Findings—2006 c 311: See note following RCW 36.120.020.

Effective date—2005 c 336: "This act takes effect August 1, 2005." [2005 c 336 § 26.]

36.73.020 Establishment of district by county or city—Participation by other jurisdictions. (1) The legislative authority of a county or city may establish a transportation benefit district within the county or city area or within the area specified in subsection (2) of this section, for the purpose of acquiring, constructing, improving, providing, and funding a transportation improvement within the district that is consistent with any existing state, regional, or local transportation plans and necessitated by existing or reasonably foreseeable congestion levels. The transportation improvements shall be owned by the county of jurisdiction if located in an unincorporated area, by the city of jurisdiction if located in an incorporated area, or by the state in cases where the transportation improvement is or becomes a state highway. However, if deemed appropriate by the governing body of the transportation benefit district, a transportation improvement may be owned by a participating port district or transit district, unless otherwise prohibited by law. Transportation improvements shall be administered and maintained as other public streets, roads, highways, and transportation improvements. To the extent practicable, the district shall consider the following criteria when selecting transportation improvements:

- (a) Reduced risk of transportation facility failure and improved safety;
- (b) Improved travel time;
- (c) Improved air quality;
- (d) Increases in daily and peak period trip capacity;
- (e) Improved modal connectivity;
- (f) Improved freight mobility;
- (g) Cost-effectiveness of the investment;
- (h) Optimal performance of the system through time;
- (i) Improved accessibility for, or other benefits to, persons with special transportation needs as defined in *RCW 47.06B.012; and
- (j) Other criteria, as adopted by the governing body.

(2) Subject to subsection (6) of this section, the district may include area within more than one county, city, port district, county transportation authority, or public transportation benefit area, if the legislative authority of each participating jurisdiction has agreed to the inclusion as provided in an interlocal agreement adopted pursuant to chapter 39.34 RCW. However, the boundaries of the district need not include all territory within the boundaries of the participating jurisdictions comprising the district.

(3) The members of the legislative authority proposing to establish the district, acting ex officio and independently, shall constitute the governing body of the district: PROVIDED, That where a district includes area within more than one jurisdiction under subsection (2) of this section, the district shall be governed under an interlocal agreement adopted pursuant to chapter 39.34 RCW, with the governing body

being composed of (a) at least five members including at least one elected official from the legislative authority of each participating jurisdiction or (b) the governing body of the metropolitan planning organization serving the district, but only if the district boundaries are identical to the boundaries of the metropolitan planning organization serving the district.

(4) The treasurer of the jurisdiction proposing to establish the district shall act as the ex officio treasurer of the district, unless an interlocal agreement states otherwise.

(5) The electors of the district shall all be registered voters residing within the district.

(6) Prior to December 1, 2007, the authority under this section, regarding the establishment of or the participation in a district, shall not apply to:

(a) Counties with a population greater than one million five hundred thousand persons and any adjoining counties with a population greater than five hundred thousand persons;

(b) Cities with any area within the counties under (a) of this subsection; and

(c) Other jurisdictions with any area within the counties under (a) of this subsection. [2010 c 250 § 1; 2009 c 515 § 14; 2006 c 311 § 25; 2005 c 336 § 3; 1989 c 53 § 1; 1987 c 327 § 2.]

*Reviser's note: RCW 47.06B.012 was repealed by 2011 c 60 § 51.

Findings—2006 c 311: See note following RCW 36.120.020.

Effective date—2005 c 336: See note following RCW 36.73.015.

Transportation benefit district tax authority: RCW 82.47.020.

Additional notes found at www.leg.wa.gov

36.73.030 Establishment of district by city. See RCW 35.21.225.

36.73.040 General powers of district. (1) A transportation benefit district is a quasi-municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

(2) A transportation benefit district constitutes a body corporate and possesses all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, to acquire, hold, and dispose of real and personal property, and to sue and be sued. Public works contract limits applicable to the jurisdiction that established the district apply to the district.

(3) To carry out the purposes of this chapter, and subject to the provisions of RCW 36.73.065, a district is authorized to impose the following taxes, fees, charges, and tolls:

(a) A sales and use tax in accordance with RCW 82.14.0455;

(b) A vehicle fee in accordance with RCW 82.80.140;

(c) A fee or charge in accordance with RCW 36.73.120.

However, if a county or city within the district area is levying a fee or charge for a transportation improvement, the fee or charge shall be credited against the amount of the fee or charge imposed by the district. Developments consisting of less than twenty residences are exempt from the fee or charge under RCW 36.73.120; and

(d) Vehicle tolls on state routes, city streets, or county roads, within the boundaries of the district, unless otherwise prohibited by law. However, consistent with RCW 47.56.820, the vehicle toll must first be authorized by the legislature if the toll is imposed on a state route. The department of transportation shall administer the collection of vehicle tolls authorized on state routes, unless otherwise specified in law or by contract, and the state transportation commission, or its successor, may approve, set, and impose the tolls in amounts sufficient to implement the district's transportation improvement finance plan. The district shall administer the collection of vehicle tolls authorized on city streets or county roads, and shall set and impose the tolls in amounts sufficient to implement the district's transportation improvement plan. However, consistent with RCW 47.56.850, the vehicle toll, including any change in an existing toll rate, must first be reviewed and approved by the tolling authority designated in RCW 47.56.850 if the toll, or change in toll rate, would have a significant impact, as determined by the tolling authority, on the operation of any state facility. [2008 c 122 § 17; 2005 c 336 § 4; 1989 c 53 § 3; 1987 c 327 § 4.]

Effective date—2005 c 336: See note following RCW 36.73.015.

Additional notes found at www.leg.wa.gov

36.73.050 Establishment of district—Public hearing—Ordinance. (1) The legislative authorities proposing to establish a district, or to modify the boundaries of an existing district, or to dissolve an existing district shall conduct a hearing at the time and place specified in a notice published at least once, not less than ten days before the hearing, in a newspaper of general circulation within the proposed district. Subject to the provisions of RCW 36.73.170, the legislative authorities shall make provision for a district to be automatically dissolved when all indebtedness of the district has been retired and anticipated responsibilities have been satisfied. This notice shall be in addition to any other notice required by law to be published. The notice shall, where applicable, specify the functions or activities proposed to be provided or funded, or the additional functions or activities proposed to be provided or funded, by the district. Additional notice of the hearing may be given by mail, by posting within the proposed district, or in any manner the legislative authorities deem necessary to notify affected persons. All hearings shall be public and the legislative authorities shall hear objections from any person affected by the formation, modification of the boundaries, or dissolution of the district.

(2)(a) Following the hearing held pursuant to subsection (1) of this section, the legislative authorities may establish a district, modify the boundaries or functions of an existing district, or dissolve an existing district, if the legislative authorities find the action to be in the public interest and adopt an ordinance providing for the action.

(b) The ordinance establishing a district shall specify the functions and transportation improvements described under RCW 36.73.015 to be exercised or funded and establish the boundaries of the district. Subject to the provisions of RCW 36.73.160, functions or transportation improvements proposed to be provided or funded by the district may not be expanded beyond those specified in the notice of hearing, unless additional notices are made, further hearings on the expansion are held, and further determinations are made that

it is in the public interest to so expand the functions or transportation improvements proposed to be provided or funded. [2007 c 329 § 3; 2005 c 336 § 5; 1987 c 327 § 5.]

Effective date—2005 c 336: See note following RCW 36.73.015.

36.73.060 Authority to levy property tax. (1) A district may levy an ad valorem property tax in excess of the one percent limitation upon the property within the district for a one-year period whenever authorized by the voters of the district pursuant to RCW 84.52.052 and Article VII, section 2(a) of the state Constitution.

(2) A district may provide for the retirement of voter-approved general obligation bonds, issued for capital purposes only, by levying bond retirement ad valorem property tax levies in excess of the one percent limitation whenever authorized by the voters of the district pursuant to Article VII, section 2(b) of the state Constitution and RCW 84.52.056. [2005 c 336 § 6; 1987 c 327 § 6.]

Effective date—2005 c 336: See note following RCW 36.73.015.

36.73.065 Taxes, fees, charges, tolls, rebate program.

(1) Except as provided in subsection (4) of this section, taxes, fees, charges, and tolls may not be imposed by a district without approval of a majority of the voters in the district voting on a proposition at a general or special election. The proposition must include a specific description of: (a) The transportation improvement or improvements proposed by the district; (b) any rebate program proposed to be established under RCW 36.73.067; and (c) the proposed taxes, fees, charges, and the range of tolls imposed by the district to raise revenue to fund the improvement or improvements or rebate program, as applicable.

(2) Voter approval under this section must be accorded substantial weight regarding the validity of a transportation improvement as defined in RCW 36.73.015.

(3) A district may not increase any taxes, fees, charges, or range of tolls imposed or change a rebate program under this chapter once the taxes, fees, charges, tolls, or rebate program takes effect, unless authorized by the district voters pursuant to RCW 36.73.160.

(4)(a) A district that includes all the territory within the boundaries of the jurisdiction, or jurisdictions, establishing the district may impose by a majority vote of the governing board of the district the following fees and charges:

(i) Up to twenty dollars of the vehicle fee authorized in RCW 82.80.140; or

(ii) A fee or charge in accordance with RCW 36.73.120.

(b) The vehicle fee authorized in (a) of this subsection may only be imposed for a passenger-only ferry transportation improvement if the vehicle fee is first approved by a majority of the voters within the jurisdiction of the district.

(c)(i) A district solely comprised of a city or cities shall not impose the fees or charges identified in (a) of this subsection within one hundred eighty days after July 22, 2007, unless the county in which the city or cities reside, by resolution, declares that it will not impose the fees or charges identified in (a) of this subsection within the one hundred eighty-day period; or

(ii) A district solely comprised of a city or cities identified in RCW 36.73.020(6)(b) may not impose the fees or charges until after May 22, 2008, unless the county in which

the city or cities reside, by resolution, declares that it will not impose the fees or charges identified in (a) of this subsection through May 22, 2008.

(5) If the interlocal agreement in RCW 82.80.140(2)(a) cannot be reached, a district that includes only the unincorporated territory of a county may impose by a majority vote of the governing body of the district up to twenty dollars of the vehicle fee authorized in RCW 82.80.140. [2012 c 152 § 3; 2007 c 329 § 1; 2005 c 336 § 17.]

Effective date—2005 c 336: See note following RCW 36.73.015.

36.73.067 Vehicle fee rebate program—Low-income individuals—Report to legislature.

(1) A district that: (a) Includes a city with a population of five hundred thousand persons or more; and (b) imposes a vehicle fee under RCW 36.73.040(3)(b), sales and use taxes under RCW 36.73.040(3)(a), or tolls under RCW 36.73.040(3)(d), may establish a rebate program for the purposes of providing rebates of up to forty percent of the actual fee, tax, or toll paid by a low-income individual.

(2) Funds collected from a vehicle fee under RCW 36.73.040(3)(b), sales and use tax under RCW 36.73.040(3)(a) or tolls under RCW 36.73.040(3)(d) may be used for a rebate program established under this section.

(3) A district that establishes a rebate program is responsible for the development and administration of the program and all functions and costs associated with the rebate program.

(4) A district that establishes a rebate program under this section must report back to the legislature two years after the program takes effect. The report must include, but is not limited to, a detailed description of the structure of the program, the average rebate, the total amount of rebates issued, and the number of people that received rebates. [2012 c 152 § 2.]

36.73.070 Authority to issue general obligation bonds, revenue bonds.

(1) To carry out the purposes of this chapter and notwithstanding RCW 39.36.020(1), a district may issue general obligation bonds, not to exceed an amount, together with any other outstanding nonvoter-approved general obligation indebtedness, equal to one and one-half percent of the value of taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015. A district may additionally issue general obligation bonds for capital purposes only, together with any outstanding general obligation indebtedness, not to exceed an amount equal to five percent of the value of the taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015, when authorized by the voters of the district pursuant to Article VIII, section 6 of the state Constitution, and may also provide for the retirement thereof by excess property tax levies as provided in RCW 36.73.060(2). The district may, if applicable, submit a single proposition to the voters that, if approved, authorizes both the issuance of the bonds and the bond retirement property tax levies.

(2) General obligation bonds with a maturity in excess of forty years shall not be issued. The governing body of the district shall by resolution determine for each general obligation bond issue the amount, date, terms, conditions, denominations, maximum fixed or variable interest rate or rates, matu-

rity or maturities, redemption rights, registration privileges, manner of execution, manner of sale, callable provisions, if any, covenants, and form, including registration as to principal and interest, registration as to principal only, or bearer. Registration may include, but not be limited to: (a) A book entry system of recording the ownership of a bond whether or not physical bonds are issued; or (b) recording the ownership of a bond together with the requirement that the transfer of ownership may only be effected by the surrender of the old bond and either the reissuance of the old bond or the issuance of a new bond to the new owner. Facsimile signatures may be used on the bonds and any coupons. Refunding general obligation bonds may be issued in the same manner as general obligation bonds are issued.

(3) Whenever general obligation bonds are issued to fund specific projects or enterprises that generate revenues, charges, user fees, or special assessments, the district may specifically pledge all or a portion of the revenues, charges, user fees, or special assessments to refund the general obligation bonds. The district may also pledge any other revenues that may be available to the district.

(4) In addition to general obligation bonds, a district may issue revenue bonds to be issued and sold in accordance with chapter 39.46 RCW. [2005 c 336 § 7; 1987 c 327 § 7.]

Effective date—2005 c 336: See note following RCW 36.73.015.

36.73.080 Local improvement districts authorized—Special assessments—Bonds. (1) A district may form a local improvement district to provide any transportation improvement it has the authority to provide, impose special assessments on all property specially benefited by the transportation improvements, and issue special assessment bonds or revenue bonds to fund the costs of the transportation improvement. Local improvement districts shall be created and administered, and assessments shall be made and collected, in the manner and to the extent provided by law to cities and towns pursuant to chapters 35.43, 35.44, 35.49, 35.50, 35.51, 35.53, and 35.54 RCW. However, the duties devolving upon the city or town treasurer under these chapters shall be imposed upon the district treasurer for the purposes of this section. A local improvement district may only be formed under this section pursuant to the petition method under RCW 35.43.120 and 35.43.125.

(2) The governing body of a district shall by resolution establish for each special assessment bond issue the amount, date, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, if any, covenants, and form, including registration as to principal and interest, registration as to principal only, or bearer. Registration may include, but not be limited to: (a) A book entry system of recording the ownership of a bond whether or not physical bonds are issued; or (b) recording the ownership of a bond together with the requirement that the transfer of ownership may only be effected by the surrender of the old bond and either the reissuance of the old bond or the issuance of a new bond to the new owner. Facsimile signatures may be used on the bonds and any coupons. The maximum term of any special assessment bonds shall not exceed thirty years beyond the date of issue. Special assessment bonds issued pursuant to this section shall not be an indebtedness of the district issuing

the bonds, and the interest and principal on the bonds shall only be payable from special assessments made for the improvement for which the bonds were issued and any local improvement guaranty fund that the district has created. The owner or bearer of a special assessment bond or any interest coupon issued pursuant to this section shall not have any claim against the district arising from the bond or coupon except for the payment from special assessments made for the improvement for which the bonds were issued and any local improvement guaranty fund the district has created. The district issuing the special assessment bonds is not liable to the owner or bearer of any special assessment bond or any interest coupon issued pursuant to this section for any loss occurring in the lawful operation of its local improvement guaranty fund. The substance of the limitations included in this subsection (2) shall be plainly printed, written, or engraved on each special assessment bond issued pursuant to this section.

(3) Assessments shall reflect any credits given by a district for real property or property right donations made pursuant to RCW 47.14.030.

(4) The governing body may establish, administer, and pay money into a local improvement guaranty fund, in the manner and to the extent provided by law to cities and towns under chapter 35.54 RCW, to guarantee special assessment bonds issued by the district. [2005 c 336 § 8; 1987 c 327 § 8.]

Effective date—2005 c 336: See note following RCW 36.73.015.

36.73.090 Printing of bonds. Where physical bonds are issued pursuant to RCW 36.73.070 or 36.73.080, the bonds shall be printed, engraved, or lithographed on good bond paper and the manual or facsimile signatures of both the treasurer and chairperson of the governing body shall be included on each bond. [1987 c 327 § 9.]

36.73.100 Use of bond proceeds. (1) The proceeds of any bond issued pursuant to RCW 36.73.070 or 36.73.080 may be used to pay costs incurred on a bond issue related to the sale and issuance of the bonds. These costs include payments for fiscal and legal expenses, obtaining bond ratings, printing, engraving, advertising, and other similar activities.

(2) In addition, proceeds of bonds used to fund capital projects may be used to pay the necessary and related engineering, architectural, planning, and inspection costs. [2005 c 336 § 9; 1987 c 327 § 10.]

Effective date—2005 c 336: See note following RCW 36.73.015.

36.73.110 Acceptance and use of gifts and grants. A district may accept and expend or use gifts, grants, and donations. [2005 c 336 § 10; 1987 c 327 § 11.]

Effective date—2005 c 336: See note following RCW 36.73.015.

36.73.120 Imposition of fees on building construction or land development. (1) Subject to the provisions in RCW 36.73.065, a district may impose a fee or charge on the construction or reconstruction of commercial buildings, industrial buildings, or on any other commercial or industrial building or building space or appurtenance, or on the development, subdivision, classification, or reclassification of land for commercial purposes, only if done in accordance with chapter 39.92 RCW.

(2) Any fee or charge imposed under this section shall be used exclusively for transportation improvements as defined in RCW 36.73.015. The fees or charges imposed must be reasonably necessary as a result of the impact of development, construction, or classification or reclassification of land on identified transportation needs.

(3) If a county or city within the district area is levying a fee or charge for a transportation improvement, the fee or charge shall be credited against the amount of the fee or charge imposed by the district. [2010 c 105 § 2; 2007 c 329 § 4; 2005 c 336 § 11; 1988 c 179 § 7; 1987 c 327 § 12.]

Effective date—2005 c 336: See note following RCW 36.73.015.

Additional notes found at www.leg.wa.gov

36.73.130 Power of eminent domain. A district may exercise the power of eminent domain to obtain property for its authorized purposes in the same manner as authorized for the city or county legislative authority that established the district. [2005 c 336 § 12; 1987 c 327 § 13.]

Effective date—2005 c 336: See note following RCW 36.73.015.

36.73.140 Authority to contract for street and highway improvements. A district has the same powers as a county or city to contract for street, road, or state highway improvement projects and to enter into reimbursement contracts provided for in chapter 35.72 RCW. [2005 c 336 § 13; 1987 c 327 § 14.]

Effective date—2005 c 336: See note following RCW 36.73.015.

36.73.150 Department of transportation, counties, cities, and other jurisdictions may fund transportation improvements. The department of transportation, counties, cities, and other jurisdictions may give funds to districts for the purposes of financing transportation improvements under this chapter. [2005 c 336 § 14; 1987 c 327 § 15.]

Effective date—2005 c 336: See note following RCW 36.73.015.

36.73.160 Transportation improvement projects—Material change policy—Annual report. (1) The district governing body shall develop a material change policy to address major plan changes that affect project delivery or the ability to finance the plan. The policy must at least address material changes to cost, scope, and schedule, the level of change that will require governing body involvement, and how the governing body will address those changes. At a minimum, in the event that a transportation improvement cost exceeds its original cost by more than twenty percent as identified in a district's original finance plan, the governing body shall hold a public hearing to solicit comment from the public regarding how the cost change should be resolved.

(2) A district shall issue an annual report, indicating the status of transportation improvement costs, transportation improvement expenditures, revenues, and construction schedules, to the public and to newspapers of record in the district. [2005 c 336 § 18.]

Effective date—2005 c 336: See note following RCW 36.73.015.

36.73.170 Completion of transportation improvement—Termination of district operations—Termination of taxes, fees, charges, and tolls—Dissolution of district. Within thirty days of the completion of the construction of

the transportation improvement or series of improvements authorized by a district, the district shall terminate day-to-day operations and exist solely as a limited entity that oversees the collection of revenue and the payment of debt service or financing still in effect, if any and to carry out the requirements of RCW 36.73.160. The district shall accordingly adjust downward its employees, administration, and overhead expenses. Any taxes, fees, charges, or tolls imposed by the district terminate when the financing or debt service on the transportation improvement or series of improvements constructed is completed and paid and notice is provided to the departments administering the taxes. Any excess revenues collected must be disbursed to the participating jurisdictions of the district in proportion to their population, using population estimates prepared by the office of financial management. The district shall dissolve itself and cease to exist thirty days after the financing or debt service on the transportation improvement, or series of improvements, constructed is completed and paid. If there is no debt outstanding, then the district shall dissolve within thirty days from completion of construction of the transportation improvement or series of improvements authorized by the district. Notice of dissolution must be published in newspapers of general circulation within the district at least three times in a period of thirty days. Creditors must file claims for payment of claims due within thirty days of the last published notice or the claim is extinguished. [2005 c 336 § 19.]

Effective date—2005 c 336: See note following RCW 36.73.015.

36.73.180 Supplemental transportation improvements. (1) In districts comprised of more than one member city, the legislative authorities of any member city that is located in a county having a population of more than one million five hundred thousand may petition the district to provide supplemental transportation improvements.

(2) Upon receipt of a petition as provided in subsection (1) of this section for supplemental transportation improvements that are to be fully funded by the petitioner city, including ongoing operating and maintenance costs, the district must:

(a) Conduct a public hearing, and provide notice and opportunity for public comment consistent with the requirements of RCW 36.73.050(1); and

(b) Following the hearing, if a majority of the district's governing board determines that the proposed supplemental transportation improvements are in the public interest, the district shall adopt an ordinance providing for the incorporation of the supplemental improvements into any existing services. The supplemental transportation improvements must be in addition to existing services provided by the district. The district shall enter into agreements with the petitioner city or identified service providers to coordinate existing services with the supplemental improvements.

(3) Upon receipt of a petition as provided in subsection (1) of this section for supplemental transportation improvements proposed to be partially or fully funded by the district, the district must:

(a) Conduct a public hearing, and provide notice and opportunity for public comment consistent with the requirements of RCW 36.73.050(1); and

(b) Following the hearing, submit a proposition to the voters at the next special or general election for approval by a majority of the voters in the district. The proposition must specify the supplemental transportation improvements to be provided and must estimate the capital, maintenance, and operating costs to be funded by the district.

(4) If a proposition to incorporate supplemental transportation improvements is approved by the voters as provided under subsection (3) of this section, the district shall adopt an ordinance providing for the incorporation of the supplemental improvements into any existing services provided by the district. The supplemental improvements must be in addition to existing services. The district shall enter into agreements with the petitioner city or identified service providers to coordinate existing services with the supplemental improvements.

(5) A supplemental transportation improvement must be consistent with the petitioner city's comprehensive plan under chapter 36.70A RCW.

(6) Unless otherwise agreed to by the petitioner city or by a majority of the district's governing board, upon adoption of an ordinance under subsection (2) or (4) of this section, the district shall maintain its existing public transportation service levels in locations where supplemental transportation improvements are provided. [2010 c 251 § 3.]

36.73.900 Liberal construction. The rule of strict construction does not apply to this chapter, and this chapter shall be liberally construed to permit the accomplishment of its purposes. [1987 c 327 § 16.]

Chapter 36.75 RCW

ROADS AND BRIDGES—GENERAL PROVISIONS

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Toll roads, bridges, and ferries of state, sale or lease of unneeded property to county: RCW 47.56.253.

36.75.010 Definitions. As used in this title with relation to roads and bridges, the following terms mean:

(1) "Alley," a highway not designed for general travel and primarily used as a means of access to the rear of residences and business establishments;

(2) "Board," the board of county commissioners or the county legislative authority, however organized;

(3) "Center line," the line, marked or unmarked, parallel to and equidistant from the sides of a two-way traffic roadway of a highway except where otherwise indicated by painted lines or markers;

(4) "City street," every highway or part thereof, located within the limits of incorporated cities and towns, except alleys;

(5) "County engineer" means the county road engineer, county engineer, and engineer, and shall refer to the statutorily required position of county engineer appointed under RCW 36.80.010; and may include the county director of public works when the person in that position also meets the requirements of a licensed professional engineer and is duly appointed by the county legislative authority under RCW 36.80.010;

(6) "County road," every highway or part thereof, outside the limits of incorporated cities and towns and which has not been designated as a state highway;

(7) "Department," the state department of transportation;

(8) "Director" or "secretary," the state secretary of transportation or his or her duly authorized assistant;

(9) "Pedestrian," any person afoot;

(10) "Private road or driveway," every way or place in private ownership and used for travel of vehicles by the owner or those having express or implied permission from the owner, but not by other persons;

(11) "Highway," every way, lane, road, street, boulevard, and every way or place in the state of Washington open as a matter of right to public vehicular travel both inside and outside the limits of incorporated cities and towns;

(12) "Railroad," a carrier of persons or property upon vehicles, other than streetcars, operated upon stationary rails, the route of which is principally outside incorporated cities and towns;

(13) "Roadway," the paved, improved, or proper driving portion of a highway designed or ordinarily used for vehicular travel;

(14) "Sidewalk," property between the curb lines or the lateral lines of a roadway, and the adjacent property, set aside and intended for the use of pedestrians or such portion of private

property parallel and in proximity to a highway and dedicated to use by pedestrians;

(15) "State highway," includes every highway as herein defined, or part thereof, that has been designated as a state highway, or branch thereof, by legislative enactment. [2005 c 161 § 1; 1984 c 7 § 26; 1975 c 62 § 1; 1969 ex.s. c 182 § 1; 1963 c 4 § 36.75.010. Prior: 1937 c 187 § 1; RRS § 6450-1.]

Additional notes found at www.leg.wa.gov

36.75.020 County roads—County legislative authority as agent of state—Standards. All of the county roads in each of the several counties shall be established, laid out, constructed, altered, repaired, improved, and maintained by the legislative authority of the respective counties as agents of the state, or by private individuals or corporations who are allowed to perform such work under an agreement with the county legislative authority. Such work shall be done in accordance with adopted county standards under the supervision and direction of the county engineer. [1982 c 145 § 6; 1963 c 4 § 36.75.020. Prior: 1943 c 82 § 1; 1937 c 187 § 2; Rem. Supp. 1943 § 6450-2.]

36.75.030 State and county cooperation. The state department of transportation and the governing officials of any county may enter into reciprocal public highway improvement and maintenance agreements, providing for cooperation either in the county assisting the department in the improvement or maintenance of state highways, or the department assisting the county in the improvement or maintenance of county roads, under any circumstance where a necessity appears therefor or where economy in public highway improvement and maintenance will be best served. [1984 c 7 § 27; 1963 c 4 § 36.75.030. Prior: 1939 c 181 § 11; RRS § 6450-2a.]

Additional notes found at www.leg.wa.gov

36.75.035 County may fund improvements to state highways. A county pursuant to chapter 36.88 RCW, or a service district as provided for in chapter 36.83 RCW, may, with the approval of the state department of transportation, improve or fund the improvement of any state highway within its boundaries. The county may fund improvements under this section by any means authorized by law, except that expenditures of county road funds under chapter 36.82 RCW under this section must be limited to improvements to the state highway system and shall not include maintenance or operations. Nothing in this section shall limit the authority of a county to fund cooperative improvement and maintenance agreements with the department of transportation, authorized by RCW 36.75.030 or 47.28.140. [2002 c 60 § 1; 1985 c 400 § 1.]

County road improvement districts and service districts may improve state highways: RCW 36.83.010 and 36.88.010.

36.75.040 Powers of county commissioners. The board of county commissioners of each county, in relation to roads and bridges, shall have the power and it shall be its duty to:

(1) Acquire in the manner provided by law property real and personal and acquire or erect structures necessary for the administration of the county roads of such county;

(2) Maintain a county engineering office and keep record of all proceedings and orders pertaining to the county roads of such county;

(3) Acquire land for county road purposes by purchase, gift, or condemnation, and exercise the right of eminent domain as by law provided for the taking of land for public use by counties of this state;

(4) Perform all acts necessary and proper for the administration of the county roads of such county as by law provided;

(5) In its discretion rent or lease any lands, improvements or air space above or below any county road or unused county roads to any person or entity, public or private: PROVIDED, That the said renting or leasing will not interfere with vehicular traffic along said county road or adversely affect the safety of the traveling public: PROVIDED FURTHER, That any such sale, lease or rental shall be by public bid in the manner provided by law: AND PROVIDED FURTHER, That nothing herein shall prohibit any county from granting easements of necessity. [1969 ex.s. c 182 § 15; 1963 c 4 § 36.75.040. Prior: 1937 c 187 § 3; RRS § 6450-3.]

36.75.050 Powers—How exercised. The powers and duties vested in or imposed upon the boards with respect to establishing, examining, surveying, constructing, altering, repairing, improving, and maintaining county roads, shall be exercised under the supervision and direction of the county road engineer.

The board shall by resolution, and not otherwise, order the survey, establishment, construction, alteration, or improvement of county roads; the county road engineer shall prepare all necessary maps, plans, and specifications therefor, showing the right-of-way widths, the alignments, gradients, and standards of construction. [1963 c 4 § 36.75.050. Prior: 1943 c 73 § 1, part; 1937 c 187 § 4, part; Rem. Supp. 1943 § 6450-4.]

36.75.060 County road districts. For the purpose of efficient administration of the county roads of each county the board may, but not more than once in each year, form their respective counties, or any part thereof, into suitable and convenient road districts, not exceeding nine in number, and cause a description thereof to be entered upon their records.

Unless the board decides otherwise by majority vote, there shall be at least one road district in each county commissioner's district embracing territory outside of cities and towns and no road district shall extend into more than one county commissioner's district. [1969 ex.s. c 182 § 3; 1963 c 4 § 36.75.060. Prior: 1937 c 187 § 5; RRS § 6450-5.]

36.75.065 Community revitalization financing—Public improvements. In addition to other authority that a road district possesses, a road district may provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a road district to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 16.]

Additional notes found at www.leg.wa.gov

36.75.070 Highways worked seven years are county roads. All public highways in this state, outside incorporated cities and towns and not designated as state highways, which have been used as public highways for a period of not less than seven years, where they have been worked and kept up at the expense of the public, are county roads. [1963 c 4 § 36.75.070. Prior: 1955 c 361 § 2; prior: 1945 c 125 § 1, part; 1937 c 187 § 10, part; Rem. Supp. 1945 § 6450-10, part.]

36.75.080 Highways used ten years are county roads. All public highways in this state, outside incorporated cities and towns and not designated as state highways which have been used as public highways for a period of not less than ten years are county roads: PROVIDED, That no duty to maintain such public highway nor any liability for any injury or damage for failure to maintain such public highway or any road signs thereon shall attach to the county until the same shall have been adopted as a part of the county road system by resolution of the county commissioners. [1963 c 4 § 36.75.080. Prior: 1955 c 361 § 3; prior: 1945 c 125 § 1, part; 1937 c 187 § 10, part; Rem. Supp. 1945 § 6450-10, part.]

36.75.090 Abandoned state highways. All public highways in this state which have been a part of the route of a state highway and have been or may hereafter be no longer necessary as such, if situated outside of the limits of incorporated cities or towns, shall, upon certification thereof by the state department of transportation to the legislative authority of the county in which any portion of the highway is located, become a county road of the county, and if situated within the corporate limits of any city or town shall upon certification thereof by the state department of transportation to the mayor of the city or town in which any portion of the highway is located become a street of the city or town. Upon the certification the secretary of transportation shall execute a deed, which shall be duly acknowledged, conveying the abandoned highway or portion thereof to the county or city as the case may be. [1984 c 7 § 28; 1977 ex.s. c 78 § 4; 1963 c 4 § 36.75.090. Prior: 1955 c 361 § 4; prior: 1953 c 57 § 1; 1945 c 125 § 1, part; 1937 c 187 § 10, part; Rem. Supp. 1945 § 6450-10, part.]

Additional notes found at www.leg.wa.gov

36.75.100 Informalities not fatal. No informalities in the records in laying out, establishing, or altering any public highways existing on file in the offices of the various county auditors of this state or in the records of the department or the transportation commission, may be construed to invalidate or vacate the public highways. [1984 c 7 § 29; 1963 c 4 § 36.75.100. Prior: 1937 c 187 § 11; RRS § 6450-11.]

Additional notes found at www.leg.wa.gov

36.75.110 True locations to be determined—Survey. Whenever the board declares by resolution that the true location, course, or width of any county road is uncertain and that the same should be determined, it shall direct the county road engineer to make examination and survey thereof.

This shall embrace an examination and survey of the original petition, report, and field notes on the establishment of such road; a survey of the present traveled roadway; all topography within a reasonable distance and having a bearing

on the true location of such road; the distance from the center line of the traveled roadway to the nearest section and quarter section corners; a map of sufficient scale accurately showing the above with field notes thereon; a map on the same scale showing the original field notes, such field notes to be transposed and the same meridian used on both maps. [1963 c 4 § 36.75.110. Prior: 1937 c 187 § 12; RRS § 6450-12.]

36.75.120 Action to determine true location. When the true location, course, or width of a county road, which was prior thereto uncertain, has been reported by the examining engineer, the board shall file an action in the superior court of such county for the determination thereof. All persons affected by the determination of the true location, course, or width insofar as the same may vary from the originally established location, course, or width shall be made parties defendant in such action and service had and return made as in the case of civil actions. Upon the hearing the court shall consider the survey, maps, and all data with reference to the investigation of the examining engineer and may demand such further examination as it may deem necessary and any objection of any party defendant may be heard and considered. The court shall determine the true location, course, and width of the road and may in its discretion assess the cost of such action against the county to be paid from the county road fund. [1963 c 4 § 36.75.120. Prior: 1937 c 187 § 13; RRS § 6450-13.]

36.75.130 Approaches to county roads—Rules regarding construction—Penalty. (1) No person shall be permitted to build or construct any approach to any county road without first obtaining permission therefor from the board.

(2) The boards of the several counties of the state may adopt reasonable rules for the construction of approaches which, when complied with, shall entitle a person to build or construct an approach from any abutting property to any county road. The rules may include provisions for the construction of culverts under the approaches, the depth of fills over the culverts, and for such other drainage facilities as the board deems necessary. The construction of approaches, culverts, fills, or such other drainage facilities as may be required, shall be under the supervision of the county road engineer, and all such construction shall be at the expense of the person benefited by the construction.

(3) Any person violating this section is guilty of a misdemeanor. [2003 c 53 § 208; 1963 c 4 § 36.75.130. Prior: 1943 c 174 § 1; Rem. Supp. 1943 § 6450-95.]

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

36.75.160 Power of county commissioners as to roads, bridges, and other structures crossing boundary lines. The board of county commissioners of any county may erect and construct or acquire by purchase, gift, or condemnation, any bridge, trestle, or any other structure which crosses any stream, body of water, gulch, navigable water, swamp or other topographical formation requiring such structure for the continuation or connection of any county road if such topographical formation constitutes the boundary of a city, town,

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another county or the state of Washington or another state or a county, city or town of such other state.

The board of such county may join with such city, town, other county, the state of Washington, or other state, or a county, city or town of such other state in paying for, erecting, constructing, acquiring by purchase, gift, or condemnation any such bridge, trestle, or other structure, and the purchase or condemnation of right-of-way therefor.

The board of any county may construct, maintain, and operate any county road which forms the boundary line between another county within the state or another county in any other state or which through its meandering crosses such boundary; and acquire by purchase or condemnation any lands or rights within this state, either within or without its county, necessary for such boundary road; and enter into joint contracts with authorities of adjoining counties for the construction, operation, and maintenance of such boundary roads. The power of condemnation herein granted may be exercised jointly by two counties in the manner provided in RCW 36.75.170 for bridges, or it may be exercised by a single county in the manner authorized by law. [2000 c 155 § 1; 1963 c 4 § 36.75.160. Prior: 1943 c 82 § 3; 1937 c 187 § 26; Rem. Supp. 1943 § 6450-26.]

36.75.170 Power of county commissioners as to roads, bridges, and other structures crossing boundary lines—Resolution to acquire or construct. The board may by original resolution entered upon its minutes declare its intention to pay for and erect or construct, or acquire by purchase, gift, or condemnation, any bridge, trestle, or other structure upon any county road which crosses any stream, body of water, gulch, navigable water, swamp or other topographical formation constituting a boundary, or to join therein with any other county, city or town, or with this state, or with any other state, or with any county, city or town of any other state, in the erection, or construction, or acquisition of any such structure, and declare that the same is a public necessity, and direct the county road engineer to report upon such project, dividing any just proportional cost thereof.

In the event two counties or any county and any city wish to join in paying for the erection or acquisition of any such structure, the resolution provided in this section shall be a joint resolution of the governing authorities of the counties and cities and they shall further, by such resolution, designate an engineer employed by one county to report upon the proposed erection or acquisition. [1963 c 4 § 36.75.170. Prior: 1937 c 187 § 27; RRS § 6450-27.]

36.75.180 Power of county commissioners as to roads, bridges, and other structures crossing boundary lines—Freeholders' petition to acquire or construct. Ten or more freeholders of any county may petition the board for the erection and construction or acquisition by purchase, gift, or condemnation of any bridge, trestle, or any other structure in the vicinity of their residence, and upon any county road which crosses any stream, body of water, gulch, navigable waters, swamp or other topographical formation constituting a boundary by joining with any other county, city or town, or the state of Washington, or with any other state or with any county, city or town of any other state, setting forth and describing the location proposed for the erection of such

bridge, trestle, or other structure, and stating that the same is a public necessity. The petition shall be accompanied by a bond with the same requirements, conditions, and amount and in the same manner as in case of a freeholders' petition for the establishing of a county road. Upon the filing of such petition and bond and being satisfied that the petition has been signed by freeholders residing in the vicinity of such proposed bridge, trestle, or other structure, the board shall direct the county road engineer to report upon the project, dividing any just proportional cost thereof.

In the event two counties or any county and any city or town are petitioned to join in paying for the erection or acquisition of such structure, the board of county commissioners of the counties or the board of county commissioners of the county and governing authorities of the city or town shall act jointly in the selection of the engineer who shall report upon such acquisition or erection. [1963 c 4 § 36.75.180. Prior: 1937 c 187 § 28; RRS § 6450-28.]

36.75.190 Engineer's report—Hearing—Order.

Upon report by the examining engineer for the erection and construction upon any county road, or for acquisition by purchase, gift or condemnation of any bridge, trestle, or any other structure crossing any stream, body of water, gulch, navigable water, swamp or other topographical formation, which constitutes a boundary, publication shall be made and joint hearing had upon such report in the same manner and upon the same procedure as in the case of resolution or petition for the laying out and establishing of county roads. If upon the hearing the governing authorities jointly order the erection and construction or acquisition of such bridge, trestle, or other structure, they may jointly acquire land necessary therefor by purchase, gift, or condemnation in the manner as provided for acquiring land for county roads, and shall advertise calls for bids, require contractor's deposit and bond, award contracts, and supervise construction as by law provided and in the same manner as required in the case of the construction of county roads.

Any such bridges, trestles or other structures may be operated free, or may be operated as toll bridges, trestles, or other structures under the provisions of the laws of this state relating thereto. [1963 c 4 § 36.75.190. Prior: 1937 c 187 § 29; RRS § 6450-29.]

36.75.200 Bridges on city or town streets. The boards of the several counties may expend funds from the county road fund for the construction, improvement, repair, and maintenance of any bridge upon any city street within any city or town in such county where such city street and bridge are essential to the continuation of the county road system of the county. Such construction, improvement, repair, or maintenance shall be ordered by resolution and proceedings conducted in respect thereto in the same manner as provided for the laying out and establishing of county roads by counties, and for the preparation of maps, plans, and specifications, advertising and award of contracts therefor. [1963 c 4 § 36.75.200. Prior: 1937 c 187 § 30; RRS § 6450-30.]

36.75.203 Responsibility of city to maintain county road forming a municipal boundary. If the centerline of a portion of a county road is part of a corporate boundary of a

city or town as of May 21, 1985, and that portion of county road has no connection to the county road system, maintenance of all affected portions of the road shall be the responsibility of such city or town after a petition requesting the same has been made to the city or town by the county legislative authority. [1985 c 429 § 2.]

36.75.205 Street as extension of road in town of less than one thousand. Whenever any street in any town, having a population of less than one thousand persons, forms an extension of a county road of the county in which such town is located, and where the board of county commissioners of such county and the governing body of such town, prior to the commencement of any work, have mutually agreed and each adopted a resolution setting forth the nature and scope of the work to be performed and the share of the cost or labor which each shall bear, such county may expend county road funds for construction, improvement, repair, or maintenance of such street. [1963 c 4 § 36.75.205. Prior: 1959 c 83 § 1.]

36.75.207 Agreements for planning, establishment, construction, and maintenance of city streets by counties—Use of county road fund—Payment by city—Contracts, bids. See RCW 35.77.020 through 35.77.040.

36.75.210 Roads crossing boundaries. Whenever a county road is established within any county, and such county road crosses the boundary of the county, the board of the county within which the major portion of the road is located may expend the county road fund of such county in laying out, establishing, constructing, altering, repairing, improving, and maintaining that portion of the road lying outside the county, in the manner provided by law for the expenditure of county funds for the construction, alteration, repair, improvement, and maintenance of county roads within the county.

The board of any county may construct, maintain, and operate any county road which forms the boundary line between another county within the state or another county in any other state or which through its meandering crosses such boundary; and acquire by purchase or condemnation any lands or rights within this state, either within or without its county, necessary for such boundary road; and enter into joint contracts with authorities of adjoining counties for the construction, operation, and maintenance of such boundary roads. The power of condemnation herein granted may be exercised jointly by two counties in the manner provided for bridges, or it may be exercised by a single county in the manner authorized by law. [2000 c 155 § 2; 1963 c 4 § 36.75.210. Prior: 1937 c 187 § 23; RRS § 6450-23. FORMER PART OF SECTION: 1943 c 82 § 3, part; 1937 c 187 § 26, part; Rem. Supp. 1943 § 6450-26, part, now codified in RCW 36.75.160.]

36.75.220 Connecting road across segment of third county. Whenever two counties are separated by an intervening portion of a third county not exceeding one mile in width, and each of such counties has constructed or shall construct a county road to the boundary thereof, and the boards of the two counties deem it beneficial to such counties to connect the county roads by the construction and maintenance of a

a county road across the intervening portion of the third county, it shall be lawful for the boards of the two counties to expend jointly the county road funds of their respective counties in acquiring right-of-way for the construction, improvement, repair, and maintenance of such connecting county road and any necessary bridges thereon, in the manner provided by law for the expenditure of county road funds for the construction, improvement, repair, and maintenance of county roads lying within a county. [1963 c 4 § 36.75.220. Prior: 1937 c 187 § 24; RRS § 6450-24.]

36.75.230 Acquisition of land under RCW 36.75.210 and 36.75.220. For the purpose of carrying into effect RCW 36.75.210 and 36.75.220 and under the circumstances therein set out the boards may acquire land necessary for the right-of-way for any portion of a county road lying outside such county or counties by gift or purchase or by condemnation in the manner provided for the taking of property for public use by counties. [1963 c 4 § 36.75.230. Prior: 1937 c 187 § 25, part; RRS § 6450-25, part.]

36.75.240 Sidewalks and pedestrian paths or walks—Bicycle paths, lanes, routes, and roadways—Standards. The boards may expend funds credited to the county road fund from any county or road district tax levied for the construction of county roads for the construction of sidewalks, bicycle paths, lanes, routes, and roadways, and pedestrian allocated paths or walks. Bicycle facilities constructed or modified after June 10, 1982, shall meet or exceed the standards of the state department of transportation. [1982 c 55 § 2; 1974 ex.s. c 141 § 7; 1963 c 4 § 36.75.240. Prior: 1937 c 187 § 25, part; RRS § 6450-25, part.]

Pavement marking standards: RCW 47.36.280.

36.75.243 Curb ramps for persons with physical disabilities. See RCW 35.68.075, 35.68.076.

36.75.250 State may intervene if maintenance neglected. If by any agreement with the federal government or any agency thereof or with the state or any agency thereof, a county has agreed to maintain certain county roads or any portion thereof and the maintenance is not being performed to the satisfaction of the federal government or the department, reasonably consistent with original construction, notice thereof may be given by the department to the legislative authority of the county, and if the county legislative authority does not within ten days provide for the maintenance, the department may perform the maintenance, and the state treasurer shall pay the cost thereof on vouchers submitted by the department and deduct the cost thereof from any sums in the motor vehicle fund credited or to be credited to the county in which the county road is located. [1984 c 7 § 30; 1963 c 4 § 36.75.250. Prior: 1937 c 187 § 46; RRS § 6450-46.]

Additional notes found at www.leg.wa.gov

36.75.255 Street improvements—Provision of supplies or materials. Any county may assist a street abutter in improving the street serving the abutter's premises by providing asphalt, concrete, or other supplies or materials. The furnishing of supplies or materials or paying to the abutter the cost thereof and the providing of inspectors and other inci-

mental personnel shall not render the street improvements a public work or improvement subject to competitive bidding. The legislative authority of such county shall approve any such assistance at a public meeting and shall maintain a public register of any such assistance setting forth the value, nature, purpose, date and location of the assistance and the name of the beneficiary. [1983 c 103 § 2.]

36.75.260 Annual report to secretary of transportation. Each county legislative authority shall on or before May 31st of each year submit such records and reports to the secretary of transportation, on forms furnished by the department, as are necessary to enable the secretary to compile an annual report on county highway operations. [1999 c 204 § 2; 1984 c 7 § 31; 1977 c 75 § 31; 1963 c 4 § 36.75.260. Prior: 1943 c 82 § 8; 1937 c 187 § 58; Rem. Supp. 1943 § 6450-58.]

Additional notes found at www.leg.wa.gov

36.75.270 Limitation of type or weight of vehicles authorized—Penalty. The board of county commissioners of each county may by resolution limit or prohibit classes or types of vehicles on any county road or bridge and may limit the weight of vehicles which may travel thereon. Any such resolution shall be effective for a definite period of time which shall be stated in the resolution. If such resolution is published at least once in a newspaper of general circulation in the county and if signs indicating such closure or limitation of traffic have been posted on such road or bridge, any person violating such resolution shall be guilty of a misdemeanor. [1963 c 4 § 36.75.270. Prior: 1949 c 156 § 8; Rem. Supp. 1949 § 6450-8g.]

Local restrictions or limitations of weight: RCW 46.44.080.

36.75.280 Centralized repair and storage of machinery, equipment, supplies, etc. All county road machinery, equipment, stores, and supplies, excepting stockpiles and other road building material, shall while not in use be stored and repaired at one centralized point in each county: PROVIDED, That if the geography, topography, distance, or other valid economic considerations require more than one place for storage or repairs, the county commissioners may, by unanimous vote, authorize the same. [1963 c 4 § 36.75.280. Prior: 1949 c 156 § 4; Rem. Supp. 1949 § 6450-8d.]

36.75.290 General penalty. It shall be a misdemeanor for any person to violate any of the provisions of this title relating to county roads and bridges unless such violation is by this title or other law of this state declared to be a felony or gross misdemeanor. [1963 c 4 § 36.75.290. Prior: 1943 c 82 § 13, part; 1937 c 187 § 66, part; Rem. Supp. 1943 § 6450-66, part.]

36.75.300 Primitive roads—Classification and designation. The legislative authority of each county may by resolution classify and designate portions of the county roads as primitive roads where the designated road portion:

- (1) Is not classified as part of the county primary road system, as provided for in RCW 36.86.070;
- (2) Has a gravel or earth driving surface; and
- (3) Has an average annual daily traffic of one hundred or fewer vehicles.

Any road designated as a primitive road shall be marked with signs indicating that it is a primitive road, as provided in the manual of uniform traffic control devices, at all places where the primitive road portion begins or connects with a highway other than another primitive road. No design or signing or maintenance standards or requirements, other than the requirement that warning signs be placed as provided in this section, apply to primitive roads.

The design of a primitive road, any discretionary maintenance, and the location, placing, or failing to place road signs, other than the requirement that warning signs be placed as provided in this section, shall not be considered in any action for damages brought against a county, or against a county employee or county employees, or both, arising from vehicular traffic on the primitive road. [2014 c 205 § 1; 1985 c 369 § 2; 1980 c 45 § 1.]

Chapter 36.76 RCW ROADS AND BRIDGES—BONDS

Sections

36.76.080	Bonds authorized—Election.
36.76.090	How to be held—Issuance of bonds.
36.76.100	Notice of election.
36.76.110	Disposition of proceeds—City assistance.
36.76.120	Payment of principal and interest.
36.76.130	Act cumulative.
36.76.140	Toll bridge bonds authorized—Adjoining counties.

36.76.080 Bonds authorized—Election. The legislative authority of any county may, whenever a majority thereof so decides, submit to the voters of their county the question whether the legislative authority shall be authorized to issue negotiable road bonds of the county in an amount subject to the limitations on indebtedness provided for in RCW 39.36.020(2), for the purpose of constructing a new road or roads, or improving established roads within the county, or for aiding in so doing, as herein prescribed.

The word "improvement" wherever used in this section and RCW 36.76.090, 36.76.100, 36.76.110, 36.76.120, and 36.76.130 shall embrace any undertaking for any or all of such purposes. The word "road" shall embrace all highways, roads, streets, avenues, bridges, and other public ways.

The provisions of this section and RCW 36.76.090, 36.76.100, 36.76.110, 36.76.120, and 36.76.130 shall apply not only to roads which are or shall be under the general control of the county, but also to all parts of state roads in such county and to all roads which are situated or are to be constructed wholly or partly within the limits of any incorporated city or town therein, provided the county legislative authority finds that they form or will become a part of the public highway system of the county, and will connect the existing roads therein. Such finding may be made by the county legislative authority at any stage of the proceedings before the actual delivery of the bonds.

The constructing or improving of any and all such roads, or the aiding therein, is declared to be a county purpose.

The question of the issuance of bonds for any undertaking which relates to a number of different roads or parts thereof, whether intended to supply the whole expenditure or to aid therein, may be submitted to the voters as a single proposition in all cases where such course is consistent with the

provisions of the state Constitution. If the county legislative authority, in submitting a proposition relating to different roads or parts thereof, finds that such proposition has for its object the furtherance and accomplishment of the construction of a system of public and county highways in such county, and constitutes and has for its object a single purpose, such finding shall be presumed to be correct, and upon the issuance of the bonds the presumption shall become conclusive.

No proposition for bonds shall be submitted which proposes that more than forty percent of the proceeds thereof shall be expended within any city or town or within any number of cities and towns. [1983 c 167 § 90; 1971 c 76 § 2; 1970 ex.s. c 42 § 22; 1963 c 4 § 36.76.080. Prior: 1913 c 25 § 1; RRS § 5592.]

Additional notes found at www.leg.wa.gov

36.76.090 How to be held—Issuance of bonds. The election shall be held as provided in RCW 39.36.050. If three-fifths of the legal ballots cast on the question of issuing bonds for the improvement contemplated in RCW 36.76.080 are in favor of the bond issue, the county legislative authority must issue the general obligation bonds. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 31; 1983 c 167 § 91; 1970 ex.s. c 56 § 53; 1969 ex.s. c 232 § 29; 1963 c 4 § 36.76.090. Prior: 1913 c 25 § 2; RRS § 5593.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Additional notes found at www.leg.wa.gov

36.76.100 Notice of election. The notice of this election shall state which road or roads are to be built or improved. The notice need not describe the road or roads with particularity, but it shall be sufficient either to describe them by termini and with a general statement as to their course, or to use any other appropriate language sufficient to show the purpose intended to be accomplished. The county legislative authority may, at its option, give such other or further notice as it may deem advisable. [1984 c 186 § 32; 1963 c 4 § 36.76.100. Prior: 1913 c 25 § 4; RRS § 5595.]

Purpose—1984 c 186: See note following RCW 39.46.110.

36.76.110 Disposition of proceeds—City assistance. When the bonds are sold, the money arising therefrom shall be immediately paid into the treasury of the county, and shall be drawn only for the improvement for which they were issued, under the general direction of the board: PROVIDED, That if the improvement includes in whole or in part the constructing or improving of one or more roads, or any part or parts thereof, within the limits of an incorporated city or town, and if the county commissioners find that the amount of the proceeds of the bonds intended to be expended for the improvements within such corporate limits will probably not be sufficient to defray the entire expense of the improvement therein, and if they further find it to be equitable that the city or town should bear the remainder of the expense, they may postpone any expenditure therefor from the proceeds of the bonds until the city or town makes provision by ordinance for proceeding with the improvement within its corporate limits

at its own expense insofar as concerns the cost thereof over and above the amount of bond proceeds available therefor.

In such case it shall be lawful for the county commissioners to consent, under such general directions as they shall impose, that the proper authorities of the city or town shall have actual charge of making the proposed improvement within the corporate limits. The city or town shall acquire any needed property or rights and do the work by contract or otherwise in accordance with its charter or ordinances, but the same shall be subject to the approval of the county commissioners insofar as concerns any payment therefor from the proceeds of the bonds.

In such case, as the work progresses and money is needed to pay therefor, the county commissioners shall, from time to time, by proper order, specifying the amount and purpose, direct the county treasurer to turn over to the city or town treasurer such part or parts of the proceeds of the bonds as may be justly applicable to such improvement or part thereof within such city or town, and any money so received by the city or town treasurer shall be inviolably applied to the purpose specified. When that portion of the entire improvement which lies within any such city or town can readily be separated into parts, the procedure authorized by this section may be pursued separately as to any one or more of such parts of the general improvement.

Nothing contained in this section shall be construed to render the county liable for any greater part of the expense of any improvement or part thereof within any city or town than the proper amount of the proceeds of such bonds, or to prevent the city or town from raising any part of the cost of any such improvement or part thereof, over and above the amount arising from the proceeds of the bonds, by assessment upon property benefited, or by contribution from any of its general or special funds in accordance with the provisions of the charter or laws governing such city or town. The provisions of this section, other than the direction for the payment into the county treasury of the money arising from the sale of the bonds, need not be complied with until after the issuance of the bonds and the validity of the bonds shall not be dependent upon such compliance. [1963 c 4 § 36.76.110. Prior: 1913 c 25 § 5; RRS § 5596.]

36.76.120 Payment of principal and interest. The county legislative authority must ascertain and levy annually a tax sufficient to pay the interest on all such bonds whenever it becomes due and to meet the annual maturities of principal. The county treasurer must pay out of any money accumulated from the taxes levied to pay the interest as aforesaid, the interest upon all such bonds when it becomes due as provided on the bond or, if coupons are attached to a bond, upon presentation at the place of payment of the proper coupon. Any interest payments or coupons so paid must be reported to the county legislative authority at its first meeting thereafter. Whenever interest is payable at any place other than the city in which the county treasurer keeps his or her office, the county treasurer shall seasonably remit to the state fiscal agent the amount of money required for the payment of any interest which is about to fall due. When any such bonds or any interest is paid, the county treasurer shall suitably and indelibly cancel them. [2009 c 549 § 4125; 1984 c 186 § 33;

(2014 Ed.)

1983 c 167 § 92; 1963 c 4 § 36.76.120. Prior: 1913 c 25 § 3; RRS § 5594.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Additional notes found at www.leg.wa.gov

36.76.130 Act cumulative. *This act shall not be construed as repealing or affecting any other act relating to the issuance of bonds for road or other purposes, but shall be construed as conferring additional power and authority. [1963 c 4 § 36.76.130. Prior: 1913 c 25 § 7; RRS § 5598.]

***Reviser's note:** "This act" [1913 c 25] consists of RCW 36.76.080, 36.76.090, 36.76.100, 36.76.110, 36.76.120, and 36.76.130.

36.76.140 Toll bridge bonds authorized—Adjoining counties. The county legislative authority may, by majority vote, and by submission to the voters under the same procedure required in RCW 36.76.090 and 36.76.100, issue general obligation bonds for the purpose of contributing money, or the bonds themselves, to the department to help finance the construction of toll bridges across topographical formations constituting boundaries between the county and an adjoining county, or a toll bridge across topographical formation located wholly within an adjoining county, which in the discretion of the county legislative authority, directly or indirectly benefits the county. The bonds may be transferred to the department to be sold by it for the purposes outlined herein. The bonds may bear interest at a rate or rates as authorized by the county legislative authority. Such indebtedness is subject to the limitations on indebtedness provided for in RCW 39.36.020(2). [1984 c 7 § 32; 1971 c 76 § 3; 1970 ex.s. c 56 § 54; 1969 ex.s. c 232 § 30; 1963 c 4 § 36.76.140. Prior: 1955 c 194 § 1.]

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Additional notes found at www.leg.wa.gov

Chapter 36.77 RCW

ROADS AND BRIDGES—CONSTRUCTION

Sections

36.77.010	Maps, plans, and specifications.
36.77.020	Approval—Call for bids.
36.77.030	Opening of bids—Deposit.
36.77.040	Award of contract—Bond—Low bidder claiming error.
36.77.065	County forces construction projects or programs—Amounts—Violations.
36.77.070	Publication of information on county forces projects—Penalty—Prosecution.
36.77.075	County roads—Small works roster.

36.77.010 Maps, plans, and specifications. Whenever it is ordered by resolution of the board that any county road shall be laid out and established and altered, widened, or otherwise constructed or improved, the county road engineer employed by the county shall prepare such maps, plans, and specifications as shall be necessary and sufficient. A copy of such maps, plans, and specifications shall be approved by the board of county commissioners with its approval endorsed thereon, and such copy shall be filed with the clerk of the board. [1963 c 4 § 36.77.010. Prior: 1959 c 67 § 2; prior: 1937 c 187 § 32, part; RRS § 6450-32, part.]

36.77.020 Approval—Call for bids. Upon approval of such maps, plans, and specifications and the filing thereof the

board shall, if it determines that the work shall be done by contract, advertise a call for bids upon such construction work by publication in the official county paper and also one trade paper of general circulation in the county, in one issue of each such paper at least once in each week for two consecutive weeks prior to the time set in the call for bids for the opening of bids. All bids shall be submitted under sealed cover before the time set for the opening of bids. [1963 c 4 § 36.77.020. Prior: 1959 c 67 § 3; prior: 1937 c 187 § 32, part; RRS § 6450-32, part.]

36.77.030 Opening of bids—Deposit. At the time and place fixed in the call for bids, such bids as have been submitted shall be publicly opened and read. No bid may be considered unless it is accompanied by a bid deposit in the form of a surety bond, cash, cashier's check, or certified check in an amount equal to five percent of the amount of the bid proposed. [1985 c 369 § 3; 1963 c 4 § 36.77.030. Prior: 1959 c 67 § 4; prior: 1937 c 187 § 32, part; RRS § 6450-32, part.]

36.77.040 Award of contract—Bond—Low bidder claiming error. The board shall proceed to award the contract to the lowest and best bidder but may reject any or all bids if in its opinion good cause exists therefor. The board shall require from the successful bidder a contractor's bond in the amount and with the conditions imposed by law. Should the bidder to whom the contract is awarded fail to enter into the contract and furnish the contractor's bond as required within ten days after notice of the award, exclusive of the day of notice, the amount of the bid deposit shall be forfeited to the county and placed in the county road fund and the contract awarded to the next lowest and best bidder. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. The bid deposit of all unsuccessful bidders shall be returned after the contract is awarded and the required contractor's bond given by the successful bidder is accepted by the board. [1996 c 18 § 4; 1963 c 4 § 36.77.040. Prior: 1959 c 67 § 5; prior: 1937 c 187 § 32, part; RRS § 6450-32, part.]

36.77.065 County forces construction projects or programs—Amounts—Violations. The board may cause any county road to be constructed or improved by use of county forces as provided in this section.

(1) As used in this section:

(a) "County forces" means regular employees of a county; and

(b) "Road construction project costs" means the aggregate total of those costs as defined by the budgeting, accounting, and reporting system for counties and cities and other local governments authorized under RCW 43.09.200 and 43.09.230 as prescribed in the state auditor's budget, accounting, and reporting manual's (BARS) road and street construction accounts: PROVIDED, That such costs shall not include those costs assigned to the right-of-way account, ancillary operations account, preliminary engineering account, and construction engineering account in the budget, accounting, and reporting manual.

(2) For counties with a population that equals or exceeds four hundred thousand people, the total amount of road con-

struction project costs one county may perform annually with county forces shall be no more than the total of the following amounts:

(a) Three million two hundred fifty thousand dollars; and

(b) The previous year's county motor vehicle fuel tax distribution factor, as provided for in RCW 46.68.124(5), multiplied by the amount listed in (a) of this subsection.

(3) For counties with a population that equals or exceeds one hundred fifty thousand, but is less than four hundred thousand people, the total amount of road construction project costs one county may perform annually with county forces shall be no more than the total of the following amounts:

(a) One million seven hundred fifty thousand dollars; and

(b) The previous year's county motor vehicle fuel tax distribution factor, as provided for in RCW 46.68.124(5), multiplied by the amount listed in (a) of this subsection.

(4) For counties with a population that equals or exceeds thirty thousand, but is less than one hundred fifty thousand people, the total amount of road construction project costs one county may perform annually with county forces shall be no more than the total of the following amounts:

(a) One million one hundred fifty thousand dollars; this amount shall increase to one million two hundred fifty thousand dollars effective January 1, 2012; and

(b) The previous year's county motor vehicle fuel tax distribution factor, as provided for in RCW 46.68.124(5), multiplied by the amount listed in (a) of this subsection.

(5) For counties with a population that is less than thirty thousand people, the total amount of road construction project costs one county may perform annually with county forces shall be no more than the total of the following amounts:

(a) Seven hundred thousand dollars; this amount shall increase to eight hundred thousand dollars effective January 1, 2012; and

(b) The previous year's county motor vehicle fuel tax distribution factor, as provided for in RCW 46.68.124(5), multiplied by the amount listed in (a) of this subsection.

(6) Any county whose expenditure for county forces for road construction projects exceeds the limits specified in this section, is in violation of the county road administration board's standards of good practice under RCW 36.78.020 and is in violation of this section.

(7) Notwithstanding any other provision in this section, whenever the construction work or improvement is the installation of electrical traffic control devices, highway illumination equipment, electrical equipment, wires, or equipment to convey electrical current, in an amount exceeding ten thousand dollars for any one project including labor, equipment, and materials, such work shall be performed by contract as in this chapter provided. This section means a complete project and does not permit the construction of any project by county forces by division of the project into units of work or classes of work. [2009 c 29 § 1; 2005 c 162 § 1; 2001 c 108 § 1; 1980 c 40 § 1.]

Additional notes found at www.leg.wa.gov

36.77.070 Publication of information on county forces projects—Penalty—Prosecution. If the board deter-

mines that any construction should be performed by county forces, and the estimated cost of the work exceeds ten thousand dollars, it shall cause to be published in one issue of a newspaper of general circulation in the county, a brief description of the work to be done and the county road engineer's estimate of the cost thereof. At the completion of such construction, the board shall cause to be published in one issue of such a newspaper a similar brief description of the work together with an accurate statement of the true and complete cost of performing such construction by county forces.

Failure to make the required publication shall subject each county commissioner to a fine of one hundred dollars for which he or she shall be liable individually and upon his or her official bond and the prosecuting attorney shall prosecute for violation of the provisions of this section and RCW 36.77.065. [2009 c 549 § 4126; 2009 c 29 § 2; 1983 c 3 § 81; 1963 c 4 § 36.77.070. Prior: 1949 c 156 § 9, part; 1943 c 82 § 4, part; 1937 c 187 § 34, part; Rem. Supp. 1949 § 6450-34, part.]

Reviser's note: This section was amended by 2009 c 29 § 2 and by 2009 c 549 § 4126, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

36.77.075 County roads—Small works roster. In lieu of the procedure for awarding contracts that is provided in RCW 36.77.020 through 36.77.040, a county may award contracts for public works projects on county roads using the small works roster process under RCW 39.04.155. [2000 c 138 § 208; 1991 c 363 § 81.]

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.155.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Chapter 36.78 RCW ROADS AND BRIDGES— COUNTY ROAD ADMINISTRATION BOARD

Sections

36.78.010	Definitions—"Board."
36.78.020	Definitions—"Standards of good practice."
36.78.030	Board created—Number—Appointment—Terms—Vacancies.
36.78.040	Composition of board—Qualifications of members.
36.78.050	Meetings—Rules and regulations—Election of chair.
36.78.060	Executive director.
36.78.070	Duties of board.
36.78.080	Members to serve without compensation—Reimbursement for travel expenses.
36.78.090	Certificates of good practice—Withholding of motor vehicle tax distribution.
36.78.100	Conditional certificates.
36.78.110	Expenses to be paid from motor vehicle fund—Disbursement procedure.
36.78.121	Maintenance.

Board duties

generally: RCW 46.68.120.

motor vehicle fund, distribution of amount to counties—Factors of distribution formula for RCW 46.68.120(4) funds: RCW 46.68.122.

population, road cost, money need, computed—Allocation percentage adjustment, when: RCW 46.68.124.

Equipment rental, ability to inquire into setting rates for: RCW 36.33A.040.

36.78.010 Definitions—"Board." "Board" shall mean the county road administration board created by this chapter. [1965 ex.s. c 120 § 1.]

(2014 Ed.)

36.78.020 Definitions—"Standards of good practice." "Standards of good practice" shall mean general and uniform practices formulated and adopted by the board relating to the administration of county roads and the safe and efficient movement of people and goods over county roads, which shall apply to engineering, design procedures, maintenance, traffic control, safety, planning, programming, road classification, road inventories, budgeting and accounting procedures, management practices, equipment policies, personnel policies, and effective use of transportation-related information technology. [1993 c 65 § 1; 1991 c 363 § 82; 1965 ex.s. c 120 § 2.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.78.030 Board created—Number—Appointment—Terms—Vacancies. There is created hereby a county road administration board consisting of nine members who shall be appointed by the executive committee of the Washington state association of counties. Prior to July 1, 1965 the executive committee of the Washington state association of counties shall appoint the first members of the county road administration board: Three members to serve one year; three members to serve two years; and three members to serve three years from July 1, 1965. Upon expiration of the original terms subsequent appointments shall be made by the same appointing authority for three year terms except in the case of a vacancy, in which event the appointment shall be only for the remainder of the unexpired term in which the vacancy has occurred. [1971 ex.s. c 85 § 5; 1965 ex.s. c 120 § 3.]

36.78.040 Composition of board—Qualifications of members. Six members of the county road administration board shall be county legislative authority members and three members shall be county engineers. If any member, during the term for which he or she is appointed ceases to be either a member of a county legislative authority or a county engineer, as the case may be, his or her membership on the county road administration board is likewise terminated. Three members of the board shall be from counties with a population of one hundred twenty-five thousand or more. Four members shall be from counties with a population of from twenty thousand to less than one hundred twenty-five thousand. Two members shall be from counties with a population of less than twenty thousand. Not more than one member of the board shall be from any one county. [2005 c 233 § 1; 1991 c 363 § 83; 1965 ex.s. c 120 § 4.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.78.050 Meetings—Rules and regulations—Election of chair. The board shall meet at least once quarterly and shall from time to time adopt rules and regulations for its own government and as may be necessary for it to discharge its duties and exercise its powers under this chapter. The board shall elect a chair from its own membership who shall hold office for one year. Election as chair does not affect the member's right to vote on all matters before the board. [1993 c 65 § 2; 1965 ex.s. c 120 § 5.]

36.78.060 Executive director. The county road administration board shall appoint an executive director who shall be the chief administrative officer of the board and shall be responsible for carrying out the policies adopted by the board. The executive director is exempt from the provisions of state civil service law, chapter 41.06 RCW, and shall serve at the pleasure of the county road administration board. The executive director's salary shall be set by the board. [1990 c 266 § 1; 1965 ex.s. c 120 § 6.]

36.78.070 Duties of board. The county road administration board shall:

(1) Establish by rule, standards of good practice for the administration of county roads and the efficient movement of people and goods over county roads;

(2) Establish reporting requirements for counties with respect to the standards of good practice adopted by the board;

(3) Receive and review reports from counties and reports from its executive director to determine compliance with legislative directives and the standards of good practice adopted by the board;

(4) Advise counties on issues relating to county roads and the safe and efficient movement of people and goods over county roads and assist counties in developing uniform and efficient transportation-related information technology resources;

(5) Report annually before the fifteenth day of January, and throughout the year as appropriate, to the state department of transportation and to the chairs of the house and senate transportation committees, and to other entities as appropriate on the status of county road administration in each county, including one copy to the staff of each of the committees. The annual report shall contain recommendations for improving administration of the county road programs;

(6) Administer the rural arterial program established by chapter 36.79 RCW and the program funded by the county arterial preservation account established by RCW 46.68.090, as well as any other programs provided for in law. [2005 c 319 § 102; 1999 c 269 § 1; 1993 c 65 § 3; 1990 c 266 § 2; 1987 c 505 § 19; 1983 1st ex.s. c 49 § 19; 1977 ex.s. c 235 § 4; 1965 ex.s. c 120 § 7.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Additional notes found at www.leg.wa.gov

36.78.080 Members to serve without compensation—Reimbursement for travel expenses. Members of the county road administration board shall receive no compensation for their service on the board, but shall be reimbursed for travel expenses incurred while attending meetings of the board or while engaged on other business of the board when authorized by the board in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 80; 1975 1st ex.s. c 1 § 1; 1969 ex.s. c 182 § 5; 1965 ex.s. c 120 § 8.]

Additional notes found at www.leg.wa.gov

36.78.090 Certificates of good practice—Withholding of motor vehicle tax distribution. (1) Before May 1st of each year the board shall transmit to the state treasurer certifi-

icates of good practice on behalf of the counties which during the preceding calendar year:

(a) Have submitted to the state department of transportation or to the board all reports required by law or regulation of the board; and

(b) Have reasonably complied with provisions of law relating to county road administration and with the standards of good practice as formulated and adopted by the board.

(2) The board shall not transmit to the state treasurer a certificate of good practice on behalf of any county failing to meet the requirements of subsection (1) of this section, but the board shall in such case and before May 1st, notify the county and the state treasurer of its reasons for withholding the certificate.

(3) The state treasurer, upon receiving a notice that a certificate of good practice will not be issued on behalf of a county, or that a previously issued certificate of good practice has been revoked, shall, effective the first day of the month after that in which notice is received, withhold from such county its share of motor vehicle fuel taxes distributable pursuant to RCW 46.68.120 until the board thereafter issues on behalf of such county a certificate of good practice or a conditional certificate. After withholding or revoking a certificate of good practice with respect to any county, the board may thereafter at any time issue such a certificate or a conditional certificate when the board is satisfied that the county has complied or is diligently attempting to comply with the requirements of subsection (1) of this section.

(4) The board may, upon notice and a hearing, revoke a previously issued certificate of good practice or substitute a conditional certificate therefor when, after issuance of a certificate of good practice, any county fails to meet the requirements of subsection (1) (a) and (b) of this section, but the board shall in such case notify the county and the state treasurer of its reasons for the revocation or substitution.

(5) Motor vehicle fuel taxes withheld from any county pursuant to this section shall not be distributed to any other county, but shall be retained in the motor vehicle fund to the credit of the county originally entitled thereto. Whenever the state treasurer receives from the board a certificate of good practice issued on behalf of such county he or she shall distribute to such county all of the funds theretofore retained in the motor vehicle fund to the credit of such county. [2009 c 549 § 4127; 1984 c 7 § 33; 1977 ex.s. c 257 § 1; 1965 ex.s. c 120 § 9.]

Additional notes found at www.leg.wa.gov

36.78.100 Conditional certificates. Whenever the board finds that a county has failed to submit the reports required by RCW 36.78.090, or has failed to comply with provisions of law relating to county road administration or has failed to meet the standards of good practice as formulated and adopted by the board, the board may in lieu of withholding or revoking a certificate of good practice issue and transmit to the state treasurer on behalf of such county a conditional certificate which will authorize the continued distribution to such county all or a designated portion of its share of motor vehicle fuel taxes. The issuance of such a conditional certificate shall be upon terms and conditions as shall be deemed by the board to be appropriate. In the event a county on whose behalf a conditional certificate is issued

fails to comply with the terms and conditions of such certificate, the board may forthwith cancel or modify such certificate notifying the state treasurer thereof. In such case the state treasurer shall thereafter withhold from such county all or the designated portion of its share of the motor vehicle fuel taxes as provided in RCW 36.78.090. [1977 ex.s. c 257 § 2; 1965 ex.s. c 120 § 10.]

36.78.110 Expenses to be paid from motor vehicle fund—Disbursement procedure. All expenses incurred by the board including salaries of employees shall be paid upon voucher forms provided by the office of financial management or pursuant to a regular payroll signed by the chair and the executive director of the board. All expenses of the board shall be paid out of that portion of the motor vehicle fund allocated to the counties and withheld for use by the department of transportation and the county road administration board under the provisions of RCW 46.68.120(1), as now or hereafter amended. [2009 c 549 § 4128; 1990 c 266 § 3; 1979 c 151 § 42; 1965 ex.s. c 120 § 11.]

36.78.121 Maintenance. The county road administration board, or its successor entity, shall establish a standard of good practice for maintenance of transportation system assets. This standard must be implemented by all counties no later than December 31, 2007. The board shall develop a model maintenance management system for use by counties. The board shall develop rules to assist the counties in the implementation of this system. Counties shall annually submit their maintenance plans to the board. The board shall compile the county data regarding maintenance management and annually submit it to the office of financial management. [2006 c 334 § 10; 2003 c 363 § 307.]

Effective date—2006 c 334: See note following RCW 47.01.051.

Finding—Intent—2003 c 363: See note following RCW 35.84.060.

Additional notes found at www.leg.wa.gov

**Chapter 36.79 RCW
ROADS AND BRIDGES—
RURAL ARTERIAL PROGRAM**

Sections

36.79.010	Definitions.
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36.79.030	Apportionment of rural arterial trust account funds—Regions established.
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(2014 Ed.)

36.79.150	Allocation of funds to rural arterial projects—Subsequent application for increased allocation—Withholding of funds for noncompliance.
36.79.160	Payment of rural arterial trust account funds.
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36.79.900	Severability—1983 1st ex.s. c 49.
36.79.901	Effective date—1983 1st ex.s. c 49.

36.79.010 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Rural arterial program" means improvement projects on those county roads in rural areas classified as rural arterials and collectors in accordance with the federal functional classification system and the construction of replacement bridges funded by the federal bridge replacement program on access roads in rural areas.

(2) "Rural area" means every area of the state outside of areas designated as urban areas by the state transportation commission with the approval of the secretary of the United States department of transportation in accordance with federal law.

(3) "Board" means the county road administration board created by RCW 36.78.030. [1997 c 81 § 1; 1988 c 26 § 1; 1983 1st ex.s. c 49 § 1.]

36.79.020 Rural arterial trust account. There is created in the motor vehicle fund the rural arterial trust account. All moneys deposited in the motor vehicle fund to be credited to the rural arterial trust account shall be expended for (1) the construction and improvement of county rural arterials and collectors, (2) the construction of replacement bridges funded by the federal bridge replacement program on access roads in rural areas, and (3) those expenses of the board associated with the administration of the rural arterial program. [1997 c 81 § 2; 1988 c 26 § 2; 1983 1st ex.s. c 49 § 2.]

36.79.030 Apportionment of rural arterial trust account funds—Regions established. For the purpose of apportioning rural arterial trust account funds, the state is divided into five regions as follows:

(1) The Puget Sound region includes those areas within the counties of King, Pierce, and Snohomish.

(2) The northwest region includes those areas within the counties of Clallam, Jefferson, Island, Kitsap, San Juan, Skagit, and Whatcom.

(3) The northeast region includes those areas within the counties of Adams, Chelan, Douglas, Ferry, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, and Whitman.

(4) The southeast region includes those areas within the counties of Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Klickitat, Walla Walla, and Yakima.

(5) The southwest region includes those areas within the counties of Clark, Cowlitz, Grays Harbor, Lewis, Mason, Pacific, Skamania, Thurston, and Wahkiakum. [1983 1st ex.s. c 49 § 3.]

36.79.040 Apportionment of rural arterial trust account funds—Apportionment formula. Funds available for expenditure by the board pursuant to RCW 36.79.020 shall be apportioned to the five regions for expenditure upon county arterials in rural areas in the following manner:

(1) One-third in the ratio which the land area of the rural areas of each region bears to the total land area of all rural areas of the state;

(2) Two-thirds in the ratio which the mileage of county arterials and collectors in rural areas of each region bears to the total mileage of county arterials and collectors in all rural areas of the state.

The board shall adjust the schedule for apportionment of such funds to the five regions in the manner provided in this section before the commencement of each fiscal biennium. [1997 c 81 § 3; 1983 1st ex.s. c 49 § 4.]

36.79.050 Apportionment of rural arterial trust account funds—Establishment of apportionment percentages. At the beginning of each fiscal biennium, the board shall establish apportionment percentages for the five regions defined in RCW 36.79.030 in the manner prescribed in RCW 36.79.040 for that biennium. The apportionment percentages shall be used once each calendar quarter by the board to apportion funds credited to the rural arterial trust account that are available for expenditure for rural arterial and collector projects and for construction of replacement bridges funded by the federal bridge replacement program on access roads in rural areas. The funds so apportioned shall remain apportioned until expended on construction projects in accordance with rules of the board. Within each region, funds shall be allocated by the board to counties for the construction of specific rural arterial and collector projects and construction of replacement bridges funded by the federal bridge replacement program on access roads in rural areas in accordance with the procedures set forth in this chapter. [1997 c 81 § 4; 1988 c 26 § 3; 1983 1st ex.s. c 49 § 5.]

36.79.060 Powers and duties of board. The board shall:

(1) Adopt rules necessary to implement the provisions of this chapter relating to the allocation of funds in the rural arterial trust account to counties;

(2) Adopt reasonably uniform design standards for county rural arterials and collectors that meet the requirements for trucks transporting commodities. [1998 c 245 § 31; 1997 c 81 § 5; 1988 c 26 § 4; 1983 1st ex.s. c 49 § 6.]

36.79.070 Board may contract with department of transportation for staff services and facilities. The board may contract with the department of transportation to furnish any necessary staff services and facilities required in the administration of the rural arterial program. The cost of such services that are attributable to the rural arterial program, together with travel expenses in accordance with RCW 43.03.050 and 43.03.060 of the members and all other lawful expenses of the board that are attributable to the rural arterial program, shall be paid from the rural arterial trust account in the motor vehicle fund. [1983 1st ex.s. c 49 § 7.]

36.79.080 Six-year program for rural arterial improvements—Selection of priority improvement projects. In preparing their respective six-year programs relating to rural arterial improvements, counties shall select specific priority improvement projects for each functional class of arterial based on the rating of each arterial section proposed

to be improved in relation to other arterial sections within the same functional class, taking into account the following:

- (1) Its structural ability to carry loads imposed upon it;
- (2) Its capacity to move traffic at reasonable speeds;
- (3) Its adequacy of alignment and related geometrics;
- (4) Its accident experience; and
- (5) Its fatal accident experience.

The six-year construction programs shall remain flexible and subject to annual revision as provided in RCW 36.81.121. [1983 1st ex.s. c 49 § 8.]

36.79.090 Six-year program for rural arterial improvements—Review and revision by board. Upon receipt of a county's revised six-year program, the board as soon as practicable shall review and may revise the construction program as it relates to rural arterials and the construction of replacement bridges funded by the federal bridge replacement program on access roads in rural areas for which rural arterial trust account moneys are requested as necessary to conform to (1) the priority rating of the proposed project, based upon the factors in RCW 36.79.080, in relation to proposed projects in all other rural arterial construction programs submitted by the counties and within each region; and (2) the amount of rural arterial trust account funds that the board estimates will be apportioned to the region. [1988 c 26 § 5; 1983 1st ex.s. c 49 § 10.]

36.79.100 Rural arterial improvements—Coordination with municipal and state projects. Whenever a rural arterial enters a city or town, the proper city or town and county officials shall jointly plan the improvement of the arterial in their respective long-range plans. Whenever a rural arterial connects with and will be substantially affected by a programmed construction project on a state highway, the proper county officials shall jointly plan the development of such arterial with the department of transportation district administrator. The board shall adopt rules encouraging the system development of county-city arterials in rural areas and rural arterials with state highways. [1983 1st ex.s. c 49 § 9.]

36.79.110 Coordination of transportation improvement board and county road administration board. The county road administration board and the transportation improvement board shall jointly adopt rules to assure coordination of their respective programs especially with respect to projects proposed by the group of incorporated cities outside the boundaries of federally approved urban areas, and to encourage the system development of county-city arterials in rural areas. [1988 c 167 § 7; 1983 1st ex.s. c 49 § 11.]

Additional notes found at www.leg.wa.gov

36.79.120 Rural arterial trust account—Matching funds. Counties receiving funds from the rural arterial trust account for construction of arterials and the construction of replacement bridges funded by the federal bridge replacement program on access roads in rural areas shall provide such matching funds as established by rules recommended by the board, subject to review, revision, and final approval by the office of financial management. Matching requirements shall be established after appropriate studies by the board, taking into account financial resources available to counties

to meet arterial needs. [2006 c 334 § 11; 1988 c 26 § 6; 1983 1st ex.s. c 49 § 12.]

Effective date—2006 c 334: See note following RCW 47.01.051.

36.79.130 Recommended budget for expenditures from rural arterial trust account. Not later than November 1st of each even-numbered year the board shall prepare and present to the office of financial management a recommended budget for expenditures from the rural arterial trust account during the ensuing biennium. The budget shall contain an estimate of the revenues to be credited to the rural arterial trust account.

The office of financial management shall review the budget as recommended, revise the budget as it deems proper, and include the budget as revised as a separate section of the transportation budget which it shall submit to the governor pursuant to chapter 43.88 RCW. [2006 c 334 § 12; 1983 1st ex.s. c 49 § 13.]

Effective date—2006 c 334: See note following RCW 47.01.051.

36.79.140 Expenditures from rural arterial trust account—Approval by board. At the time the board reviews the six-year program of each county each even-numbered year, it shall consider and shall approve for inclusion in its recommended budget, as required by RCW 36.79.130, the portion of the rural arterial construction program scheduled to be performed during the biennial period beginning the following July 1st. Subject to the appropriations actually approved by the legislature, the board shall as soon as feasible approve rural arterial trust account funds to be spent during the ensuing biennium for preliminary proposals in priority sequence as established pursuant to RCW 36.79.090. Only those counties that during the preceding twelve months have spent all revenues collected for road purposes only for such purposes, including removal of barriers to fish passage and accompanying streambed and stream bank repair as specified in RCW 36.82.070, and including traffic law enforcement, as are allowed to the state by Article II, section 40 of the state Constitution are eligible to receive funds from the rural arterial trust account, except that: (1) Counties with a population of less than eight thousand are exempt from this eligibility restriction; (2) counties expending revenues collected for road purposes only on other governmental services after authorization from the voters of that county under RCW 84.55.050 are also exempt from this eligibility restriction; and (3) this restriction shall not apply to any moneys diverted from the road district levy under chapter 39.89 RCW. The board shall authorize rural arterial trust account funds for the construction project portion of a project previously authorized for a preliminary proposal in the sequence in which the preliminary proposal has been completed and the construction project is to be placed under contract. At such time the board may reserve rural arterial trust account funds for expenditure in future years as may be necessary for completion of preliminary proposals and construction projects to be commenced in the ensuing biennium.

The board may, within the constraints of available rural arterial trust funds, consider additional projects for authorization upon a clear and conclusive showing by the submitting county that the proposed project is of an emergent nature and that its need was unable to be anticipated at the time the six-

year program of the county was developed. The proposed projects shall be evaluated on the basis of the priority rating factors specified in RCW 36.79.080. [2001 c 221 § 2; 2001 c 212 § 26; 1997 c 81 § 6; 1991 c 363 § 84; 1990 c 42 § 104; 1984 c 113 § 1; 1983 1st ex.s. c 49 § 14.]

Reviser's note: This section was amended by 2001 c 212 § 26 and by 2001 c 221 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—Intent—2001 c 221: "The legislature recognizes that projects that remove impediments to fish passage can greatly increase access to spawning and rearing habitat for depressed, threatened, and endangered fish stocks. Although counties are authorized to use county road funds to replace culverts and other barriers to fish passage, and may conduct streambed and stream bank restoration and stabilization work in conjunction with removal of these fish barriers, counties are reluctant to spend county road funds beyond the county right-of-way because it is unclear whether the use of road funds for this purpose is authorized. The purpose of this act is to clarify that streambed and stream bank restoration and stabilization activities conducted in conjunction with removal of existing barriers to fish passage within county rights-of-way constitute a county road purpose even if this work extends beyond the county right-of-way. The legislature intends this act to be permissive legislation. Nothing in this act is intended to create or impose a legal duty upon counties for salmon recovery work beyond the county right-of-way." [2001 c 221 § 1.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Additional notes found at www.leg.wa.gov

36.79.150 Allocation of funds to rural arterial projects—Subsequent application for increased allocation—Withholding of funds for noncompliance. (1) Whenever the board approves a rural arterial project it shall determine the amount of rural arterial trust account funds to be allocated for such project. The allocation shall be based upon information contained in the six-year plan submitted by the county seeking approval of the project and upon such further investigation as the board deems necessary. The board shall adopt reasonable rules pursuant to which rural arterial trust account funds allocated to a project may be increased upon a subsequent application of the county constructing the project. The rules adopted by the board shall take into account, but shall not be limited to, the following factors: (a) The financial effect of increasing the original allocation for the project upon other rural arterial projects either approved or requested; (b) whether the project for which an additional allocation is requested can be reduced in scope while retaining a usable segment; (c) whether the original cost of the project shown in the applicant's six-year program was based upon reasonable engineering estimates; and (d) whether the requested additional allocation is to pay for an expansion in the scope of work originally approved.

(2) The board shall not allocate funds, nor make payments under RCW 36.79.160, to any county or city identified by the governor under RCW 36.70A.340. [1991 sp.s. c 32 § 31; 1983 1st ex.s. c 49 § 15.]

Additional notes found at www.leg.wa.gov

36.79.160 Payment of rural arterial trust account funds. (1) Upon completion of a preliminary proposal, the county submitting the proposal shall submit to the board its voucher for payment of the trust account share of the cost. Upon the completion of an approved rural arterial construc-

tion project, the county constructing the project shall submit to the board its voucher for the payment of the trust account share of the cost. The chair of the board or his or her designated agent shall approve such voucher when proper to do so, for payment from the rural arterial trust account to the county submitting the voucher.

(2) The board may adopt rules providing for the approval of payments of funds in the rural arterial trust account to a county for costs of preliminary proposal, and costs of construction of an approved project from time to time as work progresses. These payments shall at no time exceed the rural arterial trust account share of the costs of construction incurred to the date of the voucher covering the payment. [2009 c 549 § 4129; 1983 1st ex.s. c 49 § 17.]

36.79.170 County may appeal decision of board—Hearing. The legislative body of any county feeling aggrieved by any action or decision of the board with respect to this chapter may appeal to the secretary of transportation by filing a notice of appeal within ninety days after the action or decision of the board. The notice shall specify the action or decision of which complaint is made. The secretary shall fix a time for a hearing on the appeal at the earliest convenient time and shall notify the county auditor and the chair of the board by certified mail at least twenty days before the date of the hearing. At the hearing the secretary shall receive evidence from the county filing the appeal and from the board. After the hearing the secretary shall make such order as in the secretary's judgment is just and proper. [2009 c 549 § 4130; 1983 1st ex.s. c 49 § 18.]

36.79.900 Severability—1983 1st ex.s. c 49. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 1st ex.s. c 49 § 32.]

36.79.901 Effective date—1983 1st ex.s. c 49. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1983. [1983 1st ex.s. c 49 § 33.]

Chapter 36.80 RCW ROADS AND BRIDGES—ENGINEER

Sections

36.80.010	Employment of road engineer.
36.80.015	Office at county seat.
36.80.020	Qualifications—Bond.
36.80.030	Duties of engineer.
36.80.040	Records to be kept.
36.80.050	Highway plat book.
36.80.060	Engineer to maintain records of expenditures for equipment, etc.—Inventory.
36.80.070	Plans and specifications to be prepared.
36.80.080	Cost-audit examination by state auditor—Expense.

County engineer defined for diking, drainage, or sewerage improvement district purposes: RCW 85.08.010.

Diking or drainage improvement district, engineer as supervisor: RCW 85.20.050.

Duties relating to agreements on planning, establishing, constructing, etc., of city streets: RCW 35.77.020, 35.77.030.

diking, drainage and sewerage improvement districts: Chapters 85.08, 85.16 RCW.

flood control zone districts: Chapter 86.15 RCW.

36.80.010 Employment of road engineer. The county legislative authority of each county shall employ a county road engineer on either a full-time or part-time basis, or may contract with another county for the engineering services of a county road engineer from such other county. [2002 c 9 § 1; 1997 c 147 § 1; 1991 c 363 § 85; 1984 c 11 § 1; 1980 c 93 § 1; 1969 ex.s. c 182 § 6; 1963 c 4 § 36.80.010. Prior: 1943 c 73 § 1, part; 1937 c 187 § 4, part; Rem. Supp. 1943 § 6450-4, part.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.80.015 Office at county seat. The county road engineer shall keep an office at the county seat in such room or rooms as are provided by the county, and he or she shall be furnished with all necessary cases and other suitable articles, and also with all blank books and blanks necessary to the proper discharge of his or her official duties. The records and books in the county road engineer's office shall be public records, and shall at all proper times be open to the inspection and examination of the public. [2009 c 105 § 5; 1963 c 4 § 36.80.015. Prior: 1955 c 9 § 1; prior: 1895 c 77 § 10; RRS § 4148.]

36.80.020 Qualifications—Bond. He or she shall be a registered and licensed professional civil engineer under the laws of this state, duly qualified and experienced in highway and road engineering and construction. He or she shall serve at the pleasure of the board.

Before entering upon his or her employment, every county road engineer shall give an official bond to the county in such amount as the board shall determine, conditioned upon the fact that he or she will faithfully perform all the duties of his or her employment and account for all property of the county entrusted to his or her care. [2009 c 549 § 4132; 1969 ex.s. c 182 § 7; 1963 c 4 § 36.80.020. Prior: 1943 c 73 § 1, part; 1937 c 187 § 4, part; Rem. Supp. 1943 § 6450-4, part.]

36.80.030 Duties of engineer. The county road engineer shall examine and certify to the board all estimates and all bills for labor, materials, provisions, and supplies with respect to county roads, prepare standards of construction of roads and bridges, and perform such other duties as may be required by order of the board.

He or she shall have supervision, under the direction of the board, of establishing, laying out, constructing, altering, improving, repairing, and maintaining all county roads of the county. [2009 c 549 § 4133; 1969 ex.s. c 182 § 8; 1963 c 4 § 36.80.030. Prior: 1943 c 73 § 1, part; 1937 c 187 § 4, part; Rem. Supp. 1943 § 6450-4, part.]

36.80.040 Records to be kept. The office of county engineer shall be an office of record; the county road engineer shall record and file in his or her office, all matters concerning the public roads, highways, bridges, ditches, or other surveys of the county, with the original papers, documents, petitions, surveys, repairs, and other papers, in order to have

the complete history of any such road, highway, bridge, ditch, or other survey; and shall number each construction or improvement project. The county engineer is not required to retain and file financial documents retained and filed in other departments in the county. [1995 c 194 § 8; 1969 ex.s. c 182 § 9; 1963 c 4 § 36.80.040. Prior: 1907 c 160 § 4; RRS § 4147.]

36.80.050 Highway plat book. He or she shall keep a highway plat book in his or her office in which he or she shall have accurately platted all public roads and highways established by the board. [2009 c 549 § 4134; 1963 c 4 § 36.80.050. Prior: 1907 c 160 § 2; RRS § 4149.]

36.80.060 Engineer to maintain records of expenditures for equipment, etc.—Inventory. The county road engineer shall maintain in his or her office complete and accurate records of all expenditures for (1) administration, (2) bond and warrant retirement, (3) maintenance, (4) construction, (5) purchase and operation of road equipment, and (6) purchase or manufacture of materials and supplies, and shall maintain a true and complete inventory of all road equipment. The state auditor, with the advice and assistance of the county road administration board, shall prescribe forms and types of records to be maintained by the county road engineers. [2009 c 549 § 4135; 1969 ex.s. c 182 § 10; 1963 c 4 § 36.80.060. Prior: 1949 c 156 § 2; Rem. Supp. 1949 § 6450-8b.]

36.80.070 Plans and specifications to be prepared. All road construction work, except minor construction work, which by its nature does not require plans and specifications, whether performed pursuant to contract or by day labor, shall be in accordance with plans and specifications prepared therefor by or under direct supervision of the county road engineer. [1969 ex.s. c 182 § 11; 1963 c 4 § 36.80.070. Prior: 1949 c 156 § 3; Rem. Supp. 1949 § 6450-8c.]

36.80.080 Cost-audit examination by state auditor—Expense. The state auditor shall annually make a cost-audit examination of the books and records of the county road engineer and make a written report thereon to the county legislative authority. The expense of the examination shall be paid from the county road fund. [1995 c 301 § 69; 1985 c 120 § 3; 1984 c 7 § 34; 1963 c 4 § 36.80.080. Prior: 1957 c 146 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 36.81 RCW

ROADS AND BRIDGES—ESTABLISHMENT

Sections

36.81.010	Resolution of intention and necessity.
36.81.020	Freeholders' petition—Bond.
36.81.030	Deeds and waivers.
36.81.040	Action on petition.
36.81.050	Engineer's report.
36.81.060	Survey map, field notes and profiles.
36.81.070	Notice of hearing on report.
36.81.080	Hearing—Road established by resolution.
36.81.090	Expense of proceedings.
36.81.100	County road on or over dikes.
36.81.110	County road on or over dikes—Condemnation for dike roads.

(2014 Ed.)

- 36.81.121 Perpetual advanced six-year plans for coordinated transportation program, expenditures—Nonmotorized transportation—Railroad right-of-way.
- 36.81.122 Provisions for bicycle paths, lanes, routes, roadways and improvements to be included in annual revision or extension of comprehensive road programs—Exception.
- 36.81.130 Procedure specified for establishment, construction, and maintenance.
- 36.81.140 Columbia Basin project road systems—Establishment by plat.

Alternate date for budget hearing: RCW 36.40.071.

Bicycles; pavement marking standards: RCW 47.36.280.

State highways in urban areas, allocation of funds, planning, bond issue, etc.: Chapter 47.26 RCW.

Urban arterials, planning, construction by cities and towns, transportation improvement board, funds, bond issue, etc.: Chapter 47.26 RCW.

36.81.010 Resolution of intention and necessity. The board may by original resolution entered upon its minutes declare its intention to establish any county road in the county and declare that it is a public necessity and direct the county road engineer to report upon such project. [1963 c 4 § 36.81.010. Prior: 1937 c 187 § 19; RRS § 6450-19.]

36.81.020 Freeholders' petition—Bond. Ten or more freeholders of any county may petition the board for the establishment of a county road in the vicinity of their residence, setting forth and describing the general course and terminal points of the proposed improvement and stating that the same is a public necessity. The petition must be accompanied by a bond in the penal sum of three hundred dollars, payable to the county, executed by one or more persons as principal or principals, with two or more sufficient sureties, conditioned that the petitioners will pay into the county road fund of the county all costs and expenses incurred by the county in examining and surveying the proposed road and in the proceedings thereon in case the road is not established by reason of its being impracticable or there not being funds therefor. [1963 c 4 § 36.81.020. Prior: 1937 c 187 § 20, part; RRS § 6450-20, part.]

36.81.030 Deeds and waivers. The board may require the petitioners to secure deeds and waivers of damages for the right-of-way from the landowners, and, in such case, before an examination or survey by the county road engineer is ordered, such deeds and waivers shall be filed with the board. [1963 c 4 § 36.81.030. Prior: 1937 c 187 § 20, part; RRS § 6450-20, part.]

36.81.040 Action on petition. Upon the filing of the petition and bond and being satisfied that the petition has been signed by freeholders residing in the vicinity of the proposed road, the board shall direct the county road engineer to report upon the project. [1963 c 4 § 36.81.040. Prior: 1937 c 187 § 20, part; RRS § 6450-20, part.]

36.81.050 Engineer's report. Whenever directed by the board to report upon the establishment of a county road the engineer shall make an examination of the road and if necessary a survey thereof. After examination, if the engineer deems the road to be impracticable, he or she shall so report to the board without making any survey, or he or she may examine or examine and survey any other practicable route which would serve such purpose. Whenever he or she considers any road as proposed or modified as practicable, he or she

shall report thereon in writing to the board giving his or her opinion: (1) As to the necessity of the road; (2) as to the proper terminal points, general course and length thereof; (3) as to the proper width of right-of-way therefor; (4) as to the estimated cost of construction, including all necessary bridges, culverts, clearing, grubbing, drainage, and grading; (5) and such other facts as he or she may deem of importance to be considered by the board. [2009 c 549 § 4136; 1963 c 4 § 36.81.050. Prior: 1937 c 187 § 21, part; RRS § 6450-21, part.]

36.81.060 Survey map, field notes and profiles. The county road engineer shall file with his or her report a correctly prepared map of the road as surveyed, which map must show the tracts of land over which the road passes, with the names, if known, of the several owners thereof, and he or she shall file therewith his or her field notes and profiles of such survey. [2009 c 549 § 4137; 1963 c 4 § 36.81.060. Prior: 1937 c 187 § 21, part; RRS § 6450-21, part.]

36.81.070 Notice of hearing on report. The board shall fix a time and place for hearing the report of the engineer and cause notice thereof to be published once a week for two successive weeks in the county official newspaper and to be posted for at least twenty days at each termini of the proposed road.

The notice shall set forth the termini of the road as set out in the resolution of the board, or the freeholders' petition, as the case may be, and shall state that all persons interested may appear and be heard at such hearing upon the report and recommendation of the engineer either to proceed or not to proceed with establishing the road. [1963 c 4 § 36.81.070. Prior: 1937 c 187 § 22, part; RRS § 6450-22, part.]

36.81.080 Hearing—Road established by resolution. On the day fixed for the hearing or any day to which the hearing has been adjourned, upon proof to its satisfaction made by affidavit of due publication and posting of the notice of hearing, the board shall consider the report and any and all evidence relative thereto, and if the board finds that the proposed county road is a public necessity and practicable it may establish it by proper resolution. [1963 c 4 § 36.81.080. Prior: 1937 c 187 § 22, part; RRS § 6450-22, part.]

36.81.090 Expense of proceedings. The cost and expense of the road, together with cost of proceedings thereon and of right-of-way and any quarries or other land acquired therefor, and the maintenance of the road shall be paid out of the county road fund. When the costs are assessed against the principals on the bond given in connection with a petition for the improvement, the county auditor shall file a cost bill with the county treasurer who shall proceed to collect it. [1963 c 4 § 36.81.090. Prior: (i) 1937 c 187 § 22, part; RRS § 6450-22, part. (ii) 1937 c 187 § 20, part; RRS § 6450-20, part.]

36.81.100 County road on or over dikes. The board of any county may establish county roads over, across or along any dike maintained by any diking, or diking and drainage, district in the manner provided by law for establishing county roads over or across private property, and shall determine and

offer the amount of damages, if any, to the district and to the owners of the land upon which the dike is constructed and maintained: PROVIDED, That every such county road must be so constructed, maintained, and used as not to impair the use of the dike. [1963 c 4 § 36.81.100. Prior: 1937 c 187 § 15; RRS § 6450-15.]

36.81.110 County road on or over dikes—Condemnation for dike roads. If any offer of damages to any diking, or diking and drainage, district is not accepted in the manner provided by law, it shall be deemed rejected, and the board by order, shall direct condemnation proceedings to procure the right-of-way to be instituted in the superior court of the county by the prosecuting attorney in the manner provided by law for the taking of private property for public use, and to that end the board may institute and maintain in the name of the county such proceedings against the diking, or diking and drainage, district and the owners of any land on which the dike is located and that have failed to accept the offer of damages made by the board: PROVIDED, That no taxes or assessments shall be charged or collected by any diking, or diking and drainage, district for any county road as provided in this section. [1963 c 4 § 36.81.110. Prior: 1937 c 187 § 16; RRS § 6450-16.]

36.81.121 Perpetual advanced six-year plans for coordinated transportation program, expenditures—Nonmotorized transportation—Railroad right-of-way. (1) At any time before adoption of the budget, the legislative authority of each county, after one or more public hearings thereon, shall prepare and adopt a comprehensive transportation program for the ensuing six calendar years. If the county has adopted a comprehensive plan pursuant to chapter 35.63 or 36.70 RCW, the inherent authority of a charter county derived from its charter, or chapter 36.70A RCW, the program shall be consistent with this comprehensive plan.

The program shall include proposed road and bridge construction work and other transportation facilities and programs deemed appropriate, and for those counties operating ferries shall also include a separate section showing proposed capital expenditures for ferries, docks, and related facilities. The program shall include any new or enhanced bicycle or pedestrian facilities identified pursuant to RCW 36.70A.070(6) or other applicable changes that promote non-motorized transit. Copies of the program shall be filed with the county road administration board and with the state secretary of transportation not more than thirty days after its adoption by the legislative authority. The purpose of this section is to assure that each county shall perpetually have available advanced plans looking to the future for not less than six years as a guide in carrying out a coordinated transportation program. The program may at any time be revised by a majority of the legislative authority but only after a public hearing thereon.

(2) Each six-year transportation program forwarded to the secretary in compliance with subsection (1) of this section shall contain information as to how a county will expend its moneys, including funds made available pursuant to chapter 47.30 RCW, for nonmotorized transportation purposes.

(3) Each six-year transportation program forwarded to the secretary in compliance with subsection (1) of this section

shall contain information as to how a county shall act to preserve railroad right-of-way in the event the railroad ceases to operate in the county's jurisdiction.

(4) The six-year plan for each county shall specifically set forth those projects and programs of regional significance for inclusion in the transportation improvement program within that region. [2005 c 360 § 3; 1997 c 188 § 1. Prior: 1994 c 179 § 2; 1994 c 158 § 8; 1990 1st ex.s. c 17 § 58; 1988 c 167 § 8; 1983 1st ex.s. c 49 § 20; prior: 1975 1st ex.s. c 215 § 2; 1975 1st ex.s. c 21 § 3; 1967 ex.s. c 83 § 26; 1963 c 4 § 36.81.121; prior: 1961 c 195 § 1.]

Findings—Intent—2005 c 360: See note following RCW 36.70A.070.

Highways, roads, streets in urban areas, urban arterials, development: Chapter 47.26 RCW.

Long range arterial construction planning, counties and cities to prepare data: RCW 47.26.170.

Additional notes found at www.leg.wa.gov

36.81.122 Provisions for bicycle paths, lanes, routes, roadways and improvements to be included in annual revision or extension of comprehensive road programs—Exception. The annual revision and extension of comprehensive road programs pursuant to RCW 36.81.121 shall include consideration of and, wherever reasonably practicable, provisions for bicycle paths, lanes, routes, and roadways: PROVIDED, That no provision need be made for such a path, lane, route, or roadway where the cost of establishing it would be excessively disproportionate to the need or probable use. [1974 ex.s. c 141 § 9.]

36.81.130 Procedure specified for establishment, construction, and maintenance. The laying out, construction, and maintenance of all county roads shall hereafter be in accordance with the following procedure:

On or before the first Monday in October of each year each county road engineer shall file with the county legislative authority a recommended plan for the laying out, construction, and maintenance of county roads for the ensuing fiscal year. Such recommended plan need not be limited to but shall include the following items: Recommended projects, including capital expenditures for ferries, docks, and related facilities, and their priority; the estimated cost of all work, including labor and materials for each project recommended; a statement as to whether such work is to be done by the county forces or by publicly advertised contract; a list of all recommended purchases of road equipment, together with the estimated costs thereof. Amounts to be expended for maintenance shall be recommended, but details of these proposed expenditures shall not be made. The recommended plan shall conform as nearly as practicable to the county's long range road program.

After filing of the road engineer's recommended plan, the county legislative authority shall consider the same. Revisions and changes may be made until a plan which is agreeable to a majority of the members of the county legislative authority has been adopted: PROVIDED, That such revisions shall conform as nearly as practicable to the county's long range road program. Any appropriations contained in the county road budget shall be void unless the county's road plan was adopted prior to such appropriation.

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The final road plan for the fiscal year shall not thereafter be changed except by unanimous vote of the county legislative authority. [2005 c 162 § 2; 1991 c 363 § 86; 1975 1st ex.s. c 21 § 4; 1963 c 4 § 36.81.130. Prior: 1949 c 156 § 7; Rem. Supp. 1949 § 6450-8f.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.81.140 Columbia Basin project road systems—Establishment by plat. When plats or blocks of farm units have been or are filed under the provisions of chapter 89.12 RCW which contain a system of county roads, or when a supplemental plat of a system of county roads to serve such a plat is filed in connection therewith, the filing period and formal approval by the board of county commissioners shall constitute establishment as county roads: PROVIDED, That the board of county commissioners have obtained the individual rights-of-way by deed or as otherwise provided by law. [1963 c 4 § 36.81.140. Prior: 1953 c 199 § 1.]

Chapter 36.82 RCW

ROADS AND BRIDGES—FUNDS—BUDGET

Sections

36.82.010	"County road fund" created.
36.82.020	County road fund—Limitation upon expenditures.
36.82.040	General tax levy for road fund—Exceptions.
36.82.050	Receipts from motor vehicle fund to road fund.
36.82.060	Federal reimbursement to road fund.
36.82.070	Purpose for which road fund can be used.
36.82.075	Use of county road funds in cooperative agreement with conservation district.
36.82.080	Purpose for which road fund can be used—Payment of bond or warrant interest and principal.
36.82.090	Anticipation warrants against road fund.
36.82.100	Purchases of road material extraction equipment—Sale of surplus materials.
36.82.110	Voluntary contributions for improvements to county roads—Standards.
36.82.120	Purchases of road material extraction equipment—Proceeds to road fund.
36.82.140	Forest roads may be maintained from road fund.
36.82.145	Bicycle paths, lanes, routes, etc., may be constructed, maintained, or improved from county road fund—Standards.
36.82.148	Use of street and road funds for pedestrian rights-of-way—Standards.
36.82.160	County road budget—Road budget to be prepared—Estimates of expenditures.
36.82.170	County road budget—Budget as adopted filed with department of transportation.
36.82.180	County road budget—Preliminary supplemental budget.
36.82.190	County road budget—Notice of hearing on supplemental budget.
36.82.200	County road budget—Hearing, adoption, supplemental budget.
36.82.210	Disposition of fines and forfeitures for violations.

Bicycles; pavement marking standards: RCW 47.36.280.

Employee safety award program, funds affected: RCW 36.32.460.

36.82.010 "County road fund" created. There is created in each county of the state a county fund to be known as the "county road fund." Any funds which accrue to any county for use upon county roads, shall be credited to and deposited in the county road fund. [1969 ex.s. c 182 § 12; 1963 c 4 § 36.82.010. Prior: 1943 c 82 § 2, part; 1937 c 187 § 6, part; Rem. Supp. 1943 § 6450-6, part.]

36.82.020 County road fund—Limitation upon expenditures. Any funds accruing to and to be deposited in

the county road fund arising from any levy in any road district shall be expended for proper county road purposes. [1991 c 363 § 87; 1963 c 4 § 36.82.020. Prior: 1943 c 82 § 2, part; 1937 c 187 § 6, part; Rem. Supp. 1943 § 6450-6, part.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.82.040 General tax levy for road fund—Exceptions. For the purpose of raising revenue for establishing, laying out, constructing, altering, repairing, improving, and maintaining county roads, bridges, and wharves necessary for vehicle ferriage and for other proper county purposes, the board shall annually at the time of making the levy for general purposes make a uniform tax levy throughout the county, or any road district thereof, of not to exceed two dollars and twenty-five cents per thousand dollars of assessed value of the last assessed valuation of the taxable property in the county, or road district thereof, unless other law of the state requires a lower maximum levy, in which event such lower maximum levy shall control. All funds accruing from such levy shall be credited to and deposited in the county road fund except that revenue diverted under RCW 36.33.220 shall be placed in a separate and identifiable account within the county current expense fund and except that revenue diverted under chapter 39.89 RCW shall be expended as provided under chapter 39.89 RCW. [2001 c 212 § 27; 1973 1st ex.s. c 195 § 41; 1971 ex.s. c 25 § 2; 1963 c 4 § 36.82.040. Prior: 1937 c 187 § 7; RRS § 6450-7.]

Additional notes found at www.leg.wa.gov

36.82.050 Receipts from motor vehicle fund to road fund. Any funds accruing to the credit of any county from the motor vehicle fund shall be paid monthly to the county treasurer and deposited in the county road fund. [1963 c 4 § 36.82.050. Prior: 1937 c 187 § 8, part; RRS § 6450-8, part.]

36.82.060 Federal reimbursement to road fund. Any funds accruing to any county by way of reimbursement by the federal government for expenditures made from the county road fund of such county for any proper county road purpose shall be credited to and deposited in the county road fund. [1963 c 4 § 36.82.060. Prior: 1937 c 187 § 8, part; RRS § 6450-8, part.]

36.82.070 Purpose for which road fund can be used. Any money paid to any county road fund may be used for the construction, alteration, repair, improvement, or maintenance of county roads and bridges thereon and for wharves necessary for ferriage of motor vehicle traffic, and for ferries, and for the acquiring, operating, and maintaining of machinery, equipment, quarries, or pits for the extraction of materials, and for the cost of establishing county roads, acquiring rights-of-way therefor, and expenses for the operation of the county engineering office, and for any of the following programs when directly related to county road purposes: (1) Insurance; (2) self-insurance programs; and (3) risk management programs; and for any other proper county road purpose. Such expenditure may be made either independently or in conjunction with the state or any city, town, or tax district within the county. County road purposes include the construction, maintenance, or improvement of park and ride lots.

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County road purposes also include the removal of barriers to fish passage related to county roads, and include but are not limited to the following activities associated with the removal of these barriers: Engineering and technical services; stream bank stabilization; streambed restoration; the placement of weirs, rock, or woody debris; planting; and channel modification. County road funds may be used beyond the county right-of-way for activities clearly associated with removal of fish passage barriers that are the responsibility of the county. Activities related to the removal of barriers to fish passage performed beyond the county right-of-way must not exceed twenty-five percent of the total cost of activities related to fish barrier removal on any one project, and the total annual cost of activities related to the removal of barriers to fish passage performed beyond the county rights-of-way must not exceed one-half of one percent of a county's annual road construction budget. The use of county road funds beyond the county right-of-way for activities associated with the removal of fish barriers is permissive, and wholly within the discretion of the county legislative authority. The use of county road funds beyond the county right-of-way for such activities does not create or impose a legal duty upon a county for salmon recovery work beyond the county right-of-way. [2010 c 43 § 1; 2001 c 221 § 3; 1997 c 189 § 1; 1963 c 4 § 36.82.070. Prior: 1943 c 82 § 5, part; 1937 c 187 § 53, part; Rem. Supp. 1943 § 6450-53, part.]

Purpose—Intent—2001 c 221: See note following RCW 36.79.140.

Additional notes found at www.leg.wa.gov

36.82.075 Use of county road funds in cooperative agreement with conservation district. Whenever a county legislative authority enters into a cooperative agreement with a conservation district as provided in chapter 89.08 RCW, the agreement may specify that the county will participate in the cost of any project which can be anticipated to result in a substantial reduction of the amount of soil deposited in a specifically described roadside ditch normally maintained by the county. The amount of participation by the county through the county road fund shall not exceed fifty percent of the project cost and shall be limited to those engineering and construction costs incurred during the initial construction or reconstruction of the project. [1985 c 369 § 9.]

36.82.080 Purpose for which road fund can be used—Payment of bond or warrant interest and principal. The payment of interest or principal on general obligation county road bonds, or retirement of registered warrants both as to principal and interest when such warrants have been issued for a proper county road purpose, are declared to be a proper county road purpose. [1979 ex.s. c 30 § 4; 1963 c 4 § 36.82.080. Prior: 1943 c 82 § 5, part; 1937 c 187 § 53, part; Rem. Supp. 1943 § 6450-53, part.]

36.82.090 Anticipation warrants against road fund. The board may expend funds from the county road fund or register warrants against the county road fund in anticipation of funds to be paid to the county from the motor vehicle fund. [1963 c 4 § 36.82.090. Prior: 1943 c 82 § 6; 1937 c 187 § 54; Rem. Supp. 1943 § 6450-54.]

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36.82.100 Purchases of road material extraction equipment—Sale of surplus materials. The boards of the several counties may purchase and operate, out of the county road fund, rock crushing, gravel, or other road building material extraction equipment.

Any crushed rock, gravel, or other road building material extracted and not directly used or needed by the county in the construction, alteration, repair, improvement, or maintenance of its roads may be sold at actual cost of production by the board to the state or any other county, city, town, or other political subdivision to be used in the construction, alteration, repair, improvement, or maintenance of any state, county, city, town or other proper highway, road or street purpose: PROVIDED, That in counties of less than twelve thousand five hundred population as determined by the 1950 federal census, the boards of commissioners, during such times as the crushing, loading or mixing equipment is actually in operation, or from stockpiles, may sell at actual cost of production such surplus crushed rock, gravel, or other road building material to any other person for private use where the place of contemplated use of such crushed rock, gravel or other road building material is more than fifteen miles distant from the nearest private source of such materials within the county, distance being computed by the closest traveled route: AND PROVIDED FURTHER, That the purchaser presents, at or before the time of delivery to him or her, a treasurer's receipt for payment for such surplus crushed rock, gravel, or any other road building material. [2009 c 549 § 4138; 1963 c 4 § 36.82.100. Prior: 1953 c 172 § 1; 1937 c 187 § 44, part; RRS § 6450-44, part.]

36.82.110 Voluntary contributions for improvements to county roads—Standards. Upon voluntary contribution and payment by any person for the actual cost thereof, such person or legislative authority upon the approval of maps, plans, specifications and guaranty bonds as may be required, may place crushed rock gravel or other road building material or make improvements upon any county road. Such work shall be done in accordance with adopted county standards under the supervision of and direction of the county engineer. [1982 c 145 § 7; 1963 c 4 § 36.82.110. Prior: 1937 c 187 § 44, part; RRS § 6450-44, part.]

36.82.120 Purchases of road material extraction equipment—Proceeds to road fund. All proceeds from the sale or placing of any crushed rock, gravel or other road building material shall be deposited in the county road fund to be expended under the same provisions as are by law imposed upon the funds used to produce the crushed rock, gravel, or other road building material extracted and sold. [1963 c 4 § 36.82.120. Prior: 1937 c 187 § 44, part; RRS § 6450-44, part.]

36.82.140 Forest roads may be maintained from road fund. The board may maintain any forest roads within its county and expend for the maintenance thereof funds accruing to the county road fund. [1963 c 4 § 36.82.140. Prior: 1937 c 187 § 45; RRS § 6450-45.]

36.82.145 Bicycle paths, lanes, routes, etc., may be constructed, maintained, or improved from county road

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fund—Standards. Any funds deposited in the county road fund may be used for the construction, maintenance, or improvement of bicycle paths, lanes, routes, and roadways, and for improvements to make existing streets and roads more suitable and safe for bicycle traffic. Bicycle facilities constructed or modified after December 31, 2012, shall meet or exceed the standards adopted by the design standards committee under RCW 43.32.020. [2012 c 67 § 5; 1982 c 55 § 3; 1974 ex.s. c 141 § 8.]

Intent—2012 c 67: See note following RCW 35.75.060.

36.82.148 Use of street and road funds for pedestrian rights-of-way—Standards. Any county may use any funds available for street or road construction, maintenance, or improvement for building, improving, and maintaining a pedestrian right-of-way and for improvements to make existing streets and roads more suitable and safe for pedestrian travel. Any such paths, lanes, roadways, routes, or streets for which any such street or road funds are expended must be suitable for pedestrian travel purposes and not solely for recreation purposes. A pedestrian right-of-way constructed or modified after December 31, 2012, must meet or exceed the standards adopted by the design standards committee under RCW 43.32.020. [2012 c 67 § 6.]

Intent—2012 c 67: See note following RCW 35.75.060.

36.82.160 County road budget—Road budget to be prepared—Estimates of expenditures. Each county legislative authority, with the assistance of the county road engineer, shall prepare and file with the county auditor on or before the second Monday in August in each year, detailed and itemized estimates of all expenditures required in the county for the ensuing fiscal year. In the preparation and adoption of the county road budget the legislative authority shall determine and budget sums to become available for the following county road purposes: (1) Administration; (2) bond and warrant retirement; (3) maintenance; (4) construction; (5) operation of equipment rental and revolving fund; and (6) such other items relating to the county road budget as may be required by the county road administration board; and the respective amounts as adopted for these several items in the final budget for the ensuing calendar year shall not be altered or exceeded except as by law provided. [1991 c 363 § 88; 1969 ex.s. c 182 § 14; 1963 c 4 § 36.82.160. Prior: 1949 c 156 § 6, part; 1943 c 82 § 7, part; 1937 c 187 § 56, part; Rem. Supp. 1949 § 6450-56, part.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.82.170 County road budget—Budget as adopted filed with department of transportation. Upon the final adoption of the county road budgets of the several counties, the county legislative authorities shall file a copy thereof in the office of the department of transportation. [1984 c 7 § 36; 1963 c 4 § 36.82.170. Prior: 1949 c 156 § 6, part; 1943 c 82 § 7, part; 1937 c 187 § 56, part; Rem. Supp. 1949 § 6450-56, part.]

Additional notes found at www.leg.wa.gov

36.82.180 County road budget—Preliminary supplemental budget. If any funds are paid to any county from the

motor vehicle fund in excess of the amount estimated by the department of transportation and the excess funds have not been included by the county legislative authority in the then current county road budget or if funds become available from other sources upon a matching basis or otherwise and it is impracticable to adhere to the provisions of the county road budget, the legislative authority may by unanimous consent, consider and adopt a preliminary supplemental budget covering the excess funds for the remainder of the current fiscal year. [1984 c 7 § 37; 1963 c 4 § 36.82.180. Prior: 1949 c 156 § 6, part; 1943 c 82 § 7, part; 1937 c 187 § 56, part; Rem. Supp. 1949 § 6450-56, part.]

Additional notes found at www.leg.wa.gov

36.82.190 County road budget—Notice of hearing on supplemental budget. The county legislative authority shall then publish a notice setting day of hearing for the adoption of the final supplemental budget covering the excess funds, designating the time and place of hearing and that anyone may appear thereat and be heard for or against any part of the preliminary supplemental budget. The notice shall be published once a week for two consecutive weeks immediately following the adoption of the preliminary supplemental budget in the official newspaper of the county. The county legislative authority shall provide a sufficient number of copies of the preliminary supplemental budget to meet reasonable public demands and they shall be available not later than two weeks immediately preceding the hearing. [1985 c 469 § 50; 1963 c 4 § 36.82.190. Prior: 1949 c 156 § 6, part; 1943 c 82 § 7, part; 1937 c 187 § 56, part; Rem. Supp. 1949 § 6450-56, part.]

36.82.200 County road budget—Hearing, adoption, supplemental budget. The board shall hold such hearing at the time and place designated in the notice, and it may be continued from day to day until concluded but not to exceed a total of five days. Upon the conclusion of the hearing the board shall fix and determine the supplemental budget and by resolution adopt it as finally determined and enter it in detail in the official minutes of the board, a copy of which supplemental budget shall be forwarded to the director. [1995 c 301 § 70; 1963 c 4 § 36.82.200. Prior: 1949 c 156 § 6, part; 1943 c 82 § 7, part; 1937 c 187 § 56, part; Rem. Supp. 1949 § 6450-56, part.]

36.82.210 Disposition of fines and forfeitures for violations. All fines and forfeitures collected for violation of any of the provisions of chapters 36.75, and 36.77 to 36.87 RCW, inclusive, when the violation thereof occurred outside of any incorporated city or town shall be distributed and paid into the proper funds for the following purposes: One-half shall be paid into the county road fund of the county in which the violation occurred; one-fourth into the state fund for the support of state parks and parkways; and one-fourth into the highway safety fund: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

All fines and forfeitures collected for the violation of any of such provisions when the violation thereof occurred inside

any incorporated city or town shall be distributed and paid into the proper funds for the following purposes: One-half shall be paid into the city street fund of such incorporated city or town for the construction and maintenance of city streets; one-fourth into the state fund for the support of state parks and parkways; and one-fourth into the highway safety fund: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 211; 1969 ex.s. c 199 § 21; 1963 c 4 § 36.82.210. Prior: 1949 c 75 § 2; 1937 c 187 § 67; Rem. Supp. 1949 § 6450-67.]

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

Chapter 36.83 RCW

ROADS AND BRIDGES—SERVICE DISTRICTS

Sections

36.83.010	Service districts authorized—Bridge and road improvements—Powers—Governing body.
36.83.020	Establishment—Notice, hearing—Termination of proceedings—Modification of boundaries—Dissolution.
36.83.030	Excess ad valorem property taxes authorized.
36.83.040	General obligation bonds, excess property tax levies authorized—Limitations.
36.83.050	Local improvement districts authorized—Assessments—Special assessment bonds and revenue bonds—Limitations.
36.83.060	Bonds—Form.
36.83.070	Bonds—Use of proceeds.
36.83.080	Gifts, grants, and donations.
36.83.090	Eminent domain.
36.83.100	Commissioners—Appointment—Terms—Vacancies—Compensation—Powers.
36.83.110	Election to retain commissioners—Referendum petition.
36.83.120	Removal of commissioner.
36.83.130	Improvements—Ownership.
36.83.140	Local service district fund.
36.83.900	Liberal construction.

Transportation benefit districts: Chapter 36.73 RCW.

36.83.010 Service districts authorized—Bridge and road improvements—Powers—Governing body. The legislative authority of a county may establish one or more service districts within the county for the purpose of providing and funding capital and maintenance costs for any bridge or road improvement or for providing and funding capital costs for any state highway improvement a county or a road district has the authority to provide. A service district may not include any area within the corporate limits of a city or town unless the city or town governing body adopts a resolution approving inclusion of the area within its limits. A service district is a quasi municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

A service district shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, to acquire, hold, and dispose of real and personal property, and to sue and be sued. All projects constructed by a service district pursuant to the provisions of this chapter shall be competitively bid and contracted.

A board of three commissioners appointed by the county legislative authority or county executive pursuant to this

chapter shall be the governing body of a service district. The county treasurer shall act as the ex officio treasurer of the service district. The electors of a service district are all registered voters residing within the district. [1996 c 292 § 1; 1985 c 400 § 2; 1983 c 130 § 1.]

County may fund improvements to state highways: RCW 36.75.035.

36.83.020 Establishment—Notice, hearing—Termination of proceedings—Modification of boundaries—Dissolution. (1) A county legislative authority proposing to establish a service district shall conduct a hearing at the time and place specified in a notice published at least once, not less than ten days prior to the hearing, in a newspaper of general circulation within the proposed service district. This notice shall be in addition to any other notice required by law to be published. The notice shall specify the functions or activities proposed to be provided or funded by the service district. Additional notice of the hearing may be given by mail, posting within the proposed service district, or in any manner the county legislative authority deems necessary to notify affected persons. All hearings shall be public and the county legislative authority shall hear objections from any person affected by the formation, modification of the boundaries, or dissolution of the service district.

(2) Following the hearing held pursuant to subsection (1) of this section, the county legislative authority may establish a service district if the county legislative authority finds the action to be in the public interest and adopts an ordinance or resolution providing for the establishment of the service district. The legislation establishing a service district shall specify the functions or activities to be exercised or funded and establish the boundaries of the service district. Functions or activities proposed to be provided or funded by the service district may not be expanded beyond those specified in the notice of hearing, except as provided in subsection (4) of this section.

(3) At any time prior to the county legislative authority establishing a service district pursuant to this section, all further proceedings shall be terminated upon the filing of a verified declaration of termination signed by a majority of the registered voters of the proposed service district.

(4) With the approval of the county legislative authority, the governing body of a service district may modify the boundaries of, expand or otherwise modify the functions of, or dissolve the service district after providing notice and conducting a public hearing or hearings in the manner provided in subsection (1) of this section. The governing body must make a determination that the proposed action is in the public interest and adopt a resolution providing for the action. [1996 c 292 § 2; 1983 c 130 § 2.]

36.83.030 Excess ad valorem property taxes authorized. (1) A service district may levy an ad valorem property tax, in excess of the one percent limitation, upon the property within the district for a one-year period whenever authorized by the voters of the district pursuant to RCW 84.52.052 and Article VII, section 2(a) of the state Constitution.

(2) A service district may provide for the retirement of voter approved general obligation bonds, issued for capital purposes only, by levying bond retirement ad valorem property tax levies, in excess of the one percent limitation, when-

ever authorized by the voters of the district pursuant to Article VII, section 2(b) of the state Constitution and RCW 84.52.056. [1983 c 130 § 3.]

36.83.040 General obligation bonds, excess property tax levies authorized—Limitations. (1) To carry out the purpose of this chapter, a service district may issue general obligation bonds, not to exceed an amount, together with any other outstanding nonvoter approved general obligation indebtedness, equal to three-eighths of one percent of the value of taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015. A service district may additionally issue general obligation bonds for capital purposes only, together with any outstanding general obligation indebtedness, not to exceed an amount equal to one and one-fourth percent of the value of the taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015, when authorized by the voters of the service district pursuant to Article VIII, section 6 of the state Constitution, and to provide for the retirement thereof by excess property tax levies as provided in RCW 36.83.030(2). The service district may submit a single proposition to the voters which, if approved, authorizes both the issuance of the bonds and the bond retirement property tax levies.

(2) General obligation bonds with a maturity in excess of forty years shall not be issued. The governing body of the service district shall by resolution determine for each general obligation bond issue the amount, date, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, manner of execution, manner of sale, callable provisions, if any, covenants, and form, including registration as to principal and interest, registration as to principal only, or bearer. Registration may include, but not be limited to: (a) A book entry system of recording the ownership of a bond whether or not physical bonds are issued; or (b) recording the ownership of a bond together with the requirement that the transfer of ownership may only be effected by the surrender of the old bond and either the reissuance of the old bond or the issuance of a new bond to the new owner. Facsimile signatures may be used on the bonds and any coupons. Refunding general obligation bonds may be issued in the same manner as general obligation bonds are issued.

(3) Whenever general obligation bonds are issued to fund specific projects or enterprises that generate revenues, charges, user fees, or special assessments, the service district which issues the bonds may specifically pledge all or a portion of the revenues, charges, user fees, or special assessments to refund the general obligation bonds. [1983 c 130 § 4.]

36.83.050 Local improvement districts authorized—Assessments—Special assessment bonds and revenue bonds—Limitations. (1) A service district may form a local improvement district or utility local improvement district to provide any local improvement it has the authority to provide, impose special assessments on all property specially benefited by the local improvements, and issue special assessment bonds or revenue bonds to fund the costs of the local improvement. Improvement districts shall be created

and assessments shall be made and collected pursuant to chapters 35.43, 35.44, 35.49, 35.50, 35.53, and 35.54 RCW.

(2) The governing body of a service district shall by resolution establish for each special assessment bond issue the amount, date, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, if any, covenants, and form, including registration as to principal and interest, registration as to principal only, or bearer. Registration may include, but not be limited to: (a) A book entry system of recording the ownership of a bond whether or not physical bonds are issued; or (b) recording the ownership of a bond together with the requirement that the transfer of ownership may only be effected by the surrender of the old bond and either the reissuance of the old bond or the issuance of a new bond to the new owner. Facsimile signatures may be used on the bonds and any coupons. The maximum term of any special assessment bonds shall not exceed thirty years beyond the date of issue. Special assessment bonds issued pursuant to this section shall not be an indebtedness of the service district issuing the bonds, and the interest and principal on the bonds shall only be payable from special assessments made for the improvement for which the bonds were issued and any local improvement guaranty fund that the service district has created. The owner or bearer of a special assessment bond or any interest coupon issued pursuant to this section shall not have any claim against the service district arising from the bond or coupon except for the payment from special assessments made for the improvement for which the bonds were issued and any local improvement guaranty fund the service district has created. The service district issuing the special assessment bonds is not liable to the owner or bearer of any special assessment bond or any interest coupon issued pursuant to this section for any loss occurring in the lawful operation of its local improvement guaranty fund. The substance of the limitations included in this subsection shall be plainly printed, written, or engraved on each special assessment bond issued pursuant to this section.

(3) The governing body may establish and pay moneys into a local improvement guaranty fund to guarantee special assessment bonds issued by the service district.

(4) The governing body of a service district shall provide for the payment of both the special assessments which are imposed and a portion of the utility income from the utility improvement into a special fund established for the payment of the revenue bonds to defray the cost of the utility local improvement district whenever it desires to create a utility local improvement district and issue revenue bonds to fund the local improvement. [1983 c 130 § 5.]

36.83.060 Bonds—Form. Where physical bonds are issued pursuant to RCW 36.83.040 or 36.83.050, the bonds shall be printed, engraved, or lithographed on good bond paper and the manual or facsimile signatures of both the treasurer and chairperson of the governing body shall be included on each bond. [1983 c 130 § 6.]

36.83.070 Bonds—Use of proceeds. (1) The proceeds of any bond issued pursuant to RCW 36.83.040 or 36.83.050 may be used to pay costs incurred on such bond issue related to the sale and issuance of the bonds. Such costs include pay-

ments for fiscal and legal expenses, obtaining bond ratings, printing, engraving, advertising, and other similar activities.

(2) In addition, proceeds of bonds used to fund capital projects may be used to pay the necessary and related engineering, architectural, planning, and inspection costs. [1983 c 130 § 7.]

36.83.080 Gifts, grants, and donations. A service district may accept and expend or use gifts, grants, and donations. [1983 c 130 § 8.]

36.83.090 Eminent domain. A service district may exercise the power of eminent domain to obtain property for its authorized purposes in the manner counties exercise the powers of eminent domain. [1983 c 130 § 9.]

36.83.100 Commissioners—Appointment—Terms—Vacancies—Compensation—Powers. If the county legislative authority establishes a road and bridge service district, it shall promptly appoint three persons who are residents of the territory included in that service district to serve as the commissioners of the service district. For counties having an elected executive, the executive shall appoint those commissioners subject to confirmation by the legislative authority of the county. The commissioners first appointed shall be designated to serve for terms of one, two, and three years, respectively, from the date of their appointment. Thereafter, service district commissioners shall be appointed for a term of office of five years. Vacancies must be filled for any unexpired term in the same manner as the original appointment. No member of the legislative authority of the county in which a service district is created may be a commissioner of that service district, except that, if the boundaries of the service district are included within or coterminous with the boundaries of a county commissioner or council district, the county commissioner or councilmember elected from that commissioner or council district may be appointed to serve as a commissioner of the service district. A commissioner shall hold office until his or her successor has been appointed and qualified, unless sooner removed from office for cause in accordance with this chapter or removed by referendum in accordance with RCW 36.83.110. A certificate of the appointment or reappointment of any commissioner must be filed with the county auditor, and such certificate is conclusive evidence of the due and proper appointment of the commissioner. The commissioners of the service district shall receive no compensation for their services, in any capacity, but are entitled to reimbursement for reasonable and necessary expenses, including travel expenses, incurred in the discharge of their duties.

The powers of each service district are vested in the commissioners of the service district. Two commissioners constitute a quorum of the service district for the purpose of conducting its business and exercising its powers and for all other purposes. The commissioners of the service district shall organize itself and select its chair, vice chair, and secretary, who shall serve one-year terms but may be selected for additional terms. When the office of any officer becomes vacant, the commissioners of the service district shall select a new officer from among the commissioners for the balance of the term of office. [1996 c 292 § 3.]

36.83.110 Election to retain commissioners—Referendum petition. Any registered voter residing within the boundaries of the road and bridge service district may file a referendum petition to call an election to retain any or all commissioners. Any referendum petition to call such election shall be filed with the county auditor no later than one year before the end of a commissioner's term. Within ten days of the filing of a petition, the county auditor shall confer with the petitioner concerning form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title shall be posed as a question: "Shall (name of commissioner) be retained as a road and bridge service district commissioner?" and the question shall be posed separately for each commissioner. The petitioner shall be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner shall have thirty days in which to secure on petition forms the signatures of not less than twenty-five percent of the registered voters residing within the boundaries of the service district and file the signed petitions with the county auditor. Each petition form shall contain the ballot title. The county auditor shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the county auditor shall submit the referendum measure to the registered voters residing in the service district in a special election no later than one hundred twenty days after the signed petition has been filed with the county auditor.

The office of any commissioner for whom there is not a majority vote to retain shall be declared vacant. [2011 c 10 § 79; 1996 c 292 § 4.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

36.83.120 Removal of commissioner. For neglect of duty or misconduct in office, a commissioner of a service district may be removed by the county legislative authority after conducting a hearing. The commissioner must be given a copy of the charges at least ten days prior to the hearing and must have an opportunity to be heard in person or by counsel. If a commissioner is removed, a record of the proceedings, together with the charges and findings, must be filed in the office of the county auditor. [1996 c 292 § 5.]

36.83.130 Improvements—Ownership. Any road or bridge improvements financed in whole by funds of a service district, including but not limited to proceeds of bonds issued by a service district, shall be owned by that service district. Improvements financed jointly by a service district and the county or city within which the improvements are located may be owned jointly by the service district and that county or city pursuant to an interlocal agreement. [1996 c 292 § 6.]

36.83.140 Local service district fund. If a service district is formed, there shall be created in the office of the county treasurer, as ex officio treasurer of the service district, a local service district fund with such accounts as the treasurer may find convenient or as the state auditor or the governing body of the service district may direct, into which shall be deposited all revenues received by or on behalf of the service district from tax levies, gifts, donations and any other

source. The fund shall be designated "(name of county) (road/bridge) service district No. . . . fund." [1996 c 292 § 7.]

36.83.900 Liberal construction. The rule of strict construction does not apply to this chapter, and this chapter shall be liberally construed to permit the accomplishment of its purposes. [1983 c 130 § 10.]

Chapter 36.85 RCW

ROADS AND BRIDGES—RIGHTS-OF-WAY

Sections

36.85.010	Acquisition—Condemnation.
36.85.020	Aviation site not exempt from condemnation.
36.85.030	Acceptance of federal grants over public lands.
36.85.040	Acceptance of federal grants over public lands—Prior acceptances ratified.

36.85.010 Acquisition—Condemnation. Whenever it is necessary to secure any lands for a right-of-way for any county road or for the drainage thereof or to afford unobstructed view toward any intersection or point of possible danger to public travel upon any county road or for any borrow pit, gravel pit, quarry, or other land for the extraction of material for county road purposes, or right-of-way for access thereto, the board may acquire such lands on behalf of the county by gift, purchase, or condemnation. When the board so directs, the prosecuting attorney of the county shall institute proceedings in condemnation to acquire such land for a county road in the manner provided by law for the condemnation of land for public use by counties. All cost of acquiring land for right-of-way or for other purposes by purchase or condemnation shall be paid out of the county road fund of the county and chargeable against the project for which acquired. [1963 c 4 § 36.85.010. Prior: 1937 c 187 § 9; RRS § 6450-9.]

36.85.020 Aviation site not exempt from condemnation. Whenever any county has established a public highway, which, in whole or in part, abuts upon and adjoins any aviation site in such county, no property shall be exempt from condemnation for such highway by reason of the same having been or being dedicated, appropriated, or otherwise reduced or held to public use. [1963 c 4 § 36.85.020. Prior: 1925 ex.s. c 41 § 1; RRS § 905-2.]

36.85.030 Acceptance of federal grants over public lands. The boards in their respective counties may accept the grant of rights-of-way for the construction of public highways over public lands of the United States, not reserved for public uses, contained in section 2477 of the Revised Statutes of the United States. Such rights-of-way shall henceforward not be less than sixty feet in width unless a lesser width is specified by the United States. Acceptance shall be by resolution of the board spread upon the records of its proceedings: PROVIDED, That nothing herein contained shall be construed to invalidate the acceptance of such grant by general public use and enjoyment, heretofore or hereafter had. [1963 c 4 § 36.85.030. Prior: 1937 c 187 § 17; RRS § 6450-17.]

36.85.040 Acceptance of federal grants over public lands—Prior acceptances ratified. Prior action of boards

purporting to accept the grant of rights-of-way under section 2477 of the Revised Statutes of the United States for the construction of public highways over public lands of the United States, as provided in RCW 36.85.030, is hereby approved, ratified and confirmed and all such public highways shall be deemed duly laid out county roads and boards of county commissioners may at any time by recorded resolution cause any of such county roads to be opened and improved for public travel. [1963 c 4 § 36.85.040. Prior: 1937 c 187 § 18; RRS § 6450-18.]

Chapter 36.86 RCW

ROADS AND BRIDGES—STANDARDS

Sections

36.86.010	Standard width of right-of-way prescribed.
36.86.020	Minimum standards of construction.
36.86.030	Amendment of standards—Filing.
36.86.040	Uniform standard for signs, signals, guideposts—Railroad grade crossings.
36.86.050	Monuments at government survey corners.
36.86.060	Restrictions on use of oil at intersections or entrances to county roads.
36.86.070	Classification of roads in accordance with designations under federal functional classification system.
36.86.080	Application of design standards to construction and reconstruction.
36.86.090	Logs dumped on right-of-way—Removal—Confiscation.
36.86.100	Railroad grade crossings—Obstructions.

36.86.010 Standard width of right-of-way prescribed. From and after April 1, 1937, the width of thirty feet on each side of the center line of county roads, exclusive of such additional width as may be required for cuts and fills, is the necessary and proper right-of-way width for county roads, unless the board of county commissioners, shall, in any instance, adopt and designate a different width. This shall not be construed to require the acquisition of increased right-of-way for any county road already established and the right-of-way for which has been secured. [1963 c 4 § 36.86.010. Prior: 1937 c 187 § 14; RRS § 6450-14.]

36.86.020 Minimum standards of construction. In the case of roads, the minimum width between shoulders shall be fourteen feet with eight feet of surfacing, and in the case of bridges, which includes all decked structures, the minimum standard shall be for H-10 loading in accordance with the standards of the state department of transportation. When the standards have been prepared by the county road engineer, they shall be submitted to the county legislative authority for approval, and when approved shall be used for all road and bridge construction and improvement in the county. [1984 c 7 § 38; 1963 c 4 § 36.86.020. Prior: 1943 c 73 § 1, part; 1937 c 187 § 4, part; Rem. Supp. 1943 § 6450-4, part.]

Additional notes found at www.leg.wa.gov

36.86.030 Amendment of standards—Filing. Road and bridge standards may be amended from time to time by resolution of the county legislative authority, but no standard may be approved by the legislative authority with any minimum requirement less than that specified in this chapter. Two copies of the approved standards shall be filed with the department of transportation for its use in examinations of

county road work. [1984 c 7 § 39; 1963 c 4 § 36.86.030. Prior: 1943 c 73 § 1, part; 1937 c 187 § 4, part; Rem. Supp. 1943 § 6450-4, part.]

Additional notes found at www.leg.wa.gov

36.86.040 Uniform standard for signs, signals, guideposts—Railroad grade crossings. The county legislative authority shall erect and maintain upon the county roads such suitable and proper signs, signals, signboards, and guideposts and appropriate stop, caution, warning, restrictive, and directional signs and markings as it deems necessary or as may be required by law. All such markings shall be in accordance with the uniform state standard of color, design, erection, and location adopted and designed by the Washington state department of transportation. In respect to existing and future railroad grade crossings over county roads the legislative authority shall install and maintain standard, nonmechanical railroad approach warning signs on both sides of the railroad upon the approaches of the county road. All such signs shall be located a sufficient distance from the crossing to give adequate warning to persons traveling on county roads. [1984 c 7 § 40; 1963 c 4 § 36.86.040. Prior: 1955 c 310 § 1; 1937 c 187 § 37; RRS § 6450-37.]

Additional notes found at www.leg.wa.gov

36.86.050 Monuments at government survey corners. The board and the road engineer, at the time of establishing, constructing, improving, or paving any county road, shall fix permanent monuments at the original positions of all United States government monuments at township corners, section corners, quarter section corners, meander corners, and witness markers, as originally established by the United States government survey, whenever any such original monuments or markers fall within the right-of-way of any county road, and shall aid in the reestablishment of any such corners, monuments, or markers destroyed or obliterated by the construction of any county road heretofore established, by permitting inspection of the records in the office of the board and the county engineering office. [1963 c 4 § 36.86.050. Prior: 1937 c 187 § 36; RRS § 6450-36.]

36.86.060 Restrictions on use of oil at intersections or entrances to county roads. No oil or other material shall be used in the treatment of any county road or private road or driveway, of such consistency, viscosity or nature or in such quantities and in such proximity to the entrance to or intersection with any state highway or county road, the roadway of which is surfaced with cement concrete or asphaltic concrete, that such oil or other material is or will be tracked by vehicles thereby causing a coating or discoloration of such cement concrete or asphaltic concrete roadway. Any person violating the provisions of this section shall be guilty of a misdemeanor. [1963 c 4 § 36.86.060. Prior: 1937 c 187 § 43; RRS § 6450-43.]

36.86.070 Classification of roads in accordance with designations under federal functional classification system. From time to time the legislative authority of each county shall classify and designate as the county primary road system such county roads as are designated rural minor collector, rural major collector, rural minor arterial, rural

principal arterial, urban collector, urban minor arterial, and urban principal arterial in the federal functional classification system. [1982 c 145 § 2; 1963 c 4 § 36.86.070. Prior: 1949 c 165 § 1; Rem. Supp. 1949 § 6450-8h.]

36.86.080 Application of design standards to construction and reconstruction. Upon the adoption of uniform design standards the legislative authority of each county shall apply the same to all new construction within, and as far as practicable and feasible to reconstruction of old roads comprising, the county primary road system. No deviation from such design standards as to such primary system may be made without the approval of the state aid engineer for the department of transportation. [1982 c 145 § 3; 1963 c 4 § 36.86.080. Prior: 1949 c 165 § 4; Rem. Supp. 1949 § 6450-8k.]

36.86.090 Logs dumped on right-of-way—Removal—Confiscation. Logs dumped on any county road right-of-way or in any county road drainage ditch due to hauling equipment failure, or for any other reason, shall be removed within ten days. Logs remaining within any county road right-of-way for a period of thirty days shall be confiscated and removed or disposed of as directed by the boards of county commissioners in the respective counties. Confiscated logs may be sold by the county commissioners and the proceeds thereof shall be deposited in the county road fund. [1963 c 4 § 36.86.090. Prior: 1951 c 143 § 1.]

36.86.100 Railroad grade crossings—Obstructions. Each railroad company shall keep its right-of-way clear of all brush and timber in the vicinity of a railroad grade crossing with a county road for a distance of one hundred feet from the crossing in such a manner as to permit a person upon the road to obtain an unobstructed view in both directions of an approaching train. The county legislative authority shall cause brush and timber to be cleared from the right-of-way of county roads in the proximity of a railroad grade crossing for a distance of one hundred feet from the crossing in such a manner as to permit a person traveling upon the road to obtain an unobstructed view in both directions of an approaching train. It is unlawful to erect or maintain a sign, signboard, or billboard within a distance of one hundred feet from the point of intersection of the road and railroad grade crossing located outside the corporate limits of any city or town unless, after thirty days notice to the Washington utilities and transportation commission and the railroad operating the crossing, the county legislative authority determines that it does not obscure the sight distance of a person operating a vehicle or train approaching the grade crossing.

When a person who has erected or who maintains such a sign, signboard, or billboard or when a railroad company permits such brush or timber in the vicinity of a railroad grade crossing with a county road or permits the surface of a grade crossing to become inconvenient or dangerous for passage and who has the duty to maintain it, fails, neglects, or refuses to remove or cause to be removed such brush, timber, sign, signboard, or billboard, or maintain the surface of the crossing, the utilities and transportation commission upon complaint of the county legislative authority or upon complaint of any party interested, or upon its own motion, shall enter upon

a hearing in the manner now provided for hearings with respect to railroad-highway grade crossings, and make and enforce proper orders for the removal of the brush, timber, sign, signboard or billboard, or maintenance of the crossing. Nothing in this section prevents the posting or maintaining thereon of highway or road signs or traffic devices giving directions or distances for the information of the public when the signs conform to the "Manual for Uniform Traffic Control Devices" issued by the state department of transportation. The county legislative authority shall inspect highway grade crossings and make complaint of the violation of any provisions of this section. [1983 c 19 § 1; 1963 c 4 § 36.86.100. Prior: 1955 c 310 § 6.]

Railroad crossings, obstructions: RCW 47.32.140.

Chapter 36.87 RCW ROADS AND BRIDGES—VACATION

Sections

36.87.010	Resolution of intention to vacate.
36.87.020	County road frontage owners' petition—Bond, cash deposit, or fee.
36.87.030	County road frontage owners' petition—Action on petition.
36.87.040	Engineer's report.
36.87.050	Notice of hearing on report.
36.87.060	Hearing.
36.87.070	Expense of proceeding.
36.87.080	Majority vote required.
36.87.090	Vacation of road unopened for five years—Exceptions.
36.87.100	Classification of roads for which public expenditures made—Compensation of county.
36.87.110	Classification of roads for which no public expenditures made—Compensation of county.
36.87.120	Appraised value as basis for compensation—Appraisal costs.
36.87.130	Vacation of roads abutting bodies of water prohibited unless for public purposes or industrial use.
36.87.140	Retention of easement for public utilities and services.
36.87.900	Severability—1969 ex.s. c 185.

36.87.010 Resolution of intention to vacate. When a county road or any part thereof is considered useless, the board by resolution entered upon its minutes, may declare its intention to vacate and abandon the same or any portion thereof and shall direct the county road engineer to report upon such vacation and abandonment. [1969 ex.s. c 185 § 1; 1963 c 4 § 36.87.010. Prior: 1937 c 187 § 48; RRS § 6450-48.]

36.87.020 County road frontage owners' petition—Bond, cash deposit, or fee. Owners of the majority of the frontage on any county road or portion thereof may petition the county legislative authority to vacate and abandon the same or any portion thereof. The petition must show the land owned by each petitioner and set forth that such county road is useless as part of the county road system and that the public will be benefited by its vacation and abandonment. The legislative authority may (1) require the petitioners to make an appropriate cash deposit or furnish an appropriate bond against which all costs and expenses incurred in the examination, report, and proceedings pertaining to the petition shall be charged; or (2) by ordinance or resolution require the petitioners to pay a fee adequate to cover such costs and expenses. [1991 c 363 § 89; 1985 c 369 § 4; 1963 c 4 § 36.87.020. Prior: 1937 c 187 § 49, part; RRS § 6450-49, part.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.87.030 County road frontage owners' petition—Action on petition. On the filing of the petition and bond and on being satisfied that the petition has been signed by petitioners residing in the vicinity of the county road or portion thereof, the board shall direct the county road engineer to report upon such vacation and abandonment. [1963 c 4 § 36.87.030. Prior: 1937 c 187 § 49, part; RRS § 6450-49, part.]

36.87.040 Engineer's report. When directed by the board the county road engineer shall examine any county road or portion thereof proposed to be vacated and abandoned and report his or her opinion as to whether the county road should be vacated and abandoned, whether the same is in use or has been in use, the condition of the road, whether it will be advisable to preserve it for the county road system in the future, whether the public will be benefited by the vacation and abandonment, and all other facts, matters, and things which will be of importance to the board, and also file his or her cost bill. [2009 c 549 § 4139; 1963 c 4 § 36.87.040. Prior: 1937 c 187 § 50; RRS § 6450-50.]

36.87.050 Notice of hearing on report. Notice of hearing upon the report for vacation and abandonment of a county road shall be published at least once a week for two consecutive weeks preceding the date fixed for the hearing, in the county official newspaper and a copy of the notice shall be posted for at least twenty days preceding the date fixed for hearing at each termini of the county road or portion thereof proposed to be vacated or abandoned. [1963 c 4 § 36.87.050. Prior: 1937 c 187 § 51, part; RRS § 6450-51, part.]

36.87.060 Hearing. (1) On the day fixed for the hearing, the county legislative authority shall proceed to consider the report of the engineer, together with any evidence for or objection against such vacation and abandonment. If the county road is found useful as a part of the county road system it shall not be vacated, but if it is not useful and the public will be benefited by the vacation, the county legislative authority may vacate the road or any portion thereof. Its decision shall be entered in the minutes of the hearing.

(2) As an alternative, the county legislative authority may appoint a hearing officer to conduct a public hearing to consider the report of the engineer and to take testimony and evidence relating to the proposed vacation. Following the hearing, the hearing officer shall prepare a record of the proceedings and a recommendation to the county legislative authority concerning the proposed vacation. Their decision shall be made at a regular or special public meeting of the county legislative authority. [1985 c 369 § 5; 1963 c 4 § 36.87.060. Prior: 1937 c 187 § 51, part; RRS § 6450-51, part.]

36.87.070 Expense of proceeding. If the county legislative authority has required the petitioners to make a cash deposit or furnish a bond, upon completion of the hearing, it shall certify all costs and expenses incurred in the proceedings to the county treasurer and, regardless of its final deci-

sion, the county legislative authority shall recover all such costs and expenses from the bond or cash deposit and release any balance to the petitioners. [1985 c 369 § 6; 1963 c 4 § 36.87.070. Prior: 1937 c 187 § 51, part; RRS § 6450-51, part.]

36.87.080 Majority vote required. No county road shall be vacated and abandoned except by majority vote of the board properly entered, or by operation of law, or judgment of a court of competent jurisdiction. [1969 ex.s. c 185 § 2; 1963 c 4 § 36.87.080. Prior: 1937 c 187 § 51, part; RRS § 6450-51, part.]

36.87.090 Vacation of road unopened for five years—Exceptions. Any county road, or part thereof, which remains unopen for public use for a period of five years after the order is made or authority granted for opening it, shall be thereby vacated, and the authority for building it barred by lapse of time: PROVIDED, That this section shall not apply to any highway, road, street, alley, or other public place dedicated as such in any plat, whether the land included in such plat is within or without the limits of an incorporated city or town, or to any land conveyed by deed to the state or to any county, city or town for highways, roads, streets, alleys, or other public places. [1963 c 4 § 36.87.090. Prior: 1937 c 187 § 52; RRS § 6450-52.]

36.87.100 Classification of roads for which public expenditures made—Compensation of county. Any board of county commissioners may, by ordinance, classify all county roads for which public expenditures were made in the acquisition, improvement or maintenance of the same, according to the type and amount of expenditures made and the nature of the county's property interest in the road; and may require persons benefiting from the vacation of county roads within some or all of the said classes to compensate the county as a condition precedent to the vacation thereof. [1969 ex.s. c 185 § 4.]

36.87.110 Classification of roads for which no public expenditures made—Compensation of county. Any board of county commissioners may, by ordinance, separately classify county roads for which no public expenditures have been made in the acquisition, improvement or maintenance of the same, according to the nature of the county's property interest in the road; and may require persons benefiting from the vacation of county roads within some or all of the said classes to compensate the county as a condition precedent to the vacation thereof. [1969 ex.s. c 185 § 5.]

36.87.120 Appraised value as basis for compensation—Appraisal costs. Any ordinance adopted pursuant to this chapter may require that compensation for the vacation of county roads within particular classes shall equal all or a percentage of the appraised value of the vacated road as of the effective date of the vacation. Costs of county appraisals of roads pursuant to such ordinances shall be deemed expenses incurred in vacation proceedings, and shall be paid in the manner provided by RCW 36.87.070. [1969 ex.s. c 185 § 6.]

36.87.130 Vacation of roads abutting bodies of water prohibited unless for public purposes or industrial use. No county shall vacate a county road or part thereof which abuts on a body of salt or freshwater unless the purpose of the vacation is to enable any public authority to acquire the vacated property for port purposes, boat moorage or launching sites, or for park, viewpoint, recreational, educational or other public purposes, or unless the property is zoned for industrial uses. [1969 ex.s. c 185 § 7.]

36.87.140 Retention of easement for public utilities and services. Whenever a county road or any portion thereof is vacated the legislative body may include in the resolution authorizing the vacation a provision that the county retain an easement in respect to the vacated land for the construction, repair, and maintenance of public utilities and services which at the time the resolution is adopted are authorized or are physically located on a portion of the land being vacated: PROVIDED, That the legislative body shall not convey such easement to any public utility or other entity or person but may convey a permit or franchise to a public utility to effectuate the intent of this section. The term "public utility" as used in this section shall include utilities owned, operated, or maintained by every gas company, electrical company, telephone company, telegraph company, and water company whether or not such company is privately owned or owned by a governmental entity. [1975 c 22 § 1.]

36.87.900 Severability—1969 ex.s. c 185. If any provision of this act, or its application to any person, property or road is held invalid, the validity of the remainder of the act, or the application of the provision to other persons, property or roads shall not be affected. [1969 ex.s. c 185 § 8.]

**Chapter 36.88 RCW
COUNTY ROAD IMPROVEMENT DISTRICTS**

Sections

- 36.88.010 Districts authorized—Purposes.
- 36.88.015 Additional purposes.
- 36.88.020 Formation of district—How initiated.
- 36.88.030 Formation of district—By resolution of intention—Procedure.
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- 36.88.485 Underground electric and communication facilities, installation or conversion to—Recording of underground utility installations.
- 36.88.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Assessments and charges against state lands: Chapter 79.44 RCW.
Deferral of special assessments: Chapter 84.38 RCW.
Local improvements, supplemental authority: Chapter 35.51 RCW.

36.88.010 Districts authorized—Purposes. All counties have the power to create county road improvement districts for the acquisition of rights-of-way and improvement of county roads, existing private roads that will become county roads as a result of this improvement district process and, with the approval of the state department of transportation, state highways; for the construction or improvement of necessary drainage facilities, bulkheads, retaining walls, and other appurtenances therefor, bridges, culverts, sidewalks, curbs and gutters, escalators, or moving sidewalks; and for the draining or filling of drainage potholes or swamps. Such counties have the power to levy and collect special assessments against the real property specially benefited thereby for the purpose of paying the whole or any part of the cost of such acquisition of rights-of-way, construction, or improvement. [1985 c 400 § 3; 1985 c 369 § 7; 1965 c 60 § 1; 1963 c 84 § 1; 1963 c 4 § 36.88.010. Prior: 1959 c 134 § 1; 1951 c 192 § 1.]

Reviser's note: This section was amended by 1985 c 369 § 7 and by 1985 c 400 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

County may fund improvements to state highways: RCW 36.75.035.

36.88.015 Additional purposes. All counties have the power to create county road improvement districts for the construction, installation, improvement, operation, and maintenance of street and road lighting systems for any county roads, and subject to the approval of the state department of transportation, for state highways, and for safeguards to protect the public from hazards of open canals, flumes, or ditches, and the counties have the power to levy and collect special assessments against the real property specially benefited thereby for the purpose of paying the whole or any part of the cost of the construction, installation, or improvement together with the expense of furnishing electric energy, maintenance, and operation. [1984 c 7 § 41; 1965 c 60 § 2; 1963 c 84 § 2; 1963 c 4 § 36.88.015. Prior: 1959 c 75 § 4; 1953 c 152 § 1.]

Additional notes found at www.leg.wa.gov

36.88.020 Formation of district—How initiated. County road improvement districts may be initiated either by resolution of the board of county commissioners or by petition signed by the owners according to the records of the office of the county auditor of property to an aggregate amount of the majority of the lineal frontage upon the contemplated improvement and of the area within the limits of the county road improvement district to be created therefor. [1963 c 4 § 36.88.020. Prior: 1951 c 192 § 2.]

36.88.030 Formation of district—By resolution of intention—Procedure. In case the board of county commissioners shall desire to initiate the formation of a county road improvement district by resolution, it shall first pass a resolution declaring its intention to order such improvement, setting forth the nature and territorial extent of such proposed improvement, designating the number of the proposed road improvement district and describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed district, notifying the own-

ers of property therein to appear at a meeting of the board at the time specified in such resolution, and directing the county road engineer to submit to the board at or prior to the date fixed for such hearing a diagram or print showing thereon the lots, tracts and parcels of land and other property which will be specially benefited thereby and the estimated amount of the cost and expense of such improvement to be borne by each lot, tract or parcel of land or other property, and also designating thereon all property which is being purchased under contract from the county. The resolution of intention shall be published in at least two consecutive issues of a newspaper of general circulation in such county, the date of the first publication to be at least fifteen days prior to the date fixed by such resolution for hearing before the board of county commissioners.

Notice of the adoption of the resolution of intention shall be given each owner or reputed owner of any lot, tract or parcel of land or other property within the proposed improvement district by mailing said notice to the owner or reputed owner of the property as shown on the tax rolls of the county treasurer at the address shown thereon at least fifteen days before the date fixed for the public hearing. The notice shall refer to the resolution of intention and designate the proposed improvement district by number. Said notice shall also set forth the nature of the proposed improvement, the total estimated cost, the proportion of total cost to be borne by assessments, the estimated amount of the cost and expense of such improvement to be borne by the particular lot, tract or parcel, the date and place of the hearing before the board of county commissioners, and shall contain the directions hereinafter provided for voting upon the formation of the proposed improvement district.

The clerk of the board shall prepare and mail, together with the notice above referred to, a ballot for each owner or reputed owner of any lot, tract or parcel of land within the proposed improvement district. This ballot shall contain the following proposition:

"Shall county road improvement district No. be formed?
Yes
No

and, in addition, shall contain appropriate spaces for the signatures of the property owners, and a description of their property, and shall have printed thereon the direction that all ballots must be signed to be valid and must be returned to the clerk of the board of county commissioners not later than five o'clock p.m. of a day which shall be one week after the date of the public hearing.

The notice of adoption of the resolution of intention shall also contain the above directions, and, in addition thereto, shall state the rules by which the election shall be governed. [1970 ex.s. c 66 § 2; 1963 c 84 § 3; 1963 c 4 § 36.88.030. Prior: 1951 c 192 § 3.]

36.88.035 Notice must contain statement that assessments may vary from estimates. Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a county road improvement district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed

a figure equal to the increased true and fair value the improvement adds to the property. [1989 c 243 § 5.]

36.88.040 Formation of district—By resolution of intention—Election—Rules. The election provided herein for cases where the improvement is initiated by resolution shall be governed by the following rules: (1) All ballots must be signed by the owner or reputed owner of property within the proposed district according to the records of the county auditor; (2) each ballot must be returned to the clerk of the board not later than one week after the public hearing; (3) each property owner shall have one vote for each full dollar of estimated assessment against his or her property as determined by the preliminary estimates and assessment roll; (4) the valid ballots shall be tabulated and a majority of the votes cast shall determine whether the formation of the district shall be approved or rejected. [2009 c 549 § 4140; 1963 c 4 § 36.88.040. Prior: 1951 c 192 § 4.]

36.88.050 Formation of district—By petition—Procedure. In case any such road improvement shall be initiated by petition, such petition shall set forth the nature and territorial extent of such proposed improvement, and the fact that the signers thereof are the owners, according to the records of the county auditor of property to an aggregate amount of a majority of the lineal frontage upon the improvement to be made and of the area within the limits of the assessment district to be created therefor.

Upon the filing of such petition the board shall determine whether the same shall be sufficient and whether the property within the proposed district shall be sufficiently developed and if the board shall find the district to be sufficiently developed and the petition to be sufficient, it shall proceed to adopt a resolution setting forth the nature and territorial extent of the improvement petitioned for, designating the number of the proposed improvement district and describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed district, notifying the owners of property therein to appear at a meeting of the board at the time specified in such resolution, and directing the county road engineer to submit to the board at or prior to the date fixed for such hearing a diagram or print showing thereon the lots, tracts and parcels of land and other property which will be specially benefited thereby and the estimated amount of the cost and expense of such improvement to be borne by each lot, tract or parcel of land or other property, and also designating thereon all property which is being purchased under contract from the county. The resolution of intention shall be published in at least two consecutive issues of a newspaper of general circulation in such county, the date of the first publication to be at least fifteen days prior to the date fixed by such resolution for hearing before the board of county commissioners.

Notice of the adoption of the resolution of intention shall be given each owner or reputed owner of any lot, tract or parcel of land or other property within the proposed improvement district by mailing said notice to the owner or reputed owner of the property as shown on the tax rolls of the county treasurer at the address shown thereon at least fifteen days before the date fixed for the public hearing. The notice shall

refer to the resolution of intention and designate the proposed improvement district by number. Said notice shall also set forth the nature of the proposed improvement, the total estimated cost, the proportion of total cost to be borne by assessments, the estimated amount of the cost and expense of such improvement to be borne by the particular lot, tract or parcel, the date and place of the hearing before the board of county commissioners, and the fact that property owners may withdraw their names from the petition or add their names thereto at any time prior to five o'clock p.m. of the day before the hearing. [1963 c 4 § 36.88.050. Prior: 1951 c 192 § 5.]

36.88.060 Formation of district—Hearing—Resolution creating district. Whether the improvement is initiated by petition or resolution the board shall conduct a public hearing at the time and place designated in the notice to property owners. At this hearing, the board may make such changes in the boundaries of the district or such modifications in the plans for the proposed improvement as shall be deemed necessary: PROVIDED, That the board may neither so alter the improvement as to increase the estimated cost by an amount greater than ten percent above that stated in the notice, nor increase the proportionate share of the cost to be borne by assessments from the proportion stated in the notice, nor change the boundaries of the district to include property not previously included therein without first passing a new resolution of intention and giving a new notice to property owners, in the manner and form and within the time herein provided for the original notice.

At said hearing, the board shall select the method of assessment, ascertain whether the plan of improvement or construction is feasible and whether the benefits to be derived therefrom by the property within the proposed district, together with the amount of any county road fund participation, exceed the costs and expense of the formation of the proposed district and the contemplated construction or improvement and shall make a written finding thereon. In case the proceedings have been initiated by petition, the board shall find whether the petition including all additions thereto or withdrawals therefrom made prior to five o'clock p.m. of the day before the hearing is sufficient within the boundaries of the district so established at said hearing by the board. If said petition shall be found insufficient the board shall by resolution declare the proceedings terminated. In case the proceedings have been initiated by resolution if the board shall find the improvement to be feasible, it shall continue the hearing until a day not more than fifteen days after the date for returning ballots for the purpose of determining the results of said balloting.

After the hearing the board may proceed to adopt a resolution creating the district and ordering the improvement. Such resolution shall establish such district as the ". . . . county road improvement district No. . . ." Such resolution shall describe the nature and territorial extent of the improvement to be made and the boundaries of the improvement district, shall describe the method of assessment to be used, shall declare the estimated cost and the proportion thereof to be borne by assessments, and shall contain a finding as to the result of the balloting by property owners in case the improvement shall have been initiated by resolution.

Upon the adoption of the resolution establishing the district, the board shall have jurisdiction to proceed with the improvement. The board's findings on the sufficiency of petitions or on the results of the balloting shall be conclusive upon all persons. [1963 c 84 § 4; 1963 c 4 § 36.88.060. Prior: 1951 c 192 § 6.]

36.88.062 Formation of district—Committee or hearing officer may conduct hearings—Report to legislative authority. In lieu of the county legislative authority holding the hearing under RCW 36.88.060 to create the road improvement district, the county legislative authority may adopt an ordinance providing for a committee of the county legislative authority or an officer to conduct the hearings. The committee or hearing officer shall report recommendations on the resolution to the full county legislative authority for final action, which need not hold a hearing on the proposed assessment role and shall either adopt or reject the recommendations. [1994 c 71 § 3.]

36.88.065 Formation of district—Alternative method. If the county legislative authority desires to initiate the formation of a county road improvement district by resolution, it may elect to follow either the procedure set forth in chapter 35.43 RCW or the procedure set forth in RCW 36.88.030, and shall indicate the procedure selected in the resolution of intention. [1985 c 369 § 10.]

36.88.070 Diagram only preliminary determination. The diagram or print herein directed to be submitted to the board shall be in the nature of a preliminary determination upon the method, and estimated amounts, of assessments to be levied upon the property specially benefited by such improvement and shall in no case be construed as being binding or conclusive as to the amount of any assessments which may ultimately be levied. [1963 c 4 § 36.88.070. Prior: 1951 c 192 § 7.]

36.88.072 Waivers of protest—Recording—Limits on enforceability. If an owner of property enters into an agreement with a county waiving the property owner's right under RCW 36.88.030, 36.88.040, 36.88.050, 36.88.060, and 36.88.065 to protest formation of a road improvement district, the agreement must specify the improvements to be financed by the district and shall set forth the effective term of the agreement, which shall not exceed ten years. The agreement must be recorded with the auditor of the county in which the property is located. It is against public policy and void for an owner, by agreement, as a condition imposed in connection with proposed property development, or otherwise, to waive rights to object to the property owner's individual assessment (including the determination of special benefits allocable to the property), or to appeal to the superior court the decision of the county council affirming the final assessment roll. [1988 c 179 § 12.]

Additional notes found at www.leg.wa.gov

36.88.074 Preformation expenditures. The county engineer or other designated official may contract with owners of real property to provide for payment by the owners of the cost of the preparation of engineering plans, surveys,

studies, appraisals, legal services, and other expenses associated with improvements to be financed in whole or in part by a local improvement district (not including the cost of actual construction of such improvements), that the owners elect to undertake. The contract may provide for reimbursement to the owner of such costs from the proceeds of bonds issued by the district after formation of a district under this chapter, from assessments paid to the district as appropriate, or by a credit in the amount of such costs against future assessments assessed against such property. Such reimbursement shall be made to the owner of the property at the time of reimbursement. The contract shall also provide that such costs shall not be reimbursed to the owner if a district to construct the specified improvements (as the project may be amended) is not formed within six years of the date of the contract. The contract shall provide that any preformation work shall be conducted only under the direction of the county engineer or other appropriate county authority. [1988 c 179 § 13.]

Additional notes found at www.leg.wa.gov

36.88.076 Credits for other assessments. A county ordering a road improvement upon which special assessments on property specifically benefited by the improvements are levied and collected, may provide as part of the ordinance creating the road improvement district that moneys paid or the cost of facilities constructed by a property owner in the district in satisfaction of obligations under chapter 39.92 RCW, shall be credited against assessments due from the owner of such property at the time the credit is made, if those moneys paid or facilities constructed directly defray the cost of the specified improvements under the district and if credit for such amounts is reflected in the final assessment roll confirmed for the district. [1988 c 179 § 14.]

Additional notes found at www.leg.wa.gov

36.88.078 Assessment reimbursement accounts. A county ordering a road improvement upon which special assessments on property specifically benefited by the improvement are levied and collected, may provide as part of the ordinance creating the road improvement district that the payment of an assessment levied for the district on underdeveloped properties may be made by owners of other properties within the district if they so elect, subject to terms of reimbursement set forth in the ordinance. The terms for reimbursement shall require the owners of underdeveloped properties on whose behalf payments of assessments have been made to reimburse all such assessment payments to the party who made them when those properties are developed or redeveloped, together with interest at a rate specified in the ordinance. The ordinance may provide that reimbursement shall be made on a one-time, lump sum basis, or may provide that reimbursement shall be made over a period not to exceed five years. The ordinance may provide that reimbursement shall be made no later than the time of dissolution of the district, or may provide that no reimbursement is due if the underdeveloped properties are not developed or redeveloped before the dissolution of the district. Reimbursement amounts due from underdeveloped properties under this section are liens upon the underdeveloped properties in the same manner and with like effect as assessments made under this chapter. For the purposes of this section, "underdeveloped properties" may

include those properties that, in the discretion of the county legislative authority, (1) are undeveloped or are not developed to their highest and best use, and (2) are likely to be developed or redeveloped before the dissolution of the district. [1988 c 179 § 15.]

Additional notes found at www.leg.wa.gov

36.88.080 Property included in district—Method of assessment—Assessment limited by benefit. Every resolution ordering any improvement mentioned in this chapter, payment for which shall be in whole or in part by special assessments shall establish a road improvement district which shall embrace as near as may be all the property specially benefited by such improvement and the board shall apply thereto such method of assessment as shall be deemed most practical and equitable under the conditions prevailing: PROVIDED, That no assessment as determined by the board of commissioners shall be levied which shall be greater than the special benefits derived from the improvements. [1963 c 84 § 5; 1963 c 4 § 36.88.080. Prior: 1951 c 192 § 8.]

36.88.085 Exemption of farm and agricultural land from special benefit assessments. See RCW 84.34.300 through 84.34.380 and 84.34.922.

36.88.090 Assessment roll—Hearing—Notice—Objections—New hearing. Whenever the assessment roll for any county road improvement district has been prepared, such roll shall be filed with the clerk of the county legislative authority. The county legislative authority shall thereupon by resolution set the date for hearing upon such roll before a board of equalization and direct the clerk to give notice of such hearing and the time and place thereof.

Such notice shall specify such time and place of hearing on such roll and shall notify all persons who may desire to object thereto to make such objection in writing and to file the same with the clerk of the county legislative authority at or prior to the date fixed for such hearing; and that at the time and place fixed and at such other times as the hearing may be continued to, the county legislative authority will sit as a board of equalization for the purpose of considering such roll and at such hearing will consider such objections made thereto, or any part thereof, and will correct, revise, raise, lower, change, or modify such roll or any part thereof, or set aside such roll in order that such assessment be made de novo as to such body shall appear just and equitable and then proceed to confirm the same by resolution.

Notice of the time and place of hearing under such assessment roll shall be given to the owner or reputed owner of the property whose name appears thereon, by mailing a notice thereof at least fifteen days before the date fixed for the hearing to such owner or reputed owner at the address of such owner as shown on the tax rolls of the county treasurer; and in addition thereto such notice shall be published at least two times in a newspaper of general circulation in the county. At least fifteen days must elapse between the date of the first publication of the notice and the date fixed for such hearing. However, mosquito control districts are only required to give notice by publication.

The board of equalization, at the time fixed for hearing objections to the confirmation of the roll, or at such time or

times as the hearing may be adjourned to, has power to correct, revise, raise, lower, change, or modify the roll or any part thereof, and to set aside the roll in order that the assessment be made de novo as to the board appears equitable and just, and then shall confirm the same by resolution. All objections shall be in writing and filed with the board and shall state clearly the grounds objected to, and objections not made within the time and in the manner described in this section shall be conclusively presumed to have been waived.

Whenever any such roll is amended so as to raise any assessments appearing thereon, or to include property subject to assessment which has been omitted from the assessment roll for any reason, a new hearing, and a new notice of hearing upon such roll, as amended, shall be given as in the case of an original hearing. At the conclusion of such hearing the board may confirm the same or any portion thereof by resolution and certify the same to the treasurer for collection. Whenever any property has been entered originally on such roll, and the assessment upon such property shall not be raised, no objections to it may be considered by the board or by any court on appeal, unless such objections are made in writing at or prior to the date fixed for the original hearing upon such roll. [1985 c 369 § 8; 1972 ex.s. c 62 § 1; 1963 c 4 § 36.88.090. Prior: 1951 c 192 § 9.]

36.88.095 Assessment roll—Committee or officer may conduct hearing—Recommendations to legislative authority—Appeals. In lieu of the county legislative authority holding the hearing on assessment roll under RCW 36.88.090 as the board of equalization, the county legislative authority may adopt an ordinance providing for a committee of the county legislative authority or an officer to conduct the hearing on the assessment roll as the board of equalization.

A committee or an officer that sits as a board of adjustment [equalization] shall conduct a hearing on the proposed assessment roll and shall make recommendations to the full county legislative authority, which need not hold a hearing on the proposed assessment roll and shall either adopt or reject the recommendations. The ordinance shall provide for an appeal procedure by which a property owner may protest his or her assessment that is proposed by the committee or officer to the full county legislative authority and the full county legislative authority may reject or accept any appealed protested assessment and if accepted shall modify the assessment roll accordingly. [1994 c 71 § 4.]

36.88.100 Appeal—Reassessment. The decision of the board upon any objections made within the time and in the manner herein prescribed may be reviewed by the superior court upon an appeal taken thereto in the manner provided for taking appeals from objections in local improvement districts of cities and towns.

The board shall have the same powers of reassessment and shall proceed to make such reassessments in the same manner and subject to the same limitations as are provided by law for the making of reassessments in local improvement districts of cities and towns. [1963 c 4 § 36.88.100. Prior: 1951 c 192 § 10.]

36.88.110 Assessment roll—Conclusive. Whenever any assessment roll for construction or improvements shall

have been confirmed by the board, as provided in this chapter, the regularity, validity and correctness of the proceedings relating to such construction or improvement and to the assessment therefor, including the action of the board on such assessment roll and the confirmation thereof, shall be conclusive in all things upon all parties and cannot in any manner be contested or questioned in any proceeding whatsoever by any person not filing written objection to such roll in the manner and within the time provided in this chapter, and not appealing from the action of the board in confirming such assessment roll in the manner and within the time provided in this chapter. No proceedings of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any such assessment or for the sale of any property to pay such assessment or any certificate of delinquency issued therefor or the foreclosure of any lien issued therefor, but this section shall not be construed as prohibiting the bringing of injunction proceedings to prevent the sale of any real estate upon the grounds that the property about to be sold does not appear upon the assessment roll, or that the assessment has been paid. [1963 c 4 § 36.88.110. Prior: 1951 c 192 § 11.]

36.88.120 Assessment is lien on property—Superior-ity. The charge on the respective lots, tracts, parcels of land and other property for the purpose of special assessment to pay the cost and expense in whole or in part of any construction or improvement authorized in this chapter, when assessed, and the assessment roll confirmed by the board shall be a lien upon the property assessed from the time said assessment rolls shall be placed in the hands of the county treasurer for collection. Said liens shall be paramount and superior to any other lien or encumbrance whatsoever, theretofore or thereafter created, except a lien for general taxes. [1963 c 4 § 36.88.120. Prior: 1951 c 192 § 12.]

36.88.130 County treasurer—Duties. The county treasurer is hereby designated as the treasurer of all county road improvement districts created hereunder, and shall collect all road improvement district assessments, and the duties and responsibilities herein imposed upon him or her shall be among the duties and responsibilities of his or her office for which his or her bond is given as county treasurer. [2009 c 549 § 4141; 1963 c 4 § 36.88.130. Prior: 1951 c 192 § 13.]

36.88.140 Payment of assessment—Delinquent assessments—Penalties—Lien foreclosure. The county legislative authority shall prescribe by resolution within what time such assessment or installments thereof shall be paid, and shall provide for the payment and collection of interest and the rate of interest to be charged on that portion of any assessment which remains unpaid over thirty days after such date. Assessments or installments thereof which are delinquent, shall bear, in addition to such interest, such penalty not less than five percent as shall be prescribed by resolution. Interest and penalty shall be included in and shall be a part of the assessment lien. All liens acquired by the county hereunder shall be foreclosed by the appropriate county officers in the same manner and subject to the same rights of redemption provided by law for the foreclosure of liens held by cities or towns against property in local improvement districts. [1981

c 156 § 11; 1970 ex.s. c 66 § 3; 1963 c 4 § 36.88.140. Prior: 1951 c 192 § 14.]

36.88.145 Property donations—Credit against assessments. The county legislative authority may give credit for all or any portion of any property donation against an assessment, charge, or other required financial contribution for transportation improvements within a county road improvement district. The credit granted is available against any assessment, charge, or other required financial contribution for any transportation purpose that uses the donated property. [1987 c 267 § 11.]

Right-of-way donations: Chapter 47.14 RCW.

Additional notes found at www.leg.wa.gov

36.88.150 Payment of assessment—Record of. Whenever before the sale of any property the amount of any assessment thereon, with interest, penalty, costs and charges accrued thereon, shall be paid to the treasurer, he or she shall thereon mark the same paid with the date of payment thereof on the assessment roll. [2009 c 549 § 4142; 1963 c 4 § 36.88.150. Prior: 1951 c 192 § 15.]

36.88.160 District fund—Purposes—Bond redemptions. All moneys collected by the treasurer upon any assessments under this chapter shall be kept as a separate fund to be known as ". . . . , county road improvement district No. . . . fund." Such funds shall be used for no other purpose than the payment of costs and expense of construction and improvement in such district and the payment of interest or principal of warrants and bonds drawn or issued upon or against said fund for said purposes. Whenever after payment of the costs and expenses of the improvement there shall be available in the local improvement district fund a sum, over and above the amount necessary to meet the interest payments next accruing on outstanding bonds, sufficient to retire one or more outstanding bonds the treasurer shall forthwith call such bond or bonds for redemption as determined in the bond authorizing ordinance. [2003 c 139 § 3; 1963 c 4 § 36.88.160. Prior: 1951 c 192 § 16.]

Additional notes found at www.leg.wa.gov

36.88.170 Foreclosed property—Held in trust for district. Whenever any property shall be bid in by any county or be stricken off to any county under and by virtue of any proceeding for enforcement of the assessment provided in this chapter said property shall be held in trust by said county for the fund of the improvement district for the creation of which fund said assessment was levied and for the collection of which assessment said property was sold: PROVIDED, Such county may at any time after the procuring of a deed pay in to such fund the amount of the delinquent assessment for which said property was sold and all accrued interest and interest to the time of the next call for bonds or warrants issued against such assessment fund at the rate provided thereon, and thereupon shall take and hold said property discharged of such trust: PROVIDED FURTHER, That property deeded to any county and which shall become a part of the trust being exercised by the said county for the benefit of any local improvement district fund of the said county, shall be exempt from taxation for general, state, county and

municipal purposes during the period that it is so held. [1963 c 4 § 36.88.170. Prior: 1951 c 192 § 17.]

36.88.180 Foreclosed property—Sale or lease—Disposition of proceeds. Any county may at any time after a deed is issued to it under and by virtue of any proceeding mentioned in this chapter, lease or sell or convey any such property at public or private sale for such price and on such terms as may be determined by resolution of the board, and all proceeds resulting from such sale shall ratably belong to and be paid into the fund of the county road improvement district or districts concerned after first reimbursing any fund or funds having advanced any money on account of said property. [1963 c 4 § 36.88.180. Prior: 1951 c 192 § 18.]

36.88.190 Improvement bonds, warrants authorized.

(1) The county legislative authority may provide for the payment of the whole or any portion of the cost and expense of any duly authorized road improvement by bonds and/or warrants of the improvement district which bonds shall be issued and sold as herein provided, but no bonds shall be issued in excess of the cost and expense of the project nor shall they be issued prior to twenty days after the thirty days allowed for the payment of assessments without penalty or interest.

(2) Notwithstanding subsection (1) of this section, such bonds and warrants may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 93; 1963 c 4 § 36.88.190. Prior: 1951 c 192 § 19.]

Additional notes found at www.leg.wa.gov

36.88.200 Improvement bonds—Form, contents, execution.

(1) Such bonds shall be numbered from one upwards consecutively, shall be in such denominations as may be provided by the county legislative authority in the resolution authorizing their issuance, shall mature on or before a date not to exceed twenty-two years from and after their date, shall bear interest at such rate or rates as authorized by the legislative authority payable annually or semiannually as may be provided by the legislative authority, shall be signed by the chair of the legislative authority and attested by the county auditor, shall have the seal of the county affixed thereto, and shall be payable at the office of the county treasurer or elsewhere as may be designated by the legislative authority. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030. In lieu of any signatures required in this section, the bonds and any coupons may bear the printed or engraved facsimile signatures of said officials.

Such bonds shall refer to the improvement for which they are issued and to the resolution creating the road improvement district therefor.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [2009 c 549 § 4143; 1983 c 167 § 94; 1980 c 100 § 5; 1970 ex.s. c 56 § 55; 1969 ex.s. c 232 § 73; 1963 c 4 § 36.88.200. Prior: 1951 c 192 § 20.]

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Additional notes found at www.leg.wa.gov

36.88.210 Improvement bonds—Issuance—Sale—Deposit of proceeds.

(1) The bonds issued under the provi-

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sions of this chapter may be issued to the contractor or sold by the county legislative authority as authorized by the resolution directing their issuance at not less than their par value and accrued interest to the date of delivery. No bonds shall be sold except at public sale upon competitive bids and a notice calling for bids shall be published once a week for two consecutive weeks in the official newspaper of the county. Such notice shall specify a place and designate a day and hour subsequent to the date of last publication thereof when sealed bids will be received and publicly opened for the purchase of said bonds. The proceeds of all sales of bonds shall be deposited in the county road improvement district fund and applied to the cost and expense of the district.

(2) Notwithstanding subsection (1) of this section, such bonds may be sold in accordance with chapter 39.46 RCW. [1983 c 167 § 95; 1963 c 4 § 36.88.210. Prior: 1951 c 192 § 21.]

Additional notes found at www.leg.wa.gov

36.88.220 Improvement bonds—Guaranty fund.

All counties may establish a fund for the purpose of guaranteeing to the extent of such fund and in the manner hereinafter provided, the payment of its road improvement district bonds and warrants issued to pay for any road improvement ordered under this chapter. If the county legislative authority shall determine to establish such fund it shall be designated ". . . . county road improvement guaranty fund" and from moneys available for road purposes such county shall deposit annually in said guaranty fund such sums as may be necessary to establish and maintain a balance therein equal to at least five percent of the outstanding obligations guaranteed thereby and to make necessary provision in its annual budget therefor. The moneys held in the guaranty fund may be invested in accordance with the laws relating to county investments. [1997 c 393 § 7; 1967 ex.s. c 145 § 63; 1963 c 4 § 36.88.220. Prior: 1959 c 134 § 2; 1951 c 192 § 22.]

Additional notes found at www.leg.wa.gov

36.88.230 Improvement bonds—Guaranty fund in certain counties—Operation.

Whenever there shall be paid out of a guaranty fund any sum on account of principal or interest of a road improvement district bond or warrant, the county, as trustee for the fund, shall be subrogated to all the rights of the owner of the bond or any interest coupon or warrant so paid, and the proceeds thereof, or of the assessment underlying the same, shall become part of the guaranty fund. There shall also be paid into each guaranty fund the interest received from investment of the fund, as well as any surplus remaining in any local improvement fund guaranteed hereunder after the payment of all outstanding bonds or warrants payable primarily out of such road improvement fund. Warrants drawing interest at a rate or rates not to exceed the rate determined by the county legislative authority shall be issued, as other warrants are issued by the county, against a guaranty fund to meet any liability accruing against it, and at the time of making its annual budget and tax levy the county shall provide from funds available for road purposes for the deposit in the guaranty fund of a sum sufficient with other resources of such fund to pay warrants so issued during the preceding fiscal year. As among the several issues of bonds or warrants guaranteed by the fund no preference shall exist, but

defaulted bonds, interest payments, and warrants shall be purchased out of the fund in the order of their presentation.

Every county establishing a guaranty fund for road improvement district bonds or warrants shall prescribe by resolution appropriate rules and regulations for the maintenance and operation of the guaranty fund not inconsistent herewith. So much of the money of a guaranty fund as is necessary may be used to purchase underlying bonds or warrants guaranteed by the fund, or to purchase certificates of delinquency for general taxes on property subject to local improvement assessments, or to purchase such property at tax foreclosures, for the purpose of protecting the guaranty fund. Said fund shall be subrogated to the rights of the county, and the county, acting on behalf of said fund, may foreclose the lien of general tax certificates of delinquency and purchase the property at the foreclosure sale for the account of said fund. Whenever the legislative authority of any county shall so cause a lien of general tax certificates of delinquency to be foreclosed and the property to be so purchased at a foreclosure sale, the court costs and costs of publication and expenses for clerical work and/or other expense incidental thereto, shall be chargeable to and payable from the guaranty fund. After so acquiring title to real property, a county may lease or sell and convey the same at public or private sale for such price and on such terms as may be determined by resolution of the county legislative body, and all proceeds resulting from such sales shall belong to and be paid into the guaranty fund. [1997 c 393 § 8; 1983 c 167 § 96; 1981 c 156 § 12; 1963 c 4 § 36.88.230. Prior: 1951 c 192 § 23.]

Additional notes found at www.leg.wa.gov

36.88.235 Improvement bonds—Guaranty fund assets may be transferred to county general fund—When.

(1) Any county maintaining a local improvement guaranty fund under this chapter, upon certification by the county treasurer that the local improvement guaranty fund has sufficient funds currently on hand to meet all valid outstanding obligations of the fund and all other obligations of the fund reasonably expected to be incurred in the near future, may by ordinance transfer assets from such fund to its general fund. The net cash of the local improvement guaranty fund may be reduced by such transfer to an amount not less than five percent of the net outstanding obligations guaranteed by such fund.

(2) If, at any time within five years of any transfer of assets from the local improvement guaranty fund to the general fund of the county, the net cash of the local improvement guaranty fund is reduced below the minimum amount specified in subsection (1) of this section, the county shall, to the extent of the amount transferred, pay valid claims against the local improvement guaranty fund as a general obligation of the county. In addition, such county shall pay all reasonable costs of collection necessarily incurred by the holders of valid claims against the local improvement guaranty fund. [1991 c 245 § 12.]

36.88.240 Improvement bonds—Repayment restricted to special funds—Remedies of bond owner—Notice of restrictions. The owner of any bond or warrant issued under the provisions of this chapter shall not have any claim therefor against the county by which the same is issued,

except for payment from the special assessments made for the improvement for which said bond or warrant was issued and except as against the improvement guaranty fund of such county, and the county shall not be liable to any owner of such bond or warrant for any loss to the guaranty fund occurring in the lawful operation thereof by the county. The remedy of the owner of a bond, or warrant in case of nonpayment, shall be confined to the enforcement of any assessments made in such road improvement district and to the guaranty fund. In case the bonds are guaranteed in accordance herewith a copy of the foregoing part of this section shall be plainly written, printed or engraved on each bond issued and guaranteed hereunder. [1983 c 167 § 97; 1963 c 4 § 36.88.240. Prior: 1951 c 192 § 24.]

Additional notes found at www.leg.wa.gov

36.88.250 Improvement bonds—Remedies of bond owners—Enforcement. If the board fails to cause any bonds to be paid when due or to promptly collect any assessments when due, the owner of any of the bonds may proceed in his or her own name to collect the assessments and foreclose the lien thereof in any court of competent jurisdiction and shall recover in addition to the amount of the bonds outstanding in his or her name, interest thereon at five percent per annum, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court. Any number of owners of bonds for any single project may join as plaintiffs and any number of the owners of property upon which the assessments are liens may be joined as defendants in the same suit. [2009 c 549 § 4144; 1963 c 4 § 36.88.250. Prior: 1951 c 192 § 25.]

36.88.260 Assessment where bonds issued—Payment in installments. In all cases where the board shall issue bonds to pay the cost and expense of any county road improvement district and shall provide that the whole or any part of the cost and expense shall be assessed against the lots, tracts, parcels of land, and other property therein, the resolution levying such assessment shall provide that the sum charged thereby against each lot, tract, or parcel of land or any portion of said sum may be paid during the thirty day period provided for in RCW 36.88.270 and that thereafter the sum remaining unpaid may be paid in equal annual installments, the number of which installments shall be less by two than the number of years which the bonds issued to pay for the improvement may run. Interest upon all unpaid installments shall be charged at a rate fixed by said resolution. Each year such installments together with interest due thereon shall be collected in the manner provided in the resolution for the collection of the assessments. [1963 c 4 § 36.88.260. Prior: 1951 c 192 § 26.]

36.88.270 Assessment where bonds issued—Payment in cash—Notice of assessment. The owner of any lot, tract, or parcel of land, or other property charged with any such assessments may redeem the same from all or any portion of the liability for the cost and expense of such improvement by paying the entire assessment or any portion thereof charged against such lot, tract, or parcel of land without interest within thirty days after notice to him or her of such assessment, which notice shall be given as follows: The county

treasurer shall, as soon as the assessment roll has been placed in his or her hands for collection, publish a notice for two consecutive daily or weekly issues in the official newspaper of the county in which the district is located, which notice shall state that the assessment roll is in his or her hands for collection and that any assessment thereon or any portion of such assessment may be paid at any time within thirty days from the date of the first publication of said notice without penalty interest or costs. [2009 c 549 § 4145; 1963 c 4 § 36.88.270. Prior: 1951 c 192 § 27.]

36.88.280 Assessment where bonds issued—Payment in cash during installment period—Duties of county treasurer—Use of funds. The owners of any lot, tract, or parcel of land may save the same from all liability for the unpaid amount of the assessment, at any time after the thirty-day period herein provided for their payment without interest, by paying the entire amount or all installments on said assessment together with all interest due to the date of maturity of any installment next falling due. All such payments shall be made to the county treasurer whose duty it shall be to collect all assessments under this chapter and all sums so paid or collected shall be applied solely to the payment of the cost and expense of the district and payment of principal and/or interest of any bonds issued. [1963 c 4 § 36.88.280. Prior: 1951 c 192 § 28.]

36.88.290 Limitation of actions. An action to collect any special assessment or installment thereof for road improvements, or to enforce the lien of any such assessment or installment, whether such action be brought by the county or by the holder of any certificate of delinquency, or by any other person having the right to bring such action, shall be commenced within ten years after such assessment shall have become delinquent or within ten years after the last installment of any such assessment shall have become delinquent, when said special assessment is payable in installments.

Actions to set aside or cancel any deed issued after midnight, June 6, 1951, upon the sale of property for road improvement assessments, or for the recovery of property sold for delinquent road improvement assessments must be brought within three years from and after date of the issuance of such deed. [1963 c 4 § 36.88.290. Prior: 1951 c 192 § 29.]

36.88.295 Refunding bonds—Limitations. The legislative authority of any county may issue and sell bonds to refund outstanding road improvement district or consolidated road improvement district bonds issued after June 7, 1984, on the earliest date such outstanding bonds may be redeemed following the date of issuance of such refunding bonds. Such refunding shall be subject to the following:

(1) The refunding shall result in a net interest cost savings after paying the costs and expenses of the refunding, and the principal amount of the refunding bonds may not exceed the principal balance of the assessment roll or rolls pledged to pay the bonds being refunded at the time of the refunding.

(2) The refunding bonds shall be paid from the same local improvement fund or bond redemption fund as the bonds being refunded.

(3) The costs and expenses of the refunding shall be paid from the proceeds of the refunding bonds, or the same road

improvement district fund or bond redemption fund for the bonds being refunded, except the county may advance such costs and expenses to such fund pending the receipt of assessment payments available to reimburse such advances.

(4) The last maturity of refunding bonds shall be no later than one year after the last maturity of bonds being refunded.

(5) The refunding bonds may be exchanged for the bonds being refunded or may be sold in the same manner permitted at the time of sale for road improvement district bonds.

(6) All other provisions of law applicable to the refunded bonds shall apply to the refunding bonds. [1984 c 186 § 67.]

Purpose—1984 c 186: See note following RCW 39.46.110.

36.88.300 District costs and expenses—What to include. Whenever any district is organized hereunder, there shall be included in the cost and expense thereof: (1) The cost of all of the construction or improvement authorized in the district, including that portion of the construction or improvement within the limits of any street or road intersection, space or spaces; (2) the estimated costs and expenses of all engineering and surveying necessary to be done by the county engineer or under his or her direction or by such other engineer as may be employed by the county commissioners; (3) the cost of all advertising, mailing, and publishing of all notices; (4) the cost of legal services and any other expenses incurred by the county for the district or in the formation thereof, or by the district in connection with such construction or improvement and in the financing thereof, including the issuance of any bonds. [2009 c 549 § 4146; 1963 c 4 § 36.88.300. Prior: 1951 c 192 § 30.]

36.88.305 District costs and expenses—Credit or reduction of assessments. At its option, a county may include the value of right-of-way or property that is donated or given to the county for purposes of an improvement to be financed by a road improvement district, together with the costs of acquiring other rights-of-way or property for the improvement that was not donated or given to the county, in the costs of the improvement and credit or reduce the assessments imposed on benefited property for the value of the right-of-way or property that the owner of the benefited property donated or gave to the county for the improvement. [1991 c 363 § 90.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.88.310 Acquisition of property—Eminent domain. All land, premises or property necessary for right-of-way or other purposes in the construction or improvement of any county road, including bridges, sidewalks, curbs and gutters and the drainage facilities therefor, under this chapter may be acquired by the county acting through its board of county commissioners, either by gift, purchase or by condemnation. In the event of any exercise of the power of eminent domain, the procedure shall be the same as is provided by law for the securing of right-of-way for county roads. The title to all property acquired for any construction or improvement under this chapter shall be taken in the name of the county. The county commissioners in any eminent domain action brought to secure any property for construction or improvement under this chapter may pay any final judgment

entered in such action with county road funds and take possession of the particular property condemned. In the event of any such payment the county commissioners may require that the county road fund be reimbursed out of the particular county road improvement fund of the district for which the property was acquired. [1963 c 4 § 36.88.310. Prior: 1951 c 192 § 31.]

36.88.320 Construction or improvement—Supervision—Contracts—Standards. All construction or improvement performed under this chapter shall be under the direction of the board of county commissioners, acting by and through the county road engineer, or such other engineer as the board of county commissioners shall designate. Contracts let and/or work performed upon all construction or improvement hereunder shall be in accordance with the laws pertaining to work upon county roads. The construction and improvement standards of the respective counties for engineering and performance of work, shall apply to all construction or improvement under this chapter. [1963 c 4 § 36.88.320. Prior: 1951 c 192 § 32.]

36.88.330 Warrants—Issuance—Priority—Acceptance. The board may provide by resolution for the issuance of warrants in payment of the costs and expenses of any project, payable out of the county road improvement fund. The warrants shall be redeemed either in cash or by bonds for the same project authorized by the resolution.

All warrants issued against any such improvement fund shall be claims and liens against said fund prior and superior to any right, lien or claim of any surety upon the bond given to the county by or for the contract to secure the performance of his or her contract or to secure the payment of persons who have performed work thereon, furnished materials therefor, or furnished provisions and supplies for the carrying on of the work.

The county treasurer may accept warrants against any county road improvement fund upon such conditions as the board may prescribe in payment of: (1) Assessments levied to supply that fund in due order of priority; (2) judgments rendered against property owners who have become delinquent in the payment of assessments to that fund; and (3) certificates of purchase in cases where property of delinquents has been sold under execution or at tax sale for failure to pay assessments levied to supply that fund. [2009 c 549 § 4147; 1980 c 100 § 6; 1963 c 4 § 36.88.330. Prior: 1951 c 192 § 33.]

36.88.340 Participation of county road fund—Arrangements with other public agencies, private utilities. Except as they may establish continuing guaranty fund requirements, the board of county commissioners shall be the sole judges as to the extent of county road fund participation in any project under this chapter and the decisions of the board shall be final; the said board may receive grants from or contract with any other county, municipal corporation, public agency or the state or federal government in order to effect any construction or improvement hereunder, including the construction, installation, improvement, operation, maintenance of and furnishing electric energy for any street and road lighting system, and to effect the construction, installation, improvement, operation and maintenance of and fur-

nishing electric energy for any such street and road lighting system, may contract with any private utility corporation. [1963 c 4 § 36.88.340. Prior: 1953 c 152 § 2; 1951 c 192 § 34.]

36.88.350 Maintenance—Expense. After the completion of any construction or improvement under this chapter, all maintenance thereof shall be performed by the county at the expense of the county road fund, excepting furnishing electric energy for and operating and maintaining street and road lighting systems: PROVIDED, That maintenance of canal protection improvements may, at the option of the board of commissioners of the county, be required of the irrigation, drainage, flood control, or other district, agency, person, corporation, or association maintaining the canal or ditch. If such option is exercised reimbursement must be made by the county for all actual costs of such maintenance. [1963 c 4 § 36.88.350. Prior: 1959 c 75 § 8; 1953 c 152 § 3; 1951 c 192 § 35.]

36.88.360 State, county, school, municipal corporation lands—Assessment—Recipients of notices, ballots. Lands owned by the state, county, school district or any municipal corporation may be assessed and charged for road improvements authorized under this chapter in the same manner and subject to the same conditions as provided by law for assessments against such property for local improvements in cities and towns.

All notices and ballots provided for herein affecting state lands shall be sent to the department of natural resources whose designated agent is hereby authorized to sign petitions or ballots on behalf of the state. In the case of counties or municipal or quasi municipal bodies notices and ballots shall be sent to the legislative authority of said counties or municipality and petitions or ballots shall be signed by the officer duly empowered to act by said legislative authority. [1963 c 4 § 36.88.360. Prior: 1951 c 192 § 36.]

36.88.370 Signatures on petitions, ballots, objections—Determining sufficiency. Wherever herein petitions, ballots or objections are required to be signed by the owners of property, the following rules shall govern the sufficiency thereof: (1) The signature of the record owner as determined by the records of the county auditor shall be sufficient without the signature of his or her spouse; (2) in the case of mortgaged property, the signature of the mortgagor shall be sufficient; (3) in the case of property purchased on contract the signature of the contract purchaser shall be deemed sufficient; (4) any officer of a corporation owning land in the district duly authorized to execute deeds or encumbrances on behalf of the corporation may sign on behalf of such corporation: PROVIDED, That there shall be attached to the ballot or petition a certified excerpt from the bylaws showing such authority; (5) if any property in the district stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator or guardian as the case may be shall be equivalent to the signature of the owner of the property. [1963 c 84 § 6; 1963 c 4 § 36.88.370. Prior: 1951 c 192 § 37.]

36.88.375 Consolidated road improvement districts—Establishment—Bonds. For the purpose of issuing bonds only, the governing body of any county may authorize the establishment of consolidated road improvement districts. The road improvements within such consolidated districts need not be adjoining, vicinal, or neighboring. If the governing body orders the creation of such consolidated road improvement districts, the money received from the installment payments of the principal of and interest on assessments levied within original road improvement districts shall be deposited in a consolidated road improvement district bond redemption fund to be used to redeem outstanding consolidated road improvement district bonds. The issuance of bonds of a consolidated road improvement district shall not change the number of assessment installments in the original road improvement districts, but such bonds shall run two years longer than the longest assessment installment of such original districts. [1981 c 313 § 19.]

Reviser's note: 1981 c 313 § 19 directed that this section be placed in chapter 36.89 RCW. Since this placement appears inappropriate, this section has been codified as part of chapter 36.88 RCW.

Additional notes found at www.leg.wa.gov

36.88.380 Safeguarding open canals or ditches—Assessments and benefits. Whenever a county road improvement district is established for the safeguarding of open canals or ditches as authorized by RCW 36.88.015 the rate of assessment per square foot in the district may be determined by any one of the methods provided in chapter 35.44 RCW for similar improvements in cities or towns, and the land specially benefited by such improvements shall be the same as provided in chapter 35.43 RCW for similar improvements in cities or towns. [1963 c 4 § 36.88.380. Prior: 1959 c 75 § 5.]

36.88.390 Safeguarding open canals or ditches—Authority. Every county shall have the right of entry upon every irrigation, drainage, or flood control canal or ditch right-of-way within its boundaries for all purposes necessary to safeguard the public from the hazards of open canals or ditches, including the right to clean such canals or ditches to prevent their flooding adjacent lands, and the right to cause to be constructed and maintained on such rights-of-way or adjacent thereto safeguards as authorized by RCW 36.88.015: PROVIDED, That such safeguards must not unreasonably interfere with maintenance of the canal or ditch or with the operation thereof. [1963 c 4 § 36.88.390. Prior: 1959 c 75 § 6.]

36.88.400 Safeguarding open canals or ditches—Installation and construction—Costs. Any county, establishing a road improvement district for canal protection, notwithstanding any laws to the contrary, may require the district, agency, person, corporation, or association, public or private, which operates and maintains the canal or ditch to supervise the installation and construction of safeguards, and must make reimbursement to said operator for all actual costs incurred and expended. [1963 c 4 § 36.88.400. Prior: 1959 c 75 § 7.]

36.88.410 Underground electric and communication facilities, installation or conversion to—Declaration of

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public interest and purpose. It is hereby found and declared that the conversion of overhead electric and communication facilities to underground facilities and the initial underground installation of such facilities is substantially beneficial to the public safety and welfare, is in the public interest and is a public purpose, notwithstanding any resulting incidental private benefit to any electric or communication utility affected by such conversion or installation. [1971 ex.s. c 103 § 1; 1967 c 194 § 1.]

Cities and towns, conversion of overhead electric and communication facilities to underground facilities: Chapter 35.96 RCW.

Additional notes found at www.leg.wa.gov

36.88.420 Underground electric and communication facilities, installation or conversion to—Definitions. As used in RCW 36.88.410 through 36.88.480, unless specifically defined otherwise, or unless the context indicates otherwise:

"Conversion area" means that area in which existing overhead electric and communication facilities are to be converted to underground facilities pursuant to the provisions of RCW 36.88.410 through 36.88.480.

"Electric utility" means any publicly or privately owned utility engaged in the business of furnishing electric energy to the public in all or part of the conversion area and includes electrical companies as defined by RCW 80.04.010 and public utility districts.

"Communication utility" means any utility engaged in the business of affording telephonic, telegraphic, cable television or other communication service to the public in all or part of the conversion area and includes telephone companies and telegraph companies as defined by RCW 80.04.010. [1967 c 194 § 2.]

36.88.430 Underground electric and communication facilities, installation or conversion to—Powers of county relating to—Contracts—County road improvement districts—Special assessments. Every county shall have the power to contract with electric and communication utilities, as hereinafter provided, for any or all of the following purposes:

(1) The conversion of existing overhead electric facilities to underground facilities.

(2) The conversion of existing overhead communication facilities to underground facilities.

(3) The conversion of existing street and road lighting facilities to ornamental street and road lighting facilities to be served from underground electrical facilities.

(4) The initial installation, in accordance with the limitations set forth in RCW 36.88.015, or [of] ornamental street and road lighting facilities to be served from underground electrical facilities.

(5) The initial installation of underground electric and communication facilities.

(6) Any combination of the improvements provided for in this section.

To provide funds to pay the whole or any part of the cost of any such conversion or initial installation, together with the expense of furnishing electric energy, maintenance and operation to any ornamental street lighting facilities served from underground electrical facilities, every county shall

have the power to create county road improvement districts and to levy and collect special assessments against the real property specially benefited by such conversion or initial installation. For the purpose of ascertaining the amount to be assessed against each lot or parcel of land within any county road improvement district established pursuant to RCW 36.88.410 through 36.88.480, in addition to other methods provided by law for apportioning special benefits, the county commissioners may apportion all or part of the special benefits accruing on a square footage basis or on a per lot basis.

That portion of the assessments levied in any county road improvement district to pay part of the cost of the initial installation of underground electric and communication facilities shall not exceed the cost of such installation, less the estimated cost of constructing overhead facilities providing equivalent service. [1971 ex.s. c 103 § 2; 1967 c 194 § 3.]

36.88.440 Underground electric and communication facilities, installation or conversion to—Contracts with electric and communication utilities—Authorized—Provisions. Every county shall have the power to contract with electric and communication utilities for the conversion of existing overhead electric and communication facilities to underground facilities, for the conversion of existing street and road lighting facilities to ornamental street and road lighting facilities to be served from underground electrical facilities[,] for the initial installation of ornamental street and road lighting facilities to be served from underground electrical facilities and for the initial installation of underground electric and communication facilities. Such contracts may provide, among other provisions, any of the following:

(1) For the supplying and approval by the electric and communication utilities of plans and specifications for such conversion or installation;

(2) For the payment to the electric and communication utilities for any work performed or services rendered by it in connection with the conversion project or installation;

(3) For the payment to the electric and communication utilities for the value of the overhead facilities removed pursuant to the conversion;

(4) For ownership of the underground facilities and the ornamental street and road lighting facilities by the electric and communication utilities. [1971 ex.s. c 103 § 3; 1967 c 194 § 4.]

36.88.450 Underground electric and communication facilities, installation or conversion to—Notice to owners to convert service lines to underground—Objections—Hearing—Time limitation for conversion. When service from the underground electric and communication facilities is available in all or part of a conversion area, the county shall mail a notice to the owners of all structures or improvements served from the existing overhead facilities in the area, which notice shall state that:

(1) Service from the underground facilities is available;

(2) All electric and communication service lines from the existing overhead facilities within the area to any structure or improvement must be disconnected and removed within one hundred twenty days after the date of the mailing of the notice;

(3) Should such owner fail to convert such service lines from overhead to underground within one hundred twenty days after the date of the mailing of the notice, the county will order the electric and communication utilities to disconnect and remove the service lines;

(4) Should the owner object to the disconnection and removal of the service lines he or she may file his or her written objections thereto with the secretary of the board of county commissioners within one hundred twenty days after the date of the mailing of the notice and failure to so object within such time will constitute a waiver of his or her right thereafter to object to such disconnection and removal.

If the owner of any structure or improvement served from the existing overhead electric and communication facilities within a conversion area shall fail to convert to underground the service lines from such overhead facilities to such structure or improvement within one hundred twenty days after the mailing to him or her of the notice, the county shall order the electric and communication utilities to disconnect and remove all such service lines: PROVIDED, That if the owner has filed his or her written objections to such disconnection and removal with the secretary of the board of county commissioners within one hundred twenty days after the mailing of said notice then the county shall not order such disconnection and removal until after the hearing on such objections.

Upon the timely filing by the owner of objections to the disconnection and removal of the service lines, the board of county commissioners shall conduct a hearing to determine whether the removal of all or any part of the service lines is in the public benefit. The hearing shall be held at such time as the board of county commissioners may establish for hearings on such objections and shall be held in accordance with the regularly established procedure set by the board. The determination reached by the board of county commissioners shall be final in the absence of an abuse of discretion. [2009 c 549 § 4148; 1967 c 194 § 5.]

36.88.460 Underground electric and communication facilities, installation or conversion to—Utility conversion guaranty fund—Establishment authorized—Purpose—Deposits—Investments. Every county may establish a fund for the purpose of guaranteeing to the extent of such fund and in the manner hereinafter provided, the payment of its county road improvement district bonds and warrants issued to pay for the underground conversion of electric and communication facilities and the underground conversion or installation of ornamental road and street lighting facilities ordered under this chapter. If the board of county commissioners shall determine to establish such fund it shall be designated ". . . . utility conversion guaranty fund" and from moneys available such county shall deposit annually in said guaranty fund such sums as may be necessary to establish and maintain a balance therein equal to at least five percent of the outstanding obligations guaranteed thereby and to make necessary provision in its annual budget therefor. The moneys held in the guaranty fund may be invested in certificates, notes, or bonds of the United States of America, or in state, county, municipal or school district bonds, or in warrants of taxing districts of the state; provided, only, that such bonds and warrants shall be general obligations. [1967 c 194 § 6.]

36.88.470 Underground electric and communication facilities, installation or conversion to—Utility conversion guaranty fund—Operation. Whenever there shall be paid out of the guaranty fund any sum on account of principal or interest of a county road improvement district bond or warrant, the county, as trustee for the fund, shall be subrogated to all the rights of the owner of the bond or any interest coupon or warrant so paid, and the proceeds thereof, or of the assessment underlying the same, shall become part of the guaranty fund. There shall also be paid into each guaranty fund the interest received from investments of the fund, as well as any surplus remaining in any county road improvement fund guaranteed hereunder after the payment of all outstanding bonds or warrants payable primarily out of such utility conversion county road improvement district fund. Warrants drawing interest at a rate or rates not to exceed the rate determined by the county legislative authority shall be issued, as other warrants are issued by the county, against the guaranty fund to meet any liability accruing against it, and at the time of making its annual budget and tax levy the county shall provide from funds available for the deposit in the guaranty fund of a sum sufficient with other resources of such fund to pay warrants so issued during the preceding fiscal year. As among the several issues of bonds or warrants guaranteed by the fund no preference shall exist, but defaulted bonds, interest payments, and warrants shall be purchased out of the fund in the order of their presentation.

Every county establishing a guaranty fund for utility conversion road improvement district bonds or warrants shall prescribe by resolution appropriate rules and regulations for the maintenance and operation of such guaranty fund not inconsistent herewith. So much of the money of a guaranty fund as is necessary may be used to purchase underlying bonds or warrants guaranteed by the fund, or to purchase certificates of delinquency for general taxes on property subject to local improvement assessments, or to purchase such property at tax foreclosures, for the purpose of protecting the guaranty fund. The fund shall be subrogated to the rights of the county and the county, acting on behalf of the fund, may foreclose the lien of general tax certificates of delinquency and purchase the property at the foreclosure sale for the account of said fund. Whenever the legislative authority of any county shall so cause a lien of general tax certificates of delinquency to be foreclosed and the property to be so purchased at a foreclosure sale, the court costs and costs of publication and expenses for clerical work and/or other expense incidental thereto, shall be chargeable to and payable from the guaranty fund. After so acquiring title to real property, a county may lease or sell and convey the same at public or private sale for such price and on such terms as may be determined by resolution of the county legislative authority, and all proceeds resulting from such sales shall belong to and be paid into the guaranty fund. [1983 c 167 § 98; 1981 c 156 § 13; 1967 c 194 § 7.]

Additional notes found at www.leg.wa.gov

36.88.480 Underground electric and communication facilities, installation or conversion to—Applicability of general provisions relating to county road improvement districts. Unless otherwise provided in RCW 36.88.410 through 36.88.480, the general provisions relating to county

road improvement districts shall apply to local improvements authorized by RCW 36.88.410 through 36.88.480. [1967 c 194 § 8.]

36.88.485 Underground electric and communication facilities, installation or conversion to—Recording of underground utility installations. All installations of underground utilities made on and after August 9, 1971 shall be recorded on an "as constructed" map and filed with the county engineer of the county in which the underground utilities are installed. [1971 ex.s. c 103 § 4.]

36.88.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 82.]

**Chapter 36.89 RCW
HIGHWAYS—OPEN SPACES—PARKS—
OTHER PUBLIC FACILITIES—
STORM WATER CONTROL**

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36.89.911	Severability—1970 ex.s. c 30.

Assessments and charges against state lands: Chapter 79.44 RCW.

36.89.010 Definitions. The words "governmental agency" as used in this chapter mean the United States of America, the state or any agency, subdivision, taxing district or municipal or quasi municipal corporation thereof.

The word "highways" as used in this chapter means all public roads, streets, expressways, parkways, scenic drives, bridges and other public ways, including without limitation, traffic control facilities, special lanes, turnouts or structures in, upon, over or under such public ways for exclusive or nonexclusive use by public transit vehicles, and landscaping, visual and sound buffers between such public ways and adjacent properties.

The words "open space, park, recreation and community facilities" as used in this chapter mean any public facility, improvement, development, property or right or interest therein for public park, recreational, green belt, arboretum, multi-purpose community center (as defined in RCW 35.59.010), museum, zoo, aquarium, auditorium, exhibition, athletic, historic, scenic, viewpoint, aesthetic, ornamental or natural resource preservation purposes.

The words "public health and safety facilities" as used in this chapter mean any public facility, improvement, development, property or right or interest therein, made, constructed or acquired for the purpose of protecting life from disease or injury, enforcing the criminal and civil laws or protecting property from damage caused by breach of law, including but not limited to public hospitals, health laboratories, public health clinics or service centers, custodial, correction or rehabilitation facilities, courtrooms, crime laboratories, law enforcement equipment and facilities, training facilities for specialized personnel, facilities for the collection, storage, retrieval or communication of information, and mobile, support or administrative facilities, all as necessary for the foregoing purpose, or any combination of the facilities herein described.

The words "storm water control facilities" as used in this chapter mean any facility, improvement, development, property or interest therein, made, constructed or acquired for the purpose of controlling, or protecting life or property from, any storm, waste, flood or surplus waters wherever located within the county, and shall include but not be limited to the improvements and authority described in RCW 86.12.020 and chapters 86.13 and 86.15 RCW.

The word "county" as used in this chapter shall mean any county of the state of Washington. [1970 ex.s. c 30 § 1; 1967 c 109 § 1.]

36.89.020 Purpose. The legislature finds that the open spaces, park, recreation and community facilities, public health and safety facilities, storm water control facilities and highways within any county of this state, whether located partly or wholly within or without the cities and towns of such county are of general benefit to all of the residents of such county. The open spaces, park, recreation and community facilities within such county provide public recreation, aesthetic, conservation and educational opportunities and other services and benefits accessible to all of the residents of such county. The public health and safety facilities within such county provide protection to life and property throughout the county, are functionally inter-related and affect the health, safety and welfare of all the residents of such county.

The storm water control facilities within such county provide protection from storm water damage for life and property throughout the county, generally require planning and development over the entire drainage basins, and affect the prosperity, interests and welfare of all the residents of such county. The highways within such county, whether under the general control of the county or the state or within the limits of any incorporated city or town, provide an inter-connected system for the convenient and efficient movement of people and goods within such county. The use of general county funds for the purpose of acquisition, development, construction, or improvement of open space, park, recreation and community facilities, public health and safety facilities, storm water control facilities, or highways or to participate with any governmental agency to perform such purposes within such county pursuant to this chapter is hereby declared to be a strictly county purpose. [1970 ex.s. c 30 § 2; 1967 c 109 § 2.]

36.89.030 Authority to establish, acquire, develop, construct, and improve highways, open spaces, parks, etc. Counties are authorized to establish, acquire, develop, construct, and improve open space, park, recreation, and community facilities, public health and safety facilities, storm water control facilities, and highways or any of them pursuant to the provisions of this chapter within and without the cities and towns of the county and for such purposes have the power to acquire lands, buildings and other facilities by gift, grant, purchase, condemnation, lease, devise, and bequest, to construct, improve, or maintain buildings, structures, and facilities necessary for such purposes, and to use and develop for such purposes the air rights over and the subsurface rights under any highway. The approval of the state department of transportation shall be first secured for such use and development of any state highway. For visual or sound buffer purposes the county shall not acquire by condemnation less than an owner's entire interest or right in the particular real property to be so acquired if the owner objects to the taking of a lesser interest or right. [1984 c 7 § 42; 1970 ex.s. c 30 § 3; 1967 c 109 § 3.]

Acquisition of interests in land for conservation, protection, preservation, or open space purposes by counties: RCW 64.04.130.

Flood control, county powers: RCW 86.12.020.

Additional notes found at www.leg.wa.gov

36.89.040 Issuance of general obligation bonds— Proposition submitted to voters. To carry out the purposes of this chapter counties shall have the power to issue general obligation bonds within the limitations now or hereafter prescribed by the Constitution and laws of this state. Such general obligation bonds shall be issued and sold as provided in chapter 39.46 RCW.

The question of issuance of bonds for any undertaking which relates to a number of different highways or parts thereof, whether situated wholly or partly within the limits of any city or town within the county, and whether such bonds are intended to supply the whole expenditure or to participate therein, may be submitted to the voters of the county as a single proposition. If the county legislative authority in submitting a proposition relating to different highways or parts thereof declare that such proposition has for its object the fur-

therance and accomplishment of the construction of a system of connected public highways within such county and constitutes a single purpose, such declaration shall be presumed to be correct and upon the issuance of the bonds the presumption shall become conclusive.

The question of the issuance of bonds for any undertaking which relates to a number of different open spaces, park, recreation and community facilities, whether situated wholly or partly within the limits of any city or town within the county, and whether such bonds are intended to supply the whole expenditure or to participate therein may be submitted to the voters as a single proposition. If the county legislative authority in submitting a proposition relating to different open spaces, park, recreation and community facilities declare that such proposition has for its object the furtherance, accomplishment or preservation of an open space, park, recreation and community facilities system available to, and for the benefit of, all the residents of such county and constitutes a single purpose, such declaration shall be presumed to be correct and upon the issuance of the bonds the presumption shall become conclusive.

The question of the issuance of bonds for any undertaking which relates to a number of different public health and safety facilities, whether situated wholly or partly within the limits of any city or town within the county, and whether such bonds are intended to supply the whole expenditure or to participate therein may be submitted to the voters as a single proposition. If the county legislative authority in submitting a proposition relating to different public health and safety facilities declare that such proposition has for its object the furtherance or accomplishment of a system of public health and safety facilities for the benefit of all the residents of such county and constitutes a single purpose, such declaration shall be presumed to be correct and upon the issuance of the bonds the presumption shall become conclusive.

The question of the issuance of bonds for any undertaking which relates to a number of different storm water control facilities, whether situated wholly or partly within the limits of any city or town within the county, and whether such bonds are intended to supply the whole expenditure or to participate therein may be submitted to the voters as a single proposition. If the county legislative authority in submitting a proposition relating to different storm water control facilities declares that such proposition has for its object the furtherance, accomplishment or preservation of a storm water control facilities system for the benefit of all the residents of such county and constitutes a single purpose, such declaration shall be presumed to be correct and upon the issuance of the bonds the presumption shall become conclusive.

Elections shall be held as provided in RCW 39.36.050. [1984 c 186 § 34; 1983 c 167 § 99; 1970 ex.s. c 30 § 4; 1967 c 109 § 4.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Additional notes found at www.leg.wa.gov

36.89.042 Issuance of general obligation bonds—Payment from revenue—Additional method. In issuing general obligation bonds at any time after February 20, 1970 for the purpose of providing all or part of the cost and expense of planning and design, establishing, acquiring, developing, constructing or improving the county capital pur-

(2014 Ed.)

poses authorized by this chapter and RCW 86.12.020, the board of county commissioners may provide that such bonds also be made payable from any otherwise unpledged revenue which may be derived from the ownership or operation of any such properties or facilities. [1970 ex.s. c 30 § 6.]

36.89.050 Participation by other governmental agencies. A county may finance, acquire, construct, develop, improve, maintain and operate any open space, park, recreation and community facilities, public health and safety facilities, storm water control facilities and highways authorized by this chapter either solely or in conjunction with one or more governmental agencies. Any governmental agency is authorized to participate in such financing, acquisition, construction, development, improvement, use, maintenance and operation and to convey, dedicate or lease any lands, properties or facilities to any county for the purposes provided in this chapter and RCW 86.12.020, on such terms as may be fixed by agreement between the respective governing commissions or legislative bodies without submitting the matter to a vote of the electors unless the provisions of general law applicable to the incurring of public indebtedness shall require such submission.

No county shall proceed under the authority of this chapter to construct or improve any storm water control facility or highway or part thereof lying within the limits of a city or town except with the prior consent of such city or town. By agreement between their respective legislative bodies, cities, towns and counties may provide that upon completion of any storm water control facility or highway or portion thereof constructed pursuant to this chapter within any city or town, the city or town shall accept the same for maintenance and operation and that such storm water control facility or highway or portion thereof shall thereupon become a part of the respective storm water control facility or highway system of the city or town.

A county may transfer to any other governmental agency the ownership, operation and maintenance of any open space, park, recreation and community facility acquired by the county pursuant to this chapter, which lies wholly or partly within such governmental agency, pursuant to an agreement entered into between the legislative bodies of the county and such governmental agency: PROVIDED, That such transfer shall be subject to the condition that either such facility shall continue to be used for the same purposes or that other equivalent facilities within the county shall be conveyed to the county in exchange therefor. [1970 ex.s. c 30 § 5; 1967 c 109 § 5.]

36.89.060 Powers and authority are supplemental. The powers and authority conferred upon governmental agencies under the provisions of this chapter, shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other powers or authority of such governmental agencies. [1967 c 109 § 6.]

36.89.062 Power and authority of counties are supplemental. The power and authority conferred upon counties by this chapter and RCW 86.12.020 shall be in addition and supplemental to those already granted and shall not limit any

other powers or authority of such counties. [1970 ex.s. c 30 § 13.]

36.89.065 Lien for delinquent charges. The county shall have a lien for delinquent charges, including interest, penalties, and costs of foreclosure thereon, against any property against which they were levied for the purposes authorized by this chapter, which lien shall be superior to all other liens and encumbrances except general taxes and local and special assessments. Such lien shall be effective upon the charges becoming delinquent and shall be enforced and foreclosed in the same manner as provided for sewerage liens of cities and towns by RCW 35.67.200 through 35.67.290. However, a county may, by resolution or ordinance, adopt all or any part of the alternative interest rate, lien, and foreclosure procedures as set forth in RCW 36.89.092 through 36.89.094 or 36.94.150, or chapters 84.56, 84.60, and 84.64 RCW. [2007 c 295 § 4; 1991 c 36 § 1; 1987 c 241 § 1; 1970 ex.s. c 30 § 8. Formerly RCW 36.89.090.]

36.89.080 Storm water control facilities—Rates and charges—Limitations—Use. (1) Subject to subsections (2) and (3) of this section, any county legislative authority may provide by resolution for revenues by fixing rates and charges for the furnishing of service to those served or receiving benefits or to be served or to receive benefits from any storm water control facility or contributing to an increase of surface water runoff. In fixing rates and charges, the county legislative authority may in its discretion consider:

- (a) Services furnished or to be furnished;
- (b) Benefits received or to be received;
- (c) The character and use of land or its water runoff characteristics;
- (d) The nonprofit public benefit status, as defined in RCW 24.03.490, of the land user;
- (e) Income level of persons served or provided benefits under this chapter, including senior citizens and disabled persons; or
- (f) Any other matters which present a reasonable difference as a ground for distinction.

(2) The rate a county may charge under this section for storm water control facilities shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(3) Rates and charges authorized under this section may not be imposed on lands taxed as forest land under chapter 84.33 RCW or as timber land under chapter 84.34 RCW.

(4) The service charges and rates collected shall be deposited in a special fund or funds in the county treasury to be used only for the purpose of paying all or any part of the cost and expense of maintaining and operating storm water control facilities, all or any part of the cost and expense of planning, designing, establishing, acquiring, developing, constructing and improving any of such facilities, or to pay or secure the payment of all or any portion of any issue of general obligation or revenue bonds issued for such purpose.

[2003 c 394 § 3; 1998 c 74 § 1; 1995 c 124 § 1; 1970 ex.s. c 30 § 7.]

Sewerage, water, and drainage systems: Chapter 36.94 RCW.

36.89.085 Storm water control facilities—Public property subject to rates and charges. Except as otherwise provided in RCW 90.03.525, any public entity and public property, including the state of Washington and state property, shall be subject to rates and charges for storm water control facilities to the same extent private persons and private property are subject to such rates and charges that are imposed by counties pursuant to RCW 36.89.080. In setting these rates and charges, consideration may be made of in-kind services, such as stream improvements or donation of property. [1986 c 278 § 57; 1983 c 315 § 3.]

Flood control zone districts—Storm water control improvements: Chapter 86.15 RCW.

Rates and charges for storm water control facilities—Limitations—Definitions: RCW 90.03.500 through 90.03.525. See also RCW 35.67.025, 35.92.021, and 36.94.145.

Additional notes found at www.leg.wa.gov

36.89.092 Storm water control facilities—Alternative interest rate on delinquent charges. Any county may provide, by resolution or ordinance, that delinquent storm water service charges bear interest at a rate of twelve percent per annum, computed on a monthly basis, in lieu of the interest rate provided for in RCW 35.67.200. [1987 c 241 § 2.]

36.89.093 Storm water control facilities—Alternative procedures for lien on delinquent charges. Any county may, by resolution or ordinance, provide that the storm water service charge lien shall be effective for a total not to exceed one year's delinquent service charges without the necessity of any writing or recording of the lien with the county auditor, in lieu of the provisions provided for in RCW 35.67.210. [1987 c 241 § 3.]

36.89.094 Storm water control facilities—Alternative foreclosure procedures on lien on delinquent charges. Any county may, by resolution or ordinance, provide that an action to foreclose a storm water service charge lien may be commenced after three years from the date storm water service charges become delinquent, in lieu of the provisions provided for in RCW 35.67.230. [1987 c 241 § 4.]

36.89.100 Storm water control facilities—Revenue bonds. (1) Any county legislative authority may authorize the issuance of revenue bonds to finance any storm water control facility. Such bonds may be issued by the county legislative authority in the same manner as prescribed in RCW 36.67.510 through 36.67.570. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

Each revenue bond shall state on its face that it is payable from a special fund, naming such fund and the resolution creating the fund.

Revenue bond principal, interest, and all other related necessary expenses shall be payable only out of the appropriate special fund or funds. Revenue bonds shall be payable from the revenues of the storm water control facility being

financed by the bonds, a system of these facilities and, if so provided, from special assessments, installments thereof, and interest and penalties thereon, levied in one or more utility local improvement districts authorized by *this 1981 act.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 100; 1981 c 313 § 20; 1970 ex.s. c 30 § 9.]

***Reviser's note:** For codification of "this 1981 act" [1981 c 313], see Codification Tables.

Additional notes found at www.leg.wa.gov

36.89.110 Storm water control facilities—Utility local improvement districts—Assessments. A county may create utility local improvement districts for the purpose of levying and collecting special assessments on property specially benefited by one or more storm water control facilities. The provisions of RCW 36.94.220 through 36.94.300 concerning the formation of utility local improvement districts and the fixing, levying, collecting and enforcing of special assessments apply to utility local improvement districts authorized by this section. [1981 c 313 § 21.]

Additional notes found at www.leg.wa.gov

36.89.120 Storm water control facilities—Annexation, incorporation of area by city or town—Imposition of rates and charges by county. Whenever a city or town annexes an area, or a city or town incorporates an area, and the county has issued revenue bonds or general obligation bonds to finance storm water control facilities that are payable in whole or in part from rates or charges imposed in the area, the county shall continue imposing all portions of the rates or charges that are allocated to payment of the debt service on bonds in that area after the effective date of the annexation or official date of the incorporation until: (1) The debt is retired; (2) any debt that is issued to refinance the underlying debt is retired; or (3) the city or town reimburses the county amount that is sufficient to retire that portion of the debt borne by the annexed or incorporated area. The county shall construct all facilities included in the storm water plan intended to be financed by the proceeds of such bonds. If the county provides storm water management services to the city or town by contract, the contract shall consider the value of payments made by property owners to the county for the payment of debt service.

The provisions of this section apply whether or not the bonds finance facilities that are geographically located within the area that is annexed or incorporated. [1993 c 361 § 1.]

36.89.130 Cooperative watershed management. In addition to the authority provided in RCW 36.89.030, a county may, as part of maintaining a system of storm water control facilities, participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 10.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

(2014 Ed.)

36.89.900 Effective date—1967 c 109. This chapter shall take effect on June 9, 1967. [1967 c 109 § 9.]

36.89.910 Severability—1967 c 109. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 c 109 § 7.]

36.89.911 Severability—1970 ex.s. c 30. If any provision of this 1970 amendatory act or its application to any person or circumstance is held invalid, the remainder of this 1970 amendatory act or the application of the provision to other persons or circumstances shall not be affected. [1970 ex.s. c 30 § 12.]

Chapter 36.90 RCW SOUTHWEST WASHINGTON FAIR

Sections

36.90.010	Control of property.
36.90.020	Fair commission abolished—Rights, duties, and obligations devolved upon Lewis county commissioners—Property vested in Lewis county.
36.90.030	Administration of fair—Appointment of designee or commission—Organization of commission—Funds.
36.90.040	Fair deemed county and district fair and agricultural fair.
36.90.050	Acquisition, improvement, control of property.
36.90.070	Conveyance of property to Lewis county for fair purposes.

36.90.010 Control of property. The property of the Southwest Washington Fair Association including the buildings and structures thereon, as constructed or as may be built or constructed from time to time, or any alterations or additions thereto, shall be under the jurisdiction of Lewis county. That property will be under the management and control of the board of county commissioners of Lewis county or that board's designee. [1998 c 107 § 1; 1973 1st ex.s. c 97 § 1; 1963 c 4 § 36.90.010. Prior: 1913 c 47 § 2; RRS § 2746.]

Additional notes found at www.leg.wa.gov

36.90.020 Fair commission abolished—Rights, duties, and obligations devolved upon Lewis county commissioners—Property vested in Lewis county. The southwest Washington fair commission heretofore established and authorized under the provisions of this chapter is abolished and all rights, duties and obligations of such commission is devolved upon the board of county commissioners of Lewis county and title to or all interest in real estate, choses in action and all other assets, including but not limited to assignable contracts, cash, deposits in county funds (including any interest or premiums thereon), equipment, buildings, facilities, and appurtenances thereto held as of the date of passage of this 1973 amendatory act by or for the commission shall, on *the effective date of this 1973 amendatory act vest in Lewis county. [1973 1st ex.s. c 97 § 2; 1963 c 4 § 36.90.020. Prior: 1959 c 34 § 1; 1913 c 47 § 3; RRS § 2747; prior: 1909 c 237 § 4.]

***Reviser's note:** "the effective date of this 1973 amendatory act" [1973 1st ex.s. c 97] was July 16, 1973.

Additional notes found at www.leg.wa.gov

36.90.030 Administration of fair—Appointment of designee or commission—Organization of commission—

Funds. The board of county commissioners in the county of Lewis as administrators of all property relating to the southwest Washington fair may elect to appoint either (1) a designee, whose operation and funds the board may control and oversee, to carry out the board's duties and obligations as set forth in RCW 36.90.020, or (2) a commission of citizens to advise and assist in carrying out such fair. The chair of the board of county commissioners of Lewis county may elect to serve as chair of any such commission. Such commission may elect a president and secretary and define their duties and fix their compensation, and provide for the keeping of its records. The commission may also designate the treasurer of Lewis county as fair treasurer. The funds relating to fair activities shall be kept separate and apart from the funds of Lewis county, but shall be deposited in the regular depositories of Lewis county and all interest earned thereby shall be added to and become a part of the funds. Fair funds shall be audited as are other county funds. [2009 c 549 § 4149; 1998 c 107 § 2; 1973 1st ex.s. c 97 § 3; 1963 c 4 § 36.90.030. Prior: 1913 c 47 § 4; RRS § 2748.]

Additional notes found at www.leg.wa.gov

36.90.040 Fair deemed county and district fair and agricultural fair. The southwest Washington fair shall be deemed a county and district fair for the purposes of chapter 15.76 RCW as well as an agricultural fair for the purpose of receiving allocations of funds under RCW 15.76.140 through 15.76.165. [1973 1st ex.s. c 97 § 4; 1963 c 4 § 36.90.040. Prior: 1913 c 47 § 5; RRS § 2749.]

Additional notes found at www.leg.wa.gov

36.90.050 Acquisition, improvement, control of property. The Lewis county board of county commissioners may acquire by gift, exchange, devise, lease, or purchase, real property for southwest Washington fair purposes and may construct and maintain temporary or permanent improvements suitable and necessary for the purpose of holding and maintaining the southwest Washington fair. Any such property deemed surplus by the board may be (1) sold at private sale after notice in a local publication of general circulation, or (2) exchanged for other property after notice in a local publication of general circulation, under Lewis county property management regulations. [1998 c 107 § 3; 1973 1st ex.s. c 97 § 5; 1963 c 4 § 36.90.050. Prior: 1959 c 34 § 2.]

Additional notes found at www.leg.wa.gov

36.90.070 Conveyance of property to Lewis county for fair purposes. Upon payment to the state of Washington by Lewis county of the sum of one dollar, which sum shall be deposited in the general fund when received by the treasurer of the state of Washington, such treasurer is authorized and directed to certify to the governor and secretary of state that such payment has been made on the following described property presently utilized for southwest Washington fair purposes situated in Lewis county, Washington: "Beginning at the intersection of the south line of section Seventeen (17) Township Fourteen (14) North of Range Two (2) West of W.M. with the West right-of-way line of the Somerville consent Road, and running thence North 15 degrees 20 feet East along the West line of said Road, Eleven Hundred Forty-four (1144) feet, thence North 2 degrees 33 feet West along the

said west line Seventy-four and four-tenths (74.4) feet, thence west on a line parallel with the said south line of said Section Seventeen (17) Eleven Hundred Sixty-seven and two tenths (1167.2) feet to within one hundred fifty (150) feet to the Center line of the Northern Pacific Railroad, thence south 16 degrees 20 feet West on a line parallel with and one hundred fifty (150) feet distant Easterly from the Center line of the Northern Pacific Railroad Eleven Hundred and Thirty-five and seven-tenths (1135.7) feet, thence East on a line parallel with and Eighty-seven and three-tenths (87.3) feet north of the south line of said section seventeen (17) eight hundred fifty-seven (857) feet, thence south 74 degrees 40 feet East three hundred thirty (330) feet to the point of beginning, containing thirty (30) acres in Section Seventeen (17) Township Fourteen (14) North of Range Two (2) West of W.M." and the governor is thereby authorized and directed forthwith to execute and the secretary of state is authorized and directed to attest to a deed conveying said lands to Lewis county, Washington. The office of the attorney general and the commissioner of public lands shall offer any necessary assistance in carrying out such conveyance. [1973 1st ex.s. c 97 § 6.]

Additional notes found at www.leg.wa.gov

Chapter 36.92 RCW

COUNTY CENTRAL SERVICES DEPARTMENT

Sections

36.92.010	Purpose.
36.92.020	Definitions.
36.92.030	County central services department—Created—Supervisor.
36.92.040	Central services fund.
36.92.050	Comprehensive data processing use plan—Utilization of equipment.
36.92.060	Appointment of assistants.
36.92.070	Charges for services—Duties of county treasurer.
36.92.080	Services limited to department.
36.92.900	Severability—1967 ex.s. c 103.

36.92.010 Purpose. The purpose of this chapter is to provide county officials of each county with a modern approach to the common problems encountered by said officers in accounting, recordkeeping, and problem solving, thereby effectuating economies in county government.

It is further the intent of this chapter that the constitutional autonomy of the various county officers be preserved while providing such officials with a centralized department to perform ministerial functions for them on the most modern and efficient machines available. [1967 ex.s. c 103 § 2.]

36.92.020 Definitions. As used in this chapter, the following words shall have the meanings ascribed herein:

(1) "Services department" shall mean the county central services department, established in accordance with the provisions of this chapter.

(2) "Board" shall mean the board of county commissioners.

(3) "Automatic data processing" or "ADP" shall mean that method of processing information using mechanical or electronic machines, guided by predetermined instructions to produce information in usable form, and shall include but not be limited to electronic accounting machines, electronic data processing machines, and computers.

(4) "Electronic accounting machines" or "EAM" shall mean that method of ADP utilizing punch cards or unit record equipment.

(5) "Electronic data processing" or "EDP" shall include that system which comprises a combination of equipment or units to provide input of source data, storage and processing of data and output in predetermined form, including a central processing unit (CPU) or main frame.

(6) "Computer" shall mean any device that is capable of solving problems and supplying results by accepting data and performing prescribed operations. It shall include analog or digital, general purpose or special purpose computers.

(7) "Copy" or "micro-copy" shall mean photographic, photostatic, photomechanical or other copy process.

It is the intent of this chapter that the definitions contained in subsections (3) through (7) of this section shall be construed in the broadest possible interpretation in order that new and modern equipment and methods as they become available shall be included therein. [1967 ex.s. c 103 § 3.]

36.92.030 County central services department—Created—Supervisor. By resolution, the board of county commissioners may create a county central services department which shall be organized and function as any other department of the county. When a board creates a central services department, it shall also provide for the appointment of a supervisor to be the administrative head of such department, subject to the supervision and control of the board, and to serve at the pleasure of the board. The supervisor shall receive such salary as may be prescribed by the board. In addition, the supervisor shall be reimbursed for traveling and other actual and necessary expenses incurred by him or her in the performance of his or her official duties. [2009 c 549 § 4150; 1967 ex.s. c 103 § 4.]

36.92.040 Central services fund. When a central services department is created, the board shall establish a central services fund for the payment of all costs of conducting those services for which such department was organized and annually budget therefor. It may make transfers into the central services fund from the current expense fund and receive funds for such purposes from other departments and recipients of such services. [1967 ex.s. c 103 § 5.]

36.92.050 Comprehensive data processing use plan—Utilization of equipment. Services departments created pursuant to this chapter shall initially draw a comprehensive data processing use plan. It shall establish levels of service to be performed by the department and shall establish levels of service required by using agencies. Before proceeding with purchase, lease or acquisition of the data processing equipment, the comprehensive data processing use plan shall be adopted by the board.

When established by the board, the services department may perform the service functions relating to accounting, recordkeeping, and micro-copy by the utilization of automatic data processing and micro-copy equipment.

In relation to said equipment the services department shall perform any ministerial services authorized by the board and requested by the various officers and departments of the county. In this connection, it is the intent of this chapter

that the services department be authorized to utilize such equipment to the highest degree consistent with the purposes of this chapter and not inconsistent with constitutional powers and duties of such officers.

The services department is also authorized to utilize such equipment for the purpose of problem solving when such problem solving is of a ministerial rather than a discretionary nature. [1967 ex.s. c 103 § 6.]

36.92.060 Appointment of assistants. The supervisor shall have the authority to appoint, subject to the approval of the board, such clerical and other assistants as may be required and authorized for the proper discharge of the functions of the services department. [1967 ex.s. c 103 § 7.]

36.92.070 Charges for services—Duties of county treasurer. The board of county commissioners shall fix the terms and charges for services rendered by the central services department pursuant to this chapter, which amounts shall be credited as income to the appropriate account within the central services fund and charged on a monthly basis against the account of the recipient for whom such services were performed. Moneys derived from the activities of the central services department shall be disbursed from the central services fund by the county treasurer by warrants on vouchers duly authorized by the board. [1967 ex.s. c 103 § 8.]

36.92.080 Services limited to department. When a board of county commissioners creates a central services department pursuant to RCW 36.92.030, the ministerial services to be performed by such department in connection with automatic data processing shall not thereafter be performed by any other officer or employee of said county. [1967 ex.s. c 103 § 9.]

36.92.900 Severability—1967 ex.s. c 103. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 ex.s. c 103 § 10.]

Chapter 36.93 RCW

LOCAL GOVERNMENTAL ORGANIZATION— BOUNDARIES—REVIEW BOARDS

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36.93.010 Purpose. The legislature finds that in metropolitan areas of this state, experiencing heavy population growth, increased problems arise from rapid proliferation of municipalities and haphazard extension of and competition to extend municipal boundaries. These problems affect adversely the quality and quantity and cost of municipal services furnished, the financial integrity of certain municipalities, the consistency of local regulations, and many other incidents of local government. Further, the competition among municipalities for unincorporated territory and the disorganizing effect thereof on land use, the preservation of property values and the desired objective of a consistent comprehensive land use plan for populated areas, makes it appropriate that the legislature provide a method of guiding and controlling the creation and growth of municipalities in metropolitan areas so that such problems may be avoided and that residents and businesses in those areas may rely on the logical growth of local government affecting them. [1967 c 189 § 1.]

36.93.020 Definitions. As used herein:

(1) "Governmental unit" means any incorporated city or town, metropolitan municipal corporation, or any special purpose district as defined in this section.

(2) "Special purpose district" means any water-sewer district, fire protection district, drainage improvement district, drainage and diking improvement district, flood control zone district, irrigation district, metropolitan park district, drainage district, or public utility district engaged in water distribution.

(3) "Board" means a boundary review board created by or pursuant to this chapter. [1999 c 153 § 44; 1979 ex.s. c 30 § 5; 1967 c 189 § 2.]

Additional notes found at www.leg.wa.gov

36.93.030 Creation of boundary review boards in counties with populations of two hundred ten thousand or

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more—Creation in other counties. (1) There is hereby created and established in each county with a population of two hundred ten thousand or more a board to be known and designated as a "boundary review board".

(2) A boundary review board may be created and established in any other county in the following manner:

(a) The county legislative authority may, by majority vote, adopt a resolution establishing a boundary review board; or

(b) A petition seeking establishment of a boundary review board signed by qualified electors residing in the county equal in number to at least five percent of the votes cast in the county at the last county general election may be filed with the county auditor.

Upon the filing of such a petition, the county auditor shall examine the same and certify to the sufficiency of the signatures thereon. No person may withdraw his or her name from a petition after it has been filed with the auditor. Within thirty days after the filing of such petition, the county auditor shall transmit the same to the county legislative authority, together with his or her certificate of sufficiency.

After receipt of a valid petition for the establishment of a boundary review board, the county legislative authority shall submit the question of whether a boundary review board should be established to the electorate at the next primary or general election according to RCW 29A.04.321. Notice of the election shall be given as provided in RCW 29A.52.355 and shall include a clear statement of the proposal to be submitted.

If a majority of the persons voting on the proposition shall vote in favor of the establishment of the boundary review board, such board shall thereupon be deemed established. [2011 c 10 § 80; 2006 c 344 § 28; 1991 c 363 § 91; 1969 ex.s. c 111 § 1; 1967 c 189 § 3.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.93.040 Dates upon which boards in counties with populations of less than two hundred ten thousand deemed established. For the purposes of this chapter, each county with a population of less than two hundred ten thousand shall be deemed to have established a boundary review board on and after the date a proposition for establishing the same has been approved at an election as provided for in RCW 36.93.030, or on and after the date of adoption of a resolution of the county legislative authority establishing the same as provided for in RCW 36.93.030. [1991 c 363 § 92; 1967 c 189 § 4.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.93.051 Appointment of board—Members—Terms—Qualifications. The boundary review board in each county with a population of one million or more shall consist of eleven members chosen as follows:

(1) Four persons shall be appointed by the county appointing authority;

(2) Four persons shall be appointed by the mayors of the cities and towns located within the county; and

(3) Three persons shall be appointed by the board from nominees of special districts in the county.

The governor shall designate one initial appointee to serve a term of two years, and two initial appointees to serve terms of four years, if the appointments are made in an odd-numbered year, or one initial appointee to serve a term of one year, and two initial appointees to serve terms of three years, if the appointments are made in an even-numbered year, with the length of the term being calculated from the first day of February in the year the appointment was made.

The county appointing authority shall designate one of its initial appointees to serve a term of two years, and two of its initial appointees to serve terms of four years, if the appointments are made in an odd-numbered year, or one of its initial appointees to serve a term of one year, and two of its initial appointees to serve terms of three years, if the appointments are made in an even-numbered year, with the length of the term being calculated from the first day of February in the year the appointment was made.

The mayors making the initial city and town appointments shall designate two of their initial appointees to serve terms of two years, and one of their initial appointees to serve a term of four years, if the appointments are made in an odd-numbered year, or two of their initial appointees to serve terms of one year, and one of their initial appointees to serve a term of three years, if the appointments are made in an even-numbered year, with the length of the term being calculated from the first day of February in the year the appointment was made.

The board shall make two initial appointments from the nominees of special districts, with one appointee serving a term of four years and one initial appointee serving a term of two years, if the appointments are made in an odd-numbered year, or one initial appointee serving a term of three years and one initial appointee serving a term of one year if the appointments are made in an even-numbered year, with the length of the term being calculated from the first day of March in the year in which the appointment is made.

After the initial appointments, all appointees shall serve four-year terms.

No appointee may be an official or employee of the county or a governmental unit in the county, or a consultant or advisor on a contractual or regular retained basis of the county, any governmental unit in the county, or any agency or association thereof. [2011 1st sp.s. c 21 § 23; 1991 c 363 § 93; 1989 c 84 § 17.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.93.061 Boards in counties with populations of less than one million—Members—Terms—Qualifications. The boundary review board in each county with a population of less than one million shall consist of five members chosen as follows:

(1) Two persons shall be appointed by the governor;

(2) One person shall be appointed by the county appointing authority;

(2014 Ed.)

(3) One person shall be appointed by the mayors of the cities and towns located within the county; and

(4) One person shall be appointed by the board from nominees of special districts in the county.

The governor shall designate one initial appointee to serve a term of two years, and one initial appointee to serve a term of four years, if the appointments are made in an odd-numbered year, or one initial appointee to serve a term of one year, and one initial appointee to serve a term of three years, if the appointments are made in an even-numbered year, with the length of a term being calculated from the first day of February in the year that the appointment was made.

The initial appointee of the county appointing authority shall serve a term of two years, if the appointment is made in an odd-numbered year, or a term of one year, if the appointment is made in an even-numbered year. The initial appointee by the mayors shall serve a term of four years, if the appointment is made in an odd-numbered year, or a term of three years, if the appointment is made in an even-numbered year. The length of the term shall be calculated from the first day in February in the year the appointment was made.

The board shall make one initial appointment from the nominees of special districts to serve a term of two years if the appointment is made in an odd-numbered year, or a term of one year if the appointment is made in an even-numbered year, with the length of the term being calculated from the first day of March in the year in which the appointment is made.

After the initial appointments, all appointees shall serve four-year terms.

No appointee may be an official or employee of the county or a governmental unit in the county, or a consultant or advisor on a contractual or regular retained basis of the county, any governmental unit in the county, or any agency or association thereof. [1991 c 363 § 94; 1989 c 84 § 18.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.93.063 Selection of board members—Procedure—Commencement of term—Vacancies. The executive of the county shall make the appointments under RCW 36.93.051 and 36.93.061 for the county, if one exists, or otherwise the county legislative authority shall make the appointments for the county.

The mayors of all cities and towns in the county shall meet on or before the last day of January in each odd-numbered year to make such appointments for terms to commence on the first day of February in that year. The date of the meeting shall be called by the mayor of the largest city or town in the county, and the mayor of the largest city or town in the county who attends the meeting shall preside over the meeting. Selection of each appointee shall be by simple majority vote of those mayors who attend the meeting.

Any special district in the county may nominate a person to be appointed to the board on or before the last day of January in each odd-numbered year that the term for this position expires. The board shall make its appointment of a nominee or nominees from the special districts during the month of February following the date by which such nominations are required to be made.

The county appointing authority and the mayors of cities and towns within the county shall make their initial appointments for newly created boards within sixty days of the creation of the board or shall make sufficient additional appointments to increase a five-member board to an eleven-member board within sixty days of the date the county obtains a population of one million or more. The board shall make its initial appointment or appointments of board members from the nominees of special districts located within the county within ninety days of the creation of the board or shall make an additional appointment of a board member from the nominees of special districts located within the county within ninety days of the date the county obtains a population of one million or more.

The term of office for all appointees other than the appointee from the special districts shall commence on the first day of February in the year in which the term is to commence. The term of office for the appointee from nominees of special districts shall commence on the first day of March in the year in which the term is to commence.

Vacancies on the board shall be filled by appointment of a person to serve the remainder of the term in the same manner that the person whose position is vacant was filled. [1991 c 363 § 95; 1989 c 84 § 19.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.93.067 Effect of failure to make appointment.

Whenever appointments under RCW 36.93.051 through *36.93.065 have not been made by the appointing authority, the size of the board shall be considered to be reduced by one member for each position that remains vacant or unappointed. [1989 c 84 § 21.]

***Reviser's note:** RCW 36.93.065 was repealed by 1999 c 124 § 1.

36.93.070 Chair, vice chair, chief clerk—Powers and duties of board and chief clerk—Meetings—Hearings—Counsel—Compensation. The members of each boundary review board shall elect from its members a chair, vice chair, and shall employ a nonmember as chief clerk, who shall be the secretary of the board. The board shall determine its own rules and order of business and shall provide by resolution for the time and manner of holding all regular or special meetings: PROVIDED, That all meetings shall be subject to chapter 42.30 RCW. The board shall keep a journal of its proceedings which shall be a public record. A majority of all the members shall constitute a quorum for the transaction of business.

The chief clerk of the board shall have the power to administer oaths and affirmations, certify to all official acts, issue subpoenas to any public officer or employee ordering him or her to testify before the board and produce public records, papers, books or documents. The chief clerk may invoke the aid of any court of competent jurisdiction to carry out such powers.

The board by rule may provide for hearings by panels of members consisting of not less than five board members, the number of hearing panels and members thereof, and for the impartial selection of panel members. A majority of a panel shall constitute a quorum thereof.

At the request of the board, the state attorney general, or at the board's option, the county prosecuting attorney, shall provide counsel for the board.

The planning departments of the county, other counties, and any city, and any state or regional planning agency shall furnish such information to the board at its request as may be reasonably necessary for the performance of its duties.

Each member of the board shall be compensated from the county current expense fund at the rate of fifty dollars per day, or a major portion thereof, for time actually devoted to the work of the boundary review board. Each board of county commissioners shall provide such funds as shall be necessary to pay the salaries of the members and staff, and such other expenses as shall be reasonably necessary. [2009 c 549 § 4151; 1997 c 77 § 1; 1987 c 477 § 1; 1967 c 189 § 7.]

36.93.080 Expenditures—Remittance of costs to counties. Expenditures by the board shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties. The *department of community, trade, and economic development shall on a quarterly basis remit to each county one-half of the actual costs incurred by the county for the operation of the boundary review board within individual counties as provided for in this chapter. However, in the event no funds are appropriated to the said agency for this purpose, this shall not in any way affect the operation of the boundary review board. [1995 c 399 § 44; 1985 c 6 § 7; 1969 ex.s. c 111 § 4; 1967 c 189 § 8.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

36.93.090 Filing notice of proposed actions with board. Whenever any of the following described actions are proposed in a county in which a board has been established, the initiators of the action shall file within one hundred eighty days a notice of intention with the board: PROVIDED, That when the initiator is the legislative body of a governmental unit, the notice of intention may be filed immediately following the body's first acceptance or approval of the action. The board may review any such proposed actions pertaining to:

(1) The: (a) Creation, incorporation, or change in the boundary, other than a consolidation, of any city, town, or special purpose district; (b) consolidation of special purpose districts, but not including consolidation of cities and towns; or (c) dissolution or disincorporation of any city, town, or special purpose district, except that a board may not review the dissolution or disincorporation of a special purpose district which was dissolved or disincorporated pursuant to the provisions of chapter 36.96 RCW: PROVIDED, That the change in the boundary of a city or town arising from the annexation of contiguous city or town owned property held for a public purpose shall be exempted from the requirements of this section; or

(2) The assumption by any city or town of all or part of the assets, facilities, or indebtedness of a special purpose district which lies partially within such city or town; or

(3) The establishment of or change in the boundaries of a mutual water and sewer system or separate sewer system by a water-sewer district pursuant to RCW 57.08.065 or *chapter 57.40 RCW; or

(4) The extension of permanent water or sewer service outside of its existing service area by a city, town, or special purpose district. The service area of a city, town, or special purpose district shall include all of the area within its corporate boundaries plus, (a) for extensions of water service, the area outside of the corporate boundaries which it is designated to serve pursuant to a coordinated water system plan approved in accordance with RCW 70.116.050; and (b) for extensions of sewer service, the area outside of the corporate boundaries which it is designated to serve pursuant to a comprehensive sewerage plan approved in accordance with chapter 36.94 RCW and RCW 90.48.110. [1996 c 230 § 1608; 1995 c 131 § 1; 1987 c 477 § 2; 1985 c 281 § 28; 1982 c 10 § 7. Prior: 1981 c 332 § 9; 1981 c 45 § 2; 1979 ex.s. c 5 § 12; 1971 ex.s. c 127 § 1; 1969 ex.s. c 111 § 5; 1967 c 189 § 9.]

***Reviser's note:** Chapter 57.40 RCW was repealed and/or decodified in its entirety.

Consolidation of cities and towns—Role of boundary review board: RCW 35.10.450.

Additional notes found at www.leg.wa.gov

36.93.093 Copy of notice of intention by water-sewer district to be sent officials. Whenever a water-sewer district files with the board a notice of intention as required by RCW 36.93.090, the board shall send a copy of such notice of intention to the legislative authority of the county wherein such action is proposed to be taken and one copy to the state department of ecology. [1999 c 153 § 45; 1971 ex.s. c 127 § 2.]

Additional notes found at www.leg.wa.gov

36.93.100 Review of proposed actions by board—Procedure. The board shall review and approve, disapprove, or modify any of the actions set forth in RCW 36.93.090 when any of the following shall occur within forty-five days of the filing of a notice of intention:

(1) Three members of a five-member boundary review board or five members of a boundary review board in a county with a population of one million or more files a request for review: PROVIDED, That the members of the boundary review board shall not be authorized to file a request for review of the following actions:

(a) The incorporation of any special district or change in the boundary of any city, town, or special purpose district;

(b) The extension of permanent water service outside of its existing corporate boundaries by a city, town, or special purpose district if (i) the extension is through the installation of water mains of six inches or less in diameter or (ii) the county legislative authority for the county in which the proposed extension is to be built is required or chooses to plan under RCW 36.70A.040 and has by a majority vote waived the authority of the board to initiate review of all other extensions; or

(c) The extension of permanent sewer service outside of its existing corporate boundaries by a city, town, or special purpose district if (i) the extension is through the installation of sewer mains of eight inches or less in diameter or (ii) the county legislative authority for the county in which the proposed extension is to be built is required or chooses to plan under RCW 36.70A.040 and has by a majority vote waived

the authority of the board to initiate review of all other extensions;

(2) Any governmental unit affected, including the governmental unit for which the boundary change or extension of permanent water or sewer service is proposed, or the county within which the area of the proposed action is located, files a request for review of the specific action;

(3) A petition requesting review is filed and is signed by:

(a) Five percent of the registered voters residing within the area which is being considered for the proposed action (as determined by the boundary review board in its discretion subject to immediate review by writ of certiorari to the superior court); or

(b) An owner or owners of property consisting of five percent of the assessed valuation within such area;

(4) The majority of the members of boundary review boards concur with a request for review when a petition requesting the review is filed by five percent of the registered voters who deem themselves affected by the action and reside within one-quarter mile of the proposed action but not within the jurisdiction proposing the action.

If a period of forty-five days shall elapse without the board's jurisdiction having been invoked as set forth in this section, the proposed action shall be deemed approved.

If a review of a proposal is requested, the board shall make a finding as prescribed in RCW 36.93.150 within one hundred twenty days after the filing of such a request for review. If this period of one hundred twenty days shall elapse without the board making a finding as prescribed in RCW 36.93.150, the proposal shall be deemed approved unless the board and the person who submitted the proposal agree to an extension of the one hundred twenty day period. [1994 c 216 § 13; 1992 c 162 § 1; 1991 c 363 § 96; 1989 c 84 § 3; 1987 c 477 § 3; 1983 c 76 § 1; 1982 c 220 § 1; 1967 c 189 § 10.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Additional notes found at www.leg.wa.gov

36.93.105 Actions not subject to review by board. The following actions shall not be subject to potential review by a boundary review board:

(1) Annexations of territory to a water-sewer district pursuant to RCW 36.94.410 through 36.94.440;

(2) Revisions of city or town boundaries pursuant to RCW 35.21.790 or 35A.21.210;

(3) Adjustments to city or town boundaries pursuant to RCW 35.13.340; and

(4) Adjustments to city and town boundaries pursuant to RCW 35.13.300 through 35.13.330. [1999 c 153 § 46; 1989 c 84 § 4; 1984 c 147 § 5.]

Additional notes found at www.leg.wa.gov

36.93.110 When review not necessary. Where an area proposed for annexation is less than ten acres and less than two million dollars in assessed valuation, the chair of the review board may by written statement declare that review by the board is not necessary for the protection of the interest of the various parties, in which case the board shall not review such annexation. [2009 c 549 § 4152; 1987 c 477 § 4; 1973 1st ex.s. c 195 § 42; 1967 c 189 § 11.]

Additional notes found at www.leg.wa.gov

36.93.116 Simultaneous consideration of incorporation and annexation of territory. A boundary review board may simultaneously consider the proposed incorporation of a city or town, and the proposed annexation of a portion of the territory included in the proposed incorporation, if the resolution or petition initiating the annexation is adopted or filed ninety or fewer days after the petition proposing the incorporation was filed. [1994 c 216 § 9.]

Additional notes found at www.leg.wa.gov

36.93.120 Fees. A fee of fifty dollars shall be paid by all initiators and in addition if the jurisdiction of the review board is invoked pursuant to RCW 36.93.100, the person or entity seeking review, except for the boundary review board itself, shall pay to the county treasurer and place in the county current expense fund the fee of two hundred dollars. [1987 c 477 § 5; 1969 ex.s. c 111 § 6; 1967 c 189 § 12.]

36.93.130 Notice of intention—Contents. The notice of intention shall contain the following information:

- (1) The nature of the action sought;
- (2) A brief statement of the reasons for the proposed action;
- (3) The legal description of the boundaries proposed to be created, abolished or changed by such action: PROVIDED, That the legal description may be altered, with concurrence of the initiators of the proposed action, if a person designated by the county legislative authority as one who has expertise in legal descriptions makes a determination that the legal description is erroneous; and
- (4) A county assessor's map on which the boundaries proposed to be created, abolished or changed by such action are designated: PROVIDED, That at the discretion of the boundary review board a map other than the county assessor's map may be accepted. [1987 c 477 § 6; 1969 ex.s. c 111 § 7; 1967 c 189 § 13.]

36.93.140 Pending actions not affected. Actions described in RCW 36.93.090 which are pending July 1, 1967, or actions in counties with populations of less than two hundred ten thousand which are pending on the date of the creation of a boundary review board therein, shall not be affected by the provisions of this chapter. Actions shall be deemed pending on and after the filing of sufficient petitions initiating the same with the appropriate public officer, or the performance of an official act initiating the same. [1991 c 363 § 97; 1967 c 189 § 14.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.93.150 Review of proposed actions—Actions and determinations of board—Disapproval, effect. The board, upon review of any proposed action, shall take such of the following actions as it deems necessary to best carry out the intent of this chapter:

- (1) Approve the proposal as submitted.
- (2) Subject to RCW 35.02.170, modify the proposal by adjusting boundaries to add or delete territory. Subject to the requirements of this chapter, a board may modify a proposal by adding territory that would increase the total area of the proposal before the board. A board, however, may not mod-

ify a proposal for annexation of territory to a city or town by adding an amount of territory that constitutes more than one hundred percent of the total area of the proposal before the board. Any modifications shall not interfere with the authority of a city, town, or special purpose district to require or not require preannexation agreements, covenants, or petitions. A board shall not modify the proposed incorporation of a city with an estimated population of seven thousand five hundred or more by removing territory from the proposal, or adding territory to the proposal, that constitutes ten percent or more of the total area included within the proposal before the board. However, a board shall remove territory in the proposed incorporation that is located outside of an urban growth area or is annexed by a city or town, and may remove territory in the proposed incorporation if a petition or resolution proposing the annexation is filed or adopted that has priority over the proposed incorporation, before the area is established that is subject to this ten percent restriction on removing or adding territory. A board shall not modify the proposed incorporation of a city with a population of seven thousand five hundred or more to reduce the territory in such a manner as to reduce the population below seven thousand five hundred.

(3) Determine a division of assets and liabilities between two or more governmental units where relevant.

(4) Determine whether, or the extent to which, functions of a special purpose district are to be assumed by an incorporated city or town, metropolitan municipal corporation, or another existing special purpose district.

(5) Disapprove the proposal except that the board shall not have jurisdiction: (a) To disapprove the dissolution or disincorporation of a special purpose district which is not providing services but shall have jurisdiction over the determination of a division of the assets and liabilities of a dissolved or disincorporated special purpose district; (b) over the division of assets and liabilities of a special purpose district that is dissolved or disincorporated pursuant to chapter 36.96 RCW; nor (c) to disapprove the incorporation of a city with an estimated population of seven thousand five hundred or more, but the board may recommend against the proposed incorporation of a city with such an estimated population.

Unless the board disapproves a proposal, it shall be presented under the appropriate statute for approval of a public body and, if required, a vote of the people. A proposal that has been modified shall be presented under the appropriate statute for approval of a public body and if required, a vote of the people. If a proposal, other than that for a city, town, or special purpose district annexation, after modification does not contain enough signatures of persons within the modified area, as are required by law, then the initiating party, parties or governmental unit has thirty days after the modification decision to secure enough signatures to satisfy the legal requirement. If the signatures cannot be secured then the proposal may be submitted to a vote of the people, as required by law.

The addition or deletion of property by the board shall not invalidate a petition which had previously satisfied the sufficiency of signature provisions of RCW 35.13.130 or 35A.14.120. When the board, after due proceedings held, disapproves a proposed action, such proposed action shall be unavailable, the proposing agency shall be without power to

initiate the same or substantially the same as determined by the board, and any succeeding acts intended to or tending to effectuate that action shall be void, but such action may be reinitiated after a period of twelve months from date of disapproval and shall again be subject to the same consideration.

The board shall not modify or deny a proposed action unless there is evidence on the record to support a conclusion that the action is inconsistent with one or more of the objectives under RCW 36.93.180. The board may not increase the area of a city or town annexation unless it holds a separate public hearing on the proposed increase and provides ten or more days' notice of the hearing to the registered voters and property owners residing within the area subject to the proposed increase. Every such determination to modify or deny a proposed action shall be made in writing pursuant to a motion, and shall be supported by appropriate written findings and conclusions, based on the record. [2012 c 212 § 1; 1994 c 216 § 15; 1990 c 273 § 1; 1987 c 477 § 7; 1979 ex.s. c 5 § 13; 1975 1st ex.s. c 220 § 10; 1969 ex.s. c 111 § 8; 1967 c 189 § 15.]

Legislative finding, intent—1975 1st ex.s. c 220: See note following RCW 35.02.170.

Additional notes found at www.leg.wa.gov

36.93.153 Review of proposed incorporation in county with boundary review board. The proposed incorporation of any city or town that includes territory located in a county in which a boundary review board exists shall be reviewed by the boundary review board and action taken as described under RCW 36.93.150. [1994 c 216 § 10.]

Additional notes found at www.leg.wa.gov

36.93.155 Annexation approval—Other action not authorized. Boundary review board approval, or modification and approval, of a proposed annexation by a city, town, or special purpose district shall authorize annexation as approved and shall not authorize any other annexation action. [1989 c 84 § 16.]

36.93.157 Decisions to be consistent with growth management act. The decisions of a boundary review board located in a county that is required or chooses to plan under RCW 36.70A.040 must be consistent with RCW 36.70A.020, 36.70A.110, and 36.70A.210. [1992 c 162 § 2.]

36.93.160 Hearings—Notice—Record—Subpoenas—Decision of board—Appellate review. (1) When the jurisdiction of the boundary review board has been invoked, the board shall set the date, time and place for a public hearing on the proposal. The board shall give at least thirty days' advance written notice of the date, time and place of the hearing to the governing body of each governmental unit having jurisdiction within the boundaries of the territory proposed to be annexed, formed, incorporated, disincorporated, dissolved or consolidated, or within the boundaries of a special district whose assets and facilities are proposed to be assumed by a city or town, and to the governing body of each city within three miles of the exterior boundaries of the area and to the proponent of the change. Notice shall also be given by publication in any newspaper of general circulation in the area of the proposed boundary change at least three times, the last

publication of which shall be not less than five days prior to the date set for the public hearing. Notice shall also be posted in ten public places in the area affected for five days when the area is ten acres or more. When the area affected is less than ten acres, five notices shall be posted in five public places for five days. Notice as provided in this subsection shall include any territory which the board has determined to consider adding in accordance with RCW 36.93.150(2).

(2) A verbatim record shall be made of all testimony presented at the hearing and upon request and payment of the reasonable costs thereof, a copy of the transcript of the testimony shall be provided to any person or governmental unit.

(3) The chair upon majority vote of the board or a panel may direct the chief clerk of the boundary review board to issue subpoenas to any public officer to testify, and to compel the production by him or her of any records, books, documents, public records or public papers.

(4) Within forty days after the conclusion of the final hearing on the proposal, the board shall file its written decision, setting forth the reasons therefor, with the board of county commissioners and the clerk of each governmental unit directly affected. The written decision shall indicate whether the proposed change is approved, rejected or modified and, if modified, the terms of the modification. The written decision need not include specific data on every factor required to be considered by the board, but shall indicate that all standards were given consideration. Dissenting members of the board shall have the right to have their written dissents included as part of the decision.

(5) Unanimous decisions of the hearing panel or a decision of a majority of the members of the board shall constitute the decision of the board and shall not be appealable to the whole board. Any other decision shall be appealable to the entire board within ten days. Appeals shall be on the record, which shall be furnished by the appellant, but the board may, in its sole discretion, permit the introduction of additional evidence and argument. Decisions shall be final and conclusive unless within thirty days from the date of the action a governmental unit affected by the decision or any person owning real property or residing in the area affected by the decision files in the superior court a notice of appeal.

The filing of the notice of appeal within the time limit shall stay the effective date of the decision of the board until such time as the appeal shall have been adjudicated or withdrawn. On appeal the superior court shall not take any evidence other than that contained in the record of the hearing before the board.

(6) The superior court may affirm the decision of the board or remand the case for further proceedings; or it may reverse the decision if any substantial rights may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional provisions, or
- (b) In excess of the statutory authority or jurisdiction of the board, or
- (c) Made upon unlawful procedure, or
- (d) Affected by other error of law, or
- (e) Unsupported by material and substantial evidence in view of the entire record as submitted, or
- (f) Clearly erroneous.

An aggrieved party may seek appellate review of any final judgment of the superior court in the manner provided by law as in other civil cases. [2009 c 549 § 4153; 1994 c 216 § 16; 1988 c 202 § 40; 1987 c 477 § 8; 1971 c 81 § 97; 1969 ex.s. c 111 § 9; 1967 c 189 § 16.]

General corporate powers—Towns, restrictions as to area: RCW 35.21.010.

Additional notes found at www.leg.wa.gov

36.93.170 Factors to be considered by board—Incorporation proceedings exempt from state environmental policy act. In reaching a decision on a proposal or an alternative, the board shall consider the factors affecting such proposal, which shall include, but not be limited to the following:

(1) Population and territory; population density; land area and land uses; comprehensive plans and zoning, as adopted under chapter 35.63, 35A.63, or 36.70 RCW; comprehensive plans and development regulations adopted under chapter 36.70A RCW; applicable service agreements entered into under chapter 36.115 or 39.34 RCW; applicable interlocal annexation agreements between a county and its cities; per capita assessed valuation; topography, natural boundaries and drainage basins, proximity to other populated areas; the existence and preservation of prime agricultural soils and productive agricultural uses; the likelihood of significant growth in the area and in adjacent incorporated and unincorporated areas during the next ten years; location and most desirable future location of community facilities;

(2) Municipal services; need for municipal services; effect of ordinances, governmental codes, regulations and resolutions on existing uses; present cost and adequacy of governmental services and controls in area; prospects of governmental services from other sources; probable future needs for such services and controls; probable effect of proposal or alternative on cost and adequacy of services and controls in area and adjacent area; the effect on the finances, debt structure, and contractual obligations and rights of all affected governmental units; and

(3) The effect of the proposal or alternative on adjacent areas, on mutual economic and social interests, and on the local governmental structure of the county.

The provisions of chapter 43.21C RCW, State Environmental Policy, shall not apply to incorporation proceedings covered by chapter 35.02 RCW. [1997 c 429 § 39; 1989 c 84 § 5; 1986 c 234 § 33; 1982 c 220 § 2; 1979 ex.s. c 142 § 1; 1967 c 189 § 17.]

Incorporation proceedings exempt from state environmental policy act: RCW 43.21C.220.

Additional notes found at www.leg.wa.gov

36.93.180 Objectives of boundary review board. The decisions of the boundary review board shall attempt to achieve the following objectives:

- (1) Preservation of natural neighborhoods and communities;
- (2) Use of physical boundaries, including but not limited to bodies of water, highways, and land contours;
- (3) Creation and preservation of logical service areas;
- (4) Prevention of abnormally irregular boundaries;

(5) Discouragement of multiple incorporations of small cities and encouragement of incorporation of cities in excess of ten thousand population in heavily populated urban areas;

(6) Dissolution of inactive special purpose districts;

(7) Adjustment of impractical boundaries;

(8) Incorporation as cities or towns or annexation to cities or towns of unincorporated areas which are urban in character; and

(9) Protection of agricultural and rural lands which are designated for long term productive agricultural and resource use by a comprehensive plan adopted by the county legislative authority. [1989 c 84 § 6; 1981 c 332 § 10; 1979 ex.s. c 142 § 2; 1967 c 189 § 18.]

Additional notes found at www.leg.wa.gov

36.93.185 Objectives of boundary review board—Water-sewer district annexations, mergers—Territory not adjacent to district. The proposal by a water-sewer district to annex territory that is not adjacent to the district shall not be deemed to be violative of the objectives of a boundary review board solely due to the fact that the territory is not adjacent to the water-sewer district. The proposed consolidation or merger of two or more water-sewer districts that are not adjacent to each other shall not be deemed to be violative of the objectives of a boundary review board solely due to the fact that the districts are not adjacent. [1999 c 153 § 47; 1989 c 308 § 13.]

Additional notes found at www.leg.wa.gov

36.93.190 Decision of board not to affect existing franchises, permits, codes, ordinances, etc., for ten years. For a period of ten years from the date of the final decision, no proceeding, approval, action, or decision on a proposal or an alternative shall be deemed to cancel any franchise or permit theretofore granted by the authorities governing the territory to be annexed, nor shall it be deemed to supersede the application as to any territory to be annexed, of such construction codes and ordinances (including but not limited to fire, electrical, and plumbing codes and ordinances) as shall have been adopted by the authorities governing the territory to be annexed and in force at the time of the decision. [1967 c 189 § 19.]

36.93.200 Rules and regulations—Adoption procedure. Each review board shall adopt rules governing the formal and informal procedures prescribed or authorized by this chapter. Such rules may state the qualifications of persons for practice before the board. Such rules shall also include rules of practice before the board, together with forms and instructions.

To assist interested persons dealing with it, each board shall so far as deemed practicable supplement its rules with descriptive statements of its procedures.

Prior to the adoption of any rule authorized by law, or the amendment or repeal thereof, the board shall file notice thereof with the clerk of the court of the county in which the board is located. So far as practicable, the board shall also publish or otherwise circulate notice of its intended action and afford interested persons opportunity to submit data or views either orally or in writing. Such notice shall include (1) a statement of the time, place, and nature of public rule-making

ing proceedings, (2) reference to the authority under which the rule is proposed, and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

This paragraph shall not apply to interpretative rules, general statements of policy, or rules of internal board organization, procedure or practice. [1967 c 189 § 20.]

36.93.210 Rules and regulations—Filing—Permanent register. Each board shall file forthwith with the clerk of the court a certified copy of all rules and regulations adopted. The clerk shall keep a permanent register of such rules open to public inspection. [1967 c 189 § 21.]

36.93.220 Provisions of prior laws superseded by chapter. Whenever a review board has been created pursuant to the terms of this chapter, the provisions of law relating to city annexation review boards set forth in chapter 35.13 RCW and the powers granted to the boards of county commissioners to alter boundaries of proposed annexations or incorporations shall not be applicable. [1967 c 189 § 22.]

36.93.230 Power to disband boundary review board. When a county and the cities and towns within the county have adopted a comprehensive plan and consistent development regulations pursuant to the provisions of chapter 36.70A RCW, the county may, at the discretion of the county legislative authority, disband the boundary review board in that county. [1991 sp.s. c 32 § 22.]

Additional notes found at www.leg.wa.gov

36.93.800 Application of chapter to merged special purpose districts. This chapter does not apply to the merger of irrigation districts authorized under RCW 87.03.530(2) and 87.03.845 through 87.03.855 or to the merger of a drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district into an irrigation district authorized by RCW 87.03.720 through 87.03.745 and 85.08.830 through 85.08.890. [1996 c 313 § 2; 1993 c 235 § 10.]

36.93.900 Effective date—1967 c 189. The effective date of this chapter is July 1, 1967. [1967 c 189 § 24.]

36.93.910 Severability—1967 c 189. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 c 189 § 23.]

Chapter 36.94 RCW

SEWERAGE, WATER, AND DRAINAGE SYSTEMS

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Water-sewer district activities to be approved—Criteria for approval by county legislative authority: RCW 57.02.040.

36.94.010 Definitions. As used in this chapter:

(1) A "system of sewerage" means and may include any or all of the following:

(a) Sanitary sewage collection, treatment, and/or disposal facilities and services, including without limitation on-site or off-site sanitary sewerage facilities, large on-site sewerage systems defined under RCW 70.118B.010, inspection services and maintenance services for private or public on-site systems, or any other means of sewage treatment and disposal approved by the county;

(b) Combined sanitary sewage disposal and storm or surface water drains and facilities;

(c) Storm or surface water drains, channels, and facilities;

(d) Outfalls for storm drainage or sanitary sewage and works, plants, and facilities for storm drainage or sanitary sewage treatment and disposal, and rights and interests in property relating to the system;

(e) Combined water and sewerage systems;

(f) Point and nonpoint water pollution monitoring programs that are directly related to the sewerage facilities and programs operated by a county;

(g) Public restroom and sanitary facilities;

(h) The facilities and services authorized in RCW 36.94.020; and

(i) Any combination of or part of any or all of such facilities.

(2) A "system of water" means and includes:

(a) A water distribution system, including dams, reservoirs, aqueducts, plants, pumping stations, transmission and lateral distribution lines and other facilities for distribution of water;

(b) A combined water and sewerage system;

(c) Any combination of or any part of any or all of such facilities.

(3) A "sewerage and/or water general plan" means a general plan for a system of sewerage and/or water for the county which shall be an element of the comprehensive plan estab-

lished by the county pursuant to RCW 36.70.350(6) and/or chapter 35.63 RCW, if there is such a comprehensive plan.

(a) A sewerage general plan shall include the general location and description of treatment and disposal facilities, trunk and interceptor sewers, pumping stations, monitoring and control facilities, channels, local service areas and a general description of the collection system to serve those areas, a description of on-site sanitary sewerage system inspection services and maintenance services, and other facilities and services as may be required to provide a functional and implementable plan, including preliminary engineering to assure feasibility. The plan may also include a description of the regulations deemed appropriate to carrying out surface drainage plans.

(b) A water general plan shall include the general location and description of water resources to be utilized, wells, treatment facilities, transmission lines, storage reservoirs, pumping stations, and monitoring and control facilities as may be required to provide a functional and implementable plan.

(c) Water and/or sewerage general plans shall include preliminary engineering in adequate detail to assure technical feasibility and, to the extent then known, shall further discuss the methods of distributing the cost and expense of the system and shall indicate the economic feasibility of plan implementation. The plans may also specify local or lateral facilities and services. The sewerage and/or water general plan does not mean the final engineering construction or financing plans for the system.

(4) "Municipal corporation" means and includes any city, town, metropolitan municipal corporation, any public utility district which operates and maintains a sewer or water system, any sewer, water, diking, or drainage district, any diking, drainage, and sewerage improvement district, and any irrigation district.

(5) A "private utility" means and includes all utilities, both public and private, which provide sewerage and/or water service and which are not municipal corporations within the definition of this chapter. The ownership of a private utility may be in a corporation, nonprofit or for profit, in a cooperative association, in a mutual organization, or in individuals.

(6) "Board" means one or more boards of county commissioners and/or the legislative authority of a home rule charter county. [2007 c 343 § 14; 1997 c 447 § 10; 1981 c 313 § 14; 1979 ex.s. c 30 § 6; 1971 ex.s. c 96 § 1; 1967 c 72 § 1.]

Captions and part headings not law—2007 c 343: See RCW 70.118B.900.

Finding—Purpose—1997 c 447: See note following RCW 70.05.074. Additional notes found at www.leg.wa.gov

36.94.020 Purpose—Powers. The construction, operation, and maintenance of a system of sewerage and/or water is a county purpose. Subject to the provisions of this chapter, every county has the power, individually or in conjunction with another county or counties to adopt, provide for, accept, establish, condemn, purchase, construct, add to, operate, and maintain a system or systems of sanitary and storm sewers, including outfalls, interceptors, plants, and facilities and services necessary for sewerage treatment and disposal, and/or system or systems of water supply within all or a portion of

the county. However, counties shall not have power to condemn sewerage and/or water systems of any municipal corporation or private utility.

Such county or counties shall have the authority to control, regulate, operate, and manage such system or systems and to provide funds therefor by general obligation bonds, revenue bonds, local improvement district bonds, utility local improvement district or local improvement district assessments, and in any other lawful fiscal manner. Rates or charges for on-site inspection and maintenance services may not be imposed under this chapter on the development, construction, or reconstruction of property.

Under this chapter, after July 1, 1998, any requirements for pumping the septic tank of an on-site sewage system should be based, among other things, on actual measurement of accumulation of sludge and scum by a trained inspector, trained owner's agent, or trained owner. Training must occur in a program approved by the state board of health or by a local health officer.

Before adopting on-site inspection and maintenance utility services, or incorporating residences into an on-site inspection and maintenance or sewer utility under this chapter, notification must be provided, prior to the applicable public hearing, to all residences within the proposed service area that have on-site systems permitted by the local health officer. The notice must clearly state that the residence is within the proposed service area and must provide information on estimated rates or charges that may be imposed for the service.

A county shall not provide on-site sewage system inspection, pumping services, or other maintenance or repair services under this section using county employees unless the on-site system is connected by a publicly owned collection system to the county's sewerage system, and the on-site system represents the first step in the sewage disposal process. Nothing in this section shall affect the authority of a state or local health officer to carry out their responsibilities under any other applicable law.

A county may, as part of a system of sewerage established under this chapter, provide for, finance, and operate any of the facilities and services and may exercise the powers expressly authorized for county storm water, flood control, pollution prevention, and drainage services and activities under chapters 36.89, 86.12, 86.13, and 86.15 RCW. A county also may provide for, finance, and operate the facilities and services and may exercise any of the powers authorized for aquifer protection areas under chapter 36.36 RCW; for lake or beach management districts under chapter 36.61 RCW; for diking districts, and diking, drainage, and sewerage improvement districts under chapters 85.05, 85.08, 85.15, 85.16, and 85.18 RCW; and for shellfish protection districts under chapter 90.72 RCW. However, if a county by reference to any of those statutes assumes as part of its system of sewerage any powers granted to such areas or districts and not otherwise available to a county under this chapter, then (1) the procedures and restrictions applicable to those areas or districts apply to the county's exercise of those powers, and (2) the county may not simultaneously impose rates and charges under this chapter and under the statutes authorizing such areas or districts for substantially the same facilities and services, but must instead impose uniform rates and

charges consistent with RCW 36.94.140. By agreement with such an area or district that is not part of a county's system of sewerage, a county may operate that area's or district's services or facilities, but a county may not dissolve any existing area or district except in accordance with any applicable provisions of the statute under which that area or district was created. [2008 c 301 § 25; 1997 c 447 § 11; 1981 c 313 § 1; 1967 c 72 § 2.]

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.
Additional notes found at www.leg.wa.gov

36.94.030 Adoption of sewerage and/or water general plan as element of comprehensive plan. Whenever the county legislative authority deems it advisable and necessary for the public health and welfare of the inhabitants of the county to establish, purchase, acquire, and construct a system of sewerage and/or water, or make any additions and betterments thereto, or extensions thereof, the board shall adopt a sewerage and/or water general plan for a system of sewerage and/or water for all or a portion of the county as deemed necessary by the board. If the county has adopted a comprehensive plan for a physical development of the county pursuant to chapter 36.70 RCW and/or chapter 35.63 RCW, then the sewerage and/or water general plan shall be adopted as an element of that comprehensive plan pursuant to the applicable statute. [1981 c 313 § 15; 1967 c 72 § 3.]

Additional notes found at www.leg.wa.gov

36.94.040 Incorporation of provisions of comprehensive plan in general plan. The sewerage and/or water general plan must incorporate the provisions of existing comprehensive plans relating to sewerage and water systems of cities, towns, municipalities, and private utilities, to the extent they have been implemented. [1990 1st ex.s. c 17 § 33; 1967 c 72 § 4.]

Additional notes found at www.leg.wa.gov

36.94.050 Review committee—Composition—Submission of plan or amendment to. Prior to the adoption of or amendment of the sewerage and/or water general plan, the county legislative authority (or authorities) shall submit the plan or amendment to a review committee. The review committee shall consist of:

(1) A representative of each city with a population of ten thousand or more within or adjoining the area selected by the mayor thereof (if there are no such cities within the plan area, then one representative chosen by the mayor of the city with the largest population within the plan area);

(2) One representative chosen at large by a majority vote of the executive officers of the other cities or towns within or adjoining the area;

(3) A representative chosen by the executive officer or the chair of the board, as the case may be, of each of the other municipal corporations and private utilities serving one thousand or more sewer and/or water customers located within the area;

(4) One representative chosen at large by a majority vote of the executive officers and chairs of the boards, as the case may be, of the other remaining municipal corporations within the area;

(5) A representative of each county legislative authority within the planned area, selected by the chair of each board or county executive, as the case may be; and

(6) In counties where there is a metropolitan municipal corporation operating a sewerage and/or water system in the area, the chair of its council or such person as the chair designates.

If the legislative authority rejects the plan pursuant to RCW 36.94.090, the review committee shall be deemed to be dissolved; otherwise the review committee shall continue in existence to review amendments to the plan. Vacancies on the committee shall be filled in the same manner as the original appointment to that position.

Instead of a review committee for each plan area, the county legislative authority or authorities may create a review committee for the entire county or counties, and the review committee shall continue in existence until dissolved by the county legislative authority or authorities. [1994 c 81 § 74; 1981 c 313 § 16; 1971 ex.s. c 96 § 2; 1967 c 72 § 5.]

Additional notes found at www.leg.wa.gov

36.94.060 Review committee—Chair, secretary—Rules—Quorum—Compensation of members. The members of each review committee shall elect from its members a chair and a secretary. The committee shall determine its own rules and order of business and shall provide by resolution for the time and manner of its proceedings which shall be a public record. A majority of all the members shall constitute a quorum for the transaction of business.

Each member of the committee shall be compensated from the county current expense fund at the rate of twenty-five dollars per day, or a major portion thereof, for time actually devoted to the work of the committee in reviewing any proposed sewerage and/or water general plan or amendments to a plan. Each board of county commissioners shall provide such funds as shall be necessary to pay the compensation of the members and such other expenses as shall be reasonably necessary. Such payments shall be reimbursed to the counties advancing the funds from moneys acquired from the construction or operation of a sewerage and/or water system. [2009 c 549 § 4154; 1971 ex.s. c 96 § 3; 1967 c 72 § 6.]

Additional notes found at www.leg.wa.gov

36.94.070 Review committee—Review of plan or amendments thereto—Report. The committee shall review the sewerage and/or water general plan or amendments thereto and shall report to the board or boards of county commissioners within ninety days their approval or any suggested amendments, deletions, or additions. If the committee shall fail to report within the time, the plan or amendments thereto shall be deemed approved. If the committee submits a report, the board shall consider and review the committee's report and may adopt any recommendations suggested therein. [1971 ex.s. c 96 § 4; 1967 c 72 § 7.]

Additional notes found at www.leg.wa.gov

36.94.080 Hearing by board—Notice—Filing general plan. Before final action thereon the board shall conduct a public hearing on the plan after ten days published notice of hearing is given pursuant to RCW 36.32.120(7). The notice must set out the full official title of the proposed resolution

adopting the plan and a statement describing the general intent and purpose of the plan. The notice shall also include the day, hour and place of hearing and must be given by publication in the newspaper in which legal notices of the county are printed. Ten days prior to the hearing, three copies of the sewerage and/or water general plan shall be filed with the clerk of the board. The copies shall be open to public inspection. [1967 c 72 § 8.]

36.94.090 Adoption, amendment or rejection of plan.

At the hearing, the board may adopt the plan, or amend and adopt the plan, or reject any part or all of the plan. [1967 c 72 § 9.]

36.94.100 Submission of plan or amendments thereto to certain state departments—Approval. Prior to the commencement of actual work on any plan or amendment thereto approved by the board, it must be submitted for written approval to the Washington department of social and health services and to the Washington department of ecology. [1971 ex.s. c 96 § 5; 1967 c 72 § 10.]

Additional notes found at www.leg.wa.gov

36.94.110 Adherence to plan—Procedure for amendment. After adoption of the sewerage and/or water general plan, all municipal corporations and private utilities within the plan area shall abide by and adhere to the plan for the future development of their systems. A municipal corporation or private utility, including a wastewater company as defined in RCW 80.04.010, may petition for amendments to the plan. Whenever the governing authority of any county or counties or any municipal corporation deems it to be for the public interest to amend the sewerage and/or water general plan for such county or counties, notice must be filed with the board or boards of county commissioners. Upon such notice, the board or boards shall initiate consideration of any amendment requested relating to the plan and proceed as provided in this chapter for the adoption of an original plan. [2011 c 214 § 28; 1967 c 72 § 11.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

36.94.120 Establishment of department for administration of system—Personnel merit system. The board shall establish a department in county government for the purpose of establishing, operating and maintaining the system or systems of sewerage and/or water. In the department, the board shall establish and provide for the operation and maintenance of a personnel merit system for the employment, classification, promotion, demotion, suspension, transfer, layoff and discharge of its appointive officers and employees, solely on the basis of merit and fitness, without regard to political influence or affiliation. Such merit system shall not apply to the chief administrative officer of the department and, if the sewer and/or water utility is a division of a department having other functions, the chief administrative officer of such utility. [1971 ex.s. c 96 § 6; 1967 c 72 § 12.]

Additional notes found at www.leg.wa.gov

36.94.130 Adoption of rules and regulations. The board of county commissioners may adopt by resolution rea-

sonable rules and regulations governing the construction, maintenance, operation, use, connection and service of the system of sewerage and/or water. [1967 c 72 § 13.]

36.94.140 Authority of county to operate system—Rates and charges, fixing of—Factors to be considered—Assistance for low-income persons. (1) Every county, in the operation of a system of sewerage and/or water, shall have full jurisdiction and authority to manage, regulate, and control it. Except as provided in subsection (3) of this section, every county shall have full jurisdiction and authority to fix, alter, regulate, and control the rates and charges for the service and facilities to those to whom such service and facilities are available, and to levy charges for connection to the system.

(2) The rates for availability of service and facilities, and connection charges so charged must be uniform for the same class of customers or service and facility. In classifying customers served, service furnished or made available by such system of sewerage and/or water, or the connection charges, the county legislative authority may consider any or all of the following factors:

- (a) The difference in cost of service to the various customers within or without the area;
- (b) The difference in cost of maintenance, operation, repair and replacement of the various parts of the systems;
- (c) The different character of the service and facilities furnished various customers;
- (d) The quantity and quality of the sewage and/or water delivered and the time of its delivery;
- (e) Capital contributions made to the system or systems, including, but not limited to, assessments;
- (f) The cost of acquiring the system or portions of the system in making system improvements necessary for the public health and safety;
- (g) The nonprofit public benefit status, as defined in RCW 24.03.490, of the land user; and
- (h) Any other matters which present a reasonable difference as a ground for distinction.

(3) The rate a county may charge under this section for storm or surface water sewer systems or the portion of the rate allocable to the storm or surface water sewer system of combined sanitary sewage and storm or surface water sewer systems shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(4) A county may provide assistance to aid low-income persons in connection with services provided under this chapter.

(5) The service charges and rates shall produce revenues sufficient to take care of the costs of maintenance and operation, revenue bond and warrant interest and principal amortization requirements, and all other charges necessary for the efficient and proper operation of the system.

(6) A connection charge under this section for service to a manufactured housing community, as defined in RCW 59.20.030, applies to an individual lot within that community

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only if the system of water or sewerage provides and maintains the connection. [2005 c 324 § 2; 2003 c 394 § 4; 1997 c 447 § 12; 1995 c 124 § 2; 1990 c 133 § 2; 1975 1st ex.s. c 188 § 2; 1967 c 72 § 14.]

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.

Findings—1990 c 133: "The legislature finds the best interests of the citizens of the state are served if:

- (1) Customers served by public water systems are assured of an adequate quantity and quality of water supply at reasonable rates;
- (2) There is improved coordination between state agencies engaged in water system planning and public health regulation and local governments responsible for land use regulation and public health and safety;
- (3) Public water systems in violation of health and safety standards adopted under RCW 43.20.050 remain in operation and continue providing water service providing that public health is not compromised, assuming a suitable replacement purveyor is found and deficiencies are corrected in an expeditious manner consistent with public health and safety; and
- (4) The state address[es], in a systematic and comprehensive fashion, new operating requirements which will be imposed on public water systems under the federal Safe Drinking Water Act." [1990 c 133 § 1.]

Additional notes found at www.leg.wa.gov

36.94.145 Public property subject to rates and charges for storm water control facilities. Except as otherwise provided in RCW 90.03.525, any public entity and public property, including the state of Washington and state property, shall be subject to rates and charges for storm water control facilities to the same extent private persons and private property are subject to such rates and charges that are imposed by counties pursuant to RCW 36.94.140. In setting these rates and charges, consideration may be made of in-kind services, such as stream improvements or donation of property. [1986 c 278 § 58; 1983 c 315 § 4.]

Flood control zone districts—Storm water control improvements: Chapter 86.15 RCW.

Rates and charges for storm water control facilities—Limitations—Definitions: RCW 90.03.500 through 90.03.525. See also RCW 35.67.025, 35.92.021, and 36.89.085.

Additional notes found at www.leg.wa.gov

36.94.150 Lien for delinquent charges. All counties operating a system of sewerage and/or water shall have a lien for delinquent connection charges and charges for the availability of sewerage and/or water service, together with interest fixed by resolution at eight percent per annum from the date due until paid. Penalties of not more than ten percent of the amount due may be imposed in case of failure to pay the charges at times fixed by resolution. The lien shall be for all charges, interest, and penalties and shall attach to the premises to which the services were available. The lien shall be superior to all other liens and encumbrances, except general taxes and local and special assessments of the county.

The county department established in RCW 36.94.120 shall certify periodically the delinquencies to the auditor of the county at which time the lien shall attach.

Upon the expiration of sixty days after the attachment of the lien, the county may bring suit in foreclosure by civil action in the superior court of the county where the property is located. Costs associated with the foreclosure of the lien, including but not limited to advertising, title report, and personnel costs, shall be added to the lien upon filing of the foreclosure action. In addition to the costs and disbursements provided by statute, the court may allow the county a reasonable attorney's fee. The lien shall be foreclosed in the same man-

ner as the foreclosure of real property tax liens. [1997 c 393 § 9; 1975 1st ex.s. c 188 § 3; 1967 c 72 § 15.]

Additional notes found at www.leg.wa.gov

36.94.160 Tax on gross revenues authorized. The county shall have the power to levy a tax on the system of sewerage and/or water operated by the county or counties as authorized by this chapter, not to exceed eight percent per annum, on the gross revenues, to be paid to the county's general fund for payment of all costs of planning, financing, construction and operation of the system. [1967 c 72 § 16.]

36.94.170 Authority of municipal corporations—Relinquishment of. The primary authority to construct, operate and maintain a system of sewerage and/or water within the boundaries of a municipal corporation which lies within the area of the county's sewerage and/or water general plan shall remain with such municipal corporation. A county, after it has adopted and received the necessary approvals of its sewer and/or water general plan under the provisions of chapter 36.94 RCW may construct, own, operate and maintain a system of sewerage and/or water within the boundaries of a city or town with the written consent of such city or town and within any other municipal corporation provided such municipal corporation (1) has the legislative authority to operate such a utility; and (2)(a) has given its written consent to the county to operate therein; or (b) after adoption of a comprehensive plan or an amendment thereto for the area involved, the municipal corporation has not within twelve months after receiving notice by the county of its intention to serve that area held a formation hearing for a utility local improvement district.

Prior to exercising any authority granted in this section, the county shall compensate such municipal corporation for its reasonable costs, expenses and obligations actually incurred or contracted which are directly related to and which benefit the area which the county proposes to serve. The county may contract with a municipal corporation to furnish such utility service within any municipal corporation.

Except in the case of annexations provided for in RCW 36.94.180, once a county qualifies under this section to serve within a municipal corporation, no municipal corporation may construct or operate a competing utility in the same territory to be served by the county if the county proceeds within a reasonable period of time with the construction of its proposed facilities including the sale of any bonds to finance the same.

As may be permitted by other statutes, a city or town may provide water or sewer service outside of its corporate limits, but such service may not conflict with the county plan or any county, sewer or water facilities installed or being installed.

A county proposing to exercise any authority granted in this section shall give written notice of such intention to the municipal corporation involved and to the boundary review board, if any, of such county. Within sixty days of the filing of such notice of intention, review by the boundary review board of the proposed action may be requested as provided by the provisions of RCW 36.93.100 through 36.93.180. In the event of such review, the board shall consider the factors set forth in this section in addition to the factors and objectives

set forth in RCW 36.93.170 and 36.93.180. [1971 ex.s. c 96 § 7; 1967 c 72 § 17.]

Additional notes found at www.leg.wa.gov

36.94.180 Transfer of system upon annexation or incorporation of area. In the event of the annexation to a city or town of an area, or incorporation of an area, in which a county is operating a sewerage and/or water system, the property, facilities, and equipment of such sewerage and/or water system lying within the annexed or incorporated area may be transferred to the city or town if such transfer will not materially affect the operation of any of the remaining county system, subject to the assumption by the city or town of the county's obligations relating to such property, facilities, and equipment, under the procedures specified in, and pursuant to the authority contained in, chapter 35.13A RCW. [1986 c 234 § 34; 1983 c 3 § 82; 1971 ex.s. c 96 § 8; 1967 c 72 § 18.]

Additional notes found at www.leg.wa.gov

36.94.190 Contracts with other entities. Every county in furtherance of the powers granted by this chapter shall be authorized to contract with the federal government, the state of Washington, or any city or town, within or without the county, and with any other county, and with any municipal corporation as defined herein or with any other municipal corporation created under the laws of the state of Washington and not limited as defined in RCW 36.94.010, or political subdivision, and with any person, firm or corporation in and for the establishment, maintenance and operation of all or a portion of a system or systems of sewerage and/or water supply.

The state and such city, town, person, firm, corporation, municipal corporation and any other municipal corporation created under the laws of the state of Washington and not limited as defined in RCW 36.94.010, and political subdivision, is authorized to contract with a county or counties for such purposes. [1967 c 72 § 19.]

36.94.200 Indebtedness—Bonds. The legislative authority of any county is hereby authorized for the purpose of carrying out the lawful powers granted by this chapter to contract indebtedness and to issue and sell general obligation bonds pursuant to and in the manner provided for general county bonds in chapters 36.67 and 39.46 RCW and other applicable statutes; and to issue revenue bonds pursuant to and in the manner provided for revenue bonds in chapter 36.67 RCW and other applicable statutes. The county legislative authority may also issue local improvement district bonds in the manner provided for cities and towns. [1984 c 186 § 35; 1983 c 167 § 101; 1981 c 313 § 2; 1967 c 72 § 20.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Additional notes found at www.leg.wa.gov

36.94.210 Pledge for payment of principal and interest on revenue or general obligation bonds. The board of county commissioners of any county in adopting and establishing a system of sewerage and/or water may set aside into a special fund and pledge to the payment of the principal and interest due on any county revenue bonds or general obligation bonds any sums or amounts which may accrue from the collection of rates and charges for the private and public use

of the system or systems. [1975 1st ex.s. c 188 § 4; 1967 c 72 § 21.]

Additional notes found at www.leg.wa.gov

36.94.220 Local improvement districts and utility local improvement districts—Establishment—Special assessments. (1) A county shall have the power to establish utility local improvement districts and local improvement districts within the area of a sewerage and/or water general plan and to levy special assessments under a mode of annual installments extending over a period not exceeding twenty years on all property specially benefited by any local improvement on the basis of the special benefits to pay in whole or in part the damages or costs of any improvements ordered in such county.

(2) Utility local improvement districts and local improvement districts may include territory within a city or town only with the written consent of the city or town, but if the local district is formed before such area is included within the city or town, no such consent shall be necessary. Utility local improvement districts and local improvement districts used to provide sewerage disposal systems may include territory within a water-sewer district providing sewerage disposal systems only with the written consent of such a water-sewer district, but if the local district is formed before such area is included within such a water-sewer district, no consent is necessary. Utility local improvement districts and local improvement districts used to provide water systems may include territory within a water-sewer district providing water systems only with the written consent of such a water-sewer district, but if the local district is formed before such area is included within such a water-sewer district, no consent is necessary.

(3) The levying, collection, and enforcement of all public assessments hereby authorized shall be in the manner now and hereafter provided by law for the levying, collection, and enforcement of local improvement assessments by cities and towns, insofar as the same shall not be inconsistent with the provisions of this chapter. In addition, the county shall file the preliminary assessment roll at the time and in the manner prescribed in RCW 35.50.005. The duties devolving upon the city or town treasurer under such laws are imposed upon the county treasurer for the purposes of this chapter. The mode of assessment shall be in the manner to be determined by the county legislative authority by ordinance or resolution. As an alternative to equal annual assessment installments of principal provided for cities and towns, a county legislative authority may provide for the payment of such assessments in equal annual installments of principal and interest. Assessments in any local district may be made on the basis of special benefits up to but not in excess of the total cost of any sewerage and/or water improvement made with respect to that local district and the share of any general sewerage and/or water facilities allocable to that district. In utility local improvement districts, assessments shall be deposited into the revenue bond fund or general obligation bond fund established for the payment of bonds issued to pay such costs which bond payments are secured in part by the pledge of assessments, except pending the issuance and sale of such bonds, assessments may be deposited in a fund for the payment of such costs. In local improvement districts, assessments shall be deposited into a

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fund for the payment of such costs and local improvement bonds issued to finance the same or into the local improvement guaranty fund as provided by applicable statute. [1999 c 153 § 48; 1981 c 313 § 3; 1975 1st ex.s. c 188 § 5; 1971 ex.s. c 96 § 9; 1967 c 72 § 22.]

Local improvements, supplemental authority: Chapter 35.51 RCW.

Additional notes found at www.leg.wa.gov

36.94.225 Exemption of farm and agricultural land from special benefit assessments. See RCW 84.34.300 through 84.34.380 and 84.34.922.

36.94.230 Local improvement districts and utility local improvement districts—Initiation of district by resolution or petition—Publication—Notice to property owners—Contents. Utility local improvement districts and local improvement districts to carry out all or any portion of the general plan, or additions and betterments thereof, may be initiated either by resolution of the county legislative authority or by petition signed by the owners according to the records of the office of the county assessor of at least fifty-one percent of the area of land within the limits of the local district to be created.

In case the county legislative authority desires to initiate the formation of a local district by resolution, it shall first pass a resolution declaring its intention to order such improvement, setting forth the nature and territorial extent of such proposed improvement, designating the number of the proposed local district, describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed district, and fixing a date, time, and place for a public hearing on the formation of the proposed local district.

In case any such local district is initiated by petition, such petition shall set forth the nature and territorial extent of such proposed improvement and the fact that the signers thereof are the owners according to the records of the county assessor of at least fifty-one percent of the area of land within the limits of the local district to be created. Upon the filing of such petition with the clerk of the county legislative authority, the authority shall determine whether the same is sufficient, and the authority's determination thereof shall be conclusive upon all persons. No person may withdraw his or her name from said petition after the filing thereof with the clerk of the county legislative authority. If the county legislative authority finds the petition to be sufficient, it shall proceed to adopt a resolution declaring its intention to order the improvement petitioned for, setting forth the nature and territorial extent of said improvement, designating the number of the proposed local district, describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed local district, and fixing a date, time, and place for a public hearing on the formation of the proposed local district.

Notice of the adoption of the resolution of intention, whether adopted on the initiative of the board or pursuant to a petition of the property owners, shall be published in at least two consecutive issues of a newspaper of general circulation in the proposed local district, the date of the first publication

to be at least fifteen days prior to the date fixed by such resolution for hearing before the county legislative authority. Notice of the adoption of the resolution of intention shall also be given each owner or reputed owner of any lot, tract, parcel of land, or other property within the proposed local district by mailing said notice at least fifteen days before the date fixed for the public hearing to the owner or reputed owner of the property as shown on the tax rolls of the county treasurer at the address shown thereon. The notice shall refer to the resolution of intention and designate the proposed local district by number. Said notice shall also set forth the nature of the proposed improvement, the total estimated cost, the proportion of total cost to be borne by assessments, the estimated amount of the cost and expense of such improvement to be borne by the particular lot, tract, or parcel, the date, time, and place of the hearing before the county legislative authority; and in the case of improvements initiated by resolution, said notice shall also state that all persons desiring to object to the formation of the proposed district must file their written protests with the clerk of the county legislative authority before the time fixed for said public hearing. [2002 c 168 § 2; 1981 c 313 § 4; 1971 ex.s. c 96 § 10; 1967 c 72 § 23.]

Additional notes found at www.leg.wa.gov

36.94.232 Local improvement districts and utility local improvement districts—Notice must contain statement that assessments may vary from estimates. Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a local improvement district or utility local improvement district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property. [1989 c 243 § 6.]

36.94.235 Local improvement districts and utility local improvement districts—Sanitary sewer or potable water facilities—Notice to certain property owners. Whenever it is proposed that a local improvement district or utility local improvement district finance sanitary sewers or potable water facilities, additional notice of the public hearing on the proposed improvement district shall be mailed to the owners of any property located outside of the proposed improvement district that would be required as a condition of federal housing administration loan qualification, at the time of notice, to be connected to the specific sewer or water facilities installed by the local improvement district. The notice shall include information about this restriction. [1987 c 315 § 3.]

36.94.240 Local improvement districts and utility local improvement districts—Hearing—Improvement ordered—Divestment of power to order, time limitation—Assessment roll. Whether the improvement is initiated by petition or resolution, the county legislative authority shall conduct a public hearing at the time and place designated in the notice to the property owners. At this hearing the authority shall hear objections from any person affected by the formation of the local district and may make such changes in the boundaries of the district or such modifications in plans for the proposed improvement as are deemed necessary:

PROVIDED, That the authority may not change the boundaries of the district to include property not previously included therein without first passing a new resolution of intention and giving a new notice to property owners in the manner and form and within the time herein provided for the original notice.

After said hearing the county legislative authority has jurisdiction to overrule protests and proceed with any such improvement initiated by petition or resolution: PROVIDED, That the jurisdiction of the authority to proceed with any improvement initiated by resolution shall be divested by protests filed with the clerk of the authority prior to said public hearing signed by the owners, according to the records of the county auditor, of at least forty percent of the area of land within the proposed local district. No action whatsoever may be maintained challenging the jurisdiction or authority of the county to proceed with the improvement and creating the local district or in any way challenging the validity thereof or any proceedings relating thereto unless that action is served and filed no later than thirty days after the date of passage of the resolution ordering the improvement and creating the local district.

If the county legislative authority finds that the district should be formed, it shall by resolution order the improvement, adopt detailed plans of the local district and declare the estimated cost thereof, acquire all necessary land therefor, pay all damages caused thereby, and commence in the name of the county such eminent domain proceedings and supplemental assessment or reassessment proceedings to pay all eminent domain awards as may be necessary to entitle the county to proceed with the work. The county legislative authority shall proceed with the work and file with the county treasurer its roll levying special assessments in the amount to be paid by special assessment against the property situated within the local district in proportion to the special benefits to be derived by the property therein from the improvement. [1981 c 313 § 5; 1971 ex.s. c 96 § 11; 1967 c 72 § 24.]

Additional notes found at www.leg.wa.gov

36.94.250 Local improvement districts and utility local improvement districts—Notice of filing roll—Hearing on protests. Before the approval of the roll a notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the local district, stating that the roll is on file and open to inspection in the office of the county legislative authority, and fixing the time, not less than fifteen or more than forty-five days from the date of the first publication of the notice, within which protests must be filed with the clerk against any assessments shown thereon, and fixing a time when a hearing will be held on the protests. The hearing shall be held before the county legislative authority, or the county legislative authority may direct that the hearing shall be held before either a committee of the legislative authority or a designated officer. The notice shall also be given by mailing at least fifteen days before the hearing, a similar notice to the owners or reputed owners of the land in the local district as they appear on the books of the treasurer of the county. [1981 c 313 § 17; 1967 c 72 § 25.]

Additional notes found at www.leg.wa.gov

36.94.260 Local improvement districts and utility local improvement districts—Hearing on protests—Order—Appeal. (1) At such hearing on a protest to an assessment, or any adjournment thereof, the county legislative authority or committee or officer shall sit as a board of equalization. If the protest is heard by the county legislative authority, it shall have power to correct, revise, raise, lower, change, or modify such roll, or any part thereof, and to set aside such roll, and order that such assessment be made de novo, as shall appear equitable and just. If the protest is heard by a committee or officer, the committee or officer shall make recommendations to the county legislative authority which shall either adopt or reject the recommendations of the committee or officer. If a hearing is held before such a committee or officer, it shall not be necessary to hold a hearing on the assessment roll before such legislative authority: PROVIDED, That any county providing for an officer to hear such protests shall adopt an ordinance providing for an appeal from a decision made by the officer that any person protesting his or her assessment may make to the legislative authority. The county legislative authority shall, in all instances, approve the assessment roll by ordinance or resolution.

(2) In the event of any assessment being raised a new notice similar to such first notice shall be given, after which final approval of such roll may be made by the county legislative authority or committee or officer. Whenever any property has been entered originally upon such roll and the assessment upon any such property shall not be raised, no objection thereto may be considered by the county legislative authority or committee or officer or by any court on appeal unless such objection be made in writing at, or prior, to the date fixed for the original hearing upon such roll. [1981 c 313 § 18; 1967 c 72 § 26.]

Additional notes found at www.leg.wa.gov

36.94.270 Local improvement districts and utility local improvement districts—Enlarged local district may be formed. If any portion of the system after its installation in such local district is not adequate for the purpose for which it was intended, or that for any reason changes, alterations, or betterments are necessary in any portion of the system after its installation, then such district, with boundaries which may include one or more existing local districts, may be created in the same manner as is provided herein for the creation of local districts. Upon the organization of such local district as provided for in this section the plan of the improvement and the payment of the cost of the improvement shall be carried out in the same manner as is provided herein for the carrying out of and the paying for the improvement in the utility local improvement districts or local improvement districts previously provided for in this chapter. [1981 c 313 § 6; 1967 c 72 § 27.]

Additional notes found at www.leg.wa.gov

36.94.280 Local improvement districts and utility local improvement districts—Conclusiveness of roll when approved—Adjustments to assessments if other funds become available. Whenever any assessment roll for local improvements has been confirmed by the county legislative authority, the regularity, validity and correctness of the pro-

ceedings relating to the improvement and to the assessment therefor, including the action of the county legislative authority upon the assessment roll and the confirmation thereof, shall be conclusive in all things upon all parties, and cannot in any manner be contested or questioned in any proceeding by any person not filing written objections to the assessment roll in the manner and within the time provided in this chapter, and not appealing from the action of the county legislative authority in confirming the assessment roll in the manner and within the time in this chapter provided. No proceedings of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any assessment, or the sale of any property to pay an assessment, or any certificate of delinquency issued therefor, or the foreclosure of any lien issued therefor: PROVIDED, That this section shall not be construed as prohibiting the bringing of injunction proceedings to prevent the sale of any real estate upon the grounds:

(1) That the property about to be sold does not appear upon the assessment roll, or

(2) That the assessment has been paid.

If federal, local, or state funds become available for a local improvement after the assessment roll has been confirmed by the county legislative authority, the funds may be used to lower the assessments on a uniform basis. Any adjustments to the assessments because of the availability of federal or state funds may be made on the next annual payment. [1985 c 397 § 10; 1967 c 72 § 28.]

Additional notes found at www.leg.wa.gov

36.94.290 Local improvement districts and utility local improvement districts—Appellate review. The decision of the board of county commissioners upon any objections made within the time and in the manner herein prescribed, may be reviewed by the superior court upon an appeal thereto taken in the following manner. Such appeal shall be made by filing written notice of appeal with the clerk of the board of county commissioners and with the clerk of the superior court within ten days after the resolution confirming such assessment roll shall have become published, and such notice shall describe the property and set forth the objections of such appellant to such assessment. Within the ten days from the filing of such notice of appeal with the clerk of the superior court, the appellant shall file with the clerk of said court, a transcript consisting of the assessment roll and his or her objections thereto, together with the resolution confirming such assessment roll and the record of the board of county commissioners with reference to said assessment, which transcript, upon payment of the necessary fees therefor, shall be furnished by such clerk of the board of county commissioners and by him or her certified to contain full, true and correct copies of all matters and proceedings required to be included in such transcript. Such fees shall be the same as the fees payable to the county clerk for the preparation and certification of transcripts on appeal to the supreme court or the court of appeals in civil actions. At the time of the filing of the notice of appeal with the clerk of the superior court a sufficient bond in the penal sum of two hundred dollars, with sureties thereon as provided by law for appeals in civil cases, shall be filed conditioned to prosecute such appeal without delay, and if unsuccessful, to pay all costs to which the county is put by reason of such appeal. The

court may order the appellant upon application therefor, to execute and file such additional bond or bonds as the necessity of the case may require. Within three days after such transcript is filed in the superior court, as aforesaid, the appellant shall give written notice to the clerk of the board of county commissioners that such transcript is filed. Said notice shall state a time, not less than three days from the service thereof, when the appellant will call up the said cause for hearing. The superior court shall, at said time or at such further time as may be fixed by order of the court, hear and determine such appeal without a jury, and such cause shall have preference over all civil causes pending in said court, except proceedings under an act relating to eminent domain in such county and actions of forcible entry and detainer. The judgment of the court shall confirm, correct, modify or annul the assessment insofar as the same affects the property of the appellant. A certified copy of the decision of the court shall be filed with the officer who shall have the custody of the assessment roll, and he or she shall modify and correct such assessment roll in accordance with such decision. Appellate review of the judgment of the superior court may be sought as in other cases. However, review must be sought within fifteen days after the date of the entry of the judgment of such superior court. The supreme court or the court of appeals on such appeal may correct, change, modify, confirm or annul the assessment insofar as the same affects the property of the appellant. A certified copy of the order of the supreme court or the court of appeals upon such appeal shall be filed with the officer having custody of such assessment roll, who shall thereupon modify and correct such assessment roll in accordance with such decision. [2009 c 549 § 4155; 1988 c 202 § 41; 1971 c 81 § 98; 1967 c 72 § 29.]

Rules of court: *Cf. RAP 18.22.*

Additional notes found at www.leg.wa.gov

36.94.300 Local improvement districts and utility local improvement districts—Segregation of special assessment—Fee—Costs. Whenever any land against which there has been levied any special assessment by a county shall have been sold in part or subdivided, the board of county commissioners of such county shall have the power to order a segregation of the assessment.

Any person desiring to have such a special assessment against a tract of land segregated to apply to smaller parts thereof shall apply to the board of county commissioners which levied the assessment. If the board determines that a segregation should be made, they shall by resolution order the county treasurer to make segregation on the original assessment roll as directed in the resolution. The segregation shall be made as nearly as possible on the same basis as the original assessment was levied, and the total of the segregated parts of the assessment shall equal the assessment before segregation. The resolution shall describe the original tract, the amount and date of the original assessment, and shall define the boundaries of the divided parts and the amount of the assessment chargeable to each part. A certified copy of the resolution shall be delivered to the county treasurer who shall proceed to make the segregation ordered upon being tendered a fee of three dollars for each tract of land for which a segregation is to be made. In addition to such charge the board of county commissioners may require as a

condition to the order of segregation that the person seeking it pay the county the reasonable engineering and clerical costs incident to making the segregation. [1967 c 72 § 30.]

36.94.305 Service fees for sewers not constructed within ten years after voter approval—Credit against future assessments, service charges. See RCW 35.43.260.

36.94.310 Transfer of system from municipal corporation to county—Authorized. Subject to the provisions of RCW 36.94.310 through 36.94.350 a municipal corporation may transfer to the county within which all of its territory lies, all or part of the property constituting its system of sewerage, system of water or combined water and sewerage system, together with any of its other real or personal property used or useful in connection with the operation, maintenance, repair, replacement, extension, or financing of that system, and the county may acquire such property on such terms as may be mutually agreed upon by the governing body of the municipal corporation and the legislative authority of the county, and approved by the superior court for such county. [1975 1st ex.s. c 188 § 7.]

Additional notes found at www.leg.wa.gov

36.94.320 Transfer of system from municipal corporation to county—Assumption of indebtedness. In consideration of a transfer of property by a municipal corporation to a county in the manner provided in RCW 36.94.310 through 36.94.350, a county may assume and agree to pay or provide for the payment of all or part of the indebtedness of a municipal corporation including the payment and retirement of outstanding general obligation and revenue bonds issued by a municipal corporation. Until the indebtedness of a municipal corporation thus assumed by a county has been discharged, all property within the municipal corporation and the owners and occupants of that property, shall continue to be liable for taxes, special assessments, and other charges legally pledged to pay such indebtedness. The county may assume the obligation of causing the payment of such indebtedness, collecting such taxes, assessments, and charges and observing and performing the other contractual obligations of the municipal corporation. The legislative authority of the county may act in the same manner as the governing body of the municipal corporation for the purpose of certifying the amount of any property tax to be levied and collected therein, and may cause service and other charges and assessments to be collected from such property or owners or occupants thereof, enforce such collection and perform all other acts necessary to insure performance of the contractual obligations of the municipal corporation in the same manner and by the same means as if the property of the municipal corporation had not been acquired by the county.

When a county assumes the obligation of paying indebtedness of a municipal corporation and if property taxes or assessments have been levied and service and other charges have accrued for such purpose but have not been collected by the municipal corporation prior to such assumption, the same when collected shall belong and be paid to the county and be used by such county so far as necessary for payment of the indebtedness of the municipal corporation existing and unpaid on the date such county assumed that indebtedness.

Any funds received by the county which have been collected for the purpose of paying any bonded or other indebtedness of the municipal corporation shall be used for the purpose for which they were collected and for no other purpose until such indebtedness has been paid and retired or adequate provision has been made for such payment and retirement. No transfer of property as provided in *this amendatory act shall derogate from the claims or rights of the creditors of the municipal corporation or impair the ability of the municipal corporation to respond to its debts and obligations. [1975 1st ex.s. c 188 § 8.]

*Reviser's note: For codification of "this amendatory act" [1975 1st ex.s. c 188], see Codification Tables.

Additional notes found at www.leg.wa.gov

36.94.330 Transfer of system from municipal corporation to county—Transfer agreement. The governing body of a municipal corporation proposing to transfer all or part of its property to a county in the manner provided by RCW 36.94.310 through 36.94.350 and the legislative authority of a county proposing to accept such property, and to assume if it so agrees any indebtedness of the municipal corporation in consideration of such transfer, shall adopt resolutions or ordinances authorizing respectively the execution of a written agreement setting forth the terms and conditions upon which they have agreed and finding the transfer and acquisition of property pursuant to such agreement to be in the public interest and conducive to the public health, safety, welfare, or convenience. Such written agreement may include provisions, by way of description and not by way of limitation, for the rights, powers, duties, and obligations of such municipal corporation and county with regard to the use and ownership of property, the providing of services, the maintenance and operation of facilities, the allocation of costs, the financing and construction of new facilities, the application and use of assets, the disposition of liabilities and indebtedness, the performance of contractual obligations, and any other matters relating to the proposed transfer of property, which may be preceded by an interim period of operation by the county of the property and facilities subsequently to be transferred to that county. The agreement may provide for a period of time during which the municipal corporation may continue to exercise certain rights, privileges, powers, and functions authorized to it by law including the ability to promulgate rules and regulations, to levy and collect special assessments, rates, charges, service charges and connection fees, and to adopt and carry out the provisions of a comprehensive plan, and amendments thereto, for a system of improvements and to issue general obligation bonds or revenue bonds in the manner provided by law, or the agreement may provide for the exercise for a period of time of all or some of such rights, privileges, powers, and functions by the county. The agreement may provide that either party thereto may authorize, issue and sell, in the manner provided by law, revenue bonds to provide funds for new water or sewer improvements or to refund or advance refund any water revenue, sewer revenue or combined water and sewer revenue bonds outstanding of either or both such parties. The agreement may provide that either party thereto may authorize and issue, in the manner provided by law, general obligation or revenue bonds of like amounts, terms, conditions and cove-

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nants as the outstanding bonds of either or both such parties and such new bonds may be substituted or exchanged for such outstanding bonds to the extent permitted by law. [1975 1st ex.s. c 188 § 9.]

Additional notes found at www.leg.wa.gov

36.94.340 Transfer of system from municipal corporation to county—Petition for court approval of transfer—Hearing—Decree. When a municipal corporation and a county have entered into a written agreement providing for the transfer to such county of all or part of the property of such municipal corporation, proceedings may be initiated in the superior court for that county by the filing of a petition to which there shall be attached copies of the agreement of the parties and of the resolutions of the governing body of the municipal corporation and the legislative authority of the county authorizing its execution. Such petition shall ask that the court approve and direct the proposed transfer of property, and any assumption of indebtedness agreed to in consideration thereof by the county, after finding such transfer and acquisition of property to be in the public interest and conducive to the public health, safety, welfare, or convenience. Such petition shall be signed by the members of the legislative authority of the county or chief administrative officer of the municipal corporation and the chair of the legislative authority of the county, respectively, upon authorization by the governing body of the municipal corporation and the legislative authority of the county.

Within thirty days after the filing of the petition of the parties with copies of their agreement and the resolutions authorizing its execution attached thereto, the court shall by order fix a date for a hearing on the petition not less than twenty nor more than ninety days after the entry of such order which also shall prescribe the form and manner of notice of such hearing to be given. After considering the petition and such evidence as may be presented at the hearing thereon, the court may determine by decree that the proposed transfer of property is in the public interest and conducive to the public health, safety, welfare, or convenience, approve the agreement of the parties and direct that such transfer be accomplished in accordance with that agreement at the time and in the manner prescribed by the court decree. [2009 c 549 § 4156; 1975 1st ex.s. c 188 § 10.]

Additional notes found at www.leg.wa.gov

36.94.350 Transfer of system from municipal corporation to county—Dissolution of municipal corporation. In the event the agreement of the parties provides for the transfer to the county of all the property of the municipal corporation or all such property except bond redemption funds in the possession of the county treasurer from which outstanding bonds of the municipal corporation are payable, and the agreement also provides for the assumption and payment by the county of all the indebtedness of the municipal corporation including the payment and retirement of all its outstanding bonds, and if the petition of the parties so requests, the court in the decree approving and directing the transfer of property, or in a subsequent decree, may dissolve the municipal corporation effective as of the time of transfer of property or at such time thereafter as the court may determine and establish. [1975 1st ex.s. c 188 § 11.]

Additional notes found at www.leg.wa.gov

36.94.360 Transfer of system from municipal corporation to county—RCW 36.94.310 through 36.94.350 deemed alternative method. The provisions of RCW 36.94.310 through 36.94.350 shall be deemed to provide an alternative method for the doing of the things therein authorized and shall not be construed as imposing any additional conditions upon the exercise of any other powers vested in municipal corporations or counties. [1975 1st ex.s. c 188 § 12.]

Additional notes found at www.leg.wa.gov

36.94.370 Waiver or delay of collection of tap-in charges, connection or hookup fees for low income persons. Whenever a county waives or delays collection of tap-in charges, connection fees or hookup fees for low income persons, or class of low income persons, to connect to a system of sewerage or a system of water, the waiver or delay shall be pursuant to a program established by ordinance. [1980 c 150 § 2.]

36.94.380 Local improvement bonds—Local improvement guaranty fund—Payments—Assessments—Certificates of delinquency. Every county adopting a water and/or sewerage general plan is hereby authorized to create a fund for the purpose of guaranteeing, to the extent of such fund, and in the manner hereinafter provided, the payment of all of its local improvement bonds issued, subsequent to May 19, 1981, to pay for any water or sewerage local improvement within its confines. Such fund shall be designated ". County Local Improvement Guaranty Fund" and shall be established by resolution of the county legislative authority. For the purpose of maintaining such fund, every county, after the establishment thereof, shall at all times set aside and pay into such a fund such proportion of the monthly gross revenues of the water and/or sewerage system of such county as the legislative authority thereof may direct by resolution. This proportion may be varied from time to time as the county legislative authority deems expedient or necessary, except that under the existence of the conditions set forth in subsections (1) and (2) of this section, the proportion must be as therein specified.

(1) Whenever any bonds of any local improvement district have been guaranteed under RCW 36.94.380 through 36.94.400 and the guaranty fund does not have a cash balance equal to five percent of all bonds originally guaranteed under this chapter (excluding issues which have been retired in full), then five percent of the gross monthly revenues derived from all water and sewer users in the territory included in that local improvement district (but not necessarily from users in other parts of the county as a whole) may be set aside and paid into the guaranty fund. Whenever, under the requirements of this subsection, the cash balance accumulates so that it is equal to five percent of all bonds guaranteed, or to the full amount of all bonds guaranteed, outstanding and unpaid (which amount might be less than five percent of the original total guaranteed), then no further moneys need be set aside and paid into the guaranty fund so long as that condition continues.

(2) Whenever any warrants issued against the guaranty fund, as provided in this section, remain outstanding and uncalled for lack of funds for six months from the date of issuance thereof; or whenever any coupons or bonds guaranteed under this chapter have been matured for six months and have not been redeemed either in cash or by issuance and delivery of warrants upon the guaranty fund, then five percent of the gross monthly revenues (or such portion thereof as the county legislative authority determines will be sufficient to retire those warrants or redeem those coupons or bonds in the ensuing six months) derived from all water and/or sewer users in the county shall be set aside and paid into the guaranty fund. Whenever under the requirements of this subsection all such warrants, coupons, or bonds have been redeemed, no further income need be set aside and paid into the guaranty fund under the requirements of this subsection until and unless other warrants remain outstanding and unpaid for six months or other coupons or bonds default.

(3) For the purpose of complying with the requirements of setting aside and paying into the local improvement guaranty fund a proportion of the monthly gross revenues of the water supply and/or sewerage system of any county, that county shall bind and obligate itself to maintain and operate such system and further bind and obligate itself to establish, maintain, and collect such rates for water as will provide gross revenues sufficient to maintain and operate such systems and to make necessary provision for the local improvement guaranty fund as specified by this section, and the county shall alter its rates for water or sewer service from time to time and shall vary the same in different portions of its territory to comply with those requirements.

(4) Whenever any coupon or bond guaranteed by RCW 36.94.380 through 36.94.400 matures and there is not sufficient funds in the appropriate local improvement district bond redemption fund to pay the coupon or bond, then the county treasurer shall pay the coupon or bond from the local improvement guaranty fund of the county; if there is not sufficient funds in the guaranty fund to pay the coupon or bond, then it may be paid by issuance and delivery of a warrant upon the local improvement guaranty fund.

(5) Whenever the cash balance in the local improvement guaranty fund is insufficient for the required purposes, warrants drawing interest of a rate fixed by the county legislative authority may be issued by the county auditor against the fund to meet any liability accrued against it and must be issued upon demand of the holders of any maturing coupons and/or bonds guaranteed by RCW 36.94.380 through 36.94.400, or to pay for any certificates of delinquency for delinquent installments of assessments as provided in subsection (6) of this section. Guaranty fund warrants shall be a first lien in their order of issuance upon the gross revenues set aside and paid into the guaranty fund.

(6) Within twenty days after the date of delinquency of any annual installment of assessments levied for the purpose of paying the local improvement bonds of any county guaranteed under the provisions of this chapter, the county treasurer shall compile a statement of all installments delinquent, together with the amount of accrued interest and penalty appurtenant to each of those installments. Thereupon the county treasurer shall forthwith purchase certificates of delinquency for all such delinquent installments. Payment for all

such certificates of delinquency shall be made from the local improvement guaranty fund, and if there is not sufficient moneys in the fund to pay for such certificates of delinquency, the county treasurer shall accept the local improvement guaranty fund warrants in payment therefor. All such certificates of delinquency shall be issued in the name of the local improvement guaranty fund, and all guaranty fund warrants issued in payment therefor shall be issued in the name of the appropriate local improvement district fund. Whenever any market is available and the county legislative authority so directs, the county treasurer shall sell any certificates of delinquency belonging to the local improvement guaranty fund, but any such sale may not be for less than face value thereof plus accrued interest from the date of issuance to date of sale.

Such certificates of delinquency, as above provided, shall be issued by the county treasurer, shall bear interest at the rate of eight percent per annum, shall be in each instance for the face value of the delinquent installment, plus accrued interest to date of issuance of certificate of delinquency, plus a penalty of five percent of such face value, and shall set forth the:

- (a) Description of the property assessed;
- (b) Date the installment of the assessment became delinquent; and
- (c) Name of the owner or reputed owner, if known.

Such certificates of delinquency may be redeemed by the owners of the property assessed at any time up to two years from the date of foreclosure of such certificate of delinquency.

If any certificate of delinquency is not redeemed by the second occurring first day of January subsequent to its issuance, the county treasurer shall then proceed to foreclose such certificate of delinquency in the manner specified for the foreclosure of the lien of local improvement assessments, pursuant to the laws applicable to cities or towns; and if no redemption is made within the succeeding two years the treasurer shall execute and deliver a deed conveying fee simple title to the property described in the foreclosed certificate of delinquency. [1981 c 313 § 7.]

Additional notes found at www.leg.wa.gov

36.94.390 Local improvement bonds—Local improvement guaranty fund—Subrogation—Interest—Purchase of real property at foreclosure sales. Whenever there is paid out of a guaranty fund any sum on account of principal or interest upon the local improvement bond, or on account of purchase of certificates of delinquency, the county, as trustee for the fund, shall be subrogated to all rights of the holder of the bonds, or interest coupons, or delinquent assessment installments, so paid; and the proceeds thereof, or of the assessment or assessments underlying the same, shall become a part of the guaranty fund. There shall also be paid into each guaranty fund the interest received from the bank deposits of the fund, as well as any surplus remaining in the local improvement funds guaranteed under this chapter, after the payment of all outstanding bonds payable primarily out of such local improvement funds. As among the several issues of bonds guaranteed by the fund, no preference exists, but defaulted interest coupons and/or

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bonds shall be purchased out of the fund in the order of their presentation.

The legislative authority of every county operating under the provisions of RCW 36.94.380 through 36.94.400 shall by resolution prescribe appropriate rules for the guaranty fund, not inconsistent with this chapter. So much of the money of a guaranty fund as is necessary and is not required for other purposes under the terms of RCW 36.94.380 through 36.94.400 may, at the discretion of the county legislative authority, be used to purchase property at county tax foreclosure sales or from the county after foreclosure in cases where such property is subject to unpaid local improvement assessments securing bonds guaranteed under this chapter and such purchase is deemed necessary for the purpose of protecting the guaranty fund. In such cases the fund shall be subrogated to all rights of the county. After so acquiring title to real property, the county may lease or resell and convey the property in the manner that county property is authorized to be leased or resold and for such prices and on such terms as may be determined by resolution of the county legislative authority. Any provision of law to the contrary notwithstanding, all proceeds resulting from such resales belong to and shall be paid into the guaranty fund. [1981 c 313 § 8.]

Additional notes found at www.leg.wa.gov

36.94.400 Local improvement bonds—Local improvement guaranty fund—Claims by bondholders—Transfer of cash balance to water and/or sewer maintenance fund. Neither the holder nor the owner of any local improvement bonds guaranteed under the provisions of RCW 36.94.380 through 36.94.400 has any claim therefor against the county by which the bonds are issued, except for payment from the special assessments made for the improvement for which the local improvement bonds were issued, and except as against the local improvement guaranty fund of the county; and the county is not liable to any holder or owner of such local improvement bond for any loss to the guaranty fund occurring in the lawful operation thereof by the county. The remedy of the holder or owner of a local improvement bond, in the case of nonpayment, is confined to the enforcement of the assessment and to the guaranty fund. A copy of the foregoing part of this section shall be plainly written, printed, or engraved on each local improvement bond guaranteed by RCW 36.94.380 through 36.94.400. The establishment of a local improvement guaranty fund by any county shall not be deemed at variance from any water and/or sewerage general plan or amendment thereto heretofore adopted by such county.

If any local improvement guaranty fund authorized under RCW 36.94.380 through 36.94.400 at any time has a cash balance, and the obligations guaranteed thereby have all been paid off, then such balance shall be transferred to the water and/or sewer maintenance fund of the county. [1981 c 313 § 9.]

Additional notes found at www.leg.wa.gov

36.94.410 Transfer of system from county to water-sewer district. A system of sewerage, system of water or combined water and sewerage systems operated by a county under the authority of this chapter may be transferred from that county to a water-sewer district in the same manner as is

provided for the transfer of those functions from a water-sewer district to a county in RCW 36.94.310 through 36.94.340. [1999 c 153 § 51; 1984 c 147 § 1.]

Actions not subject to review by boundary review board: RCW 36.93.105.

Additional notes found at www.leg.wa.gov

36.94.420 Transfer of system from county to water-sewer district—Annexation—Hearing—Public notice—Operation of system. If so provided in the transfer agreement, the area served by the system shall, upon completion of the transfer, be deemed annexed to and become a part of the water-sewer district acquiring the system. The county shall provide notice of the hearing by the county legislative authority on the ordinance executing the transfer agreement under RCW 36.94.330 as follows: (1) By mailed notice to all rate-payers served by the system at least fifteen days prior to the hearing; and (2) by notice in a newspaper of general circulation once at least fifteen days prior to the hearing.

In the event of an annexation under this section resulting from the transfer of a system of sewerage, a system of water, or combined water and sewer systems from a county to a water-sewer district, the water-sewer district shall operate the system or systems under the provisions of Title 57 RCW. [1999 c 153 § 52; 1996 c 230 § 1609; 1985 c 141 § 1; 1984 c 147 § 2.]

Additional notes found at www.leg.wa.gov

36.94.430 Transfer of system from county to water-sewer district—Alternative method. The provisions of RCW 36.94.410 and 36.94.420 provide an alternative method of accomplishing the transfer permitted by those sections and do not impose additional conditions upon the exercise of powers vested in water-sewer districts and counties. [1999 c 153 § 49; 1984 c 147 § 3.]

Additional notes found at www.leg.wa.gov

36.94.440 Transfer of system from county to water-sewer district—Decree by superior court. If the superior court finds that the transfer agreement authorized by RCW 36.94.410 is legally correct and that the interests of the owners of related indebtedness are protected, then the court by decree shall direct that the transfer be accomplished in accordance with the agreement. [1984 c 147 § 4.]

36.94.450 Water conservation programs—Issuance of revenue bonds. A county engaged in the sale or distribution of water may issue revenue bonds, or other evidence of indebtedness in the manner provided by this chapter for the purpose of defraying the cost of financing programs for the conservation or more efficient use of water. The bonds or other evidence of indebtedness shall be deemed to be for capital purposes. [1992 c 25 § 2.]

36.94.460 Water conservation programs—Counties authorized to provide assistance to water customers. Any county engaged in the sale or distribution of water is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of structures that are provided water service by the county in financing the acquisition and installation of fixtures, systems, and equipment, for compensation or otherwise, for the conservation or

more efficient use of water in the structures under a water conservation plan adopted by the county if the cost per unit of water saved or conserved by the use of the fixtures, systems, and equipment is less than the cost per unit of water supplied by the next least costly new water source available to the county to meet future demand. Except where otherwise authorized, assistance shall be limited to:

(1) Providing an inspection of the structure, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation fixtures, systems, and equipment for which financial assistance will be approved and the estimated life cycle savings to the water system and the consumer that are likely to result from the installation of the fixtures, systems, or equipment;

(2) Providing a list of businesses that sell and install the fixtures, systems, and equipment within or in close proximity to the service area of the county, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize the fixtures, systems, and equipment in accordance with the prevailing national standards;

(3) Arranging to have approved conservation fixtures, systems, and equipment installed by a private contractor whose bid is acceptable to the owner of the structure and verifying the installation; and

(4) Arranging or providing financing for the purchase and installation of approved conservation fixtures, systems, and equipment. The fixtures, systems, and equipment shall be purchased or installed by a private business, the owner, or the utility.

Pay back shall be in the form of incremental additions to the utility bill, billed either together with the use charge or separately. Loans shall not exceed two hundred forty months in length. [2010 1st sp.s. c 5 § 2; 1992 c 25 § 3.]

36.94.470 Storm or surface water drains or facilities—Annexation, incorporation of area by city or town—Imposition of rates and charges by county. Whenever a city or town annexes an area, or a city or town incorporates an area, and the county has issued revenue bonds or general obligation bonds to finance storm or surface water drains or facilities that are payable in whole or in part from rates or charges imposed in the area, the county shall continue imposing all portions of the rates or charges that are allocated to payment of the debt service on bonds in that area after the effective date of the annexation or official date of the incorporation until: (1) The debt is retired; (2) any debt that is issued to refinance the underlying debt is retired; or (3) the city or town reimburses the county amount that is sufficient to retire that portion of the debt borne by the annexed or incorporated area. The county shall construct all facilities included in the storm water plan intended to be financed by the proceeds of such bonds. If the county provides storm water management services to the city or town by contract, the contract shall consider the value of payments made by property owners to the county for the payment of debt service.

The provisions of this section apply whether or not the bonds finance facilities that are geographically located within the area that is annexed or incorporated. [1993 c 361 § 2.]

36.94.480 Assumption of substandard water system—Limited immunity from liability. A county assuming responsibility for a water system that is not in compliance with state or federal requirements for public drinking water systems, and its agents and employees, are immune from lawsuits or causes of action, based on noncompliance with state or federal requirements for public drinking water systems, which predate the date of assuming responsibility and continue after the date of assuming responsibility, provided that the county has submitted and is complying with a plan and schedule of improvements approved by the department of health. This immunity shall expire on the earlier of the date the plan of improvements is completed or four years from the date of assuming responsibility. This immunity does not apply to intentional injuries, fraud, or bad faith. [1994 c 292 § 7.]

Findings—Intent—1994 c 292: See note following RCW 57.04.050.

36.94.490 Cooperative watershed management. In addition to the authority provided in RCW 36.94.020, a county may, as part of maintaining a system of sewerage and/or water, participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 9.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

36.94.900 Declaration of purpose. This chapter is hereby declared to be necessary for the public peace, health, safety and welfare and declared to be a county purpose and that the bonds and special assessments authorized hereby are found to be for a public purpose. [1967 c 72 § 33.]

36.94.910 Authority—Liberal construction of chapter—Modification of inconsistent acts. This chapter shall be complete authority for the establishment, construction and operation and maintenance of a system or systems of sewerage and/or water hereby authorized, and shall be liberally construed to accomplish its purpose. Any act inconsistent herewith shall be deemed modified to conform with the provisions of this chapter for the purpose of this chapter only. [1967 c 72 § 31.]

36.94.920 Severability—1967 c 72. If any portion of this chapter as now or hereafter amended, or its application to any person or circumstances, is held invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision or part thereof not adjudged to be invalid or unconstitutional, and its application to other persons or circumstances shall not be affected. [1967 c 72 § 32.]

36.94.921 Severability—1975 1st ex.s. c 188. If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances shall not be affected. [1975 1st ex.s. c 188 § 13.]

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Chapter 36.95 RCW TELEVISION RECEPTION IMPROVEMENT DISTRICTS

Sections

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36.95.210	District may not be formed to operate certain translator stations.
36.95.900	Severability—1971 ex.s. c 155.

36.95.010 Purpose. The purposes of a television reception improvement district, hereinafter referred to in this chapter as "district", shall be to serve the public interest, convenience, and necessity in the construction, maintenance, and operation of television and FM radio translator stations, including appropriate electric or electronic devices for increasing television program distribution, but said purposes are not meant to include the construction or operation of television cable systems, commonly known and referred to as cable TV systems or CATV. [1985 c 76 § 1; 1971 ex.s. c 155 § 1.]

36.95.020 Boundaries—Territory excluded. A district's boundary may include any part or all of any county and may include any part or all of any incorporated area located within the county. A district's boundary may not include any territory already being served by a cable TV system (CATV) unless on August 9, 1971, there is a translator station retransmitting television signals to such territory. [1991 c 363 § 98; 1971 ex.s. c 155 § 2.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.95.030 Petition to form—Contents. A petition to form a district may be presented to the board of county commissioners and such petition shall include: (1) A description of the purposes of the petition; (2) a description of the purposes and powers of the proposed district; (3) a description of the boundaries of the proposed district; and (4) the signatures of more than fifty percent of the registered voters residing within the boundaries of the proposed district. [1971 ex.s. c 155 § 3.]

36.95.040 Notice of text of petition, meeting where will be considered. If the board of county commissioners, with the assistance of other appropriate county officers, finds the petition filed under RCW 36.95.030 satisfies the requirements of that section, it shall cause the text of the petition to

be published once a week for at least three consecutive weeks in a newspaper of general circulation within the county where the petition is presented. With the publication of the petition there shall be published a notice of the time, date, and place of the public meeting of the county commissioners when the petition will be considered, stating that persons interested may appear and be heard. [1971 ex.s. c 155 § 4.]

36.95.050 Resolution creating district. If after the public meeting or meetings on the petition, the board of county commissioners finds that creation of the proposed district would serve the public interest, the board shall adopt a resolution granting the petition and creating the district. Prior to adoption however, the board may amend the petition in the interest of carrying out the purposes of this chapter. [1971 ex.s. c 155 § 5.]

36.95.060 District board—Duties—How constituted—Quorum—Officers—Filling vacancies. The business of the district shall be conducted by the board of the television reception improvement district, hereinafter referred to as the "board". The board shall be constituted as provided under either subsection (1) or (2) of this section.

(1) The board of a district having boundaries different from the county's shall have either three, five, seven, or nine members, as determined by the board of county commissioners at the time the district is created. Each member shall reside within the boundaries of the district and shall be appointed by the board of county commissioners for a term of three years, or until his or her successor has qualified, except that the board of county commissioners shall appoint one of the members of the first board to a one-year term and two to two-year terms. There is no limit upon the number of terms to which a member may be reappointed after his or her first appointment. A majority of the members of the board shall constitute a quorum for the transaction of business, but the majority vote of the board members shall be necessary for any action taken by the board. The board shall elect from among its members a chair and such other officers as may be necessary. In the event a seat on the board is vacated prior to the expiration of the term of the member appointed to such seat, the board of county commissioners shall appoint a person to complete the unexpired term.

(2) Upon the creation of a district having boundaries identical to those of the county (a countywide district), the county commissioners shall be the members of the board of the district and shall have all the powers and duties of the board as provided under the other sections of this chapter. The county commissioners shall be reimbursed pursuant to the provisions of RCW 36.95.070, and shall conduct the business of the district according to the regular rules and procedures applicable to meetings of the board of county commissioners. [2009 c 549 § 4157; 1992 c 150 § 1; 1971 ex.s. c 155 § 6.]

36.95.070 District board—Reimbursement of members for expenses. Members of the board shall receive no compensation for their services, but shall be reimbursed from district funds for any actual and necessary expenses incurred by them in the performance of their official duties. [1971 ex.s. c 155 § 7.]

36.95.080 List of television set owners. The board shall, on or before the first day of July of any given year, ascertain and prepare a list of all persons believed to own television sets within the district and deliver a copy of such list to the county treasurer. [1988 c 222 § 1; 1981 c 52 § 1; 1971 ex.s. c 155 § 8.]

36.95.090 County budget provisions applicable to district—Financing budget. The provisions of chapter 36.40 RCW, relating to budgets, shall apply to the district. The budget of the district shall be financed by an excise tax imposed by the board, and described in RCW 36.95.100. [1971 ex.s. c 155 § 9.]

36.95.100 Tax levied—Maximum—Exemptions. (1) The tax provided for in RCW 36.95.090 and this section may not exceed sixty dollars per year per television set within the district. No person may be taxed for more than one television set, except that a motel or hotel or any person owning more than five television sets must pay at a rate of one-fifth of the annual tax rate imposed for each of the first five television sets and one-tenth of the annual tax rate imposed for each additional television set.

(2) An owner of a television set within the district is exempt from paying the excise tax on the television set if:

(a) The owner's television set does not receive at least a class grade B contour signal retransmitted by the television translator station or other similar device operated by the district, as such class is defined under regulations of the Federal Communications Commission as of August 9, 1971;

(b) The owner is currently subscribing to and receiving the services of a community antenna system (CATV) to which the owner's television set is connected; or

(c) The owner is currently subscribing to and receiving the services of a satellite carrier, as that term is defined in 17 U.S.C. Sec. 119, as of January 1, 2013.

(3) To qualify for an exemption specified in subsection (2) of this section, an owner of a television set must file a statement with the board claiming the owner's grounds for an exemption. Space for the statement must be provided in tax notices sent to taxpayers pursuant to RCW 36.95.160. [2013 c 191 § 1; 2009 c 549 § 4158; 1981 c 52 § 2; 1975 c 11 § 1; 1971 ex.s. c 155 § 10.]

36.95.110 Liability for delinquent tax and costs. Any person owing the excise tax provided for under this chapter and who fails to pay the same within sixty days after the board or the county treasurer has sent the tax bill to him or her, shall be deemed to be delinquent. Such person shall be liable for all costs to the county or district attributable to collecting the tax but no such excise tax or costs, nor any judgment based thereon, shall be deemed to create a lien against real property. [2009 c 549 § 4159; 1981 c 52 § 3; 1971 ex.s. c 155 § 11.]

36.95.120 Prorating tax. The board may adopt rules providing for prorating of tax bills for persons who have not owned a television set within the district for a full tax year. [1971 ex.s. c 155 § 12.]

36.95.130 District board—Powers generally. In addition to other powers provided for under this chapter, the board has the following powers:

(1) To perform all acts necessary to assure that the purposes of this chapter will be carried out fairly and efficiently;

(2) To acquire, build, construct, repair, own, maintain, and operate any necessary stations retransmitting visual and aural signals intended to be received by the general public, relay stations, pick-up stations, or any other electrical or electronic system necessary. However, the board has no power to originate programs;

(3) To make contracts to compensate any owner of land or other property for the use of such property for the purposes of this chapter;

(4) To make contracts with the United States, or any state, municipality, or any department or agency of those entities for carrying out the general purposes for which the district is formed;

(5) To acquire by gift, devise, bequest, lease, or purchase real and personal property, tangible or intangible, including lands, rights-of-way, and easements, necessary or convenient for its purposes;

(6) To make contracts of any lawful nature (including labor contracts or those for employees' benefits), employ engineers, laboratory personnel, attorneys, other technical or professional assistants, and any other assistants or employees necessary to carry out the provisions of this chapter;

(7) To contract indebtedness or borrow money and to issue warrants or bonds to be paid from district revenues. The bonds, warrants, or other obligations may be in any form, including bearer or registered as provided in RCW 39.46.030. Moreover, such warrants and bonds may be issued and sold in accordance with chapter 39.46 RCW;

(8) To prescribe excise tax rates for providing services throughout the area in accordance with the provisions of this chapter;

(9) To assist the county treasurer in sending tax notices to taxpayers pursuant to RCW 36.95.160; and

(10) To apply for, accept, and be the holder of any permit or license issued by or required under federal or state law. [2013 c 191 § 2; 1985 c 76 § 2; 1983 c 167 § 102; 1980 c 100 § 2; 1971 ex.s. c 155 § 13.]

Additional notes found at www.leg.wa.gov

36.95.140 Signals district may utilize. A district may translate or retransmit only those signals which originate from commercial and educational FM radio stations and commercial and educational television stations which directly provide, within some portion of the state of Washington, a class A grade or class B grade contour, as such classes are defined under regulations of the Federal Communications Commission as of August 9, 1971. [1985 c 76 § 3; 1971 ex.s. c 155 § 14.]

36.95.150 Claims against district board—Procedure upon allowance. Any claim against the district shall be presented to the board. Upon allowance of the claim, the board shall submit a voucher, signed by the chair and one other member of the board, to the county auditor for the issuance of a warrant in payment of said claim. This procedure for payment of claims shall apply to the reimbursement of board

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members for their actual and necessary expenses incurred by them in the performance of their official duties. [2009 c 549 § 4160; 1971 ex.s. c 155 § 15.]

36.95.160 District treasurer—Duties—District warrants. (1) The treasurer of the county in which a district is located is the treasurer of the district.

(2) The county treasurer must collect the excise tax provided for under this chapter and send notice of payment due to persons owing the tax. To reduce costs of services performed by the county treasurer, district board members and employees may assist the treasurer in sending tax notices to taxpayers.

(3) Districts with fewer than twelve hundred persons subject to the excise tax and levying an excise tax of forty dollars or more per television set per year may:

(a) Send tax notices bimonthly; and

(b) Collect excise tax revenue, which must be forwarded to the county treasurer for deposit in the district account.

(4) All district funds must be deposited with the county treasurer. All district payments must be made by the county treasurer from district funds upon warrants issued by the county auditor, except the sums to be paid out of any bond fund for principal and interest payments on bonds. All warrants must be paid in the order of issuance.

(5) The treasurer must report monthly to the board, in writing, the amount in the district fund or funds. [2013 c 191 § 3; 2009 c 549 § 4161; 1983 c 167 § 103; 1981 c 52 § 4; 1971 ex.s. c 155 § 16.]

Additional notes found at www.leg.wa.gov

36.95.180 Costs of county officers reimbursed. (1) The board must reimburse the county auditor, assessor, and treasurer for the actual costs of services performed by them in behalf of the district.

(2) A district may reduce costs of services performed by the county treasurer by assisting the treasurer in sending tax notices to taxpayers pursuant to RCW 36.95.160. [2013 c 191 § 4; 1971 ex.s. c 155 § 18.]

36.95.190 Penalty for false statement as to tax exemption. Any person who shall knowingly make a false statement for exemption from the tax provided under this chapter shall be guilty of a misdemeanor. [1971 ex.s. c 155 § 19.]

36.95.200 Dissolution of district by resolution—Disposition of property. If the board of county commissioners finds, following a public hearing or hearings, that the continued existence of a district would no longer serve the purposes of this chapter, it may by resolution order the district dissolved. If there is any property owned by the district at the time of dissolution, the board of county commissioners shall have such property sold pursuant to the provisions of chapter 36.34 RCW, as now law or hereafter amended. The proceeds from such sale shall be applied to the county current expense fund. [1971 ex.s. c 155 § 20.]

36.95.210 District may not be formed to operate certain translator stations. No television reception improvement district may be formed to operate and maintain any

translator station presently or previously owned, operated or maintained by a television broadcaster. [1971 ex.s. c 155 § 21.]

36.95.900 Severability—1971 ex.s. c 155. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 155 § 22.]

Chapter 36.96 RCW DISSOLUTION OF INACTIVE SPECIAL PURPOSE DISTRICTS

Sections

36.96.010	Definitions.
36.96.020	Notice of inactive special purpose districts by county auditor.
36.96.030	Determination of inactive special purpose districts—Public hearing—Notice.
36.96.040	Dissolution of inactive special purpose district by county legislative authority—Written findings.
36.96.050	Application for writ of prohibition or mandamus by interested party—Procedure.
36.96.060	Dissolution of inactive special purpose district by county legislative authority—Powers and duties.
36.96.070	Dissolved special purpose district—Disposition of property.
36.96.080	Dissolved special purpose district—Satisfaction of outstanding obligations.
36.96.090	New special purpose districts—Duties of county auditor.
36.96.800	Alternative dissolution procedure—Drainage and drainage improvement districts—Conditions.
36.96.900	Chapter not exclusive.
36.96.910	Savings—1979 ex.s. c 5.
36.96.920	Severability—1979 ex.s. c 5.

36.96.010 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Special purpose district" means every municipal and quasi-municipal corporation other than counties, cities, and towns. Such special purpose districts shall include, but are not limited to, water-sewer districts, fire protection districts, port districts, public utility districts, county park and recreation service areas, flood control zone districts, diking districts, drainage improvement districts, and solid waste collection districts, but shall not include industrial development districts created by port districts, and shall not include local improvement districts, utility local improvement districts, and road improvement districts;

(2) "Governing authority" means the commission, council, or other body which directs the affairs of a special purpose district;

(3) "Inactive" means that a special purpose district, other than a public utility district, is characterized by either of the following criteria:

(a) Has not carried out any of the special purposes or functions for which it was formed within the preceding consecutive five-year period; or

(b) No election has been held for the purpose of electing a member of the governing body within the preceding consecutive seven-year period or, in those instances where members of the governing body are appointed and not elected, where no member of the governing body has been appointed within the preceding seven-year period.

A public utility district is inactive when it is characterized by both criteria (a) and (b) of this subsection. [1999 c 153 § 50; 1979 ex.s. c 5 § 1.]

Additional notes found at www.leg.wa.gov

36.96.020 Notice of inactive special purpose districts by county auditor. On or before June 1st of 1980, and on or before June 1st of every year thereafter, each county auditor shall search available records and notify the county legislative authority if any special purpose districts located wholly or partially within the county appear to be inactive. If the territory of any special purpose district is located within more than one county, the legislative authorities of all other counties within whose boundaries such a special purpose district lies shall also be notified by the county auditor. However, the authority to dissolve such a special purpose district as provided by this chapter shall rest solely with the legislative authority of the county which contains the greatest geographic portion of such special purpose district. [2009 c 337 § 12; 1979 ex.s. c 5 § 2.]

36.96.030 Determination of inactive special purpose districts—Public hearing—Notice. (1) Upon receipt of notice from the county auditor as provided in RCW 36.96.020, the county legislative authority within whose boundaries all or the greatest portion of such special purpose district lies shall hold one or more public hearings on or before September 1st of the same year to determine whether or not such special purpose district or districts meet either of the criteria for being "inactive" as provided in RCW 36.96.010: PROVIDED, That if such a special purpose district is a public utility district, the county legislative authority shall determine whether or not the public utility district meets both criteria of being "inactive" as provided in RCW 36.96.010. In addition, at any time a county legislative authority may hold hearings on the dissolution of any special purpose district that appears to meet the criteria of being "inactive" and dissolve such a district pursuant to the proceedings provided for in RCW 36.96.030 through 36.96.080.

(2) Notice of such public hearings shall be given by publication at least once each week for not less than three successive weeks in a newspaper that is in general circulation within the boundaries of the special purpose district or districts. Notice of such hearings shall also be mailed to each member of the governing authority of such special purpose districts, if such members are known, and to all persons known to have claims against any of the special purpose districts. Notice of such public hearings shall be posted in at least three conspicuous places within the boundaries of each special purpose district that is a subject of such hearings. Whenever a county legislative authority that is conducting such a public hearing on the dissolution of one or more of a particular kind of special purpose district is aware of the existence of an association of such special purpose districts, it shall also mail notice of the hearing to the association. In addition, whenever a special purpose district that lies in more than one county is a subject of such a public hearing, notice shall also be mailed to the legislative authorities of all other counties within whose boundaries the special purpose district lies. All notices shall state the purpose, time, and place of such hearings, and that all interested persons may appear and be heard. [1979 ex.s. c 5 § 3.]

36.96.040 Dissolution of inactive special purpose district by county legislative authority—Written findings. After such hearings, the county legislative authority shall make written findings whether each of the special purpose districts that was a subject of the hearings meets each of the criteria of being "inactive." Whenever a special purpose district other than a public utility district has been found to meet a criterion of being inactive, or a public utility district has been found to meet both criteria of being inactive, the county legislative authority shall adopt an ordinance dissolving the special purpose district if it also makes additional written findings detailing why it is in the public interest that the special purpose district be dissolved, and shall provide a copy of the ordinance to the county treasurer. Except for the purpose of winding up its affairs as provided by this chapter, a special purpose district that is so dissolved shall cease to exist and the authority and obligation to carry out the purposes for which it was created shall cease thirty-one days after adoption of the dissolution ordinance. [2001 c 299 § 12; 1979 ex.s. c 5 § 4.]

36.96.050 Application for writ of prohibition or mandamus by interested party—Procedure. The action of the county legislative authority dissolving a special purpose district pursuant to RCW 36.96.040 shall be final and conclusive unless within thirty days of the adoption of the ordinance an interested party makes application to a court of competent jurisdiction for a writ of prohibition or writ of mandamus. At the hearing upon such a writ, the applicant shall have the full burden of demonstrating that the particular special purpose district, other than a public utility district, does not meet either of the criteria of being inactive or that it is not in the public interest that the special purpose district be dissolved: PROVIDED, That where the particular special purpose district subject to the dissolution proceedings is a public utility district, the applicant shall have the full burden of demonstrating that the public utility district either does not meet both the criteria of being inactive or that it is not in the public interest to dissolve the public utility district. [1979 ex.s. c 5 § 5.]

36.96.060 Dissolution of inactive special purpose district by county legislative authority—Powers and duties. For the sole and exclusive purpose of winding up the affairs of a dissolved special purpose district, the county legislative authority, acting as a board of trustees, shall have the same powers and duties as the governing authority of the dissolved special purpose district including the following:

(1) To exchange, sell, or otherwise dispose of all property, real and personal, of the dissolved special purpose district; and

(2) To settle all obligations of such special purpose district. Such powers and duties shall commence upon the effective date of dissolution and shall continue thereafter until such time as the affairs of the dissolved special purpose district have been completely wound up. [1979 ex.s. c 5 § 6.]

36.96.070 Dissolved special purpose district—Disposition of property. Any moneys or funds of the dissolved special purpose district and any moneys or funds received by the board of trustees from the sale or other disposition of any

property of the dissolved special purpose district shall be used, to the extent necessary, for the payment or settlement of any outstanding obligations of the dissolved special purpose district. Any remaining moneys or funds shall be used to pay the county legislative authority for all costs and expenses incurred in the dissolution and liquidation of the dissolved special purpose district. Thereafter, any remaining moneys, funds, or property shall become that of the county in which the dissolved special purpose district was located. However, if the territory of the dissolved special purpose district was located within more than one county, the remaining moneys, funds, and personal property shall be apportioned and distributed to each county in the proportion that the geographical area of the dissolved special purpose district within the county bears to the total geographical area of the dissolved special purpose district, and any remaining real property or improvements to real property shall be transferred to the county within whose boundaries it lies. A county to which real property or improvements to real property are transferred under this section does not have an obligation to use the property or improvements for the purposes for which the dissolved special purpose district used the property or improvements and the county does not assume the obligations or liabilities of the dissolved special purpose district as a result of the transfer. [2001 c 299 § 13; 1979 ex.s. c 5 § 7.]

36.96.080 Dissolved special purpose district—Satisfaction of outstanding obligations. If the proceeds from the sale of any property of the special district together with any moneys or funds of the special purpose district are insufficient to satisfy the outstanding obligations of the special purpose district, the county legislative authority, acting as a board of trustees, shall exercise any and all powers conferred upon it to satisfy such outstanding obligations: PROVIDED, That in no case shall the board of trustees be obligated to satisfy such outstanding obligations from county moneys, funds, or other sources of revenue unless it would have been so obligated before initiation of the dissolution proceedings under this chapter. [1979 ex.s. c 5 § 8.]

36.96.090 New special purpose districts—Duties of county auditor. For every newly created special purpose district, the auditor of each county in which the special purpose district is located shall provide the state auditor with the following information:

(1) The name of the special purpose district and a general description of its location;

(2) The name, address, and telephone number of each member of its governing authority; and

(3) The functions that the special purpose district is then presently performing and the purposes for which it was created. [2009 c 337 § 13; 1979 ex.s. c 5 § 9.]

36.96.800 Alternative dissolution procedure—Drainage and drainage improvement districts—Conditions. As an alternative to this chapter a drainage district or drainage improvement district located within the boundaries of a county storm drainage and surface water management utility, and which is not currently imposing assessments, may be dissolved by ordinance of the county legislative authority. If the

alternative dissolution procedure in this section is used the following shall apply:

(1) The county storm drainage and surface water management utility shall assume responsibility for payment or settlement of outstanding debts of the dissolved drainage district or drainage improvement district.

(2) All assets, including money, funds, improvements, or property, real or personal, shall become assets of the county in which the dissolved drainage district or drainage improvement district was located.

(3) Notwithstanding RCW 85.38.220, the county storm drainage and surface water management utility may determine how to best manage, operate, maintain, improve, exchange, sell, or otherwise dispose of all property, real and personal, of the dissolved drainage district or drainage improvement district. [1991 c 28 § 1.]

36.96.900 Chapter not exclusive. The provisions of this chapter to dissolve inactive special purpose districts shall not be exclusive, and shall be in addition to any other method or methods provided by law to dissolve a special purpose district. [1979 ex.s. c 5 § 10.]

36.96.910 Savings—1979 ex.s. c 5. The enactment of this act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence on September 1, 1979. [1979 ex.s. c 5 § 11.]

36.96.920 Severability—1979 ex.s. c 5. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 5 § 15.]

Chapter 36.100 RCW

PUBLIC FACILITIES DISTRICTS

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36.100.010	Public facilities districts—Creation—Approval of taxes by election—Corporate powers—Property transfer—Agreements.
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36.100.230	Transfer of property, assets, and other interests from state convention and trade center public nonprofit to district—Necessary actions.
36.100.240	Eminent domain authorized.
36.100.900	Severability—1988 ex.s. c 1.
36.100.905	Construction—2010 1st sp.s. c 15.

Changes in tax law—Liability: RCW 82.08.064, 82.14.055, and 82.32.430.

Sales and use tax for public facilities districts: RCW 82.14.048.

Sales and use tax imposed by public facilities districts for regional centers: RCW 82.14.390.

36.100.010 Public facilities districts—Creation—Approval of taxes by election—Corporate powers—Property transfer—Agreements. (1) One or more public facilities districts may be created in any county and must be coextensive with the boundaries of the county.

(2) A public facilities district is created upon adoption of a resolution providing for the creation of such a district by the county legislative authority in which the proposed district is located.

(3) A public facilities district is a municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

(4) Except as provided in RCW 36.100.040 (4) and (5), no taxes authorized under this chapter may be assessed or levied unless a majority of the voters of the public facilities district has approved such tax at a general or special election. A single ballot proposition may both validate the imposition of the sales and use tax under RCW 82.14.048 and the excise tax under RCW 36.100.040(1).

(5)(a) A public facilities district constitutes a body corporate and possesses all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, including contracts with public and private parties, to acquire, own, sell, transfer, lease, and otherwise acquire or dispose of property, to grant concessions under terms approved by the public facilities district, and to sue and be sued.

(b) A public facilities district created by a county with a population of one million five hundred thousand or more to acquire, own, and operate a convention and trade center transferred from a public nonprofit corporation may continue to contract with the Seattle-King county convention and visitors' bureau or its successor in interest for marketing the convention and trade center facility and services.

(6) A public facilities district may enter into contracts with a county for the purpose of exercising any powers of a community renewal agency under chapter 35.81 RCW.

(7) The legislative authority of a city or county, the board of directors of a public nonprofit corporation, or the state of Washington may transfer property to a public facilities district created under this chapter, with or without consideration. No property that is encumbered with debt or that is in need of

major capital renovation may be transferred to the district without the agreement of the district and revenues adequate to retire the existing indebtedness.

(8) A public facilities district may enter into agreements with the state, any municipal corporation, or any other governmental entity for the design, financing, acquisition, development, construction, reconstruction, lease, remodeling, alteration, maintenance, equipping, reequipping, repair, operation, or management of one or more facilities of the parties thereto. Agreements may provide that any party to the contract designs, finances, acquires, develops, constructs, reconstructs, remodels, alters, maintains, equips, reequips, repairs, and operates one or more facilities for the other party or parties to the contract. A public facilities district may enter into an agreement with the state, any municipal corporation, or other public or private entity that will assist a public facilities district in the financing of all or any part of a district facility on such terms as may be determined by agreement between the respective parties, including without limitation by a loan, guaranty, or other financing agreement. [2010 1st sp.s. c 15 § 2; 2002 c 218 § 26; 1995 3rd sp.s. c 1 § 301; 1995 1st sp.s. c 14 § 1; 1995 c 396 § 1; 1989 1st ex.s. c 8 § 1; 1988 ex.s. c 1 § 11.]

Findings—Intent—2010 1st sp.s. c 15: "(1) The legislature finds that conventions and trade shows provide both direct and indirect civic and economic benefits. It is the intent of the legislature to provide for the transfer of the governance and financing of the state convention and trade center to a public facilities district formed by a county with a population of one million five hundred thousand or more to acquire, own, and operate the convention and trade center. The legislature also intends to replace, in connection with such transfer, the authority under chapter 67.40 RCW of the state and city to impose excise taxes on the sale of or charge made for the furnishing of lodging to fund the state convention and trade center with authority for the public facilities district to impose lodging taxes at these rates, without affecting the existing authority of the state, county, cities, and other municipal corporations to impose taxes on the sale or charge made for the furnishing of lodging under existing caps on the aggregate rate that may be charged.

(2) The legislature further finds that the location of the convention and trade center particularly benefits and increases the occupancy of larger hotels and other lodging facilities in the city in which it is located and to a lesser extent in the remainder of the county in which it is located. The legislature finds that imposing excise taxes on the sale of or charge made for the furnishing of lodging at the rates authorized in section 5 of this act is an appropriate method of paying for the cost of acquiring, constructing, owning, remodeling, maintaining, equipping, reequipping, repairing, altering, and operating a convention and trade center." [2010 1st sp.s. c 15 § 1.]

Construction—2010 1st sp.s. c 15: "The provisions of *this chapter must be liberally construed to effect the policies and purposes of *this chapter." [2010 1st sp.s. c 15 § 20.]

***Reviser's note:** The reference to "this chapter" appears to be erroneous. Reference to chapter 36.100 RCW was apparently intended.

Additional notes found at www.leg.wa.gov

36.100.020 Governance—Board of directors. (1)(a) A public facilities district must be governed by a board of directors consisting of five, seven, or nine members as provided in this section.

(b) If the largest city in the county has a population that is at least forty percent of the total county population, the board of directors of the public facilities district must consist of five members selected as follows:

(i) Two members appointed by the county legislative authority to serve for four-year staggered terms;

(ii) Two members appointed by the city council of the largest city in the county to serve for four-year staggered terms; and

(iii) One person to serve for a four-year term who is selected by the other directors.

(c)(i) Except as provided in (c)(ii) of this subsection (1), if the largest city in the county has a population of less than forty percent of the total county population, the county legislative authority must establish in the resolution creating the public facilities district whether the board of directors of the public facilities district has either five or seven members, and the county legislative authority must appoint the members of the board of directors to reflect the interests of cities and towns in the county, as well as the unincorporated area of the county.

(ii) However, if the county has a population of one million five hundred thousand or more, the largest city in the county has a population of less than forty percent of the total county population, and the county operates under a county charter, which provides for an elected county executive, the members of the board of directors must be appointed as follows:

(A) If the public facilities district is created to construct a baseball stadium as defined in RCW 82.14.0485, three members must be appointed by the governor and the remaining members must be appointed by the county executive subject to confirmation by the county legislative authority. Of the members appointed by the governor, the speaker of the house of representatives and the majority leader of the senate must each recommend to the governor a person to be appointed to the board; and

(B) If the public facilities district is created to acquire, own, and operate a convention and trade center, following the expiration of the terms of the initial board of directors, three members must be appointed by the governor, three members must be nominated by the county executive subject to confirmation by the county legislative authority, and three members must be nominated by the mayor of the city in which the convention and trade center is located subject to confirmation by the city legislative authority. Members of the board of directors may not be members of the legislative authority of the county or any city within the county.

(d) The initial board of directors of a public facilities district created in a county of one million five hundred thousand or more to acquire, own, and operate a convention and trade center must be comprised of the nine members of the board of the public nonprofit corporation that transfers the convention and trade center to the public facilities district under RCW 36.100.230. The governor must designate which of the initial board members must serve two-year terms and which must serve four-year terms and identify the board positions to which successors to initial directors are to be appointed by the county and the city.

(2) At least one member on the board of directors must be representative of the lodging industry in the public facilities district before the public facilities district imposes the excise tax under RCW 36.100.040(1). Of the members of the board of directors of a public facilities district created in a county of one million five hundred thousand or more to acquire, own, and operate a convention and trade center, one of the governor's appointments and one of the county's appointments must be representative of the lodging industry in the public facilities district and one of the city's appointments must be representative of organized labor, except that

these requirements do not apply to the initial board of such district.

(3) Members of the board of directors must serve four-year terms of office, except that two of the initial five board members, three of the initial seven board members, and four of the initial nine board members must serve two-year terms of office.

(4) A vacancy must be filled in the same manner as the original appointment was made and the person appointed to fill a vacancy must serve for the remainder of the unexpired term of the office for the position to which he or she was appointed.

(5) Any director may be removed from office by the person or entity that appointed or confirmed such director for any reason or for no reason as follows: A director appointed by the governor may be removed from office by the governor; and any director confirmed by a city or county legislative authority may be removed from office by action of at least two-thirds of the members of the legislative authority that confirmed the director. [2010 1st sp.s. c 15 § 3; 1995 3rd sp.s. c 1 § 302; 1995 1st sp.s. c 14 § 2; 1995 c 396 § 2; 1989 1st ex.s. c 8 § 2; 1988 ex.s. c 1 § 12.]

Findings—Intent—Construction—2010 1st sp.s. c 15: See notes following RCW 36.100.010.

Additional notes found at www.leg.wa.gov

36.100.025 Independent financial feasibility review—When required—Public document. (1) An independent financial feasibility review under this section is required to be performed prior to any of the following events:

(a) The formation of a public facilities district under this chapter;

(b) The issuance of any indebtedness, excluding the issuance of obligations to refund or replace such indebtedness, by a public facilities district under this chapter; or

(c) The long-term lease, purchase, or development of a facility under this chapter.

(2) The independent financial feasibility review required by this section must be conducted by the department of commerce through the municipal research and services center under RCW 43.110.030 or under a contract with another entity under the authority of RCW 43.110.080. The review must examine the potential costs to be incurred by the public facility [facilities] district and the adequacy of revenues or expected revenues to meet those costs. The cost of the independent financial feasibility review must be borne by the public facility [facilities] district or the local government proposing to form a public facility [facilities] district.

(3) The independent financial feasibility review, upon completion, must be a public document and must be submitted to the governor, the state treasurer, the state auditor, the public facility [facilities] district and participating local political subdivisions, and appropriate committees of the legislature. [2012 c 4 § 2.]

36.100.027 Statutorily authorized taxing authority. After June 7, 2012, the statutorily authorized taxing authority of a public facility [facilities] district may not be restricted in any manner by the forming jurisdiction or jurisdictions or by any action of the public facility [facilities] district. [2012 c 4 § 4.]

36.100.030 Facilities—Agreements—Fees. (1) A public facilities district is authorized to acquire, construct, own, remodel, maintain, equip, reequip, repair, and operate (a) sports facilities, entertainment facilities, convention facilities, including without limitation any convention and trade center transferred from a public nonprofit corporation under RCW 36.100.230(1), or regional centers as defined in RCW 35.57.020, and (b) for districts formed after January 1, 2000, recreational facilities other than ski areas, together with contiguous parking facilities. The taxes that are provided for in this chapter may only be imposed for these purposes, including without limitation implementing any redemption, prepayment, or legal defeasance of outstanding obligations under RCW 36.100.230(3)(a).

(2) A public facilities district may enter into agreements under chapter 39.34 RCW for the design, financing, acquisition, development, construction, reconstruction, lease, remodeling, alteration, maintenance, equipping, reequipping, repair, operation, or management of such facilities and may enter into contracts under chapter 39.34 RCW where any party to the contract provides and operates such facilities for the other party or parties to the contract. A public facilities district may enter into agreements under chapter 39.34 RCW that will assist a public facilities district in the financing of all or any part of a district facility on such terms as may be determined by agreement between the respective parties, including without limitation by a loan, guaranty, or other financing agreement.

(3) Notwithstanding the establishment of a career, civil, or merit service system, a public facilities district may contract with a public or private entity for the operation or management of its public facilities.

(4) A public facilities district is authorized to use the supplemental alternative public works contracting procedures set forth in chapter 39.10 RCW in connection with the design, construction, reconstruction, remodel, or alteration of any of its public facilities.

(5) A public facilities district may impose charges and fees for the use of its facilities, and may accept and expend or use gifts, grants, and donations. [2010 1st sp.s. c 15 § 4; 2003 c 376 § 1; 1999 c 165 § 16; 1995 1st sp.s. c 14 § 3; 1995 c 396 § 3; 1989 1st ex.s. c 8 § 3; 1988 ex.s. c 1 § 13.]

Findings—Intent—Construction—2010 1st sp.s. c 15: See notes following RCW 36.100.010.

Additional notes found at www.leg.wa.gov

36.100.035 Additional powers and restrictions on district that constructs baseball stadium. In addition to other powers and restrictions on a public facilities district, the following shall apply to a public facilities district, located in a county with a population of one million or more, that constructs a baseball stadium:

(1) The public facilities district, in consultation with the professional baseball team that will use the stadium, shall have the authority to determine the stadium site;

(2) The public facilities district, in consultation with the professional baseball team that will use the stadium, shall have the authority to establish the overall scope of the stadium project, including, but not limited to, the stadium itself, associated parking facilities, associated retail and office

development that are part of the stadium facility, and ancillary services or facilities;

(3) The public facilities district, in consultation with the professional baseball team that will use the stadium, shall have the final authority to make the final determination of the stadium design and specifications;

(4) The public facilities district shall have the authority to contract with the baseball team that will use the stadium to obtain architectural, engineering, environmental, and other professional services related to the stadium site and design options, environmental study requirements, and obtaining necessary permits for the stadium facility;

(5) The public facilities district, in consultation with the professional baseball team that will use the stadium, shall have the authority to establish the project budget and bidding specifications and requirements on the stadium project;

(6) The public facilities district, in consultation with the professional baseball team that will use the stadium and the county in which the public facilities district is located, shall have the authority to structure the financing of the stadium facility project; and

(7) The public facilities district shall consult with the house of representatives executive rules committee and the senate facilities and operations committee before selecting a name for the stadium.

As used in this section, "stadium" and "baseball stadium" mean a "baseball stadium" as defined in RCW 82.14.0485. [1995 3rd sp.s. c 1 § 303.]

Additional notes found at www.leg.wa.gov

36.100.036 Donated moneys for baseball stadium. A public facilities district may accept and expend moneys that may be donated for the purpose of a baseball stadium as defined in RCW 82.14.0485. [1995 3rd sp.s. c 1 § 304.]

Additional notes found at www.leg.wa.gov

36.100.037 Baseball stadium construction agreement. The public facilities district, the county, and the city with the largest population in the county shall enter into an agreement regarding the construction of a baseball stadium as defined in RCW 82.14.0485. The agreement shall address, but not be limited to:

(1) Expedited permit processing for the design and construction of the project;

(2) Expedited environmental review processing;

(3) Expedited processing of requests for street, right-of-way, or easement vacations necessary for the construction of the project; and

(4) Other items deemed necessary for the design and construction of the project. [1995 3rd sp.s. c 1 § 308.]

Additional notes found at www.leg.wa.gov

36.100.040 Lodging tax authorized—Annual payment amount—Payment of obligations—Application of other tax provisions. (1) A public facilities district may impose an excise tax on the sale of or charge made for the furnishing of lodging that is subject to tax under chapter 82.08 RCW, except that no such tax may be levied on any premises having fewer than forty lodging units. Except for any tax imposed under subsection (4) or (5) of this section, if a public facilities district has not imposed such an excise tax prior to

December 31, 1995, the public facilities district may only impose the excise tax if a ballot proposition authorizing the imposition of the tax has been approved by a simple majority vote of voters of the public facilities district voting on the proposition.

(2) The rate of the tax may not exceed two percent and the proceeds of the tax may only be used for the acquisition, design, construction, remodeling, maintenance, equipping, reequipping, repairing, and operation of its public facilities. This excise tax may not be imposed until the district has approved the proposal to acquire, design, and construct the public facilities.

(3) Except for a public facilities district created within a county with a population of one million five hundred thousand or more for the purpose of acquiring, owning, and operating a convention and trade center, a public facilities district may not impose the tax authorized in this section if, after the tax authorized in this section was imposed, the effective combined rate of state and local excise taxes, including sales and use taxes and excise taxes on lodging, imposed on the sale of or charge made for furnishing of lodging in any jurisdiction in the public facilities district exceeds eleven and one-half percent.

(4) To replace the tax authorized by *RCW 67.40.090, a public facilities district created within a county with a population of one million five hundred thousand or more for the purpose of acquiring, owning, and operating a convention and trade center may impose an excise tax on the sale of or charge made for the furnishing of lodging that is subject to tax under chapter 82.08 RCW, except that no such tax may be levied on any premises having fewer than sixty lodging units. The rate of the tax may not exceed seven percent within the portion of the district that corresponds to the boundaries of the largest city within the public facilities district and may not exceed 2.8 percent in the remainder of the district. The tax imposed under this subsection (4) may not be collected prior to the transfer date defined in RCW 36.100.230.

(5) To replace the tax authorized by *RCW 67.40.130, a public facilities district created within a county with a population of one million five hundred thousand or more for the purpose of acquiring, owning, and operating a convention and trade center may impose an additional excise tax on the sale of or charge made for the furnishing of lodging that is subject to tax under chapter 82.08 RCW, except that no such tax may be levied on any premises having fewer than sixty lodging units. The rate of the additional excise tax may not exceed two percent and may be imposed only within the portion of the district that corresponds to the boundaries of the largest city within the public facilities district and may not be imposed in the remainder of the district. The tax imposed under this subsection (5) may not be collected prior to the transfer date specified in RCW 36.100.230. The tax imposed under this subsection (5) must be credited against the amount of the tax otherwise due to the state from those same taxpayers under chapter 82.08 RCW. The tax under this subsection (5) may be imposed only for the purpose of paying or securing the payment of the principal of and interest on obligations issued or incurred by the public facilities district and paying annual payment amounts to the state under subsection (6)(a) of this section. The authority to impose the additional excise tax under this subsection (5) expires on the date that is the

earlier of (a) July 1, 2029, or (b) the date on which all obligations issued or incurred by the public facilities district to implement any redemption, prepayment, or legal defeasance of outstanding obligations under RCW 36.100.230(3)(a) are no longer outstanding.

(6)(a) Commencing with the first full fiscal year of the state after the transfer date defined in RCW 36.100.230 and for so long as a public facilities district imposes a tax under subsection (5) of this section, the public facilities district must transfer to the state of Washington on June 30th of each state fiscal year an annual payment amount.

(b) For the purposes of this subsection (6), "annual payment amount" means an amount equal to revenues received by the public facilities district in the fiscal year from the additional excise tax imposed under subsection (5) of this section plus an interest charge calculated on one-half the annual payment amount times an interest rate equal to the average annual rate of return for the prior calendar year in the Washington state local government investment pool created in chapter 43.250 RCW.

(c)(i) If the public facilities district in any fiscal year is required to apply additional lodging excise tax revenues to the payment of principal and interest on obligations it issues or incurs, and the public facilities district is unable to pay all or any portion of the annual payment amount to the state, the deficiency is deemed to be a loan from the state to the public facilities district for the purpose of assisting the district in paying such principal and interest and must be repaid by the public facilities district to the state after providing for the payment of the principal of and interest on obligations issued or incurred by the public facilities district, all on terms established by an agreement between the state treasurer and the public facilities district executed prior to the transfer date. Any agreement between the state treasurer and the public facilities district must specify the term for the repayment of the deficiency in the annual payment amount with an interest rate equal to the twenty bond general obligation bond buyer index plus one percentage point.

(ii) Outstanding obligations to repay any loans deemed to have been made to the public facilities district as provided in any such agreements between the state treasurer and the public facilities district survive the expiration of the additional excise tax under subsection (5) of this section.

(iii) For the purposes of this subsection (6)(c), "additional lodging excise tax revenues" mean the tax revenues received by the public facilities district under subsection (5) of this section.

(7) A public facilities district is authorized to pledge any of its revenues, including without limitation revenues from the taxes authorized in this section, to pay or secure the payment of obligations issued or incurred by the public facilities district, subject to the terms established by the board of directors of the public facilities district. So long as a pledge of the taxes authorized under this section is in effect, the legislature may not withdraw or modify the authority to levy and collect the taxes at the rates permitted under this section and may not increase the annual payment amount to be transferred to the state under subsection (6) of this section.

(8) The department of revenue must perform the collection of such taxes on behalf of the public facilities district at no cost to the district, and the state treasurer must distribute

those taxes as available on a monthly basis to the district or, upon the direction of the district, to a fiscal agent, paying agent or trustee for obligations issued or incurred by the district.

(9) Except as expressly provided in this chapter, all of the provisions contained in RCW 82.08.050 and 82.08.060 and chapter 82.32 RCW have full force and application with respect to taxes imposed under the provisions of this section.

(10) The taxes imposed in this section do not apply to sales of temporary medical housing exempt under RCW 82.08.997. [2010 1st sp.s. c 15 § 5; 2008 c 137 § 5; 2002 c 178 § 5; 1995 c 396 § 4; 1989 1st ex.s. c 8 § 4; 1988 ex.s. c 1 § 14.]

***Reviser's note:** RCW 67.40.090 and 67.40.130 were repealed by 2010 1st sp.s. c 15 § 14, effective November 30, 2010.

Findings—Intent—Construction—2010 1st sp.s. c 15: See notes following RCW 36.100.010.

Effective date—2008 c 137: See note following RCW 82.08.997.

Additional notes found at www.leg.wa.gov

36.100.042 Lodging license fee or tax in excess of rate imposed on retail businesses prohibited. (1) Except as provided in chapters 35.101, 67.28, and 82.14 RCW, after January 1, 1983, no city, town, or county in which the tax under RCW 36.100.040 (4) and (5) is imposed may impose a license fee or tax on the act or privilege of engaging in business to furnish lodging by a hotel, rooming house, tourist court, motel, trailer camp, or similar facilities in excess of the rate imposed upon other persons engaged in the business of making sales at retail.

(2) For the purposes of this section, "sales at retail" has the same meaning as provided in RCW 82.04.050. [2010 1st sp.s. c 15 § 9.]

Findings—Intent—Construction—2010 1st sp.s. c 15: See notes following RCW 36.100.010.

36.100.050 Ad valorem property tax. (1) A public facilities district may levy an ad valorem property tax, in excess of the one percent limitation, upon the property within the district for a one-year period to be used for operating or capital purposes whenever authorized by the voters of the district pursuant to RCW 84.52.052 and Article VII, section 2(a) of the state Constitution.

(2) A public facilities district may provide for the retirement of voter-approved general obligation bonds, issued for capital purposes only, by levying bond retirement ad valorem property tax levies, in excess of the one percent limitation, whenever authorized by the voters of the district pursuant to Article VII, section 2(b) of the state Constitution and RCW 84.52.056. [1988 ex.s. c 1 § 15.]

36.100.060 General obligation bonds—Termination, reauthorization of excise tax. (1) To carry out the purpose of this chapter, a public facilities district may issue general obligation bonds, not to exceed an amount, together with any outstanding nonvoter approved general obligation indebtedness, equal to one-half of one percent of the value of taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015. A public facilities district additionally may issue general obligation bonds for capital purposes only, together with any outstanding general

obligation indebtedness, not to exceed an amount equal to one and one-fourth percent of the value of the taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015, when authorized by the voters of the public facilities district pursuant to Article VIII, section 6 of the state Constitution, and to provide for the retirement thereof by excess property tax levies as provided in this chapter.

(2) General obligation bonds may be issued with a maturity of up to thirty years, and must be issued and sold in accordance with the provisions of chapter 39.46 RCW. If the public facilities district is formed by a county with a population of one million five hundred thousand or more to acquire, own, and operate a convention and trade center, general obligation bonds may be issued with a maturity of up to forty years, and must be issued and sold in accordance with the provisions of chapter 39.46 RCW. In addition to the powers vested in it under RCW 39.46.030, a public facilities district created by a county with a population of one million five hundred thousand or more to acquire, own, and operate a convention and trade center may appoint, and may specify the rights and duties of, trustees with respect to its bonds, and such trustees may receive, hold, disburse, invest, and reinvest funds on the district's behalf and for the protection of the district's bond owners.

(3) The general obligation bonds may be payable from the operating revenues of the public facilities district in addition to the tax receipts of the district.

(4) The excise tax imposed pursuant to RCW 36.100.040(1) terminates upon final payment of all bonded indebtedness for its public facilities, except that the excise tax may be reauthorized by a public vote, in the same manner as originally authorized, for funding of additional public facilities or a regional center. [2010 1st sp.s. c 15 § 6; 1999 c 165 § 15; 1995 1st sp.s. c 14 § 4; 1995 c 396 § 5; 1989 1st ex.s. c 8 § 5; 1988 ex.s. c 1 § 16.]

Findings—Intent—Construction—2010 1st sp.s. c 15: See notes following RCW 36.100.010.

Additional notes found at www.leg.wa.gov

36.100.070 Acquisition and transfer of real and personal property. A public facilities district may acquire and transfer real and personal property by lease, sublease, purchase, or sale. [1988 ex.s. c 1 § 17.]

36.100.080 Direct or collateral attack barred after thirty days. No direct or collateral attack on any public facilities district purported to be authorized or created in conformance with this chapter may be commenced more than thirty days after creation by the county legislative authority. [1995 1st sp.s. c 14 § 5.]

Additional notes found at www.leg.wa.gov

36.100.090 Tax deferral—New public facilities. (1) The governing board of a public facilities district may apply for deferral of taxes on the construction of buildings, site preparation, and the acquisition of related machinery and equipment for a new public facility. Application shall be made to the department of revenue in a form and manner prescribed by the department of revenue. The application shall contain information regarding the location of the public facil-

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ity, estimated or actual costs, time schedules for completion and operation, and other information required by the department of revenue. The department of revenue shall approve the application within sixty days if it meets the requirements of this section.

(2) The department of revenue shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on the public facility. The use of the certificate shall be governed by rules established by the department of revenue.

(3) The public facilities district shall begin paying the deferred taxes in the fifth year after the date certified by the department of revenue as the date on which the public facility is operationally complete. The first payment is due on December 31st of the fifth calendar year after such certified date, with subsequent annual payments due on December 31st of the following nine years. Each payment shall equal ten percent of the deferred tax.

(4) The department of revenue may authorize an accelerated repayment schedule upon request of the public facilities district.

(5) Interest shall not be charged on any taxes deferred under this section for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this section. The debt for deferred taxes is not extinguished by insolvency or other failure of the public facilities district.

(6) Applications and any other information received by the department of revenue under this section are not confidential and are subject to disclosure. Chapter 82.32 RCW applies to the administration of this section.

(7) As used in this section, "public facility" means a baseball stadium with a retractable roof or canopy and natural turf. [1995 1st sp.s. c 14 § 6.]

Additional notes found at www.leg.wa.gov

36.100.100 Ex officio treasurer. The treasurer of the county in which a public facilities district is located must be the ex officio treasurer of the district, unless the board of directors of a public facilities district created in a county of one million five hundred thousand or more designates by resolution another person having experience in financial or fiscal matters as the treasurer of the district. Such a treasurer possesses all of the powers, responsibilities, and duties of, and is subject to the same restrictions as provided by law for, a county treasurer with regard to district financial matters. Such treasurer must be bonded for not less than twenty-five thousand dollars. [2010 1st sp.s. c 15 § 7; 1995 c 396 § 7.]

Findings—Intent—Construction—2010 1st sp.s. c 15: See notes following RCW 36.100.010.

Additional notes found at www.leg.wa.gov

36.100.110 Travel, expense reimbursement policy—Required. The board of directors of the public facilities district shall adopt a resolution that may be amended from time to time that shall establish the basic requirements governing methods and amounts of reimbursement payable to such district officials and employees for travel and other business expenses incurred on behalf of the district. The resolution shall, among other things, establish procedures for approving such expenses; the form of the travel and expense voucher;

and requirements governing the use of credit cards issued in the name of the district. The resolution may also establish procedures for payment of per diem to board members. The state auditor shall, as provided by general law, cooperate with the public facilities district in establishing adequate procedures for regulating and auditing the reimbursement of all such expenses. [1995 c 396 § 8.]

Additional notes found at www.leg.wa.gov

36.100.120 Travel, expense reimbursement policy—Limitations. The board of directors of the public facilities district may authorize payment of actual and necessary expenses of officers and employees for lodging, meals, and travel-related costs incurred in attending meetings or conferences on behalf of the public facilities district and strictly in the public interest and for public purposes. Officers and employees may be advanced sufficient sums to cover their anticipated expenses in accordance with rules adopted by the state auditor, which shall substantially conform to the procedures provided in RCW 43.03.150 through 43.03.210. [1995 c 396 § 9.]

Additional notes found at www.leg.wa.gov

36.100.130 Board of directors—Compensation. Each member of the board of directors of the public facilities district may receive compensation of fifty dollars per day for attending meetings or conferences on behalf of the district, not to exceed three thousand dollars per year. A director may waive all or a portion of his or her compensation under this section as to a month or months during his or her term of office, by a written waiver filed with the public facilities district. The compensation provided in this section is in addition to reimbursement for expenses paid to the directors by the public facilities district. [1995 c 396 § 10.]

Additional notes found at www.leg.wa.gov

36.100.140 Liability insurance. The board of directors of the public facilities district may purchase liability insurance with such limits as the directors may deem reasonable for the purpose of protecting and holding personally harmless district officers and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1995 c 396 § 11.]

Additional notes found at www.leg.wa.gov

36.100.150 Costs of defense. Whenever an action, claim, or proceeding is instituted against a person who is or was an officer or employee of the public facilities district arising out of the performance of duties for or employment with the district, the public facilities district may grant a request by the person that the attorney of the district's choosing be authorized to defend the claim, suit, or proceeding, and the costs of defense, attorneys' fees, and obligation for payments arising from the action may be paid from the district's funds. Costs of defense or judgment or settlement against the person shall not be paid in a case where the court has found that the person was not acting in good faith or within the scope of employment with or duties for the public facilities district. [1995 c 396 § 12.]

Additional notes found at www.leg.wa.gov

36.100.160 Expenditure of funds—Purposes. (1) The board of directors of the public facilities district shall have authority to authorize the expenditure of funds for the public purposes of preparing and distributing information to the general public and promoting, advertising, improving, developing, operating, and maintaining facilities of the district. For promotional activities the district board must: (a) Identify the proposed expenditure in its annual budget; and (b) adopt written rules governing promotional hosting by employees, agents, and the board, including requirements for identifying and evaluating the public benefits to be derived and documenting the public benefits realized.

(2) Nothing contained in this section may be construed to authorize preparation and distribution of information to the general public for the purpose of influencing the outcome of a district election. [2009 c 167 § 1; 1995 c 396 § 13.]

Additional notes found at www.leg.wa.gov

36.100.170 Employees—Benefits. The public facilities district shall have authority to create and fill positions, fix wages, salaries, and bonds therefor, pay costs involved in securing or arranging to secure employees, and establish benefits for employees, including holiday pay, vacations or vacation pay, retirement benefits, medical, life, accident, or health disability insurance, as approved by the board. Public facilities district board members, at their own expense, shall be entitled to medical, life, accident, or health disability insurance. Insurance for employees and board members shall not be considered compensation. District coverage for the board is not to exceed that provided public facilities district employees. [1995 c 396 § 14.]

Additional notes found at www.leg.wa.gov

36.100.180 Service provider agreements—Competitive solicitation process for personal service contracts of one hundred fifty thousand dollars or more—Exceptions. (1) The public facilities district may secure services by means of an agreement with a service provider. The public facilities district shall publish notice, establish criteria, receive and evaluate proposals, and negotiate with respondents under requirements set forth by district resolution.

(2) For personal service contracts of one hundred fifty thousand dollars or greater not otherwise governed by chapter 39.80 RCW, contracts for architectural and engineering services, a competitive solicitation process is required. The district shall establish the process by resolution, which must at a minimum include the following:

(a) Notice. A notice inviting statements of either qualifications or proposals, or both, from interested parties must be published in a newspaper of general circulation throughout the county in which the district is located at least ten days before the date for submitting the statements of qualifications or proposals.

(b) Description of services required. The request for statements of either qualifications or proposals, or both published or provided to interested parties must describe the services required and list the types of information and data required of each proposal. It may also describe the evaluation criteria and state the relative importance of the criteria if then available.

(c) Review and evaluation. The district shall establish a process to review and evaluate statements of either qualifications or proposals, or both. That process may include a selection board identified by the district or some other panel of evaluators. If appropriate, the reviewers may hear oral presentations by proposers.

(d) Selection. The evaluators shall select and rank the most qualified proposers. In selecting and ranking such proposers, the selection board shall consider the evaluation criteria established by the district and may consider such other information as may be secured during the evaluation process related to a proposer's qualifications and experience.

(e) Negotiations. The district shall enter into contract negotiations with the top-ranked proposer or proposers identified in the selection process. Negotiations may be conducted concurrently or sequentially as may be allowed by law.

(f) Approval. When negotiations are complete, the proposed contract will be presented to the district's governing body at its next regularly scheduled meeting for approval or ratification.

(3) Exceptions. The requirements of this section need not be met in the following circumstances:

(a) Emergency. When the contracting authority makes a finding that an emergency requires the immediate execution of the work involved. As used in this subsection, "emergency" has the same meaning as provided in *RCW 39.29.006;

(b) Contract amendment. Amendments to existing service contracts are exempt from these requirements; and

(c) Sole source. In the event that the services being sought can only be obtained from a single source, then the district shall make a formal written finding stating the factual basis for the exception and the solicitation requirements of this section do not apply. As used in this subsection, "sole source" has the same meaning as provided in *RCW 39.29.006.

(4) Prospective application. Nothing in this section affects the validity or effect of any district contract executed prior to July 26, 2009. [2009 c 533 § 4; 1995 c 396 § 15.]

*Reviser's note: RCW 39.29.006 was repealed by 2012 c 224 § 29, effective January 1, 2013.

Additional notes found at www.leg.wa.gov

36.100.190 Purchases and sales—Procedures. In addition to provisions contained in chapter 39.04 RCW, the public facilities district is authorized to follow procedures contained in *RCW 43.19.1906 and 43.19.1911 for all purchases, contracts for purchase, and sales. [1995 c 396 § 16.]

*Reviser's note: RCW 43.19.1906 and 43.19.1911 were repealed by 2012 c 224 § 29, effective January 1, 2013.

Additional notes found at www.leg.wa.gov

36.100.200 Revenue bonds—Limitations. (1) A public facilities district may issue revenue bonds to fund revenue generating facilities, or portions of facilities, which it is authorized to provide or operate. Whenever revenue bonds are to be issued, the board of directors of the district shall create or have created a special fund or funds from which, along with any reserves created pursuant to RCW 39.44.140, the principal and interest on such revenue bonds shall exclu-

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sively be payable. The board may obligate the district to set aside and pay into the special fund or funds a fixed proportion or a fixed amount of the revenues from the public improvements, projects, or facilities, and all related additions, that are funded by the revenue bonds. This amount or proportion shall be a lien and charge against these revenues, subject only to operating and maintenance expenses. The board shall have due regard for the cost of operation and maintenance of the public improvements, projects, or facilities, or additions, that are funded by the revenue bonds, and shall not set aside into the special fund or funds a greater amount or proportion of the revenues that in its judgment will be available over and above the cost of maintenance and operation and the amount or proportion, if any, of the revenue so previously pledged. The board may also provide that revenue bonds payable out of the same source or sources of revenue may later be issued on a parity with any revenue bonds being issued and sold.

(2) Revenue bonds issued pursuant to this section shall not be an indebtedness of the district issuing the bonds, and the interest and principal on the bonds shall only be payable from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created pursuant to RCW 39.44.140. The owner or bearer of a revenue bond or any interest coupon issued pursuant to this section shall not have any claim against the district arising from the bond or coupon except for payment from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created pursuant to RCW 39.44.140. The substance of the limitations included in this subsection shall be plainly printed, written, or engraved on each bond issued pursuant to this section.

(3) Revenue bonds with a maturity in excess of thirty years shall not be issued. The board of directors of the district shall by resolution determine for each revenue bond issue the amount, date, form, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, manner of execution, manner of sale, callable provisions, if any, and covenants including the refunding of existing revenue bonds. Facsimile signatures may be used on the bonds and any coupons. Refunding revenue bonds may be issued in the same manner as revenue bonds are issued. [1995 c 396 § 17.]

Alternative authority to issue revenue bonds: RCW 39.46.150, 39.46.160.

Funds for reserve purposes may be included in issue amount: RCW 39.44.140.

Additional notes found at www.leg.wa.gov

36.100.205 Bonds issued are securities. Bonds issued under this chapter are hereby made securities in which all public officers and public bodies of the state and its political subdivisions, all insurance companies, trust companies in their commercial departments, savings banks, cooperative banks, banking associations, investment companies, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in obligations of the state may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the state for any purpose for which the deposit of

bonds and other obligations of the state are now or may hereafter be authorized by law. [2010 1st sp.s. c 15 § 11.]

Findings—Intent—Construction—2010 1st sp.s. c 15: See notes following RCW 36.100.010.

36.100.210 Tax on admissions. A public facility district may levy and fix a tax of not more than one cent on twenty cents or fraction thereof to be paid by the person who pays an admission charge to a regional center, as defined in RCW 35.57.020. This includes a tax on persons who are admitted free of charge or at reduced rates if other persons pay a charge or a regular higher charge for the same privileges or accommodations.

The term "admission charge" includes:

- (1) A charge made for season tickets or subscriptions;
- (2) A cover charge, or a charge made for use of seats and tables reserved or otherwise, and other similar accommodations;
- (3) A charge made for food and refreshment if free entertainment, recreation, or amusement is provided;
- (4) A charge made for rental or use of equipment or facilities for purposes of recreation or amusement; if the rental of the equipment or facilities is necessary to the enjoyment of a privilege for which a general admission is charged, the combined charges shall be considered as the admission charge;
- (5) Automobile parking charges if the amount of the charge is determined according to the number of passengers in the automobile. [1999 c 165 § 17.]

Additional notes found at www.leg.wa.gov

36.100.220 Tax on vehicle parking charges. (1) A public facility district may levy and fix a tax on any vehicle parking charges imposed at any parking facility that is owned or leased by the public facility district as part of a regional center, as defined in RCW 35.57.020, or a baseball stadium, as defined in RCW 82.14.0485. No county, city, or town within which the regional center or baseball stadium is located may impose a tax of the same or similar kind on any vehicle parking charges at the facility.

(2) For the purposes of this section, "vehicle parking charges" means only the actual parking charges exclusive of taxes and service charges and the value of any other benefit conferred.

(3) The tax authorized under this section must be at the rate of not more than ten percent. The tax authorized by this section with respect to a parking facility associated with a baseball stadium must be used exclusively to fund repair, reequipping, and capital improvement of the baseball stadium, and is not subject to the requirements of RCW 36.100.010(4). [2011 1st sp.s. c 38 § 3; 1999 c 165 § 18.]

Additional notes found at www.leg.wa.gov

36.100.230 Transfer of property, assets, and other interests from state convention and trade center public nonprofit to district—Necessary actions. (1) On the transfer date the board of directors of a public nonprofit corporation formed under *RCW 67.40.020 that owns and operates a state convention and trade center must transfer all lands, facilities, equipment, assets, other interests in real, personal, and intangible property, and interests under contracts, leases, licenses, and agreements under the control of that board of

directors to a public facilities district created as provided in RCW 36.100.010 by the county in which the convention and trade center is located pursuant to an agreement with the public facilities district, subject to the review and approval of the state treasurer.

(2) No real estate excise tax or other excise tax may be imposed with respect to the transfer of assets of the public nonprofit corporation to the public facilities district.

(3) For the purposes of this section, "transfer date" means the date on or prior to June 30, 2011, on which provision has been made for all of the following, pursuant to agreements and other necessary arrangements approved by the state treasurer:

(a) The redemption, prepayment, or legal defeasance on or prior to the transfer date of all outstanding borrowings and other financing obligations of the state of Washington and the public nonprofit corporation with respect to the state convention and trade center, including state bonds and certificates of participation and related financing contracts;

(b) The transfer to the public facilities district on the transfer date of the balances on deposit in the state convention and trade center operations account, the state convention and trade center account and other accounts relating to the state convention and trade center, including the revenues identified under (g)(ii) of this subsection (3);

(c) The imposition by the public facilities district of excise taxes on the sale of or charge made for the furnishing of lodging under RCW 36.100.040 (4) and (5) at the maximum rates permitted in those subsections;

(d) The transfer of all other assets and liabilities and, to the extent permissible by their terms, the assignment or transfer of all contracts and agreements of the public nonprofit corporation to the public facilities district;

(e) The execution of an agreement settling all claims in the case of Tourism Alliance, a Washington nonprofit corporation; Craig Schafer; Claridge LLC, a Washington limited liability company; R.C. Hedreen Corporation, a Washington corporation; and on behalf of taxpayers, Andrew Olsen, Amy L. Dee, Christopher M. Dee, Clipper Navigation, Inc., a Washington corporation v. State of Washington and James L. McIntire, in his official capacity as State Treasurer of the State of Washington;

(f) The payment or provision for payment of all fees, costs, and expenses incurred by the state of Washington and the public nonprofit corporation to effect such transfer;

(g) An agreement of the public facilities district to transfer to the state on June 30, 2011, an amount equal to (i) the revenues from the tax imposed under RCW 36.100.040(5) during the state fiscal year ending June 30, 2011, plus (ii) the revenues from the tax imposed under **RCW 67.40.130 during the state fiscal year ending June 30, 2011; and

(h) The agreement between the state treasurer and the public facilities district, referred to in RCW 36.100.040(6)(c)(i). [2010 1st sp.s. c 15 § 8.]

Reviser's note: *(1) RCW 67.40.020 was repealed by 2010 1st sp.s. c 15 § 15, effective December 30, 2010.

** (2) RCW 67.40.130 was repealed by 2010 1st sp.s. c 15 § 14, effective November 30, 2010.

Contingent effective date—2010 1st sp.s. c 15 § 14: "Section 14 of this act is effective contingent upon the transfer date occurring in section 8 of this act. If the transfer date occurs in section 8 of this act, section 14 of this act is

effective on the transfer date. For the purposes of this section, "transfer date" has the same meaning as provided in section 8 of this act." [2010 1st sp.s. c 15 § 16.] The transfer date is November 30, 2010, and section 14 of this act takes effect November 30, 2010.

Contingent effective date—2010 1st sp.s. c 15 § 15: "Section 15 of this act is effective contingent upon the transfer date occurring in section 8 of this act. If the transfer date occurs in section 8 of this act, section 15 of this act is effective thirty days after the transfer date in section 8 of this act. For the purposes of this section, "transfer date" has the same meaning as provided in section 8 of this act." [2010 1st sp.s. c 15 § 17.] The transfer date is November 30, 2010, and section 15 of this act takes effect December 30, 2010.

Notice of effective dates—2010 1st sp.s. c 15 §§ 16 and 17: "The state treasurer must provide written notice of the effective dates in sections 16 and 17 of this act to the department of revenue, the office of the code reviser, and others as deemed appropriate by the state treasurer." [2010 1st sp.s. c 15 § 18.] Written notice of the effective dates in sections 16 and 17 of this act [November 30, 2010, and December 30, 2010, respectively] was provided by the state treasurer to the office of the code reviser on November 18, 2010.

Findings—Intent—Construction—2010 1st sp.s. c 15: See notes following RCW 36.100.010.

36.100.240 Eminent domain authorized. (1) Any county with a population of one million five hundred thousand or more that creates a public facilities district pursuant to this chapter to acquire, own, and operate a convention and trade center transferred from a public nonprofit corporation is authorized to acquire by condemnation property or property rights as may be necessary to carry out the purposes of such district. If the legislative body of such county chooses to exercise its authority to acquire property by eminent domain on behalf of such public facilities district, it must do so pursuant to the procedures set forth in chapter 8.08 RCW.

(2) The accomplishment of the activities authorized by this chapter is declared to be a strictly public purpose of the municipality or municipal entities authorized to perform the same.

(3) The powers and authority conferred by this section are in addition and supplemental to existing powers or authority. Nothing contained in this section limits any other powers or authority of any agency, political subdivision, or unit of local government of this state. [2010 1st sp.s. c 15 § 12.]

Findings—Intent—Construction—2010 1st sp.s. c 15: See notes following RCW 36.100.010.

36.100.900 Severability—1988 ex.s. c 1. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 ex.s. c 1 § 27.]

36.100.905 Construction—2010 1st sp.s. c 15. Nothing in chapter 15, Laws of 2010 1st sp. sess. may be construed to limit the authority of a public nonprofit corporation under *chapter 67.40 RCW prior to November 30, 2010. [2010 1st sp.s. c 15 § 10.]

***Reviser's note:** A majority of chapter 67.40 RCW was repealed by 2010 1st sp.s. c 15 § 14, effective November 30, 2010. RCW 67.40.020 was repealed by 2010 1st sp.s. c 15 § 15, effective December 30, 2010.

Findings—Intent—Construction—2010 1st sp.s. c 15: See notes following RCW 36.100.010.

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Chapter 36.102 RCW STADIUM AND EXHIBITION CENTERS

Sections

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36.102.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Design" includes architectural, engineering, and other related professional services.

(2) "Develop" means, generally, the process of planning, designing, financing, constructing, owning, operating, and leasing a project such as a stadium and exhibition center.

(3) "Permanent seat license" means a transferable license sold to a third party that, subject to certain conditions, restrictions, and limitations, entitles the third party to purchase a season ticket to professional football games of the profes-

sional football team played in the stadium and exhibition center for so long as the team plays its games in that facility.

(4) "Preconstruction" includes negotiations, including negotiations with any team affiliate, planning, studies, design, and other activities reasonably necessary before constructing a stadium and exhibition center.

(5) "Professional football team" means a team that is a member of the national football league or similar professional football association.

(6) "Public stadium authority operation" means the formation and ongoing operation of the public stadium authority, including the hiring of employees, agents, attorneys, and other contractors, and the acquisition and operation of office facilities.

(7) "Site acquisition" means the purchase or other acquisition of any interest in real property including fee simple interests and easements, which property interests constitute the site for a stadium and exhibition center.

(8) "Site preparation" includes demolition of existing improvements, environmental remediation, site excavation, shoring, and construction and maintenance of temporary traffic and pedestrian routing.

(9) "Stadium and exhibition center" means an open-air stadium suitable for national football league football and for Olympic and world cup soccer, with adjacent exhibition facilities, together with associated parking facilities and other ancillary facilities.

(10) "Team affiliate" means a professional football team that will use the stadium and exhibition center, and any affiliate of the team designated by the team. An "affiliate of the team" means any person or entity that controls, is controlled by, or is under common control with the team. [1997 c 220 § 101 (Referendum Bill No. 48, approved June 17, 1997).]

36.102.020 Public stadium authority—Creation—Powers and duties—Transfer of property. (1) A public stadium authority may be created in any county that has entered into a letter of intent relating to the development of a stadium and exhibition center under chapter 220, Laws of 1997 with a team affiliate or an entity that has a contractual right to become a team affiliate.

(2) A public stadium authority shall be created upon adoption of a resolution providing for the creation of such an authority by the county legislative authority in which the proposed authority is located.

(3) A public stadium authority shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, and to sue and be sued.

(4) The legislative authority of the county in which the public stadium authority is located, or the council of any city located in that county, may transfer property to the public stadium authority created under this chapter. Property encumbered by debt may be transferred by a county legislative authority or a city council to a public stadium authority created to develop a stadium and exhibition center under RCW 36.102.050, but obligation for payment of the debt may not be transferred. [1997 c 220 § 102 (Referendum Bill No. 48, approved June 17, 1997).]

36.102.030 Public stadium authority—Board of directors—Appointment—Terms—Vacancy—Removal.

(1) A public stadium authority shall be governed by a board of directors consisting of seven members appointed by the governor. The speaker of the house of representatives, the minority leader of the house of representatives, the majority leader of the senate, and the minority leader of the senate shall each recommend to the governor a person to be appointed to the board.

(2) Members of the board of directors shall serve four-year terms of office, except that three of the initial seven board members shall serve two-year terms of office. The governor shall designate the initial terms of office for the initial members who are appointed.

(3) A vacancy shall be filled in the same manner as the original appointment was made and the person appointed to fill a vacancy shall serve for the remainder of the unexpired term of the office for the position to which he or she was appointed.

(4) A director appointed by the governor may be removed from office by the governor. [1997 c 220 § 103 (Referendum Bill No. 48, approved June 17, 1997).]

36.102.040 Public stadium authority advisory committee—Appointment—Review and comment on proposed lease agreement.

(1) There is created a public stadium authority advisory committee comprised of five members. The advisory committee consists of: The director of the office of financial management, who shall serve as chair; two members appointed by the house of representatives, one each appointed by the speaker of the house of representatives and the minority leader of the house of representatives; and two members appointed by the senate, one each appointed by the majority leader of the senate and the minority leader of the senate.

(2) The advisory committee, prior to the final approval of any lease with the master tenant or sale of stadium naming rights, shall review and comment on the proposed lease agreement or sale of stadium naming rights. [1997 c 220 § 104 (Referendum Bill No. 48, approved June 17, 1997).]

36.102.050 Public stadium authority—Powers and duties—Acquisition, construction, ownership, remodeling, maintenance, equipping, reequipping, repairing, and operation of stadium and exhibition center—Contracts and agreements regarding ownership and operation—Employees unclassified—Supplemental public works contracting procedures—Charges and fees—Gifts, grants, and donations—Prevailing wage and women and minority-business participation. (1) The public stadium authority is authorized to acquire, construct, own, remodel, maintain, equip, reequip, repair, and operate a stadium and exhibition center as defined in RCW 36.102.010.

(2) The public stadium authority may enter into agreements under chapter 39.34 RCW for the joint provision and operation of a stadium and exhibition center and may enter into contracts under chapter 39.34 RCW where any party to the contract provides and operates the stadium and exhibition center for the other party or parties to the contract.

(3) Any employees of the public stadium authority shall be unclassified employees not subject to the provisions of

chapter 41.06 RCW and a public stadium authority may contract with a public or private entity for the operation or management of the stadium and exhibition center.

(4) The public stadium authority is authorized to use the alternative supplemental public works contracting procedures set forth in chapter 39.10 RCW in connection with the design, construction, reconstruction, remodel, or alteration of a stadium and exhibition center.

(5) The public stadium authority may impose charges and fees for the use of the stadium and exhibition center, and may accept and expend or use gifts, grants, and donations.

(6) The public stadium authority shall comply with the prevailing wage requirements of chapter 39.12 RCW and goals established for women and minority-business participation for the county. [1997 c 220 § 105 (Referendum Bill No. 48, approved June 17, 1997).]

36.102.060 Public stadium authority—Powers and duties—Site—Project scope—Design and specification—Use of professional services—Budget—Financing structure—Development agreement—Lease agreement—Profit-sharing discussion—Master tenant funds for Olympics and world cup—Stadium scheduling—Super Bowl acquisition—Mitigation—Demolition filming—Permanent seat licenses. In addition to other powers and restrictions on a public stadium authority, the following apply to a public stadium authority created to develop a stadium and exhibition center under RCW 36.102.050:

(1) The public stadium authority, in consultation with the team affiliate, shall have the authority to determine the stadium and exhibition center site;

(2) The public stadium authority, in consultation with the team affiliate, shall have the authority to establish the overall scope of the stadium and exhibition center project, including, but not limited to, stadium and exhibition center itself, associated exhibition facilities, associated parking facilities, associated retail and office development that are part of the stadium and exhibition center, and ancillary services and facilities;

(3) The public stadium authority, in consultation with the team affiliate, shall have the authority to make the final determination of the stadium and exhibition center overall design and specification;

(4) The public stadium authority shall have the authority to contract with a team affiliate for the provision of architectural, engineering, environmental, and other professional services related to the stadium and exhibition center site, design options, required environmental studies, and necessary permits for the stadium and exhibition center;

(5) The public stadium authority, in consultation with the team affiliate, shall have the authority to establish the project budget on the stadium and exhibition center project;

(6) The public stadium authority, in consultation with the team affiliate, shall have the authority to make recommendations to the state finance committee regarding the structure of the financing of the stadium and exhibition center project;

(7) The public stadium authority shall have the authority to enter into a development agreement with a team affiliate whereby the team affiliate may control the development of the stadium and exhibition center project, consistent with subsections (1) through (6) of this section, in consideration of

which the team affiliate assumes the risk of costs of development that are in excess of the project budget established under subsection (5) of this section. Under the development agreement, the team affiliate shall determine bidding specifications and requirements, and other aspects of development. Under the development agreement, the team affiliate shall determine procurement procedures and other aspects of development, and shall select and engage an architect or architects and a contractor or contractors for the stadium and exhibition center project, provided that the construction, alterations, repairs, or improvements of the stadium and exhibition center shall be subject to the prevailing wage requirements of chapter 39.12 RCW and all phases of the development shall be subject to the goals established for women and minority-business participation for the county where the stadium and exhibition center is located. The team affiliate shall, to the extent feasible, hire local residents and in particular residents from the areas immediately surrounding the stadium and exhibition center during the construction and ongoing operation of the stadium and exhibition center;

(8) The public stadium authority shall have the authority to enter into a long-term lease agreement with a team affiliate whereby, in consideration of the payment of fair rent and assumption of operating and maintenance responsibilities, risk, legal liability, and costs associated with the stadium and exhibition center, the team affiliate becomes the sole master tenant of the stadium and exhibition center. The master tenant lease agreement must require the team affiliate to publicly disclose, on an annual basis, an audited profit and loss financial statement. The team affiliate shall provide a guarantee, security, or a letter of credit from a person or entity with a net worth in excess of one hundred million dollars that guarantees a maximum of ten years' payments of fair rent under the lease in the event of the bankruptcy or insolvency of the team affiliate. The master tenant shall have the power to sublease and enter into use, license, and concession agreements with various users of the stadium and exhibition center including the professional football team, and the master tenant has the right to name the stadium and exhibition center, subject to RCW 36.102.080. The master tenant shall meet goals, established by the county where the stadium and exhibition center is located, for women and minority employment for the operation of the stadium and exhibition center. Except as provided in subsection (10) of this section, the master tenant shall have the right to retain revenues derived from the operation of the stadium and exhibition center, including revenues from the sublease and uses, license and concession agreements, revenues from suite licenses, concessions, advertising, long-term naming rights subject to RCW 36.102.080, and parking revenue. If federal law permits interest on bonds issued to finance the stadium and exhibition center to be treated as tax exempt for federal income tax purposes, the public stadium authority and the team affiliate shall endeavor to structure and limit the amounts, sources, and uses of any payments received by the state, the county, the public stadium authority, or any related governmental entity for the use or in respect to the stadium and exhibition center in such a manner as to permit the interest on those bonds to be tax exempt. As used in this subsection, "fair rent" is solely intended to cover the reasonable operating expenses of the public stadium authority and shall be not less than eight hun-

dred fifty thousand dollars per year with annual increases based on the consumer price index;

(9) Subject to RCW 43.99N.020(2)(b)(ix), the public stadium authority may reserve the right to discuss profit sharing from the stadium and exhibition center from sources that have not been identified at the time the long-term lease agreement is executed;

(10) The master tenant may retain an amount to cover the actual cost of preparing the stadium and exhibition center for activities involving the Olympic Games and world cup soccer. Revenues derived from the operation of the stadium and exhibition center for activities identified in this subsection that exceed the master tenant's actual costs of preparing, operating, and restoring the stadium and exhibition center must be deposited into the tourism development and promotion account created in RCW 43.330.094;

(11) The public stadium authority, in consultation with a public facilities district that is located within the county, shall work to eliminate the use of the stadium and exhibition center for events during the same time as events are held in the base-ball stadium as defined in RCW 82.14.0485;

(12) The public stadium authority, in consultation with the team affiliate, must work to secure the hosting of a Super Bowl, if the hosting requirements are changed by the national football league or similar professional football association;

(13) The public stadium authority shall work with surrounding areas to mitigate the impact of the construction and operation of the stadium and exhibition center;

(14) The public stadium authority, in consultation with the office of financial management, shall negotiate filming rights of the demolition of the existing domed stadium on the stadium and exhibition center site. All revenues derived from the filming of the demolition of the existing domed stadium shall be deposited into the film and video promotion account created in *RCW 43.330.092; and

(15) The public stadium authority shall have the authority, upon the agreement of the team affiliate, to sell permanent seat licenses, and the team affiliate may act as the sales agent for this purpose. [1997 c 220 § 106 (Referendum Bill No. 48, approved June 17, 1997).]

*Reviser's note: RCW 43.330.092 was repealed by 2012 c 198 § 26.

36.102.070 Deferral of taxes—Application by public stadium authority—Department of revenue approval—Repayment—Schedules—Interest—Debt for taxes—Information not confidential. (1) The governing board of a public stadium authority may apply for deferral of taxes on the construction of buildings, site preparation, and the acquisition of related machinery and equipment for a stadium and exhibition center. Application shall be made to the department of revenue in a form and manner prescribed by the department of revenue. The application shall contain information regarding the location of the stadium and exhibition center, estimated or actual costs, time schedules for completion and operation, and other information required by the department of revenue. The department of revenue shall approve the application within sixty days if it meets the requirements of this section.

(2) The department of revenue shall issue a sales and use tax deferral certificate for state and local sales and use taxes

due under chapters 82.08, 82.12, and 82.14 RCW on the public facility.

(3) The public stadium authority shall begin paying the deferred taxes in the fifth year after the date certified by the department of revenue as the date on which the stadium and exhibition center is operationally complete. The first payment is due on December 31st of the fifth calendar year after such certified date, with subsequent annual payments due on December 31st of the following nine years. Each payment shall equal ten percent of the deferred tax.

(4) The department of revenue may authorize an accelerated repayment schedule upon request of the public stadium authority.

(5) Interest shall not be charged on any taxes deferred under this section for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this section. The debt for deferred taxes is not extinguished by insolvency or other failure of the public stadium authority.

(6) The repayment of deferred taxes and interest, if any, shall be deposited into the stadium and exhibition center account created in RCW 43.99N.060 and used to retire bonds issued under RCW 43.99N.020 to finance the construction of the stadium and exhibition center.

(7) Applications and any other information received by the department of revenue under this section are not confidential and are subject to disclosure. Chapter 82.32 RCW applies to the administration of this section. [1997 c 220 § 201 (Referendum Bill No. 48, approved June 17, 1997).]

36.102.080 Naming rights—Use of revenues. Revenues from the sales of naming rights of a stadium and exhibition center developed under RCW 36.102.050 may only be used for costs associated with capital improvements associated with modernization and maintenance of the stadium and exhibition center. The sales of naming rights are subject to the reasonable approval of the public stadium authority. [1997 c 220 § 107 (Referendum Bill No. 48, approved June 17, 1997).]

36.102.090 Donated moneys. A public stadium authority may accept and expend moneys that may be donated for the purpose of a stadium and exhibition center. [1997 c 220 § 108 (Referendum Bill No. 48, approved June 17, 1997).]

36.102.100 Construction agreements—Property assembly—Demolition of existing structures. (1) The public stadium authority, the county, and the city, if any, in which the stadium and exhibition center is to be located shall enter into one or more agreements regarding the construction of a stadium and exhibition center. The agreements shall address, but not be limited to:

(a) Expedited permit processing for the design and construction of the stadium and exhibition center project;

(b) Expedited environmental review processing;

(c) Expedited processing of requests for street, right-of-way, or easement vacations necessary for the construction of the stadium and exhibition center project; and

(d) Other items deemed necessary for the design and construction of the stadium and exhibition center project.

(2) The county shall assemble such real property and associated personal property as the public stadium authority and the county mutually determine to be necessary as a site for the stadium and exhibition center. Property that is necessary for this purpose that is owned by the county on or after July 17, 1997, shall be contributed to the authority, and property that is necessary for this purpose that is acquired by the county on or after July 17, 1997, shall be conveyed to the authority. Property that is encumbered by debt may be transferred by the county to the authority, but obligation for payment of the debt may not be transferred.

(3) A new exhibition facility of at least three hundred twenty-five thousand square feet, with adequate on-site parking, shall be constructed and operational before any domed stadium in the county is demolished or rendered unusable. Demolition of any existing structure and construction of the stadium and exhibition center shall be reasonably executed in a manner that minimizes impacts, including access and parking, upon existing facilities, users, and neighborhoods. No county or city may exercise authority under any landmarks preservation statute or ordinance in order to prevent or delay the demolition of any existing domed stadium at the site of the stadium and exhibition center. [1997 c 220 § 109 (Referendum Bill No. 48, approved June 17, 1997).]

36.102.110 Property acquisition and sale. A public stadium authority may acquire and transfer real and personal property by lease, sublease, purchase, or sale. [1997 c 220 § 110 (Referendum Bill No. 48, approved June 17, 1997).]

36.102.120 Public stadium authority board of directors—Travel and business expenses—Resolution on payment and procedures—Operating budget report. (1) The board of directors of the public stadium authority shall adopt a resolution that may be amended from time to time that shall establish the basic requirements governing methods and amounts of reimbursement payable to such authority and employees for travel and other business expenses incurred on behalf of the authority. The resolution shall, among other things, establish procedures for approving such expenses; the form of the travel and expense voucher; and requirements governing the use of credit cards issued in the name of the authority. The resolution may also establish procedures for payment of per diem to board members. The state auditor shall, as provided by general law, cooperate with the public stadium authority in establishing adequate procedures for regulating and auditing the reimbursement of all such expenses.

(2) The board of directors shall transmit a copy of the adopted annual operating budget of the public stadium authority to the governor and the majority leader and minority leader of the house of representatives and the senate. The budget information shall include, but is not limited to a statement of income and expenses of the public stadium authority. [1997 c 220 § 111 (Referendum Bill No. 48, approved June 17, 1997).]

36.102.130 Public stadium authority officers and employees—Expenses. The board of directors of the public stadium authority may authorize payment of actual and necessary expenses of officers and employees for lodging,

meals, and travel-related costs incurred in attending meetings or conferences on behalf of the public stadium authority and strictly in the public interest and for public purposes. Officers and employees may be advanced sufficient sums to cover their anticipated expenses in accordance with rules adopted by the state auditor, which shall substantially conform to the procedures provided in RCW 43.03.150 through 43.03.210. [1997 c 220 § 112 (Referendum Bill No. 48, approved June 17, 1997).]

36.102.140 Public stadium authority board of directors—Compensation—Waiver. Each member of the board of directors of the public stadium authority may receive compensation of fifty dollars per day for attending meetings or conferences on behalf of the authority, not to exceed three thousand dollars per year. A director may waive all or a portion of his or her compensation under this section as to a month or months during his or her term of office, by a written waiver filed with the public stadium authority. The compensation provided in this section is in addition to reimbursement for expenses paid to the directors by the public stadium authority. [1997 c 220 § 113 (Referendum Bill No. 48, approved June 17, 1997).]

36.102.150 Public stadium authority—Liability insurance. The board of directors of the public stadium authority may purchase liability insurance with such limits as the directors may deem reasonable for the purpose of protecting and holding personally harmless authority officers and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1997 c 220 § 114 (Referendum Bill No. 48, approved June 17, 1997).]

36.102.160 Public stadium authority—Defense of suit, claim, or proceeding against officer or employee—Costs—Attorneys' fees—Obligation—Exception. Whenever an action, claim, or proceeding is instituted against a person who is or was an officer or employee of the public stadium authority arising out of the performance of duties for or employment with the authority, the public stadium authority may grant a request by the person that the attorney of the authority's choosing be authorized to defend the claim, suit, or proceeding, and the costs of defense, attorneys' fees, and obligation for payments arising from the action may be paid from the authority's funds. Costs of defense or judgment or settlement against the person shall not be paid in a case where the court has found that the person was not acting in good faith or within the scope of employment with or duties for the public stadium authority. [1997 c 220 § 115 (Referendum Bill No. 48, approved June 17, 1997).]

36.102.170 Information preparation and distribution. The board of directors of the public stadium authority shall have authority to authorize the expenditure of funds for the public purposes of preparing and distributing information to the general public about the stadium and exhibition center. [1997 c 220 § 116 (Referendum Bill No. 48, approved June 17, 1997).]

36.102.180 Public stadium authority—Employee positions—Wages and benefits—Insurance of employees, board members. The public stadium authority shall have authority to create and fill positions, fix wages and salaries, pay costs involved in securing or arranging to secure employees, and establish benefits for employees, including holiday pay, vacations or vacation pay, retirement benefits, medical, life, accident, or health disability insurance, as approved by the board. Public stadium authority board members, at their own expense, shall be entitled to medical, life, accident, or health disability insurance. Insurance for employees and board members shall not be considered compensation. Authority coverage for the board is not to exceed that provided public stadium authority employees. [1997 c 220 § 117 (Referendum Bill No. 48, approved June 17, 1997).]

36.102.190 Public stadium authority—Securing services—Service provider agreement—Resolutions setting procedures. The public stadium authority may secure services by means of an agreement with a service provider. The public stadium authority shall publish notice, establish criteria, receive and evaluate proposals, and negotiate with respondents under requirements set forth by authority resolution. [1997 c 220 § 118 (Referendum Bill No. 48, approved June 17, 1997).]

36.102.200 Public stadium authority—Confidentiality of financial information. The public stadium authority may refuse to disclose financial information on the master tenant, concessioners, the team affiliate, or subleasee under RCW 42.56.270. [2005 c 274 § 274; 1997 c 220 § 119 (Referendum Bill No. 48, approved June 17, 1997).]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

36.102.800 Referendum only measure for taxes for stadium and exhibition center—Limiting legislation upon failure to approve—1997 c 220. The referendum on this act is the only measure authorizing, levying, or imposing taxes for a stadium and exhibition center that may be put to a public vote. Should the act fail to be approved at the special election on or before June 20, 1997, the legislature shall not pass other legislation to build or finance a stadium and exhibition center, as defined in RCW 36.102.010, for the team affiliate. [1997 c 220 § 604 (Referendum Bill No. 48, approved June 17, 1997).]

36.102.801 Legislation as opportunity for voter's decision—Not indication of legislators' personal vote on referendum proposal—1997 c 220. The legislature neither affirms nor refutes the value of this proposal, and by this legislation simply expresses its intent to provide the voter of the state of Washington an opportunity to express the voter's decision. It is also expressed that many legislators might personally vote against this proposal at the polls, or they might not. [1997 c 220 § 605 (Referendum Bill No. 48, approved June 17, 1997).]

36.102.802 Contingency—Null and void—Team affiliate's agreement for reimbursement for election—1997 c 220. Notwithstanding any other provision of this act,

this act shall be null and void in its entirety unless the team affiliate as defined in RCW 36.102.010 enters into an agreement with the secretary of state to reimburse the state and the counties for the full cost of the special election to be held on or before June 20, 1997. [1997 c 220 § 606 (Referendum Bill No. 48, approved June 17, 1997).]

Reviser's note: The team affiliate entered into an agreement with the secretary of state on May 14, 1997, for reimbursement of the full cost of the special election.

Additional notes found at www.leg.wa.gov

36.102.803 Referendum—Submittal—Explanatory statement—Voters' pamphlet—Voting procedures—Canvassing and certification—Reimbursement of counties for costs—No other elections on stadium and exhibition center—1997 c 220. (1) The secretary of state shall submit sections 101 through 604, chapter 220, Laws of 1997 to the people for their adoption and ratification, or rejection, at a special election to be held in this state on or before June 20, 1997, in accordance with Article II, section 1 of the state Constitution and the laws adopted to facilitate its operation. The special election shall be limited to submission of this act to the people.

(2) The attorney general shall prepare the explanatory statement required by *RCW 29.81.020 and transmit that statement regarding the referendum to the secretary of state no later than the last Monday of April before the special election.

(3) The secretary of state shall prepare and distribute a voters' pamphlet addressing this referendum measure following the procedures and requirements of **chapter 29.81 RCW, except that the secretary of state may establish different deadlines for the appointment of committees to draft arguments for and against the referendum, for submitting arguments for and against the referendum, and for submitting rebuttal statements of arguments for and against the referendum. The voters' pamphlet description of the referendum measure shall include information to inform the public that ownership of the KingDome may be transferred to the public stadium authority and that the KingDome will be demolished in order to accommodate the new football stadium.

(4) A county auditor may conduct the voting at this special election in all precincts of the county by mail using the procedures set forth in ***RCW 29.36.121 through 29.36.139.

(5) Notwithstanding the provisions of ****RCW 29.62.020, the county canvassing board in each county shall canvass and certify the votes cast at this special election in that county to the secretary of state no later than the seventh day following the election. Notwithstanding the provisions of ****RCW 29.62.120, the secretary of state shall canvass and certify the returns from the counties no later than the ninth day following the special election.

(6) The secretary of state shall reimburse each county for the cost of conducting the special election in that county in the same manner as state primary and general election costs are reimbursed under ****RCW 29.13.047 (1) and (3).

(7) No other state, county, or local election shall be required or held on any proposition related to or affecting the stadium and exhibition center defined in RCW 36.102.010. [1997 c 220 § 607 (Referendum Bill No. 48, approved June

17, 1997).] Referendum Bill No. 48 was approved by the electorate at the June 17, 1997, election.

Reviser's note: *(1) RCW 29.81.020 was repealed by 1999 c 260 § 13.

***(2) Chapter 29.81 RCW was recodified as chapter 29A.32 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

****(3) RCW 29.36.121, 29.36.124, 29.36.126, and 29.36.130 were recodified as RCW 29.38.020, 29.38.040, 29.38.050, and 29.38.060, respectively, pursuant to 2001 c 241 § 25. RCW 29.36.122 and 29.36.139 were repealed by 2001 c 241 § 24. RCW 29.38.020, 29.38.040, 29.38.050, and 29.38.060 were subsequently recodified as RCW 29A.48.020, 29A.48.040, 29A.48.050, and 29A.48.060, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.48.020, 29A.48.040, 29A.48.050, and 29A.48.060 were subsequently repealed by 2011 c 10 § 86.

*****(4) RCW 29.62.020, 29.62.120, and 29.13.047 were recodified as RCW 29A.60.160, 29A.60.250, and 29A.04.420, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Additional notes found at www.leg.wa.gov

Chapter 36.105 RCW

COMMUNITY COUNCILS FOR UNINCORPORATED AREAS OF ISLAND COUNTIES

Sections

36.105.010	Purpose.
36.105.020	Definitions.
36.105.030	Minimum requirements.
36.105.040	Creation.
36.105.050	Election of initial community councilmembers.
36.105.060	Community councilmembers—Election—Terms.
36.105.070	Responsibility of county legislative authority.
36.105.080	Powers.
36.105.090	Annexation.
36.105.100	Dissolution.

36.105.010 Purpose. Voters of the unincorporated areas of the state are authorized to establish community councils as provided in this chapter.

It is the purpose of this chapter to provide voters of unincorporated areas in counties with a population of over thirty thousand that are made up entirely of islands with direct input on the planning and zoning of their community by establishing a governmental mechanism to adopt proposed community comprehensive plans and proposed community zoning ordinances that are consistent with an overall guide and framework adopted by the county legislative authority. In addition, it is the purpose of this chapter to have community councils serve as forums for the discussion of local issues. [1991 c 363 § 99.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.105.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Community" means a portion of the unincorporated area for which a community council has been established and which is located in a county with a population of over thirty thousand that is made up entirely of islands.

(2) "Community comprehensive plan" means a comprehensive plan adopted by a community council.

(3) "Community council" means the governing body established under this chapter to adopt community comprehensive plans and community zoning ordinances for a community.

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(4) "Community zoning ordinances" means the zoning ordinances adopted by a community council to implement a community comprehensive plan. [1991 c 363 § 100.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.105.030 Minimum requirements. A community for which a community council is created may include only unincorporated territory located in a single county with a population of over thirty thousand that is made up entirely of islands and not included within a city or town. A community council must have at least one thousand persons residing within the community when the community council is created or, where the community only includes an entire island, at least three hundred persons must reside on the island when the community council is created. Any portion of such a community that is annexed by a city or town, or is incorporated as a city or town, shall be removed from the community upon the effective date of the annexation or the official date of the incorporation. [1991 c 363 § 101.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.105.040 Creation. (1) The process to create a community council shall be initiated by the filing of petitions with the county auditor of the county in which the community is located which: (a) Call for the creation of a community council; (b) set forth the boundaries for the community; (c) indicate the number of community councilmembers, which shall be five, seven, nine, or eleven; and (d) contain signatures of voters residing within the community equal in number to at least ten percent of the voters residing in the community who voted at the last state general election. The county auditor shall determine if the petitions contain a sufficient number of valid signatures and certify the sufficiency of the petitions within fifteen days of when the petitions were filed. If the petitions are certified as having sufficient valid signatures, the county auditor shall transmit the petitions and certificate to the county legislative authority.

(2) The county legislative authority shall hold a public hearing within the community on the creation of the proposed community council no later than sixty days after the petitions and certificate of sufficiency were transmitted to the county legislative authority. Notice of the public hearing shall be published in a newspaper of general circulation in the community for at least once a week for two consecutive weeks, with the last date of publication no more than ten days prior to the date of the public hearing. At least ten days before the public hearing, additional notice shall be posted conspicuously in at least five places within the proposed community in a manner designed to attract public attention.

(3) After receiving testimony on the creation of the proposed community council, the county legislative authority may alter the boundaries of the community, but the boundaries may not be altered to reduce the number of persons living within the community by more than ten percent or below the minimum number of residents who must reside within the community at the time of the creation of the community council. If territory is added to the community, another public hearing on the proposal shall be held.

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(4) The county legislative authority shall call a special election within the community to determine whether the proposed community council shall be created, and to elect the initial community councilmembers, at the next state general election occurring seventy-five or more days after the initial public hearing on the creation of the proposed community council. The community council shall be created if the ballot proposition authorizing the creation of the community is approved by a simple majority vote of the voters voting on the proposition. [1991 c 363 § 102.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.105.050 Election of initial community councilmembers. The initial members of the community council shall be elected at the same election as the ballot proposition is submitted authorizing the creation of the community council. However, the election of the initial community councilmembers shall be null and void if the ballot proposition authorizing the creation of the community council is not approved.

No primary election shall be held to nominate candidates for initial council positions. The initial community council shall consist of the candidate for each council position who receives the greatest number of votes for that council position. Staggering of terms of office shall be accomplished by having the majority of the winning candidates who receive the greatest number of votes being elected to four-year terms of office, and the remaining winning candidates being elected to two-year terms of office, if the election was held in an even-numbered year, or the majority of the winning candidates who receive the greatest number of votes being elected to three-year terms of office, and the remaining winning candidates being elected to one-year terms of office, if the election was held in an odd-numbered year, with the term computed from the first day of January in the year following the election. Initial councilmembers shall take office immediately when qualified in accordance with *RCW 29.01.135.

However, where the county operates under a charter providing for the election of members of the county legislative authority in odd-numbered years, the terms of office of the initial councilmembers shall be four years and two years, if the election of the initial councilmembers was held on an odd-numbered year, or three years and one year, if the election of the initial councilmembers was held on an even-numbered year. [1991 c 363 § 103.]

***Reviser's note:** RCW 29.01.135 was recodified as RCW 29A.04.133 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.105.060 Community councilmembers—Election—Terms. Community councilmembers shall be elected to staggered four-year terms until their successors are elected and qualified. Each council position shall be numbered separately. Candidates shall run for specific council positions. The number of council positions shall be five, seven, nine, or eleven, as specified in the petition calling for the creation of the community council.

Community councilmembers shall be nominated and elected at nonpartisan elections pursuant to general election

laws, except the elections shall be held in even-numbered years, unless the county operates under a charter and members of the county legislative authority are elected in odd-numbered years, in which case, community councilmembers shall be elected in odd-numbered years.

The provisions of this section apply to the election and terms of office of the initial community councilmembers, except as provided in RCW 36.105.050.

A councilmember shall lose his or her council position if his or her primary residence no longer is located within the community. Vacancies on a community council shall be filled by action of the remaining councilmembers. [1991 c 363 § 104.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.105.070 Responsibility of county legislative authority. (1) Within ninety days of the election at which a community council is created, the county legislative authority shall adopt an ordinance establishing policies and conditions and designating portions or components of the county comprehensive plan and zoning ordinances that serve as an overall guide and framework for the development of proposed community comprehensive plans and proposed community zoning ordinances. The conditions and policies shall conform with the requirements of chapter 36.70A RCW.

(2) Proposed community comprehensive plans and proposed community zoning ordinances that are adopted by a community council shall be submitted to the county legislative authority for its review of the consistency of the proposed plans and proposed ordinances with the ordinance adopted under subsection (1) of this section. The county legislative authority shall either approve the proposed plans and proposed ordinances as adopted, or refer the proposed plans and proposed ordinances back to the community council with written findings specifying the inconsistencies, within ninety days after they were submitted. The county comprehensive plan, or subarea plan and comprehensive plan, and zoning ordinances shall remain in effect in the community until the proposed community comprehensive plans and proposed community zoning ordinances have been approved as provided in this subsection.

(3) Each proposed amendment to approved community comprehensive plans or approved community zoning ordinances that is adopted by a community council shall be submitted to the county legislative authority for its review of the consistency of the amendment with the ordinance adopted under subsection (1) of this section. The county legislative authority shall either approve the proposed amendment as adopted or refer the proposed amendment back to the community council with written findings specifying the inconsistencies within ninety days after the proposed amendment was submitted. The unamended community comprehensive plans and unamended community zoning ordinances shall remain in effect in the community until the proposed amendment has been approved as provided in this subsection.

(4) If the county legislative authority amends the ordinance it adopted under subsection (1) of this section, a community council shall be given at least one hundred twenty days to amend its community comprehensive plans and community zoning ordinances to be consistent with this amended

ordinance. However, the county legislative authority may amend the community comprehensive plans and community zoning ordinances to achieve consistency with this amended ordinance. Nothing in this subsection shall preclude a community council from subsequently obtaining approval of its proposed community comprehensive plans and proposed community zoning ordinances.

(5) Approved community comprehensive plans and approved community zoning ordinances shall be enforced by the county as if they had been adopted by the county legislative authority. All quasi-judicial actions and permits relating to these plans and ordinances shall be made and decided by the county legislative authority or otherwise as provided by the county legislative authority.

(6) The county shall provide administrative and staff support for each community council within its boundaries. [1991 c 363 § 105.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.105.080 Powers. A community council shall adopt proposed community comprehensive plans and proposed community zoning ordinances as provided in RCW 36.105.070. Community councils shall not have the authority to take quasi-judicial actions nor to decide permit applications. In addition, a community council shall serve as a forum for the discussion of local issues.

Community councils are subject to chapter 42.30 RCW, the open public meetings act. [1991 c 363 § 106.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.105.090 Annexation. A community council may provide for the annexation of adjacent unincorporated areas to the community that are not included within another community for which a community council has been established. Annexations shall be initiated by either resolution of the community council proposing the annexation or petition of voters residing in the adjacent area, which petition: (a) Requests the annexation; (b) sets forth the boundaries of the area proposed to be annexed; and (c) contains signatures of voters residing within the area that is proposed to be annexed equal in number to at least ten percent of the voters residing in that area who voted at the last state general election. Annexation petitions shall be filed with the county auditor who shall determine if the petitions contain a sufficient number of valid signatures, certify the sufficiency of the petitions, and notify the community council of the sufficiency of the petitions within fifteen days of when the petitions are submitted.

A ballot proposition authorizing the annexation shall be submitted to the voters of the area that is proposed to be annexed at a primary or general election in either an odd-numbered or even-numbered year, if the community council initiated the annexation by resolution or if the community council concurs in an annexation that was initiated by the submission of annexation petitions containing sufficient valid signatures. The annexation shall occur if the ballot proposition authorizing the creation of the community is approved by a simple majority vote of the voters voting on the proposition. The county's comprehensive plan, and where

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applicable to the county's subarea plan, and zoning ordinances shall continue in effect in the annexed area until proposed amendments to the approved community comprehensive plans and approved community zoning ordinance have been approved that apply to the annexed area. [1991 c 363 § 107.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.105.100 Dissolution. A community council shall be dissolved if the population of the community is reduced to less than five hundred persons, or less than two hundred persons if the community only includes an entire island.

At the next general election at which community councilmembers would be elected, occurring at least four years after the creation or reestablishment of a community, a ballot proposition shall be submitted to the voters of the community on whether the community shall be reestablished. If reestablished, the newly elected members of the community council and the retained members of the community council shall constitute the members of the community council. [1991 c 363 § 108.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Chapter 36.110 RCW JAIL INDUSTRIES PROGRAM

Sections

36.110.010	Finding—Purpose, intent.
36.110.020	Definitions.
36.110.030	Board of directors established—Membership.
36.110.050	Local advisory groups.
36.110.060	Board of directors—Duties.
36.110.070	Board of directors may receive funds, establish fee schedule.
36.110.080	Board of directors—Meetings—Terms—Compensation.
36.110.085	Board of directors—Immunity.
36.110.090	City or county special revenue funds.
36.110.100	Comprehensive work programs.
36.110.110	Deductions from offenders' earnings.
36.110.120	Free venture industries, tax reduction industries—Employment status of inmates—Insurance coverage.
36.110.130	Free venture industry agreements—Effect of failure.
36.110.140	Education and training.
36.110.150	Department of corrections to provide staff assistance.
36.110.160	Technical training assistance.
36.110.900	Severability—1993 c 285.

36.110.010 Finding—Purpose, intent. Cities and counties have a significant interest in ensuring that inmates in their jails are productive citizens after their release in the community. The legislature finds that there is an expressed need for cities and counties to uniformly develop and coordinate jail industries technical information and program and public safety standards statewide. It further finds that meaningful jail work industries programs that are linked to formal education and adult literacy training can significantly reduce recidivism, the rising costs of corrections, and criminal activities. It is the purpose and intent of the legislature, through this chapter, to establish a statewide jail industries program designed to promote inmate rehabilitation through meaningful work experience and reduce the costs of incarceration. The legislature recognizes that inmates should have the responsibility for contributing to the cost of their crime through the wages earned while working in jail industries programs and that such income shall be used to offset the

costs of implementing and maintaining local jail industries programs and the costs of incarceration. [1993 c 285 § 1.]

36.110.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the statewide jail industries board of directors.

(2) "City" means any city, town, or code city.

(3) "Cost accounting center" means a specific industry program operated under the private sector prison industry enhancement certification program as specified in 18 U.S.C. Sec. 1761.

(4) "Court-ordered legal financial obligation" means a sum of money that is ordered by a superior, district, or municipal court of the state of Washington for payment of restitution to a victim, a statutorily imposed crime victims compensation fee, court costs, a county or interlocal drug fund, court appointed attorneys' fees and costs of defense, fines, and other legal financial obligations that are assessed as a result of a felony or misdemeanor conviction.

(5) "Free venture employer model industries" means an agreement between a city or county and a private sector business or industry or nonprofit organization to produce goods or services to both public and private sectors utilizing jail inmates whose compensation and supervision are provided by the private sector business or entity.

"Free venture customer model industries" means an agreement between a city or county and a private sector business or industry, or nonprofit organization to provide Washington state manufacturers or businesses with products or services currently produced, provided, or assembled by out-of-state or foreign suppliers utilizing jail inmates whose compensation and supervision are provided by the incarcerating facility or local jurisdiction.

(6) "Jail inmate" means a preconviction or postconviction resident of a city or county jail who is determined to be eligible to participate in jail inmate work programs according to the eligibility criteria of the work program.

(7) "Private sector prison industry enhancement certification program" means that program authorized by the United States justice assistance act of 1984, 18 U.S.C. Sec. 1761.

(8) "Tax reduction industries" means those industries as designated by a city or county owning and operating such an industry to provide work training and employment opportunities for jail inmates, in total confinement, which reduce public support costs. The goods and services of these industries may be sold to public agencies, nonprofit organizations, and private contractors when the goods purchased will be ultimately used by a public agency or nonprofit organization. Surplus goods from these operations may be donated to government and nonprofit organizations. [1995 c 154 § 1; 1993 c 285 § 2.]

36.110.030 Board of directors established—Membership. A statewide jail industries board of directors is established. The board shall consist of the following members:

(1) One sheriff and one police chief, to be selected by the Washington association of sheriffs and police chiefs;

(2) One county commissioner or one county councilmember to be selected by the Washington state association of counties;

(3) One city official to be selected by the association of Washington cities;

(4) Two jail administrators to be selected by the Washington state jail association, one of whom shall be from a county or a city with an established jail industries program;

(5) One prosecuting attorney to be selected by the Washington association of prosecuting attorneys;

(6) One administrator from a city or county corrections department to be selected by the Washington correctional association;

(7) One county clerk to be selected by the Washington association of county clerks;

(8) Three representatives from labor to be selected by the governor. The representatives may be chosen from a list of nominations provided by statewide labor organizations representing a cross-section of trade organizations;

(9) Three representatives from business to be selected by the governor. The representatives may be chosen from a list of nominations provided by statewide business organizations representing a cross-section of businesses, industries, and all sizes of employers;

(10) The governor's representative from the employment security department;

(11) One member representing crime victims, to be selected by the governor;

(12) One member representing online law enforcement officers, to be selected by the governor;

(13) One member from the *department of community, trade, and economic development to be selected by the governor;

(14) One member representing higher education, vocational education, or adult basic education to be selected by the governor; and

(15) The governor's representative from the correctional industries division of the state department of corrections shall be an ex officio member for the purpose of coordination and cooperation between prison and jail industries and to further a positive relationship between state and local government offender programs. [1995 c 399 § 45; 1993 c 285 § 3.]

**Reviser's note:* The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

36.110.050 Local advisory groups. The board shall require a city or a county that establishes a jail industries program to develop a local advisory group, or to use an existing advisory group of the appropriate composition, to advise and guide jail industries program operations. Such an advisory group shall include an equal number of representatives from labor and business. Representation from a sheltered workshop, as defined in RCW 82.04.385, and a crime victim advocacy group, if existing in the local area, should also be included.

A local advisory group shall have among its tasks the responsibility of ensuring that a jail industry has minimal negative impact on existing private industries or the labor force in the locale where the industry operates and that a jail industry does not negatively affect employment opportunities for people with developmental disabilities contracted through

the operation of sheltered workshops as defined in RCW 82.04.385. In the event a conflict arises between the local business community or labor organizations concerning new jail industries programs, products, services, or wages, the city or county must use the arbitration process established pursuant to RCW 36.110.060. [1993 c 285 § 5.]

36.110.060 Board of directors—Duties. The board, in accordance with chapter 34.05 RCW, shall:

(1) Establish an arbitration process for resolving conflicts arising among the local business community and labor organizations concerning new industries programs, products, services, or wages;

(2) Encourage the development of the collection and analysis of jail industries program data, including long-term tracking information on offender recidivism;

(3) Determine, by applying established federal guidelines and criteria, whether a city or a county jail free venture industries program complies with the private sector prison industry enhancement certification program. In so doing, also determine if that industry should be designated as a cost accounting center for the purposes of the federal certification program; and

(4) Provide technical assistance with product marketing. [1993 c 285 § 6.]

36.110.070 Board of directors may receive funds, establish fee schedule. The board may receive funds from local, county, state, or federal sources and may receive grants to support its activities. The board may establish a reasonable schedule of suggested fees that will support statewide efforts to promote and facilitate jail industries that would be presented to cities and counties that have established jail industries programs. [1993 c 285 § 7.]

36.110.080 Board of directors—Meetings—Terms—Compensation. The board shall initially convene at the call of the representative of the correctional industries division of the state department of corrections, together with the jail administrator selected from a city or a county with an established jail industries program, no later than six months after July 25, 1993. Subsequent meetings of the board shall be at the call of the board chairperson. The board shall meet at least twice a year.

The board shall elect a chairperson and other such officers as it deems appropriate. However, the chairperson may not be the representative of the correctional industries division of the state department of corrections nor any representative from a state executive branch agency.

Members of the board shall serve terms of three years each on a staggered schedule to be established by the first board. For purposes of initiating a staggered schedule of terms, some members of the first board may initially serve two years and some members may initially serve four years.

The members of the board shall serve without compensation but may be reimbursed for travel expenses from funds acquired under this chapter. [1993 c 285 § 8.]

36.110.085 Board of directors—Immunity. Any member serving in their official capacity on the Washington state jail industries board, in either an appointed or advisory

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capacity, or either their employer or employers, or other entity that selected the members to serve, are immune from a civil action based upon an act performed in good faith. [1995 c 154 § 5.]

36.110.090 City or county special revenue funds. A city or a county that implements a jail industries program may establish a separate fund for the operation of the program. This fund shall be a special revenue fund with continuing authority to receive income and pay expenses associated with the jail industries program. [1993 c 285 § 9.]

36.110.100 Comprehensive work programs. Cities and counties participating in jail industries are authorized to provide for comprehensive work programs using jail inmate workers at worksites within jail facilities or at such places within the city or county as may be directed by the legislative authority of the city or county, as similarly provided under RCW 36.28.100. [1993 c 285 § 10.]

36.110.110 Deductions from offenders' earnings. When an offender is employed in a jail industries program for which pay is allowed, deductions may be made from these earnings for court-ordered legal financial obligations as directed by the court in reasonable amounts that do not unduly discourage the incentive to work. These deductions shall be disbursed as directed in RCW 9.94A.760.

In addition, inmates working in jail industries programs shall contribute toward costs to develop, implement, and operate jail industries programs. This amount shall be a reasonable amount that does not unduly discourage the incentive to work. The amount so deducted shall be deposited in the jail industries special revenue fund.

Upon request of the offender, family support may also be deducted and disbursed to a designated family member. [1993 c 285 § 11.]

36.110.120 Free venture industries, tax reduction industries—Employment status of inmates—Insurance coverage. (1) A jail inmate who works in a free venture industry or a tax reduction industry shall be considered an employee of that industry only for the purpose of the Washington industrial safety and health act, chapter 49.17 RCW, as long as the public safety is not compromised, and for eligibility for industrial insurance benefits under Title 51 RCW, as provided in this section.

(2) For jail inmates participating in free venture employer model industries, the private sector business or industry or the nonprofit organization that is party to the agreement, shall provide industrial insurance coverage under Title 51 RCW. Local jurisdictions shall not be responsible for obligations under Title 51 RCW in a free venture employer model industry except as provided in RCW 36.110.130.

(3) For jail inmates participating in free venture customer model industries, the incarcerating entity or jurisdiction, the private sector business or industry, or the nonprofit organization that is party to the agreement, shall provide industrial insurance coverage under Title 51 RCW dependent upon how the parties to the agreement choose to finalize the agreement.

(4) For jail inmates incarcerated and participating in tax reduction industries:

(a) Local jurisdictions that are self-insured may elect to provide medical aid benefits coverage only under chapter 51.36 RCW through the state fund.

(b) Local jurisdictions, to include self-insured jurisdictions, may elect to provide industrial insurance coverage under Title 51 RCW through the state fund.

(5) If industrial insurance coverage under Title 51 RCW is provided for inmates under this section, eligibility for benefits for either the inmate or the inmate's dependents or beneficiaries for temporary total disability or permanent total disability under RCW 51.32.090 or 51.32.060, respectively, shall not take effect until the inmate is discharged from custody by order of a court of appropriate jurisdiction. Nothing in this section shall be construed to confer eligibility for any industrial insurance benefits to any jail inmate who is not employed in a free venture industry or a tax reduction industry. [1995 c 154 § 2; 1993 c 285 § 12.]

36.110.130 Free venture industry agreements—Effect of failure. In the event of a failure such as a bankruptcy or dissolution, of a private sector business, industry, or nonprofit organization engaged in a free venture industry agreement, responsibility for obligations under Title 51 RCW must be borne by the city or county responsible for establishment of the free venture industry agreement, as if the city or county had been the employing agency. To ensure that this obligation can be clearly identified and accomplished, and to provide accountability for purposes of the department of labor and industries, a free venture jail industry agreement entered into by a city or county and private sector business, industry, or nonprofit organization should be filed under a separate business license application in accordance with chapter 19.02 RCW, establishing a new and separate account with the department of labor and industries, and not be reported under an existing account for parties to the free venture industry agreement. [2013 c 144 § 38; 1995 c 154 § 3; 1993 c 285 § 13.]

36.110.140 Education and training. To the extent possible, jail industries programs shall be augmented by education and training to improve worker literacy and employability skills. Such education and training may include, but is not limited to, basic adult education, work towards earning a high school equivalency certificate as provided in RCW 28B.50.536, vocational and preemployment work maturity skills training, and apprenticeship classes. [2013 c 39 § 18; 1993 c 285 § 14.]

36.110.150 Department of corrections to provide staff assistance. Until sufficient funding is secured by the board to adequately provide staffing, basic staff assistance shall be provided, to the extent possible, by the department of corrections. [1993 c 285 § 15.]

36.110.160 Technical training assistance. Technical training assistance shall be provided to local jurisdictions by the board at the jurisdiction's request. To facilitate and promote the development of local jail industries programs, this training and technical assistance may include the following:

(1) Delivery of statewide jail industry implementation workshops for administrators of jail industries programs; (2) development of recruitment and education programs for local business and labor to gain their participation; (3) ongoing staff assistance regarding local jail industries issues, such as sound business management skills, development of a professional business plan, responding to questions regarding risk management, industrial insurance, and similar matters; and (4) provision of guidelines and assistance for the coordination of basic educational programs and jail industries as well as other technical skills required by local jails in the implementation of safe, productive, and effective jail industries programs. [1995 c 154 § 4.]

36.110.900 Severability—1993 c 285. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 285 § 17.]

Chapter 36.115 RCW SERVICE AGREEMENTS

Sections

36.115.010	Purpose.
36.115.020	Definitions.
36.115.030	Coordination—Consistency.
36.115.040	Geographic area covered—Contents—When effective.
36.115.050	Matters included.
36.115.060	Procedure for establishment—Counties affected.
36.115.070	Legislative intent.
36.115.080	Duties, requirements, authorities under growth management act not altered.

36.115.010 Purpose. The purpose of chapter 266, Laws of 1994 is to establish a flexible process by which local governments enter into service agreements that will establish which jurisdictions should provide various local government services and facilities within specified geographic areas and how those services and facilities will be financed. [1994 c 266 § 1.]

36.115.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "City" means a city or town, including a city operating under Title 35A RCW.

(2) "Governmental service" includes a service provided by local government, and any facilities and equipment related to the provision of such services, including but not limited to utility services, health services, social services, law enforcement services, fire prevention and suppression services, community development activities, environmental protection activities, economic development activities, and transportation services and facilities, but shall not include the generation, conservation, or distribution of electrical energy nor maritime shipping activities.

(3) "Regional service" means a governmental service established by agreement among local governments that delineates the government entity or entities responsible for the service provision and allows for that delivery to extend over jurisdictional boundaries.

(4) "Local government" means a county, city, or special district.

(5) "Service agreement" means an agreement among counties, cities, and special districts established pursuant to this chapter.

(6) "Special district" means a municipal or quasi-municipal corporation in the state, other than a county, city, or school district. [1994 c 266 § 2.]

36.115.030 Coordination—Consistency. A service agreement addressing children and family services shall enhance coordination and shall be consistent with the comprehensive plan developed under chapter 7, Laws of 1994 sp. sess. [1994 c 266 § 3.]

36.115.040 Geographic area covered—Contents—When effective. (1) Agreements among local governments concerning one or more governmental service should be established for a designated geographic area as provided in this section.

(2) A service agreement must describe: (a) The governmental service or services addressed by the agreement; (b) the geographic area covered by the agreement; (c) which local government or local governments are to provide each of the governmental services addressed by the agreement within the geographic area covered by the agreement; and (d) the term of the agreement, if any.

(3) A service agreement becomes effective when approved by: (a) The county legislative authority of each county that includes territory located within the geographic area covered by the agreement; (b) the governing body or bodies of at least a simple majority of the total number of cities that includes territory located within the geographic area covered by the agreement, which cities include at least seventy-five percent of the total population of all cities that includes territory located within the geographic area covered by the agreement; and (c) for each governmental service addressed by the agreement, the governing body or bodies of at least a simple majority of the special districts that include territory located within the geographic area covered by the agreement and which provide the governmental service within such territory. The participants may agree to use another formula. An agreement pursuant to this section shall be effective upon adoption by the county legislative authority following a public hearing.

(4) A service agreement may cover a geographic area that includes territory located in more than a single county. [1994 c 266 § 4.]

36.115.050 Matters included. A service agreement may include, but is not limited to, any or all of the following matters:

(1) A dispute resolution arrangement;

(2) How joint land-use planning and development regulations by the county and a city or cities, or by two or more cities, may be established, made binding, and enforced;

(3) How common development standards between the county and a city or cities, or between two or more cities, may be established, made binding, and enforced;

(4) How capital improvement plans of the county, cities, and special districts shall be coordinated;

(5) How plans and policies adopted under chapter 36.70A RCW will be implemented by the service agreement;

(6) A transfer of revenues between local governments in relationship to their obligations for providing governmental services;

(7) The designation of additional area-wide governmental services to be provided by the county. [1994 c 266 § 5.]

36.115.060 Procedure for establishment—Counties affected. (1) The county legislative authority of every county with a population of one hundred fifty thousand or more shall convene a meeting on or before March 1, 1995, to develop a process for the establishment of service agreements. Invitations to attend this meeting shall be sent to the governing body of each city located in the county, and to the governing body of each special district located in the county that provides one or more of the governmental services as defined in RCW 36.115.020(2).

The legislative authorities of counties of less than one hundred fifty thousand population may utilize this chapter by adopting a resolution stating their intent to do so. In that case or in the case of counties whose populations reach one hundred fifty thousand after March 1, 1995, this meeting shall be convened no later than sixty days after the date the county adopts its resolution of intention or was certified by the office of financial management as having a population of one hundred fifty thousand or more.

(2) On or before January 1, 1997, a service agreement must be adopted in each county under this chapter or a progress report must be submitted to the appropriate committees of the legislature.

(3) In other counties that choose to utilize this chapter or whose population reaches one hundred fifty thousand, the service agreement must be adopted two years after the initial meeting provided for in subsection (1) of this section is convened or a progress report must be submitted to the appropriate committees of the legislature. [1994 c 266 § 6.]

36.115.070 Legislative intent. It is the intent of the legislature to permit the creation of a flexible process to establish service agreements and to recognize that local governments possess broad authority to shape a variety of government service agreements to meet their local needs and circumstances. However, it is noted that in general, cities are the unit of local government most appropriate to provide urban governmental services and counties are the unit of local government most appropriate to provide regional governmental services.

The process to establish service agreements should assure that all directly affected local governments, and Indian tribes at their option, are allowed to be heard on issues relevant to them. [1994 c 266 § 7.]

36.115.080 Duties, requirements, authorities under growth management act not altered. Nothing contained in this chapter alters the duties, requirements, and authorities of cities and counties contained in chapter 36.70A RCW. [1994 c 266 § 8.]

Chapter 36.120 RCW
REGIONAL TRANSPORTATION
INVESTMENT DISTRICTS

Sections

36.120.010	Findings.
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36.120.900	Captions and subheadings not law—2002 c 56.
36.120.901	Severability—2002 c 56.

36.120.010 Findings. The legislature finds that:

- (1) The capacity of many of Washington state's transportation facilities have failed to keep up with the state's growth, particularly in major urban regions;
- (2) The state cannot by itself fund, in a timely way, many of the major capacity and other improvements required on highways of statewide significance in the state's largest urbanized area;
- (3) Providing a transportation system that provides efficient mobility for persons and freight requires a shared partnership and responsibility between the state, local, and regional governments and the private sector; and
- (4) Timely construction and development of significant transportation improvement projects can best be achieved through enhanced funding options for governments at the county and regional levels, using already existing tax authority to address roadway and multimodal needs and new authority for regions to address critical transportation projects of statewide significance. [2002 c 56 § 101.]

36.120.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Board" means the governing body of a regional transportation investment district.
- (2) "Department" means the Washington state department of transportation.
- (3) "Highway of statewide significance" means an existing or proposed state route or federal interstate designated as a highway of statewide significance by the transportation commission, the department, or the legislature.
- (4) "Lead agency" means a public agency that by law can plan, design, and build a transportation project and has been so designated by the district.
- (5) "Regional transportation investment district" or "district" means a municipal corporation that has been created by

county legislative authorities and a vote of the people under this chapter to implement a regional transportation investment plan.

(6) "Regional transportation investment district planning committee" or "planning committee" means the advisory committee created under RCW 36.120.030 to create and propose to county legislative authorities a regional transportation investment plan to develop, finance, and construct transportation projects.

(7) "Regional transportation investment plan" or "plan" means a plan to develop, construct, and finance a transportation project or projects.

(8) "Transportation project" means:

(a) A capital improvement or improvements to a highway that has been designated, in whole or in part, as a highway of statewide significance, including an extension, that:

(i) Adds a lane or new lanes to an existing state or federal highway; or

(ii) Repairs or replaces a lane or lanes damaged by an event declared an emergency by the governor before January 1, 2002.

(b) A capital improvement or improvements to all or a portion of a highway of statewide significance, including an extension, and may include the following associated multimodal capital improvements:

- (i) Approaches to highways of statewide significance;
- (ii) High occupancy vehicle lanes;
- (iii) Flyover ramps;
- (iv) Park and ride lots;
- (v) Bus pullouts;
- (vi) Vans for vanpools;
- (vii) Buses; and
- (viii) Signalization, ramp metering, and other transportation system management improvements.

(c) A capital improvement or improvements to all or a portion of a city street, county road, or existing highway or the creation of a new highway that intersects with a highway of statewide significance, if all of the following conditions are met:

(i) The project is included in a plan that makes highway improvement projects that add capacity to a highway or highways of statewide significance;

(ii) The secretary of transportation determines that the project would better relieve traffic congestion than investing that same money in adding capacity to a highway of statewide significance;

(iii) Matching money equal to fifteen percent of the total cost of the project is provided by local entities, including but not limited to a metropolitan planning organization, county, city, port, or private entity in which a county participating in a plan is located. Local entities may use federal grants to meet this matching requirement;

(iv) In no case may the cumulative regional transportation investment district contribution to all projects constructed under this subsection (8)(c) exceed ten percent of the revenues generated by the district;

(v) In no case may the cumulative regional transportation investment district contribution to all projects constructed under this subsection (8)(c) exceed one billion dollars; and

(vi) The specific projects are included within the plan and submitted as part of the plan to a vote of the people.

(d) Except as otherwise provided in this subsection, operations, preservation, and maintenance are excluded from this definition and may not be included in a regional transportation investment plan. However, operations, preservation, and maintenance of tolled facilities where toll revenues have been pledged for the payment of contracts is expressly authorized and may be included in a regional transportation investment plan. The authority under this subsection includes operational expenses for toll enforcement.

(e) Operational expenses for traffic mitigation provided solely for transportation project construction mitigation directly related to specific projects as outlined in the plan shall be included in a regional transportation investment plan. Construction mitigation strategies may include, but are not limited to, funding for increased transit service hours, trip reduction incentives, nonmotorized mode support, and ride-matching services. Prior to construction of any project, corridor mitigation plans must be developed in conjunction with the department and partner transit agencies, including local transit agencies and the regional transit authority serving the counties, with the following goals: (i) Reducing drive alone trips in affected corridors; (ii) reducing delay per person and delay per unit of goods in affected corridors; and (iii) improving levels of service that improve system performance for all transportation users in affected corridors. The regional transportation commission established under section 2, chapter 311, Laws of 2006, or a successor regional governing entity, shall review transit investments according to these performance measures to determine whether to continue funding for successful and effective operations after the construction period is completed.

(9) "Weighted vote" means a vote that reflects the population each board or planning committee member represents relative to the population represented by the total membership of the board or planning committee. Population will be determined using the federal 2000 census or subsequent federal census data. [2006 c 334 § 13; 2006 c 311 § 4; 2002 c 56 § 102.]

Reviser's note: This section was amended by 2006 c 311 § 4 and by 2006 c 334 § 13, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2006 c 334: See note following RCW 47.01.051.

Findings—2006 c 311: "The legislature finds that effective transportation planning in urbanized regions requires stronger and clearer lines of responsibility and accountability.

The legislature further finds that integrated, multimodal transportation planning will help reduce transportation congestion and improve safety, and that streamlined decision making will help reduce political congestion.

The legislature further finds that coordinated planning of, investment in, and operation of transportation systems will have significant benefit to the citizens of Washington, and that it is the will of the people to fund regional transportation solutions, including improving transit service in urbanized areas and among existing, fragmented transit agencies in the region. Although equity considerations must be respected, transportation problems are broader and deeper than the sum of geographic subareas.

It is therefore the policy of the state of Washington to create a regional transportation commission to develop a proposal for a regional transportation governing entity more directly accountable to the public, and to develop a comprehensive regional transportation finance plan for the citizens of the Puget Sound metropolitan region." [2006 c 311 § 1.]

36.120.030 Planning committee—Formation.

Regional transportation investment district planning commit-

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tees are advisory entities that are created, convened, and empowered as follows:

(1) A county with a population over one million five hundred thousand persons and any adjoining counties with a population over five hundred thousand persons may create a regional transportation investment district and shall convene a regional transportation investment district planning committee.

(a) The boundaries of the district should include at least the contiguous areas within the regional transit authority serving the counties. The boundaries must be proposed by the planning committee and approved by the county legislative authorities by ordinance before or in conjunction with approval of a regional transportation investment plan. Boundaries must follow complete parcels of land. However, any portion of a county that is located on a peninsula shall be exempt from a regional transportation investment district in which more than one county is included if (i) the portion of the county located on the peninsula is connected to the other portion of the county by a bridge improved under chapter 47.46 RCW, and (ii) the county has a national park and a population of more than five hundred thousand persons, but less than one million five hundred thousand persons.

(b) After voters within the district boundaries have approved a plan under RCW 36.120.070, elections to add areas to the district boundaries may be called by a resolution of the board, after consultation with the regional transportation planning organization and affected transit agencies and with the concurrence of the legislative authority of the city or town if the area is incorporated or with the concurrence of the county legislative authority if the area is unincorporated. The election may include a single ballot measure providing annexation to the district, approval of the plan, and approval of revenue sources necessary to finance the plan. The electorate are the voters voting within the proposed area to be annexed. A simple majority of the persons voting on the single ballot measure is required for approval of the measure.

(2) The members of the legislative authorities participating in planning under this chapter shall serve as the district planning committee. Members of the planning committee receive no compensation, but may be reimbursed for travel and incidental expenses as the planning committee deems appropriate.

The secretary of transportation, or the appropriate regional administrator of the department, as named by the secretary, shall serve on the committee as a nonvoting member.

(3) A regional transportation investment district planning committee may be entitled to state funding, as appropriated by the legislature, for start-up funding to pay for salaries, expenses, overhead, supplies, and similar expenses ordinarily and necessarily incurred in selecting transportation projects and funding for those transportation projects under this chapter. Upon creation of a regional transportation investment district, the district shall within one year reimburse the state for any sums advanced for these start-up costs from the state.

(4) The planning committee shall conduct its affairs and formulate a regional transportation investment plan as provided under RCW 36.120.040, except that it shall elect an executive board of seven members to discharge the duties of the planning committee and formulate a regional transporta-

tion investment plan, subject to the approval of the full committee.

(5) At its first meeting, a regional transportation investment district planning committee may elect officers and provide for the adoption of rules and other operating procedures.

(6) Governance of and decisions by a regional transportation investment district planning committee must be by a sixty-percent weighted majority vote of the total membership.

(7) The planning committee may dissolve itself at any time by a two-thirds weighted majority vote of the total membership of the planning committee.

(8) If a multicounty regional transportation investment district is not formed by December 1, 2007, through approval by the voters voting on a regional transportation investment plan, then the authority under this chapter to create a district, and to fund and construct transportation projects, shall be available to each of the eligible counties described in subsection (1) of this section on an individual and independent basis. [2006 c 311 § 5; 2002 c 56 § 103.]

Findings—2006 c 311: See note following RCW 36.120.020.

36.120.040 Planning committee—Duties. (1) A regional transportation investment district planning committee shall adopt a regional transportation investment plan providing for the development, construction, and financing of transportation projects. The planning committee may consider the following factors in formulating its plan:

(a) Land use planning criteria;

(b) The input of cities located within a participating county; and

(c) The input of regional transportation planning organizations of which a participating county is a member. A regional transportation planning organization in which a participating county is located shall review its adopted regional transportation plan and submit, for the planning committee's consideration, its list of transportation improvement priorities.

(2) The planning committee may coordinate its activities with the department, which shall provide services, data, and personnel to assist in this planning as desired by the planning committee. In addition, the planning committee may coordinate its activities with affected cities, towns, and other local governments, including any regional transit authority existing within the participating counties' boundaries, that engage in transportation planning.

(3) The planning committee shall:

(a) Conduct public meetings that are needed to assure active public participation in the development of the plan;

(b) Adopt a plan proposing the:

(i) Creation of a regional transportation investment district, including district boundaries; and

(ii) Construction of transportation projects to improve mobility within each county and within the region. Operations, maintenance, and preservation of facilities or systems may not be part of the plan, except for the limited purposes provided under RCW 36.120.020(8); and

(c) Recommend sources of revenue authorized by RCW 36.120.050 and a financing plan to fund selected transportation projects. The overall plan of the district must leverage the district's financial contributions so that the federal, state,

local, and other revenue sources continue to fund major congestion relief and transportation capacity improvement projects in each county and the district. A combination of local, state, and federal revenues may be necessary to pay for transportation projects, and the planning committee shall consider all of these revenue sources in developing a plan.

(4) The plan must use tax revenues and related debt for projects that generally benefit a participating county in proportion to the general level of tax revenues generated within that participating county. This equity principle applies to all modifications to the plan, appropriation of contingency funds not identified within the project estimate, and future phases of the plan. Per agreement with a regional transit authority serving the counties participating in a district, the equity principle identified under this subsection may include using the combined district and regional transit authority revenues generated within a participating county to determine the distribution that proportionally benefits the county. For purposes of the transportation subarea equity principle established under this subsection, a district may use the five subareas within a regional transit authority's boundaries as identified in an authority's system plan adopted in May 1996. During implementation of the plan, the board shall retain the flexibility to manage distribution of revenues, debt, and project schedules so that the district may effectively implement the plan. Nothing in this section should be interpreted to prevent the district from pledging district-wide tax revenues for payment of any contract or debt entered into under RCW 36.120.130.

(5) Before adopting the plan, the planning committee, with assistance from the department, shall work with the lead agency to develop accurate cost forecasts for transportation projects. This project costing methodology must be integrated with revenue forecasts in developing the plan and must at a minimum include estimated project costs in constant dollars as well as year of expenditure dollars, the range of project costs reflected by the level of project design, project contingencies, identification of mitigation costs, the range of revenue forecasts, and project and plan cash flow and bond analysis. The plan submitted to the voters must provide cost estimates for each project, including reasonable contingency costs. Plans submitted to the voters must provide that the maximum amount possible of the funds raised will be used to fund projects in the plan, including environmental improvements and mitigation, and that administrative costs be minimized. If actual revenue exceeds actual plan costs, the excess revenues must be used to retire any outstanding debt associated with the plan.

(6) If a county opts not to adopt the plan or participate in the regional transportation investment district, but two or more contiguous counties do choose to continue to participate, then the planning committee may, within ninety days, redefine the regional transportation investment plan and the ballot measure to be submitted to the people to reflect elimination of the county, and submit the redefined plan to the legislative authorities of the remaining counties for their decision as to whether to continue to adopt the redefined plan and participate. This action must be completed within sixty days after receipt of the redefined plan.

(7) Once adopted by the planning committee, the plan must be forwarded to the participating county legislative authorities to initiate the election process under RCW

36.120.070. The planning committee shall at the same time provide notice to each city and town within the district, the governor, the chairs of the transportation committees of the legislature, the secretary of transportation, and each legislator whose legislative district is partially or wholly within the boundaries of the district.

(8) If the ballot measure is not approved, the planning committee may redefine the selected transportation projects, financing plan, and the ballot measure. The county legislative authorities may approve the new plan and ballot measure, and may then submit the revised proposition to the voters at the next election or a special election. If no ballot measure is approved by the voters by the third vote, the planning committee is dissolved. [2006 c 311 § 6; 2003 c 194 § 1; 2002 c 56 § 104.]

Findings—2006 c 311: See note following RCW 36.120.020.

36.120.045 Planning committee—State route No. 520 improvements. The planning committee must develop and include in the regional transportation investment plan a funding proposal for the state route number 520 bridge replacement and HOV project that assures full project funding for seismic safety and corridor connectivity on state route number 520 between Interstate 5 and Interstate 405. [2006 c 311 § 7.]

Findings—2006 c 311: See note following RCW 36.120.020.

36.120.050 Planning committee—Taxes, fees, and tolls. (1) A regional transportation investment district planning committee may, as part of a regional transportation investment plan, recommend the imposition or authorization of some or all of the following revenue sources, which a regional transportation investment district may impose or authorize upon approval of the voters as provided in this chapter:

(a) A regional sales and use tax, as specified in RCW 82.14.430, of up to 0.1 percent of the selling price, in the case of a sales tax, or value of the article used, in the case of a use tax, upon the occurrence of any taxable event in the regional transportation investment district;

(b) A local option vehicle license fee, as specified under RCW 82.80.100, of up to one hundred dollars per vehicle registered in the district. As used in this subsection, "vehicle" means motor vehicle as defined in RCW 46.04.320. Certain classes of vehicles, as defined under chapter 46.04 RCW, may be exempted from this fee;

(c) A parking tax under RCW 82.80.030;

(d) A local motor vehicle excise tax under RCW 81.100.060;

(e) A local option fuel tax under RCW 82.80.120;

(f) An employer excise tax under RCW 81.100.030; and

(g) Vehicle tolls on new or reconstructed local or regional arterials or state routes within the boundaries of the district, if the following conditions are met:

(i) Consistent with RCW 47.56.820, the vehicle toll must first be authorized by the legislature if the toll is imposed on a state route;

(ii) Consistent with RCW 47.56.850, the vehicle toll, including any change in an existing toll rate, must first be reviewed and approved by the tolling authority designated in RCW 47.56.850 if the toll, or change in toll rate, would have

a significant impact, as determined by the tolling authority, on the operation of any state facility;

(iii) The regional transportation investment plan must identify the facilities that may be tolled; and

(iv) Unless otherwise specified by law, the department shall administer the collection of vehicle tolls on designated facilities, and the state transportation commission, or its successor, shall be the tolling authority, and shall act in accordance with RCW 47.56.850.

(2) Taxes, fees, and tolls may not be imposed or authorized without an affirmative vote of the majority of the voters within the boundaries of the district voting on a ballot proposition as set forth in RCW 36.120.070. Revenues from these taxes and fees may be used only to implement the plan as set forth in this chapter. A district may contract with the state department of revenue or other appropriate entities for administration and collection of any of the taxes or fees authorized in this section.

(3) Existing statewide motor vehicle fuel and special fuel taxes, at the distribution rates in effect on January 1, 2001, are not intended to be altered by this chapter. [2008 c 122 § 16; 2006 c 311 § 13; 2003 c 350 § 4; 2002 c 56 § 105.]

Findings—2006 c 311: See note following RCW 36.120.020.

36.120.060 Project selection—Performance criteria.

(1) The planning committee shall consider the following criteria for selecting transportation projects to improve corridor performance:

(a) Reduced level of congestion and improved safety;

(b) Improved travel time;

(c) Improved air quality;

(d) Increases in daily and peak period person and vehicle trip capacity;

(e) Reductions in person and vehicle delay;

(f) Improved freight mobility; and

(g) Cost-effectiveness of the investment.

(2) These criteria represent only minimum standards that must be considered in selecting transportation improvement projects. The board shall also consider rules and standards for benchmarks adopted by the transportation commission or its successor. [2002 c 56 § 106.]

36.120.070 Submission of ballot propositions to the voters. (1) Beginning no sooner than the 2007 general election, two or more contiguous county legislative authorities, or a single county legislative authority as provided under RCW 36.120.030(8), upon receipt of the regional transportation investment plan under RCW 36.120.040, may submit to the voters of the proposed district a single ballot proposition that approves formation of the district, approves the regional transportation investment plan, and approves the revenue sources necessary to finance the plan. For a county to participate in the plan, the county legislative authority shall, within ninety days after receiving the plan, adopt an ordinance indicating the county's participation. The planning committee may draft the ballot proposition on behalf of the county legislative authorities, and the county legislative authorities may give notice as required by law for ballot propositions, and perform other duties as required to submit the proposition to the voters of the proposed district for their approval or rejection. Counties may negotiate interlocal agreements necessary

to implement the plan. The electorate will be the voters voting within the boundaries of the proposed district. A simple majority of the total persons voting on the single ballot proposition is required for approval.

(2) The participating counties shall submit a regional transportation investment plan at the 2007 general election as part of a single ballot proposition that includes, in conjunction with RCW 81.112.030(10), a plan to support an authority's system and financing plan, or additional implementation phases of the system and financing plan, developed under chapter 81.112 RCW. The regional transportation investment plan shall not be considered approved unless both a majority of the persons voting on the proposition residing in the proposed district vote in favor of the proposition and a majority of the persons voting on the proposition residing within the regional transit authority vote in favor of the proposition. [2007 c 509 § 2; 2006 c 311 § 8; 2002 c 56 § 107.]

Findings—Intent—2007 c 509: "The legislature finds that traffic congestion reduces personal and freight mobility and is detrimental to the economy, air quality, and the quality of life throughout the central Puget Sound area. Effective transportation solutions are essential for the future growth and development of the central Puget Sound area and the welfare of its citizens.

The legislature further finds that investments in both transit and road improvements are necessary to relieve traffic congestion and to improve mobility. The transportation improvements proposed by regional transportation investment districts and regional transit authorities within the central Puget Sound region form integral parts of, and are naturally and necessarily related to, a single regional transportation system. The construction of road and transit projects in a comprehensive and interrelated manner will help reduce transportation congestion, increase road capacity, promote safety, facilitate mobility, and improve the health, welfare, and safety of the citizens of Washington.

The legislature further finds that under RCW 81.112.030 and *36.120.170 regional transportation investment districts and regional transit authorities are required to submit to the voters propositions for their respective transportation plans on the same ballot at the 2007 general election and that the opportunity to propose a single ballot reflecting a comprehensive, systemic, and interrelated approach to regional transportation would further the legislative intent and provide voters with an easier and more efficient method of expressing their will.

It is therefore the policy and intent of the state of Washington that transportation plans required to be submitted for voter approval at the 2007 general election by a regional transportation investment district and a regional transit authority must be submitted to voters in single ballot question seeking approval of both plans." [2007 c 509 § 1.]

***Reviser's note:** Reference to RCW 36.120.170 appears to be erroneous. The correct reference should be to RCW 36.120.070.

Constitutional challenges—Expedited appeals—2007 c 509: "Any legal challenges as to the constitutionality of this act must be filed in superior court along with any supporting legal and factual authority within twenty calendar days of May 15, 2007. Notice of a challenge along with any supporting legal and factual authority must be served upon the secretary of state, the attorney general, the district, and the authority. Upon the filing of a challenge, the state, district, and authority have ten calendar days to file any response to the challenge along with any supporting legal and factual authority. The court shall accord priority to hearing the matter and shall, within five calendar days of the filing of the response to the challenge, render its decision and file with the secretary of state a copy of its decision. The decision of the superior court constitutes a final judgment. Any appeal must be filed in the supreme court within ten calendar days after the date of the superior court decision. The supreme court shall issue its ruling on the appeal within thirty days of receipt by the court." [2007 c 509 § 5.]

Severability—2007 c 509: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 509 § 6.]

Effective date—2007 c 509: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect immediately [May 15, 2007]." [2007 c 509 § 7.]

Findings—2006 c 311: See note following RCW 36.120.020.

36.120.080 Formation—Certification. If the voters approve the plan, including creation of a regional transportation investment district and imposition of taxes and fees, the district will be declared formed. The county election officials of participating counties shall, within fifteen days of the final certification of the election results, publish a notice in a newspaper or newspapers of general circulation in the district declaring the district formed, and mail copies of the notice to the governor, the secretary of transportation, the executive director of the regional transit authority in which any part of the district is located, and the executive director of the regional transportation planning organization in which any part of the district is located. A party challenging the procedure or the formation of a voter-approved district must file the challenge in writing by serving the prosecuting attorney of the participating counties and the attorney general within thirty days after the final certification of the election. Failure to challenge within that time forever bars further challenge of the district's valid formation. [2006 c 311 § 10; 2002 c 56 § 108.]

Findings—2006 c 311: See note following RCW 36.120.020.

36.120.090 Governing board—Composition. (1) The governing board of a district consists of the members of the legislative authority of each member county, acting ex officio and independently. The secretary of transportation or the appropriate regional administrator of the department, as named by the secretary, shall also serve as a nonvoting member of the board. The governing board may elect an executive board of seven members to discharge the duties of the governing board subject to the approval of the full governing board.

(2) A sixty-percent majority of the weighted votes of the total board membership is required to submit to the counties a modified plan under RCW 36.120.140 or any other proposal to be submitted to the voters. The counties may, with majority vote of each county legislative authority, submit a modified plan or proposal to the voters. [2002 c 56 § 109.]

36.120.100 Governing board—Organization. The board shall adopt rules for the conduct of business. The board shall adopt bylaws to govern district affairs, which may include:

- (1) The time and place of regular meetings;
- (2) Rules for calling special meetings;
- (3) The method of keeping records of proceedings and official acts;
- (4) Procedures for the safekeeping and disbursement of funds; and
- (5) Any other provisions the board finds necessary to include. [2002 c 56 § 110.]

36.120.110 Governing board—Powers and duties—Intent. (1) The governing board of the district is responsible for the execution of the voter-approved plan. The board shall:

- (a) Impose taxes and fees authorized by district voters;

(b) Enter into agreements with state, local, and regional agencies and departments as necessary to accomplish district purposes and protect the district's investment in transportation projects;

(c) Accept gifts, grants, or other contributions of funds that will support the purposes and programs of the district;

(d) Monitor and audit the progress and execution of transportation projects to protect the investment of the public and annually make public its findings;

(e) Pay for services and enter into leases and contracts, including professional service contracts;

(f) Hire no more than ten employees, including a director or executive officer, a treasurer or financial officer, a project manager or engineer, a project permit coordinator, and clerical staff; and

(g) Coordinate its activities with affected cities, towns, and other local governments, including any regional transit authority existing either partially or entirely within the district area, that engage in transportation planning; and

(h) Exercise other powers and duties as may be reasonable to carry out the purposes of the district.

(2) It is the intent of the legislature that existing staff resources of lead agencies be used in implementing this chapter. A district may coordinate its activities with the department, which shall provide services, data, and personnel to assist as desired by the regional transportation investment district. Lead agencies for transportation projects that are not state facilities shall also provide staff support for the board.

(3) A district may not acquire, hold, or dispose of real property.

(4) Except for the limited purposes provided under RCW 36.120.020(8), a district may not own, operate, or maintain an ongoing facility, road, or transportation system.

(5) A district may accept and expend or use gifts, grants, or donations.

(6) It is the intent of the legislature that administrative and overhead costs of a regional transportation investment district be minimized. For transportation projects costing up to fifty million dollars, administrative and overhead costs may not exceed three percent of the total construction and design project costs per year. For transportation projects costing more than fifty million dollars, administrative and overhead costs may not exceed three percent of the first fifty million dollars in costs, plus an additional one-tenth of one percent of each additional dollar above fifty million. These limitations apply only to the district, and do not limit the administration or expenditures of the department.

(7) A district may use the design-build procedure for transportation projects developed by it. As used in this section "design-build procedure" means a method of contracting under which the district contracts with another party for that party to both design and build the structures, facilities, and other items specified in the contract. The requirements and limitations of RCW 47.20.780 and 47.20.785 do not apply to the transportation projects under this chapter. [2006 c 311 § 11; 2002 c 56 § 111.]

Findings—2006 c 311: See note following RCW 36.120.020.

36.120.120 Treasurer. The regional transportation investment district, by resolution, shall designate a person having experience in financial or fiscal matters as treasurer of

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the district. The district may designate the treasurer of a county within which the district is located to act as its treasurer. Such a treasurer has all of the powers, responsibilities, and duties the county treasurer has related to investing surplus funds. The district shall require a bond with a surety company authorized to do business in this state in an amount and under the terms and conditions the district, by resolution, from time to time finds will protect the district against loss. The district shall pay the premium on the bond.

In addition to the account established in RCW 36.120.200, the treasurer may establish a special account, into which may be paid district funds. The treasurer may disburse district funds only on warrants issued by the district upon orders or vouchers approved by the district.

If the treasurer of the district is the treasurer of a county, all district funds must be deposited with a county depository under the same restrictions, contracts, and security as provided for county depositories. If the treasurer of the district is some other person, all funds must be deposited in a bank or banks authorized to do business in this state qualified for insured deposits under any federal deposit insurance act as the district, by resolution, designates.

The district may provide and require a reasonable bond of any other person handling moneys or securities of the district, but the district shall pay the premium on the bond. [2002 c 56 § 112.]

36.120.130 Indebtedness—Bonds—Limitation.

(1)(a) Notwithstanding RCW 39.36.020(1), the district may at any time contract indebtedness or borrow money for district purposes and may issue general obligation bonds or other evidences of indebtedness, secured by the pledge of one or more of the taxes, tolls, charges, or fees authorized to be imposed by the district, in an amount not exceeding, together with any existing indebtedness of the district not authorized by the voters, one and one-half percent of the value of the taxable property within the boundaries of the district.

(b) With the assent of three-fifths of the voters voting at an election, a district may contract indebtedness or borrow money for district purposes and may issue general obligation bonds or other evidences of indebtedness as long as the total indebtedness of the district does not exceed five percent of the value of the taxable property within the district, including indebtedness authorized under (a) of this subsection. The bonds shall be issued and sold in accordance with chapter 39.46 RCW.

(2) The district may at any time issue revenue bonds or other evidences of indebtedness, secured by the pledge of one or more of the revenues authorized to be collected by the district, to provide funds to carry out its authorized functions without submitting the matter to the voters of the district. These obligations shall be issued and sold in accordance with chapter 39.46 RCW.

(3) The district may enter into agreements with the lead agencies or the state of Washington, when authorized by the plan, to pledge taxes or other revenues of the district for the purpose of paying in part or whole principal and interest on bonds issued by the lead agency or the state of Washington. The agreements pledging revenues and taxes shall be binding for their terms, but not to exceed thirty years, and no tax

pledged by an agreement may be eliminated or modified if it would impair the pledge made in any agreement.

(4) Once construction of projects in the plan has been completed, revenues collected by the district may only be used for the following purposes: (a) Payment of principal and interest on outstanding indebtedness of the district; (b) to make payments required under a pledging agreement; and (c) to make payments for maintenance and operations of toll facilities as may be required by toll bond covenants. [2003 c 372 § 1; 2002 c 56 § 113.]

36.120.140 Transportation project or plan modification—Accountability. (1) The board may modify the plan to change transportation projects or revenue sources if:

(a) Two or more participating counties adopt a resolution to modify the plan; and

(b) The counties submit to the voters in the district a ballot measure that redefines the scope of the plan, its projects, its schedule, its costs, or the revenue sources. If the voters fail to approve the redefined plan, the district shall continue to work on and complete the plan, and the projects in it, that was originally approved by the voters. If the voters approve the redefined plan, the district shall work on and complete the projects under the redefined plan.

(2) The board may modify the plan to change transportation projects within a participating county if:

(a) A majority of the board approves the change;

(b) The modifications are limited to projects within the county;

(c) The county submits to the voters in the county a ballot measure that redefines:

(i) Projects;

(ii) Scopes of projects; or

(iii) Costs; and

(iv) The financial plan for the county;

(d) The proposed modifications maintain the equity of the plan and does [do] not increase the total level of plan expenditure for the county.

If the voters fail to approve the modified plan, the district shall continue to work on and complete the plan, and the projects in it, that was originally approved by the voters. If the voters approve the redefined plan, the district shall work on and complete the projects under the redefined plan.

(3) If a transportation project cost exceeds its original cost by more than twenty percent as identified in the plan:

(a) The board shall, in coordination with the county legislative authorities, submit to the voters in the district or county a ballot measure that redefines the scope of the transportation project, its schedule, or its costs. If the voters fail to approve the redefined transportation project, the district shall terminate work on that transportation project, except that the district may take reasonable steps to use, preserve, or connect any improvement already constructed. The remainder of any funds that would otherwise have been expended on the terminated transportation project must first be used to retire any outstanding debt attributable to the plan and then may be used to implement the remainder of the plan.

(b) Alternatively, upon adoption of a resolution by two or more participating counties:

(i) The counties shall submit to the voters in the district a ballot measure that redefines the scope of the plan, its trans-

portation projects, its schedule, or its costs. If the voters fail to approve the redefined plan, the district shall terminate work on that plan, except that the district may take reasonable steps to use, preserve, or connect any improvement already constructed. The remainder of any funds must be used to retire any outstanding debt attributable to the plan; or

(ii) The counties may elect to have the district continue the transportation project without submitting an additional ballot proposal to the voters.

(4) To assure accountability to the public for the timely construction of the transportation improvement project or projects within cost projections, the district shall issue a report, at least annually, to the public and copies of the report to newspapers of record in the district. In the report, the district shall indicate the status of transportation project costs, transportation project expenditures, revenues, and construction schedules. The report may also include progress towards meeting the performance criteria provided under this chapter. [2003 c 194 § 2; 2002 c 56 § 114.]

36.120.150 Department of transportation—Role. (1) The department shall designate an office or division of dedicated staff and services whose primary responsibility is to coordinate the design, preliminary engineering, permitting, financing, and construction of transportation projects under consideration by a regional transportation investment district planning committee or that are part of a regional transportation investment plan being implemented by a regional transportation investment district.

(2) All of the powers granted the department under Title 47 RCW relating to highway construction may, at the request of a regional transportation investment district, be used to implement a regional transportation investment plan and construct transportation projects. [2002 c 56 § 115.]

36.120.160 Ownership of improvements. Any improvement to a state facility constructed under this chapter becomes and remains the property of this state. [2002 c 56 § 116.]

36.120.170 Dissolution of district. Within thirty days of the completion of the construction of the transportation project or series of projects forming the regional transportation investment plan, the district shall terminate day-to-day operations and exist solely as a limited entity that oversees the collection of revenue and the payment of debt service or financing still in effect, if any. The district shall accordingly adjust downward its employees, administration, and overhead expenses. Any taxes, fees, or tolls imposed under an approved plan terminate when the financing or debt service on the transportation project or series of transportation projects constructed is completed and paid, thirty days from which point the district shall dissolve itself and cease to exist. If there is no debt outstanding, then the district shall dissolve within thirty days from completion of construction of the transportation project or series of transportation projects forming the regional transportation investment plan. Notice of dissolution must be published in newspapers of general circulation within the district at least three times in a period of thirty days. Creditors must file claims for payment of

claims due within thirty days of the last published notice or the claim is extinguished. [2002 c 56 § 117.]

36.120.180 Findings—Regional models—Grants.

The legislature finds that regional solutions to the state's transportation needs are of paramount concern. The legislature further recognizes that different areas of the state will need the flexibility to fashion local solutions to their transportation problems, and that regional transportation systems may evolve over time. Areas of the state outside of King, Snohomish, and Pierce counties are eligible for grants from the state of no more than two hundred thousand dollars each to study and develop regional transportation models. Regions receiving these grants shall:

- (1) Develop a model that can be used within their region to select, fund, and administer regional transportation solutions;
- (2) Adopt a county resolution approving the model proposed;
- (3) Form interlocal agreements among counties as appropriate;
- (4) Report to the transportation committees in the senate and house of representatives, petitioning the legislature to grant them authority to implement their proposed model. [2002 c 56 § 118.]

36.120.190 Joint ballot measure. At the option of the planning committee, and with the explicit approval of the regional transit authority, the participating counties may choose to impose any remaining high capacity transportation taxes under chapter 81.104 RCW that have not otherwise been used by a regional transit authority and submit to the voters a common ballot measure that creates the district, approves the regional transportation investment plan, implements the taxes, and implements any remaining high capacity transportation taxes within the boundaries of the regional transportation investment district. Collection and expenditures of any high capacity transportation taxes implemented under this section must be determined by agreement between the participating counties or district and the regional transit authority electing to submit high capacity transportation taxes to the voters under a common ballot measure as provided in this section. If the measure fails, all such unused high capacity transportation taxes revert back to and remain with the regional transit authority. A project constructed with this funding is not considered a "transportation project" under RCW 36.120.020. [2002 c 56 § 201.]

36.120.200 Regional transportation investment district account. The regional transportation investment district account is created in the custody of the state treasurer. The purpose of this account is to act as an account into which may be deposited state money, if any, that may be used in conjunction with district money to fund transportation projects. Additionally, the district may deposit funds into this account for disbursement, as appropriate, on transportation projects. Nothing in this section requires any state matching money. All money deposited in the regional transportation investment district account will be used for design, right-of-way acquisition, capital acquisition, and construction, or for the payment of debt service associated with these activities,

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for regionally funded transportation projects developed under this chapter. Only the district may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW. An appropriation is not required for expenditures from this account. [2002 c 56 § 401.]

36.120.210 Advisory ballot for Alaskan Way viaduct improvements—Preferred alternative for Alaskan Way viaduct and Seattle Seawall improvements. (1) The most populous city, within the three-county region eligible to create a regional transportation investment district under this chapter, shall submit an advisory ballot to the city voters at the 2006 general election regarding voter preference of the tunnel and rebuild alternatives described in the environmental impact statement relative to the Alaskan Way viaduct project. The results of the election shall be advisory only and not binding regarding the final project to be constructed.

(2) In the alternative to the provisions of subsection (1) of this section, following the report of the expert review panel's findings and recommendations completed under RCW 47.01.400(4)(c), the city legislative authority shall hold public hearings on the findings and recommendations. After such time, and by November 1, 2006, the city legislative authority shall adopt by ordinance a preferred alternative for the Alaskan Way viaduct and Seattle Seawall replacement project. The preferred alternative must, at a minimum, be based on a substantial project mitigation plan and a comprehensive cost estimate review using the department's cost estimate validation process. [2006 c 311 § 29.]

Findings—2006 c 311: See note following RCW 36.120.020.

36.120.900 Captions and subheadings not law—2002 c 56. Captions and subheadings used in this act are not part of the law. [2002 c 56 § 501.]

36.120.901 Severability—2002 c 56. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2002 c 56 § 503.]

**Chapter 36.125 RCW
MARINE RESOURCES COMMITTEES**

Sections

36.125.005	Findings—Intent.
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36.125.040	Application to committees established under federal law.
36.125.050	Collaborative process for ocean policy development and coastal area management.
36.125.060	Outer coast marine resources committee program—Annual reports.

36.125.005 Findings—Intent. (1) The legislature finds the challenge of developing realistic, effective, and efficient solutions to the conservation and management issues facing Puget Sound and Washington's outer coast requires calling on all available sources of knowledge and creative thinking available in the collective wisdom of Washington's citizens. The legislature further finds that both Puget Sound and the

outer coast are dynamic and localized water bodies with unique local challenges and unique local solutions. As such, it is essential for the future management of these ecosystems that citizens, through their local government, have a voice and an opportunity to share their dedication and interest in the well-being of their community's unique marine waters, while providing a valuable contribution to the statewide efforts aimed at restoring the outer coast and Puget Sound as a whole.

(2) The legislature further finds that federally led efforts to establish marine resources committees have proven to be an exciting vehicle for involving local citizens and community leaders in the future discussions, decisions, and restoration commitments in the waters most important to the community. The existing model of using a community-based, nonregulatory organization to examine issues particular to a community's corner of Puget Sound, applying for grants, and thoroughly and fairly investigating available options and solutions has proved to be a valuable asset to Puget Sound and its communities, and is worthy of replication throughout the Puget Sound basin and the outer coast.

(3) In this chapter, the legislature intends to establish a structure on which interested local communities can harness the dedication, creativity, and wisdom of their residents in the form of marine resources committees. These committees are intended to complement, and not compete with or undermine, any other governmental efforts to restore and manage the Puget Sound. The legislature further intends that the department of fish and wildlife should apply the lessons learned from Puget Sound to work with county governments on the outer coast to establish marine resources committees. [2007 c 344 § 1.]

36.125.010 Counties authorized to establish—Purpose—Role. (1)(a) The legislative authority for each county that borders the marine waters of southern Puget Sound may establish marine resources committees consistent with the procedures outlined in RCW 36.125.020. Counties authorized to establish marine resources committees in the southern Puget Sound are: King, Pierce, Thurston, Kitsap, and Mason counties.

(b) The legislative authority for each county bordering the marine waters of the outer coast may develop a marine resources committee consistent with the procedures outlined in RCW 36.125.020. Counties authorized to establish marine resources committees on the outer coast are: Pacific, Grays Harbor, and Wahkiakum counties.

(c) Jefferson and Clallam counties may establish a new marine resources committee or a subcommittee of the county's existing marine resources committee, consistent with the procedures outlined in RCW 36.125.020, specifically to address the marine ecosystems for the outer coast or Puget Sound, where appropriate.

(2) The mission of a marine resources committee created under this section is to address, utilizing sound science, the needs of the marine ecosystem local to the county initiating the marine resources committee.

(3) A marine resources committee created under this section should review current data and resource conservation and management programs and make prioritized recommen-

dations for additional measures that might be necessary to enhance protection of marine resources.

(4) The role of a marine resources committee in developing recommendations includes, but is not limited to:

(a) Utilizing existing data and, to the extent necessary, helping to gather new data on the health of local marine resources;

(b) Making scientifically based recommendations on local candidate sites for marine protected areas;

(c) Working closely with local and state officials to help implement recommendations of the marine resources committee;

(d) Promoting public outreach and education around marine resource conservation and management issues; and

(e) Engaging in any other activities that the initiating county deems appropriate. [2007 c 344 § 2.]

36.125.020 Administration—Members—Petition.

(1) A marine resources committee, as described in RCW 36.125.010, may be created by the legislative authority of any county bordering the marine waters of the outer coast or Puget Sound, in cooperation with all appropriate cities and special districts within their boundaries. Adjacent county legislative authorities shall coordinate their efforts whenever there is a mutual interest in creating a marine resources committee.

(2) A county may delegate the management and oversight of a marine resources committee created by the county under RCW 36.125.010 to a city, or cities, within its jurisdiction, if the city or cities are located on the marine waters of the outer coast or southern Puget Sound and are willing to accept the delegation.

(3)(a) Participating county legislative authorities must select members of the marine resources committee, ensuring balanced representation from: Local government; local residents; scientific experts; affected economic interests; affected recreational interests; and environmental and conservation interests. Additionally, participating county legislative authorities must invite tribal representatives to participate in the marine resources committee.

(b) In lieu of creating a new entity, participating county legislative authorities may designate a lead entity created under RCW 77.85.050 to also serve as a marine resources committee. County legislative authorities may only make this designation where the lead entity consents in writing to also serve as a marine resources committee.

(c) An initiating county may delegate its appointment authority to a city or cities that have received from the county the delegated responsibilities of managing and overseeing the marine resources committee.

(4) County residents may petition the county legislative authority to create a marine resources committee. Upon receipt of a petition, the county legislative authority must respond in writing within sixty days as to whether they will authorize the creation of a marine resources committee as well as the reasons for their decision. [2008 c 242 § 2; 2007 c 344 § 3.]

Findings—Intent—2008 c 242: "The legislature finds that Washington's coastal and ocean resources provide vital economic, recreation, transportation, and cultural benefits to the state. The legislature seeks to continue recent state and local efforts to preserve and enhance the state's coastal and

ocean resources, such as the work of the Washington ocean policy work group and the state's existing marine resources committees.

The legislature finds that outer coast marine resources committees, authorized by the legislature in 2007, provide a mechanism for communities to discuss and develop solutions for the issues facing coastal resources and communities. However, additional state investments are necessary to allow outer coast marine resources committees to fulfill their full potential. Therefore, the legislature intends by this act to provide additional support and resources for outer coast marine resources committees in order to benefit the coastal and ocean resources of Washington." [2008 c 242 § 1.]

36.125.030 Regional coordinating entities. (1) The Puget Sound action team, or its successor organization, shall serve as the regional coordinating entity for marine resources committees created in the southern Puget Sound and the department of fish and wildlife shall serve as the regional coordinating entity for marine resources committees created for the outer coast.

(2) The regional coordinating entity shall serve as a resource to, at a minimum:

(a) Coordinate and pool grant applications and other funding requests for marine resources committees;

(b) Coordinate communications and information among marine resources committees;

(c) Assist marine resources committees to measure themselves against regional performance benchmarks;

(d) Assist marine resources committees with coordinating local projects to complement regional priorities;

(e) Assist marine resources committees to interact with and complement other marine resources committees, and other similar groups, constituted under a different authority; and

(f) Coordinate with the Northwest Straits commission on issues common to marine resources committees statewide. [2007 c 344 § 4.]

36.125.040 Application to committees established under federal law. Nothing in RCW 36.125.010 or 36.125.020 is intended to expand or limit the authority of local marine resources committees established under the Northwest Straits marine conservation initiative by federal act in San Juan, Whatcom, Skagit, Island, Snohomish, Clallam, and Jefferson counties and existing as of July 22, 2007. [2007 c 344 § 5.]

36.125.050 Collaborative process for ocean policy development and coastal area management. Outer coast marine resources committees, in conjunction with their regional coordinating entity, shall meet and consult with key state, federal, local, and tribal governments, and private interest groups to develop a collaborative process to address ocean policy issues. This collaborative process should use Washington's "Ocean Action Plan: Enhancing Management of Washington State's Ocean and Outer Coasts" developed by the Washington ocean policy work group as a guide to begin the work of developing and coordinating state and local ocean policy and providing better management of Washington's coastal areas. [2007 c 344 § 6.]

36.125.060 Outer coast marine resources committee program—Annual reports. (1) The outer coast marine resources committee program is created to provide support

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for the development, administration, and coordination of outer coast marine resources committees and their projects.

(2) The director of fish and wildlife is the administrator of the outer coast marine resources committee program. As the administrator of the program, the director of fish and wildlife shall:

(a) Provide each outer coast marine resources committee with a coordinator to support the administration and work of the committee; and

(b) Distribute grants to outer coast marine resources committees for projects that benefit Washington's coastal marine resources. The director of fish and wildlife shall develop procedures and criteria for allocating funds for projects, which may include annual allocation of funding to each committee.

(3) Each outer coast marine resources committee shall prepare and deliver an annual report to the director of fish and wildlife by October 31st of each year. The report must include, but is not limited to, a summary of actions taken that year and prioritized recommendations for future action. The director of fish and wildlife shall compile the individual outer coast marine resources committee reports into a consolidated report, and provide the consolidated report to the governor and appropriate committees of the legislature by December 31st of each year. [2008 c 242 § 3.]

Findings—Intent—2008 c 242: See note following RCW 36.125.020.

Chapter 36.130 RCW

AFFORDABLE HOUSING DEVELOPMENTS

Sections

36.130.005 Intent.

36.130.010 Definitions.

36.130.020 Restrictions on affordable housing development requirements—Preferential treatment—Requirements as conditions.

Reviser's note: 2008 c 118 § 4 directed sections 2 and 3, chapter 118, Laws of 2008 to be codified as a new chapter in Title 43 RCW. Sections 1 through 3, chapter 118, Laws of 2008 are now codified as a new chapter in Title 36 RCW, which is more appropriate for provisions addressing local government regulation of affordable housing.

36.130.005 Intent. It is the public policy of the state to assist in making affordable housing available throughout the state. The legislature recognizes that despite ongoing efforts there is still a lack of affordable housing in many areas. The legislature also recognizes that some local governments have imposed development requirements on affordable housing developments that are not generally imposed on other housing developments. The intent of this [the] legislature is to prohibit discrimination against affordable housing developments. [2008 c 118 § 1.]

36.130.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Affordable housing development" means a housing development in which at least twenty-five percent of the dwelling units within the development are set aside for or are occupied by low-income households at a sales price or rent amount that is considered affordable by a federal, state, or local government housing program.

(2) "Dwelling unit" means that part of a housing development that is used as a home, residence, or place to sleep by one person or two or more persons maintaining a common household.

(3) "Housing development" means a proposed or existing structure that is used as a home, residence, or place to sleep by one or more persons including, but not limited to, single-family residences, manufactured homes, multifamily housing, group homes, and foster care facilities.

(4) "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is less than eighty percent of the median family income, adjusted for household size, for the county where the affordable housing development is located. [2008 c 118 § 2.]

36.130.020 Restrictions on affordable housing development requirements—Preferential treatment—Requirements as conditions. (1) A city, county, or other local governmental entity or agency may not adopt, impose, or enforce requirements on an affordable housing development that are different than the requirements imposed on housing developments generally.

(2) This section does not prohibit any city, county, or other local governmental entity or agency from extending preferential treatment to affordable housing developments intended for including, but not limited to, occupancy by homeless persons, farmworkers, persons with disabilities, senior citizens, or low-income households. Preferential treatment may include, but is not limited to: A reduction or waiver of fees or changes in applicable requirements including, without limitation, architectural requirements, site development requirements, property line requirements, building setback requirements, or vehicle parking requirements; or other treatment that reduces or is likely to reduce the development or operating costs of an affordable housing development.

(3) A city, county, or other local governmental entity or agency may impose and enforce requirements on affordable housing developments as conditions of loans, grants, financial support, tax benefits, subsidy funds, or sale or lease of public property, or as conditions to eligibility for any affordable housing incentive program under RCW 36.70A.540 or any other program involving bonus density, transfer of development rights, waiver of development regulations or fees, or other development incentives. [2008 c 118 § 3.]

Chapter 36.135 RCW

LOCAL PUBLIC WORKS ASSISTANCE FUNDS

Sections

36.135.010	Definitions.
36.135.020	Use—Distribution.
36.135.030	Public works projects—Financial assistance for local governments.
36.135.040	Public works projects—Prioritization process.
36.135.050	Records of accounts—Audit.

36.135.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Capital facilities plan" means a capital facilities plan required under chapter 36.70A RCW.

(2) "Local government" means cities, towns, counties, special purpose districts, and any other municipal corporations or quasi-municipal corporations in the state, excluding school districts and port districts.

(3) "Public works project" means a project of a local government for the planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of streets and roads, bridges, water systems, or storm and sanitary sewage systems and solid waste facilities, including recycling facilities. [2009 c 45 § 1.]

36.135.020 Use—Distribution. (1) County legislative authorities may establish local public works assistance funds for the purpose of funding public works projects located wholly or partially within the county. Moneys may be deposited in local public works assistance funds from existing revenue sources of the county.

(2) Moneys deposited in local public works assistance funds, and interest earned on balances from the funds, may only be used:

(a) To make loans to the county and to other local governments for funding public works projects as provided in this chapter; and

(b) For costs incurred in the administration of funds.

(3) No more than fifty percent of the moneys loaned from a fund in a calendar year may be loaned to the county providing local public works assistance funds. At least twenty-five percent of the moneys anticipated to be loaned from a fund in a calendar year must be made available for funding public works projects in cities or towns.

(4) No more than one percent of the average annual balance of a county's fund, including interest earned on balances from the fund, may be used annually for administrative costs. [2009 c 45 § 2.]

36.135.030 Public works projects—Financial assistance for local governments. (1) Counties, in consultation with cities and towns within the county, may make loans to local governments from funds established under RCW 36.135.020 for the purpose of assisting local governments in funding public works projects. Counties may require terms and conditions and may charge rates of interest on its loans as they deem necessary or convenient to carry out the purposes of this chapter. Counties may not pledge any amount greater than the sum of money in their local public works assistance fund plus money to be received from the payment of the debt service on loans made from that fund. Money received from local governments in repayment of loans made under this chapter must be paid into the fund of the lending county for uses consistent with this chapter.

(2) Prior to receiving moneys from a fund established under RCW 36.135.020, a local government applying for financial assistance under this chapter must demonstrate to the lending county:

(a) Utilization of all local revenue sources that are reasonably available for funding public works projects;

(b) Compliance with applicable requirements of chapter 36.70A RCW; and

(c) Consistency between the proposed project and applicable capital facilities plans.

(3) Counties may not make loans under this chapter prior to completing the initial collaboration and prioritization requirements of RCW 36.135.040(1). [2009 c 45 § 3.]

36.135.040 Public works projects—Prioritization process. (1) County legislative authorities utilizing or providing money under this chapter must develop a prioritization process for funding public works projects that gives priority to projects necessary to address public health needs, substantial environmental degradation, or increases existing capacity necessary to accommodate projected population and employment growth. This prioritization process must be:

- (a) Completed collaboratively with public works directors of local governments within the county;
- (b) Documented in the form of written findings produced by the county; and
- (c) Revised periodically according to a schedule developed by the county and the public works directors.

(2) In addition to the requirements under subsection (1) of this section, legislative authorities providing funding to other local governments under this chapter must consider, through a competitive application process, the following factors in assigning a priority to and funding a project:

- (a) Whether the local government applying for assistance has experienced severe fiscal distress resulting from natural disaster or emergency public works needs;
- (b) Whether the project is critical in nature and would affect the health and safety of a great number of citizens;
- (c) The cost of the project compared to the size of the local government and amount of loan money available;
- (d) The number of communities served by or funding the project;
- (e) Whether the project is the acquisition, expansion, improvement, or renovation by a local government of a public water system that is in violation of health and safety standards;
- (f) The number of additional housing units estimated to be achieved by funding the project;
- (g) The additional jobs estimated to be achieved by funding the project; and
- (h) Other criteria the county legislative authority deems appropriate. [2009 c 45 § 4.]

36.135.050 Records of accounts—Audit. County legislative authorities providing funding for public works projects under this chapter must keep proper records of accounts and are subject to audit by the state auditor. [2009 c 45 § 5.]

Chapter 36.140 RCW ELECTRICITY GENERATION FROM BIOMASS ENERGY

Sections

36.140.010 Generation of electricity from biomass energy.

36.140.010 Generation of electricity from biomass energy. (1) Any county legislative authority of a county where a public utility district owns and operates a plant or system for the generation, transmission, and distribution of electric energy for sale within the county may construct, purchase, acquire, operate, and maintain one facility within the

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county to generate electricity from biomass energy that is a renewable resource under RCW 19.285.030 or from biomass energy that is produced from lignin in spent pulping liquors or liquors derived from algae and other sources. The county legislative authority has the authority to regulate and control the use, distribution, sale, and price of the electricity produced from the biomass facility authorized under this section.

(2) For the purposes of this section:

- (a) "County legislative authority" means the board of county commissioners or the county council;
- (b) "Plant" means a natural gas-fueled, combined-cycle combustion turbine capable of generating at least two hundred forty megawatts of electricity; and
- (c) "Public utility district" means a municipal corporation formed under chapter 54.08 RCW. [2010 c 167 § 1; 2009 c 281 § 1.]

Chapter 36.145 RCW COMMUNITY FACILITIES DISTRICTS

Sections

36.145.005	Findings.
36.145.010	Definitions.
36.145.020	Formation by petition—Requirements—Amendment.
36.145.030	Public hearing on petition—When held.
36.145.040	Public hearing on petition—Notice requirements.
36.145.050	Receipt of material evidence—Inclusion and removal of land.
36.145.060	Approval of petition—Requirements.
36.145.070	Appeals to formation.
36.145.080	Board of supervisors—Members—Vacancies.
36.145.090	Powers.
36.145.100	Financing district costs, expenses, and facilities—Prohibitions.
36.145.110	Special assessments—Procedures and requirements—Notice.
36.145.120	Payment of bonds—Related costs.
36.145.130	Bonds sole obligation of district.
36.145.140	District treasurer—How appointed, duties and powers.
36.145.150	Individual assessments on district property—Liens.

36.145.005 Findings. The legislature finds that:

(1) The state is projected to experience substantial population growth in the next two decades and this growth will require substantial new housing, places of employment, community facilities, and supporting local, subregional, and regional infrastructure;

(2) In most areas of the state projected to accommodate substantial growth, there are inadequate community facilities and infrastructure to facilitate and support such growth. In addition, current public financing options and resources are not adequate to provide the needed community facilities and local, subregional, and regional infrastructure;

(3) A more flexible type of financing mechanism known as a community facilities district should be available to counties, cities, and towns so that needed community facilities and local, subregional, and regional infrastructure can be provided;

(4) This chapter is intended to facilitate voluntary landowner financing of community facilities and local, subregional, and regional infrastructure by authorizing the creation of community facilities districts, while creating jobs and facilitating economic development; and

(5) It is in the interest of the people of the state of Washington to authorize the establishment of community facility [facilities] districts as independently governed, special purpose districts, vested with the corporate authority included

under Article VII, section 9 of the state Constitution to make local improvements in accordance with this chapter and to carry out the purposes specifically authorized under this chapter. [2010 c 7 § 101.]

36.145.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board of supervisors" or "board" means the governing body of a community facilities district.

(2) "Community facilities district" or "district" means a district created under this chapter.

(3) "Facility" or "facilities" means the local improvements included under RCW 36.145.100.

(4) "Legislative authority" means the governing body of a county, city, or town to which a petition or amended petition is submitted.

(a) If the proposed district is located entirely within unincorporated land, then the county is the exclusive "legislative authority" for purposes of approving formation of the district under RCW 36.145.020 through 36.145.070, inclusive, and RCW 36.145.080.

(b) If all or a portion of the proposed district is located within unincorporated land that is entirely surrounded by an incorporated city or town, then the "legislative authority" for purposes of approving formation of the district under RCW 36.145.020 through 36.145.070, inclusive, and RCW 36.145.080 includes the governing bodies of the county and the city or town surrounding the unincorporated land.

(c) If the proposed district is located entirely within incorporated land, then the city or town is the exclusive "legislative authority" for purposes of this chapter, and all powers and responsibilities of a county under this chapter must be exercised by that city or town.

(5) "Petition" means a request, meeting the requirements of RCW 36.145.020, made by landowners to form a community facilities district and to voluntarily submit their land to the assessments authorized under this chapter and includes an amended petition meeting the requirements of RCW 36.145.020(3).

(6) "Special assessment" means an assessment imposed in accordance with the requirements of this chapter. [2010 c 7 § 102.]

36.145.020 Formation by petition—Requirements—Amendment. Community facilities districts are authorized to be formed for the purposes authorized under this chapter. Community facilities districts may only include land within urban growth areas designated under the state growth management act, located in portions of one or more cities, towns, or counties when created in accordance with this chapter. A district may include one or more noncontiguous tracts, lots, parcels, or other properties meeting the requirements of this chapter.

(1) To form a community facilities district, a petition must be presented to the applicable legislative authorities. The petition must:

(a) Designate and describe the boundaries of the district by metes and bounds or reference to United States townships, ranges, and legal subdivisions;

(b) Be executed by one hundred percent of all owners of private property located within the boundaries of the proposed district. The property owners must include a request to subject their property to the assessments, up to the amount included in the petition and authorized under this chapter;

(c) Include a certification by the petitioners that they want to voluntarily submit their property to the authority of the district under this chapter to approve the petitioner's request to submit their property to the assessments, up to the amount included in the petition and authorized under this chapter;

(d) Include a general explanation of the objective and plan of the district and describe the specific facilities that the district anticipates financing;

(e) Declare the district will be conducive to public health, safety, and welfare;

(f) Assert that the purpose for forming the district will be a benefit to the land located in the district;

(g) Be accompanied by an "obligation" signed by at least two petitioners who agree to pay the costs of the formation process;

(h) Include a list of petitioners or representatives thereof who are willing and able to serve on the board of supervisors. All petitioners within a proposed district who are natural persons, or natural persons who are designated representatives of petitioners, are eligible to include their name on the list of eligible supervisors. The petitioners may nominate qualified professions to serve on the board of supervisors in lieu of the petitioners or representatives of the petitioners;

(i) If it proposes a special assessment, include: (i) A diagram showing each separate lot, tract, parcel of land, or other property in the district; (ii) the acreage of the property; (iii) the name and address of the owner or reputed owner of each lot, tract, parcel of land, or other property as shown on the tax rolls of the county assessor; (iv) a preliminary assessment roll showing the special assessment proposed to be imposed on each lot, tract, parcel of land, or other property; and (v) a proposed method or combination of methods for computing special assessments, determining the benefit to assessed property or use from facilities or improvements funded directly or indirectly by special assessments under this chapter; and

(j) Include an explanation of what security will be provided to ensure the timely payment of assessments and the timely payment of bonds issued by the district.

(2) The petition must be filed with the auditor of each county in which property included within the proposed district is located. The auditor for the county in which the largest geographic portion of the proposed district is located must be the lead auditor for the purposes of this section. Within thirty days of the lead auditor's receipt of the petition, the lead auditor must confirm that the petition has been validly executed by one hundred percent of all owners of the property located within the proposed district, including confirmation by the auditors of all other counties with whom the petition was filed. Within ten days of the lead auditor's finding that the petition either does or does not contain the required signatures, the lead auditor must either (a) transmit the petition, together with a certificate of sufficiency attached thereto, to each legislative authority petitioned for formation of the district; or (b) return the petition to the petitioners with a list of property owners who must sign the petition in order to com-

ply with this section. There are no restrictions on the number of petitions that may be submitted by one or more property owners.

(3) A petition may be amended for any reason if the amendment is signed by one hundred percent of the owners of property located within the district proposed in the amended petition. [2010 c 7 § 201.]

36.145.030 Public hearing on petition—When held. A public hearing on the petition for formation of a district must be held by each applicable legislative authority, not less than thirty, but not more than sixty days, from the date that the lead county auditor issues the certificate of sufficiency required under RCW 36.145.020. [2010 c 7 § 202.]

36.145.040 Public hearing on petition—Notice requirements. Notice of all public hearings must include a description of the proposal, be mailed to all petitioners, and must be published once a week for three consecutive weeks in the official paper for each applicable legislative authority, prior to the date set for the hearing. The notice must be posted for not less than fifteen days prior to the date of the hearing in each of three public places within the boundaries of the proposed district and in three public places for each applicable legislative authority. Each notice must contain the time, date, and place of the public hearing. [2010 c 7 § 203.]

36.145.050 Receipt of material evidence—Inclusion and removal of land. At the time and place of the public hearing, the legislative authority must consider the petition. The legislative authority may receive any evidence it deems material that supports or opposes the formation of the district, including the inclusion or exclusion of land. Unless an amended petition satisfying the requirements of RCW 36.145.020 is approved in accordance with the requirements of this chapter, no land outside the boundaries described in the petition may be included within the proposed district. No land inside the boundaries of an approved petition may be removed from the district unless an amended petition satisfying the requirements of RCW 36.145.020 is approved in accordance with the requirements of this chapter. [2010 c 7 § 204.]

36.145.060 Approval of petition—Requirements. (1) The legislative authority may act on the petition to form a community facilities district at the public hearing held under RCW 36.145.050 and in no event may the legislative authority's decision be issued later than thirty days after the day of the public hearing. The applicable legislative authority may approve the petition by resolution if the applicable legislative authority determines, in its sole discretion, that the petitioners will benefit from the proposed district and that the formation of the district will be in the best interest of the county, city or town, as applicable, and that formation of the district is consistent with the requirements of Washington's growth management act.

(2) A community facilities district may not be formed unless each applicable legislative authority makes the finding required under subsection (1) of this section.

(3) All resolutions approving a petition must conform to the terms and conditions contained in the petition, including

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the maximum amounts of special assessments set forth in the petition, and must designate the name and number of the community facilities district being formed. [2010 c 7 § 205.]

36.145.070 Appeals to formation. (1) Any person who objects to formation of the district may appeal the final decision of a legislative authority to approve a petition for formation of a community facilities district by filing an appeal with the superior court of the county in which any part of the district is located within thirty days of the effective date of the resolution approving formation of the district.

(2) If no appeal is timely filed, then the legislative authority's decision is deemed valid, complete, and final, and neither the legal existence of the district, nor the terms and conditions of an approved petition can thereafter be challenged or questioned by any person on the grounds of procedural defect or otherwise. Certified copies of each resolution approving a district must be filed with the auditor of the county or counties in which the community facilities district is located. [2010 c 7 § 206.]

36.145.080 Board of supervisors—Members—Vacancies. (1) A community facilities district must be governed by a board of supervisors possessing the powers set forth under RCW 36.145.090. The board of supervisors must be appointed by each applicable legislative authority within sixty days of the formation of the district. Except as expressly provided under this section, each applicable legislative authority is authorized to appoint members to the board of supervisors only from among the members of its own governing body. Each applicable legislative authority must appoint the petitioner members or nominees required under subsection (2) or (3) of this section. The term of office of each supervisor is three years and until a successor is appointed, except that the supervisors first appointed serve for one and two years respectively from the date of their appointments, as designated in their appointments.

(2) Except as provided in subsection (3) of this section, if the proposed district is located entirely within a single jurisdiction, then the board of supervisors consists of: (a) Three members of the legislative authority of the jurisdiction; and (b) two members appointed from among the list of eligible supervisors included in the petition as provided in RCW 36.145.020(1)(h). All members of the board of supervisors must be natural persons.

(3) If all or a portion of the proposed district is located within unincorporated land that is entirely surrounded by an incorporated city or town, then the board of supervisors consists of: (a) Two members appointed from the county legislative authority; (b) two members appointed from the legislative authority of the city or town that is the additional legislative authority under RCW 36.145.010(4); and (c) one member appointed from the list of eligible petitioners included in the petition as provided in RCW 36.145.020(1)(h), depending on the number of additional members that are required to result in an overall odd number of supervisors.

(4) If the county, city, or town is the exclusive legislative authority pursuant to RCW 36.145.010, then the board of supervisors consists of: (a) Three members appointed from such county, city, or town; and (b) two members from the list

of eligible petitioners or nominees included in the petition, as provided in RCW 36.145.020(1)(h), to result in an overall odd number of supervisors.

(5) The legislative authorities may appoint qualified professionals with expertise in municipal finance in lieu of one or more appointments authorized in this section. A jurisdiction's appointments to the board of supervisors may consist of a combination of qualified professionals authorized under this section and one or more members from the applicable legislative authority. Nothing contained in this section authorizes a legislative authority to exceed the maximum number of appointments set forth under subsection (2) or (3) of this section.

(6) A vacancy on the board must be filled by the legislative authority authorized to make the appointment to the applicable supervisor position under this section. Vacancies must be filled by a person in the same position vacating the board, which for initial petitioner members or nominees includes successor owners of property located within the boundaries of an approved district. If the approved district was originally located entirely on unincorporated land and the unincorporated land has been annexed into a city or town, then, as of the effective date of annexation, the city or town is deemed the exclusive legislative authority for the purposes of this chapter and the composition of the board must be structured accordingly, as provided in this section. Supervisors must serve without compensation, but they are entitled to expenses, including traveling expenses, necessarily incurred in discharge of their duties. The board must designate a chair from time to time. [2010 c 7 § 301.]

36.145.090 Powers. (1) A community facilities district created in accordance with this chapter is an independently governed, special purpose district, vested with the corporate authority included under Article VII, section 9 of the state Constitution to make local improvements by special assessment in accordance with this chapter. Nothing in this chapter exempts the public improvements and facilities provided by a district from the regulatory and land use permitting requirements of the county, city, or town in which the improvements are to be located.

(2) Subject to the terms and conditions of an approved petition, a community facilities district has the powers necessary to carry out the specific purposes authorized under this chapter in order to carry out the specific objectives, plan, and facilities identified in the approved petition including, but not limited to, the authority to:

(a) Acquire, purchase, hold, lease, finance, manage, occupy, construct, and sell real and personal property, facilities, or any interest therein, either inside or outside of the boundaries of the district, except that any such property, facilities, or interests outside the boundaries of the district must directly serve facilities or benefit properties within the district;

(b) Finance and construct facilities authorized under this chapter;

(c) Enter into and perform any and all contracts;

(d) Levy and enforce the collection of special assessments against the property included within a district;

(e) Enter into lease-purchase agreements with or without an option to purchase;

(f) Enter into executory conditional sales contracts, leases, and installment promissory notes;

(g) Borrow money to the extent and in the manner authorized by this chapter;

(h) Hold in trust property useful to accomplishment of the authority granted under this chapter;

(i) Issue revenue bonds in accordance with chapter 39.46 RCW and assessment bonds in accordance with chapter 35.45 RCW, and the requirements of this chapter, payable from revenue or assessments, respectively, of the district that is legally available to be pledged to secure the bonds;

(j) Contract with any municipal corporation, governmental, or private agencies to carry out the purposes authorized by this chapter;

(k) Sue and be sued;

(l) Accept and receive on behalf of the district any money or property donated, devised, or bequeathed to the district and carry out the terms of the donation, devise, or bequest, if it is within the powers granted by law to community facilities districts or, in the absence of such terms, expend or use the money or property for district purposes as determined by the board of supervisors;

(m) Transfer to any county, city, or other municipal corporation, without compensation, any property or other assets of the district; and

(n) Do any and all lawful acts required and expedient to carry out the express authority provided in this chapter. [2010 c 7 § 401.]

36.145.100 Financing district costs, expenses, and facilities—Prohibitions. (1) Through the use of district revenue derived through special assessments and bonds authorized under this chapter and, consistent with the terms and conditions of a petition approved in accordance with this chapter, a community facilities district may finance all or a portion of the following costs, expenses, and facilities whether located inside or outside the boundaries of an approved district:

(a) The cost, or any portion thereof, of the purchase, finance, lease, sublease, construction, expansion, improvement, or rehabilitation of any facility with an estimated life of five years or longer;

(b) The planning and design work that is directly related to the purchase, construction, expansion, improvement, or rehabilitation of a facility, including engineering, architectural, planning, and inspection costs;

(c) Facilities listed in RCW 35.43.040 to the extent not specified in this section;

(d) Sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use, and discharge;

(e) Drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use, and discharge;

(f) Water systems for domestic, industrial, irrigation, municipal, or community facilities purposes, including production, collection, storage, treatment, transport, delivery, connection, and dispersal;

(g) Highways, streets, roadways, and parking facilities, including all areas for vehicular use for travel, ingress, egress, and parking;

(h) Areas for pedestrian, equestrian, bicycle, or other nonmotor vehicle use for travel, ingress, egress, and parking;

(i) Pedestrian malls, parks, recreational facilities, and open-space facilities for the use of members of the public for entertainment, assembly, and recreation;

(j) Landscaping, including earthworks, structures, lakes, and other water features, plants, trees, and related water delivery systems;

(k) Public buildings, public safety facilities, and community facilities;

(l) Publicly owned natural gas transmission and distribution facilities, facilities for the transmission or distribution of electrical energy, and limited communications facilities, specifically poles, trenches, and conduits, for use of any communications provider;

(m) Street lighting;

(n) Traffic control systems and devices, including signals, controls, markings, and signage;

(o) Systems of surface, underground, or overhead railways, tramways, buses, or any other means of mass transportation facilities, including passenger, terminal, station parking, and related facilities and areas for passenger and vehicular use for travel, ingress, egress, and parking;

(p) Library, educational, and cultural facilities; and

(q) Facilities similar to those listed in this section.

(2) The district may not finance public or private residential dwellings, nonprofit facilities as defined in RCW 43.180.300, health care facilities as defined in RCW 70.37.020, higher education institutions as defined in RCW 28B.07.020, or economic development activities as defined in RCW 43.163.010. [2010 c 7 § 501.]

36.145.110 Special assessments—Procedures and requirements—Notice. (1) The board of supervisors of a community facilities district may impose special assessments on property located inside the district and benefited by the facilities and improvements provided, or to be provided, by a district, whether the facilities and improvements are located inside or outside of the boundaries of the proposed district. The requirements and powers of a district relating to the formation, assessment, collection, foreclosure, and other powers of a special assessment district are as set forth in chapters 35.43, 35.44, 35.49, and 35.50 RCW, except where otherwise addressed under this chapter. In any case where the provisions of this chapter conflict with the requirements under any other chapter that applies to the formation, assessment, collection, foreclosure, or other powers of a special assessment district, the provisions of this chapter control.

(2) Except as otherwise expressly provided under this chapter, the special assessments imposed and collected on property within a district may not exceed the amount set forth in a petition or amended petition approved in accordance with this chapter.

(3) The term of the special assessment is limited to the lesser of (a) twenty-eight years or (b) two years less than the term of any bonds issued by or on behalf of the district to which the assessments or other revenue of the district is specifically dedicated, pledged, or obligated.

(4) The computation of special assessments must follow the requirements of chapter 35.44 RCW, including the authority to use any method or combination of methods to

compute assessments which may be deemed by the board of supervisors to fairly reflect the benefit to the properties being assessed. The method of assessment may utilize the supplemental authority granted under chapter 35.51 RCW. A petition meeting the requirements of RCW 36.145.020 may provide for the reduction or waiver of special assessments for low-income households as that term is defined in RCW 36.130.010.

(5) The board must set a date, time, and place for hearing any objections to the assessment roll, which hearing must occur no later than one hundred twenty days from final approval of formation of the district. Petitioners or representatives thereof serving on the board of supervisors must not participate in the determination of the special assessment roll or vote on the confirmation of that assessment roll. The restriction in this subsection does not apply to members of the board of supervisors appointed from among the qualified professionals that petitioners may nominate under RCW 36.145.020(1)(h).

(6) The procedures and requirements for assessments, hearings on the assessment roll, filing of objections to the assessment roll, and appeals from the decision of the board approving or rejecting the assessment roll, must be as set forth in RCW 35.44.010 through 35.44.020, 35.44.080 through 35.44.110, and 35.44.190 through 35.44.270.

(7) At the hearing on the assessment roll and, in no event later than thirty days after the day of the hearing, the board may adopt a resolution approving the assessment roll or may correct, revise, raise, lower, change, or modify the assessment roll or any part thereof, and provide the petitioner with a detailed explanation of the changes made by the board.

(8) If the assessment roll is revised by the board in any way, then, within thirty days of the board's decision, the petitioner(s) must unanimously make one of the following elections: (a) Rescind the petition; or (b) accept the changes made by the board, upon which occurrence the board must adopt a resolution approving the assessment roll as modified by the board.

(9) Reassessments, assessments on omitted property, and supplemental assessments are governed by the provisions set forth under chapter 35.44 RCW.

(10) Any assessment approved under the provisions of this chapter may be segregated upon a petition of one hundred percent of the owners of the property subject to the assessment to be segregated. The segregation must be made as nearly as possible on the same basis as the original assessment was levied and approved by the board. The board, in approving a petition for segregation and amendment of the assessment roll, must do so in a fashion such that the total of the segregated parts of the assessment equal the assessment before segregation. As to any property originally entered upon the roll the assessment upon which has not been raised, no objections to the approval of the petition for segregation, the resulting assessment, or the amended assessment roll may be considered by the jurisdiction in which the district is located, the board, or by any court on appeal. Assessments must be collected in districts pursuant to the district's previous assessment roll until the amendment to the assessment roll is finalized under this section.

(11) Except as provided under chapter 35.44 RCW, assessments may not be increased without the approval of

one hundred percent of the property owners subject to the proposed increase.

(12) Special assessments must be collected by the district treasurer determined in accordance with RCW 36.145.140.

(13) A notice of any special assessment imposed under this chapter must be provided to the owner of the assessed property, not less than once per year, with the following appearing at the top of the page in at least fourteen point, bold font:

****NOTICE****

THIS PROPERTY IS SUBJECT TO THE ASSESSMENTS ITEMIZED BELOW AND APPROVED BY COMMUNITY FACILITIES DISTRICT # AS THE OWNER OR POTENTIAL BUYER OF THIS PROPERTY, YOU ARE, OR WOULD BE, RESPONSIBLE FOR PAYMENT OF THE AMOUNTS ITEMIZED BELOW.

PLEASE REFER TO RCW 36.145.110 OR CONTACT YOUR COUNTY AUDITOR FOR ADDITIONAL INFORMATION.

(14) The district treasurer responsible for collecting special assessments may account for the costs of handling the assessments and may collect a fee not to exceed the measurable costs incurred by the treasurer. [2010 c 7 § 502.]

36.145.120 Payment of bonds—Related costs. (1) The district may utilize the special assessments and revenue derived in accordance with this chapter for the payment of principal and interest on bonds issued pursuant to the authority granted under this chapter to fund or reimburse the costs of facilities authorized under this chapter and prior to the issuance of bonds, may utilize the revenue to directly fund the costs of providing the facilities authorized under this chapter on a pay-as-you-go basis.

(2) The board of supervisors may establish, administer, and pay or otherwise dedicate, pledge, or obligate the assessments and revenue generated in accordance with this chapter into a specific fund created by or on behalf of the district, in order to guarantee payment of obligations incurred in connection with facilities provided under this chapter, including the payment of principal and interest on any bonds issued by or on behalf of the district.

(3) The proceeds of any bond issued pursuant to this chapter may be used to pay any and all costs related to providing the facilities authorized under this chapter, including expenses incurred in connection with issuance of the bonds.

(4) The reporting requirements of RCW 39.44.210 apply to any bond issuance under this chapter. [2010 c 7 § 503.]

36.145.130 Bonds sole obligation of district. No bonds issued by or on behalf of a community facilities district are obligations of any city, town, county, or the state of Washington or any political subdivision thereof other than the district and the bonds must so state. [2010 c 7 § 504.]

36.145.140 District treasurer—How appointed, duties and powers. (1) If a district includes land that is entirely within a county and the land is not surrounded

entirely by a city or town, then the treasurer of that county is the treasurer of the district. If a district includes land that is entirely within a county and the land is entirely surrounded by a city or town, or, if parts of the district include land within or surrounded by more than one jurisdiction, then the board of supervisors may, with the concurrence of the treasurers of all jurisdictions within which the district lies, appoint the treasurer of any of those jurisdictions to serve as the district treasurer. Except as specifically provided under this chapter, the duties of a district treasurer are as provided under applicable law.

(2) The district treasurer must establish a community facilities district fund, into which must be paid all district revenues. The district treasurer must also maintain any special funds created by the board of supervisors of the community facilities district, into which the district treasurer must place all money as the board of supervisors may, by resolution, direct. The treasurer may create such subfunds, accounts, and subaccounts as he or she deems necessary, consistent with applicable law.

(3) The district treasurer must pay assessment bonds and revenue bonds and the accrued interest thereon in accordance with their terms from the appropriate fund when interest or principal payments become due.

(4) All interest collected on community facilities district funds belongs to the district and must be deposited to its credit in the proper district funds. [2010 c 7 § 505.]

36.145.150 Individual assessments on district property—Liens. All assessments imposed on the respective lots, tracts, parcels of land, and other property included within the boundaries of an approved district in accordance with this chapter are a lien upon the property from the date of final approval and are paramount and superior to any other lien or encumbrance whatsoever, theretofore or thereafter created, except a lien for general taxes. [2010 c 7 § 601.]

Chapter 36.150 RCW COUNTY FERRY DISTRICTS— COUNTY ASSUMPTION

Sections

36.150.010	County assumption of county ferry district authority.
36.150.020	Initiation of county assumption.
36.150.030	Consideration of county assumption—Public hearing.
36.150.040	Satisfaction of public interest or welfare—Declaration of county assumption—Vesting of authority—Abolishment of county ferry district governing body.
36.150.050	County ferry district employees and personnel.
36.150.060	Preservation of existing rights, proceedings, and actions—Levies.
36.150.070	Continuation of rules, regulations, and pending business—Performance of contracts—Validity of official acts.
36.150.080	Transfer of county ferry district real and personal property—Assumption of appropriations and federal grants.
36.150.090	Assumption and payment of county ferry district indebtedness.

36.150.010 County assumption of county ferry district authority. Any county with a population of one million or more in which a county ferry district has been established pursuant to RCW 36.54.110 through 36.54.190 with boundaries coterminous with the boundaries of the county may by ordinance or resolution of the county legislative authority assume the rights, powers, functions, and obligations of the

county ferry district in accordance with this chapter. [2014 c 51 § 1.]

36.150.020 Initiation of county assumption. The assumption of the rights, powers, functions, and obligations of a county ferry district may be initiated by the adoption of an ordinance or a resolution by the county legislative authority indicating its intention to conduct a hearing concerning the assumption of such rights, powers, functions, and obligations. If the county legislative authority adopts such an ordinance or a resolution of intention, the ordinance or resolution must set a time and place at which the county legislative authority will consider the proposed assumption of the rights, powers, functions, and obligations of the county ferry district, and must state that all persons interested may appear and be heard. The ordinance or resolution of intention must be published at least two times during the two weeks preceding the scheduled hearing in newspapers of daily general circulation printed or published in the county in which the county ferry district is to be located. [2014 c 51 § 2.]

36.150.030 Consideration of county assumption—Public hearing. At the time scheduled for the hearing in the ordinance or resolution of intention, the county legislative authority must consider the assumption of the rights, powers, functions, and obligations of the county ferry district and hear those appearing and all protests and objections to it. The county legislative authority may continue the hearing from time to time, not exceeding sixty days in all. [2014 c 51 § 3.]

36.150.040 Satisfaction of public interest or welfare—Declaration of county assumption—Vesting of authority—Abolishment of county ferry district governing body. (1) If, after receiving testimony, the county legislative authority determines that the public interest or welfare would be satisfied by the county assuming the rights, powers, immunities, functions, and obligations of the county ferry district, the county legislative authority may declare that to be its intent and assume such rights, powers, immunities, functions, and obligations by ordinance or resolution, providing that the county is vested with every right, power, immunity, function, and obligation currently granted to or possessed by the county ferry district pursuant to RCW 36.54.110 through 36.54.190. However, in exercising such rights, powers, immunities, functions, and obligations, all actions must be taken in the name of the county and title to all property or property rights vest in the county.

(2) Upon assumption of the rights, powers, immunities, functions, and obligations of the county ferry district by the county: The governing body established pursuant to RCW 36.54.110(5) must be abolished; RCW 36.54.110(5) does not apply to the county; and the county legislative authority is vested with all rights, powers, immunities, functions, and obligations otherwise vested by law in the governing board of the county ferry district. However, in any county with a home rule charter, such rights, powers, functions, and obligations vest in accordance with the executive and legislative responsibilities defined in such charter. [2014 c 51 § 4.]

36.150.050 County ferry district employees and personnel. Employees and personnel of the county ferry district (2014 Ed.)

do not automatically become employees of the county. [2014 c 51 § 5.]

36.150.060 Preservation of existing rights, proceedings, and actions—Levies. No transfer of any function made pursuant to this chapter may be construed to impair or alter any existing rights acquired under RCW 36.54.110 through 36.54.190 or any other provision of law relating to county ferry districts, nor as impairing or altering any actions, activities, or proceedings validated thereunder, nor as impairing or altering any civil or criminal proceedings instituted thereunder, nor any rule, regulation, or order promulgated thereunder, nor any administrative action taken thereunder; and neither the assumption of control of any county ferry district function by a county, nor any transfer of rights, powers, functions, and obligations as provided in this chapter, may impair or alter the validity of any act performed by such county ferry district or division thereof or any officer thereof prior to the assumption of such rights, powers, functions, and obligations by any county as authorized by this chapter. Furthermore, an ad valorem property tax levy upon real and personal property authorized under RCW 36.54.130 and levied by a county as authorized under this chapter must be treated as a levy by a county ferry district for all purposes including, but not limited to, limitations on levies contained in RCW 84.52.043. [2014 c 51 § 6.]

36.150.070 Continuation of rules, regulations, and pending business—Performance of contracts—Validity of official acts. (1) All rules and regulations, and all pending business before the board of any county ferry district transferred pursuant to this chapter[,] must be continued and acted upon by the county.

(2) All existing contracts and obligations of the transferred county ferry district remain in full force and effect, and must be performed by the county. A transfer authorized in this chapter does not affect the validity of any official act performed by any official or employee prior to the transfer authorized pursuant to this chapter. [2014 c 51 § 7.]

36.150.080 Transfer of county ferry district real and personal property—Assumption of appropriations and federal grants. (1) When the rights, powers, functions, and obligations of a county ferry district are transferred pursuant to this chapter, all real and personal property owned by the county ferry district becomes that of the county.

(2) All reports, documents, surveys, books, records, files, papers, or other writings relating to the administration of the powers, duties, and functions transferred pursuant to this chapter and available to the county ferry district must be made available to the county.

(3) All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed in carrying out the rights, powers, functions, and obligations transferred under this chapter and available to the county ferry district must be made available to the county.

(4) All funds, credits, or other assets held in connection with powers, duties, and functions transferred under this chapter must be assigned to the county.

(5) Any appropriations or federal grant made to the county ferry district for the purpose of carrying out the rights,

powers, functions, and obligations authorized to be assumed by a county pursuant to this chapter, on the effective date of such transfer, must be credited to the county for the purpose of carrying out such transferred rights, powers, functions, and obligations. [2014 c 51 § 8.]

36.150.090 Assumption and payment of county ferry district indebtedness. (1) The county must assume and agree to provide for the payment of all of the indebtedness of the county ferry district, including the payment and retirement of outstanding general obligation and revenue bonds issued by the county ferry district. Until the indebtedness of a county ferry district assumed by a county under this chapter has been discharged, all property within the boundaries of the county ferry district and the owners and occupants of that property continue to be liable for taxes, special assessments, and other charges legally pledged to pay the indebtedness of the county ferry district. The county must assume the obligation of causing the payment of such indebtedness, collecting such taxes, assessments, and charges, and observing and performing the other contractual obligations of the county ferry district. The legislative authority of the county must act in the same manner as the governing body of the county ferry district for the purpose of certifying the amount of any property tax to be levied and collected therein, and may cause service and other charges and assessments to be collected from such property or owners or occupants thereof, enforce such collection, and perform all acts necessary to ensure performance of the contractual obligations of the county ferry district in the same manner and by the same means as if the property of the county ferry district had not been acquired by the county.

(2) When a county assumes the obligation of paying indebtedness of a county ferry district and if property taxes or assessments have been levied and service and other charges have accrued for such purpose but have not been collected by the county ferry district prior to such assumption, the same when collected must belong and be paid to the county and be used by such county so far as necessary for payment of the indebtedness of the county ferry district existing and unpaid on the date such county assumed that indebtedness. Any funds received by the county that have been collected for the purpose of paying any bonded or other indebtedness of the county ferry district must be used for the purpose for which they were collected and for no other purpose until such indebtedness has been paid and retired or adequate provision has been made for such payment and retirement. Any funds remaining after the payment and retirement of such indebtedness must be used solely for carrying out the rights, powers, functions, and obligations of the county ferry district assumed by the county. The transfer of property as provided in this chapter does not derogate from the claims or rights of the creditors of the county ferry district or impair the ability of the county ferry district to respond to its debts and obligations. [2014 c 51 § 9.]

36.900.030 Invalidity of part of title not to affect remainder.
36.900.040 Repeals and saving.

36.900.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1963 c 4 § 36.98.010. Formerly RCW 36.98.010.]

36.900.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1963 c 4 § 36.98.020. Formerly RCW 36.98.020.]

36.900.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1963 c 4 § 36.98.030. Formerly RCW 36.98.030.]

Additional notes found at www.leg.wa.gov

36.900.040 Repeals and saving. See 1963 c 4 § 36.98.040.

Chapter 36.900 RCW CONSTRUCTION

Sections

36.900.010 Continuation of existing law.
36.900.020 Title, chapter, section headings not part of law.

Title 37

FEDERAL AREAS—INDIANS

Chapters

- 37.04** General cession of jurisdiction.
- 37.08** Jurisdiction in special cases.
- 37.12** Indians and Indian lands—Jurisdiction.
- 37.14** Indian cultural facility bond issue.
- 37.16** Acquisition of lands for permanent military installations.

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

Excise taxes—Extension of excises to federal areas: Chapter 82.52 RCW.

Federal employees classified as resident students: RCW 28B.15.014.

Federal forest reserve funds, distribution of: RCW 28A.520.010, 28A.520.020.

San Juan Island national historical park, donation of state lands: Chapter 94, Laws of 1967 (uncodified).

School districts—Agreements with other governmental entities for transportation of students or the public, or for other noncommon school purposes—Limitations: RCW 28A.160.120.

Chapter 37.04 RCW

GENERAL CESSION OF JURISDICTION

Sections

- 37.04.010 Consent given to acquisition of land by United States.
- 37.04.020 Concurrent jurisdiction ceded—Reverter.
- 37.04.030 Reserved jurisdiction of state.
- 37.04.040 Previous cessions of jurisdiction saved.
- 37.04.050 Concurrent jurisdiction—Governor authorized to accept—Procedures.

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

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

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

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

and title thereto shall revert in this state. The jurisdiction ceded shall not vest until the United States shall acquire title of record to such land. [1939 c 126 § 2; RRS § 8108-2.]

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

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

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

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

Chapter 37.08 RCW

JURISDICTION IN SPECIAL CASES

Sections

- 37.08.200 Rainier National Park.
- 37.08.210 Olympic National Park.
- 37.08.220 National forests, establishment, consolidation, extension of.
- 37.08.230 Migratory bird preserves.

37.08.240	Lake Washington ship canal.
37.08.250	Additional right-of-way.
37.08.260	Auburn general depot.
37.08.280	Veterans hospitals.

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

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

37.08.220 National forests, establishment, consolidation, extension of. The legislature of the state of Washington hereby consents to the acquisition by the United States by purchase or gift of such lands in the state of Washington as in the opinion of the government of the United States may be needed for the establishment, consolidation and extension of national forests in this state under the provisions of the act of congress approved March 1, 1911, and entitled: "An act to enable any state to cooperate with any other state or states or with the United States for the protection of the watersheds of navigable streams and to appoint a commission for the acquisition of lands for the purpose of conserving the navigability of navigable rivers," as amended: PROVIDED, The state of Washington shall retain a concurrent jurisdiction with the United States in and over lands so acquired so far that civil

processes in all cases, and such criminal processes as may issue under the authority of the state of Washington against any person charged with the commission of any crime without or within said jurisdiction, may be executed thereon in like manner as if this consent had not been granted: PROVIDED FURTHER, That before any acquirement of lands be made under the provisions of this section, such acquisition shall be approved by the department of natural resources: AND FURTHER PROVIDED, That the state of Washington shall retain concurrent jurisdiction to tax persons and corporations and their property and transaction on such lands so acquired. [1988 c 128 § 8; 1935 c 58 § 1; RRS § 9663-23.]

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

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

37.08.240 Lake Washington ship canal. That in aid of the construction, maintenance and operation of a ship canal, by the United States of America, to connect the waters of Puget Sound, together with all necessary and convenient locks, landways, spillways, buildings, power plant and other proper appurtenances, there be and hereby is granted by this state to said United States the right to place, construct, maintain, and operate, such ship canal, landways, spillways, buildings, power plant and other proper appurtenances, upon, along, through and over any and all lands belonging to and waters of this state in said King county, within such limits as shall be defined by the plans and specifications for such improvement as the same shall be approved by the United States secretary of war, and the right to raise the waters of Salmon Bay and the right to lower the waters of Lake Washington, in prosecution of such improvement, and this state hereby releases the United States from all liability to damages to this state, its successors or assigns, that shall or might arise from such lowering or raising of waters, or otherwise from such improvement. But nothing in this section contained shall operate as an assumption of nor create any liability on the part of the state, for any damages which may result to any person, company or corporation. [1901 c 6 § 1; RRS § 8120.]

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

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

A parcel of land in sections 24 and 25, Township 21 North, Range 4 East, Willamette Meridian, King County, as follows: Beginning at a point on the west line of the Northern Pacific Railway right-of-way which point is S 89°16'55" W, 423.65 feet and N 2°12'33" W, 20 feet from the southeast corner of section 25, thence S 89°16'55" W, 1548.93 feet along the north right-of-way line of Ellingson Road to a point, thence N 0°10'45" E, 1298.11 feet to a point, thence S 89°31'28" W, 638.25 feet to the east right-of-way line of Greenhalgh Road, thence N 0°08'47" E, 1351.31 feet along said east right-of-way line to its intersection with the north right-of-way line of Algona Road, thence S 89°46'07" W, 1724.35 feet along said north right-of-way line to a point on the easterly right-of-way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad, thence N 0°04'38" W, 1223.74 feet along said right-of-way to a point of spiral curve, thence along a spiral curve whose central angle is 1°36'14" and whose long chord bears N 0°27'20" E, 158.51 feet, thence along a circular curve to the right, whose radius bears S 88°28'24" E, 2822.01 feet, through a central angle of 21°16'24" for a distance of 1047.78 feet to a point of spiral, thence along a spiral curve whose central angle is 1°36'14", and whose long chord bears N 23°51'42" E, 158.51 feet, thence N 24°24'15" E, 3088.12 feet to a point of spiral curve, thence along a spiral whose central angle is 1°35'51", and

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

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

37.08.280 Veterans hospitals. Upon the filing of an appropriate notice thereof with the governor by the administrator of veterans affairs, an agency of the United States of America, pursuant to the provisions of section 302 of Public Law 93-82 (87 Stat. 195; 38 U.S.C. Sec. 5007), the governor is hereby authorized and directed to accept such legislative jurisdiction as is necessary to establish concurrent jurisdiction between the United States and the state of Washington to all land comprising the veterans hospital located at Vancouver in Clark county, Washington; the veterans administration hospital located at Walla Walla in Walla Walla county, Washington, and the veterans administration hospital located at American Lake in Pierce county, Washington. The acquisition of such concurrent jurisdiction shall become effective upon filing the documents signifying such acceptance in the office of the secretary of state. [1975 1st ex.s. c 142 § 1.]

Chapter 37.12 RCW

INDIANS AND INDIAN LANDS—JURISDICTION

Sections

37.12.010	Assumption of criminal and civil jurisdiction by state.
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- 37.12.150 Retrocession of federal jurisdiction over lands excluded from Olympic National Park.
- 37.12.160 Retrocession of civil and/or criminal jurisdiction—Process.
- 37.12.170 Limits on retrocession under RCW 37.12.160.
- 37.12.180 Issues related to retrocession under RCW 37.12.160.

Alienation of land by Indians: Chapter 64.20 RCW.

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

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

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

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

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

- (1) Compulsory school attendance;
- (2) Public assistance;
- (3) Domestic relations;
- (4) Mental illness;
- (5) Juvenile delinquency;
- (6) Adoption proceedings;
- (7) Dependent children; and
- (8) Operation of motor vehicles upon the public streets, alleys, roads and highways: PROVIDED FURTHER, That Indian tribes that petitioned for, were granted and became subject to state jurisdiction pursuant to this chapter on or before March 13, 1963 shall remain subject to state civil and criminal jurisdiction as if *chapter 36, Laws of 1963 had not been enacted. [1963 c 36 § 1; 1957 c 240 § 1.]

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

37.12.021 Assumption of criminal and civil jurisdiction by state—Resolution of request—Proclamation by governor, 1963 act. Whenever the governor of this state shall receive from the majority of any tribe or the tribal council or other governing body, duly recognized by the Bureau of Indian Affairs, of any Indian tribe, community, band, or group in this state a resolution expressing its desire that its people and lands be subject to the criminal or civil jurisdiction of the state of Washington to the full extent authorized by federal law, he or she shall issue within sixty days a proclamation to the effect that such jurisdiction shall apply to all Indians and all Indian territory, reservations, country, and

lands of the Indian body involved to the same extent that this state exercises civil and criminal jurisdiction or both elsewhere within the state: PROVIDED, That jurisdiction assumed pursuant to this section shall nevertheless be subject to the limitations set forth in RCW 37.12.060. [2011 c 336 § 765; 1963 c 36 § 5.]

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

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

37.12.050 State's jurisdiction limited by federal law. The jurisdiction assumed pursuant to this chapter shall be subject to the limitations and provisions of the federal act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session). [1957 c 240 § 5.]

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

37.12.070 Tribal ordinances, customs, not inconsistent with law applicable in civil causes. Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any appli-

cable civil law of the state, be given full force and effect in the determination of civil causes of action pursuant to this section. [1957 c 240 § 7.]

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

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

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

Additional notes found at www.leg.wa.gov

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

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

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

tion or the tribe of the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, or Tulalip reservation.

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

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

Additional notes found at www.leg.wa.gov

37.12.120 Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, and Colville Indian reservations—Retrocession of criminal jurisdiction—Proclamation by governor. Whenever the governor receives from the confederated tribes of the Colville reservation or the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, or Tulalip tribe a resolution expressing their desire for the retrocession by the state of all or any measure of the criminal jurisdiction acquired by the state pursuant to RCW 37.12.021 over lands of that tribe's reservation, the governor may, within ninety days, issue a proclamation retroceding to the United States the criminal jurisdiction previously acquired by the state over such reservation. However, the state of Washington shall retain jurisdiction as provided in RCW 37.12.010. The proclamation of retrocession shall not become effective until it is accepted by an officer of the United States government in accordance with 25 U.S.C. Sec. 1323 (82 Stat. 78, 79) and in accordance with procedures established by the United States for acceptance of such retrocession of jurisdiction. The Colville tribes and the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, and Tulalip tribes shall not exercise criminal or civil jurisdiction over non-Indians. [1995 c 202 § 3; 1995 c 177 § 3; 1994 c 12 § 3; 1988 c 108 § 3; 1986 c 267 § 4.]

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

Additional notes found at www.leg.wa.gov

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

Additional notes found at www.leg.wa.gov

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

Additional notes found at www.leg.wa.gov

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

37.12.160 Retrocession of civil and/or criminal jurisdiction—Process. (1) The process by which the state may retrocede to the United States all or part of the civil and/or criminal jurisdiction previously acquired by the state over a federally recognized Indian tribe, and the Indian country of such tribe, must be accomplished in accordance with the requirements of this section.

(2) To initiate civil and/or criminal retrocession the duly authorized governing body of a tribe must submit a retrocession resolution to the governor accompanied by information about the tribe's plan regarding the tribe's exercise of jurisdiction following the proposed retrocession. The resolution must express the desire of the tribe for the retrocession by the state of all or any measures or provisions of the civil and/or criminal jurisdiction acquired by the state under this chapter over the Indian country and the members of such Indian tribe. Before a tribe submits a retrocession resolution to the governor, the tribe and affected municipalities are encouraged to collaborate in the adoption of interlocal agreements, or other collaborative arrangements, with the goal of ensuring that the best interests of the tribe and the surrounding communities are served by the retrocession process.

(3) Upon receiving a resolution under this section, the governor must within ninety days convene a government-to-government meeting with either the governing body of the tribe or duly authorized tribal representatives for the purpose of considering the tribe's retrocession resolution. The governor's office must consult with elected officials from the counties, cities, and towns proximately located to the area of the proposed retrocession.

(4) Within one year of the receipt of an Indian tribe's retrocession resolution the governor must issue a proclamation, if approving the request either in whole or in part. This one-year deadline may be extended by the mutual consent of the tribe and the governor, as needed. In addition, either the tribe or the governor may extend the deadline once for a period of up to six months. Within ten days of issuance of a proclamation approving the retrocession resolution, the governor must formally submit the proclamation to the federal government in accordance with the procedural requirements for federal approval of the proposed retrocession. In the event the governor denies all or part of the resolution, the reasons for such denial must be provided to the tribe in writing.

(5) Within one hundred twenty days of the governor's receipt of a tribe's resolution requesting civil and/or criminal retrocession, but prior to the governor's issuance of the proclamation approving or denying the tribe's resolution, the appropriate standing committees of the state house and senate may conduct public hearings on the tribe's request for state retrocession. The majority leader of the senate must designate

the senate standing committee and the speaker of the house of representatives must designate the house standing committee. Following such public hearings, the designated legislative committees may submit advisory recommendations and/or comments to the governor regarding the proposed retrocession, but in no event are such legislative recommendations binding on the governor or otherwise of legal effect.

(6) The proclamation for retrocession does not become effective until it is approved by a duly designated officer of the United States government and in accordance with the procedures established by the United States for the approval of a proposed state retrocession.

(7) The provisions of RCW 37.12.010 are not applicable to a civil and/or criminal retrocession that is accomplished in accordance with the requirements of this section.

(8) For any proclamation issued by the governor under this section that addresses the operation of motor vehicles upon the public streets, alleys, roads, and highways, the governor must consider the following:

(a) Whether the affected tribe has in place interlocal agreements with neighboring jurisdictions, including applicable state transportation agencies, that address uniformity of motor vehicle operations over Indian country;

(b) Whether there is a tribal traffic policing agency that will ensure the safe operation of motor vehicles in Indian country;

(c) Whether the affected tribe has traffic codes and courts in place; and

(d) Whether there are appropriate traffic control devices in place sufficient to maintain the safety of the public roadways.

(9) The following definitions apply for the purposes of this section:

(a) "Civil retrocession" means the state's act of returning to the federal government the civil jurisdiction acquired over Indians and Indian country under federal Public Law 280, Act of August 15, 1953, 67 Stat. 588 (codified as amended at 18 U.S.C. Sec. 1162, 25 U.S.C. Secs. 1321-1326, and 28 U.S.C. Sec. 1360);

(b) "Criminal retrocession" means the state's act of returning to the federal government the criminal jurisdiction acquired over Indians and Indian country under federal Public Law 280, Act of August 15, 1953, 67 Stat. 588 (codified as amended at 18 U.S.C. Sec. 1162, 25 U.S.C. Secs. 1321-1326, and 28 U.S.C. Sec. 1360);

(c) "Indian tribe" means any federally recognized Indian tribe, nation, community, band, or group;

(d) "Indian country" means:

(i) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(ii) All dependent Indian communities with the borders of the United States whether in the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(iii) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. [2012 c 48 § 1.]

37.12.170 Limits on retrocession under RCW 37.12.160. A civil or criminal retrocession accomplished pursuant to the procedure set forth in RCW 37.12.160 does not:

- (1) Affect the state's civil jurisdiction over the civil commitment of sexually violent predators pursuant to chapter 71.09 RCW and the state must retain such jurisdiction notwithstanding the completion of the retrocession process authorized under RCW 37.12.160; and
- (2) Abate any action or proceeding which has been filed with any court or agency of the state or local government preceding the effective date of the completion of a retrocession authorized under RCW 37.12.160. [2012 c 48 § 2.]

37.12.180 Issues related to retrocession under RCW 37.12.160. (1) The provisions of RCW 37.12.160 do not affect the validity of any retrocession procedure commenced under RCW 37.12.100 through 37.12.140 prior to June 7, 2012.

(2) Any Indian tribe that has commenced but not completed the retrocession procedure authorized in RCW 37.12.100 through 37.12.140 may request retrocession under RCW 37.12.160 in lieu of completing that procedure.

(3) Any Indian tribe that has completed the retrocession procedure authorized in RCW 37.12.100 through 37.12.140 may use the process authorized under RCW 37.12.160 to request retrocession of any civil or criminal jurisdiction retained by the state under RCW 37.12.120 or 37.12.010.

(4) The provisions of RCW 37.12.120 are not applicable to a civil and/or criminal retrocession that is accomplished in accordance with the requirements of RCW 37.12.160. [2012 c 48 § 3.]

Chapter 37.14 RCW

INDIAN CULTURAL FACILITY BOND ISSUE

Sections

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

37.14.010 General obligation bonds—Authorized—Issuance, sale, terms, etc. Solely for the purpose of providing a matching grant for the planning, design, acquisition, construction, furnishing, equipping, remodeling, and landscaping of a regional Indian cultural, educational, tourist, and economic development facility designated as the "people's lodge," the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of one million dollars or so much thereof as shall be required to finance that portion of the grant by the state for said project as is set forth by appropriation from the Indian cultural center construction account in the state treasury for such purposes, to be paid and discharged within thirty years of the date of issuance in accordance with Article VIII, section 1 of the Constitution of the state of Washington. All earnings of

investments of balances in the Indian cultural center construction account shall be credited to the general fund.

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

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

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

*Reviser's note: The "director of general administration" was renamed the "director of enterprise services" by 2011 1st sp.s. c 43 § 108.

Additional notes found at www.leg.wa.gov

37.14.020 Anticipation notes—Proceeds of bonds and notes. At the time the state finance committee determines to issue such bonds authorized in RCW 37.14.010 or a portion thereof, it may issue, in the name of the state, temporary notes in anticipation of the money to be derived from the sale of the bonds, which notes shall be designated as "anticipation notes". The proceeds from the sale of bonds and notes authorized by this chapter shall be deposited in the Indian cultural center construction account of the general fund hereby created in the state treasury and shall be used exclusively for the purposes specified in this chapter and for the payment of expenses incurred in the issuance and sale of such bonds and notes: PROVIDED, Such portion of the proceeds of the sale of such bonds as may be required for the payment of the principal and interest on such anticipation notes as have been issued, shall be deposited in the bond redemption fund created in RCW 37.14.040. [1975-'76 2nd ex.s. c 128 § 2.]

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

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

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

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

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

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

Chapter 37.16 RCW

ACQUISITION OF LANDS FOR PERMANENT MILITARY INSTALLATIONS

Sections

37.16.180 Jurisdiction ceded.

Reviser's note: Chapter 4, Laws of 1917, herein codified as chapter 37.16 RCW, is discussed in *State ex rel. Board of Commissioners v. Clausen*, 95 Wash. 214, 163 Pac. 744 (1917), where it is considered in conjunction with 1917 c 3, a special act authorizing (and directing) Pierce county to condemn property and issue bonds in payment of awards therefor in order to secure the location of Camp (now Fort) Lewis in that county. In prior compilations, Remington omitted 1917 c 4, and Pierce omitted all but section 22, ceding the state's jurisdiction to the United States. 1917 c 4 appears to have been a general act and for that reason was codified herein. Most of the sections in this chapter were subsequently repealed by 1971 c 76 § 6.

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

Condemnation for military purposes: RCW 8.04.170, 8.04.180.

Eminent domain by counties: Chapter 8.08 RCW.

Joint armory sites: RCW 36.64.050.

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

Leases to United States for national defense: RCW 79.13.090.

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

Tidelands and shorelands grants to United States: RCW 79.125.760 through 79.125.790.

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

37.16.180 Jurisdiction ceded. Pursuant to the Constitution and laws of the United States, and especially to paragraph seventeen of section eight of article one of such Constitution, the consent of the legislature of the state of Washington is hereby given to the United States to acquire by donation from any county acting under the provisions of this chapter, title to all the lands herein intended to be referred to, to be evidenced by the deed or deeds of such county, signed by the chair of its board of county commissioners and attested by the clerk of such board under the seal of such board, and the consent of the state of Washington is hereby given to the exercise by the congress of the United States of exclusive legislation in all cases whatsoever, over such tracts or parcels of land so conveyed to it: PROVIDED, Upon such conveyance being concluded, a sufficient description by metes and bounds and an accurate plat or map of each such tract or parcel of land be filed in the auditor's office of the county in which such lands are situated, together with copies of the orders, deeds, patents, or other evidences in writing of the title of the United States: AND PROVIDED, That all civil process issued from the courts of this state, and such criminal process as may issue under the authority of this state against any person charged with crime in cases arising outside of such reservation, may be served and executed thereon in the same mode and manner and by the same officers as if the consent herein given had not been made. [2011 c 336 § 766; 1917 c 4 § 22; no RRS. Formerly RCW 37.08.180.]

General cession of jurisdiction: Chapter 37.04 RCW.

Jurisdiction in special cases: Chapter 37.08 RCW.

Title 38

MILITIA AND MILITARY AFFAIRS

Chapters

- 38.04** General provisions.
- 38.08** Powers and duties of governor.
- 38.10** Emergency management assistance compact.
- 38.12** Militia officers and advisory council.
- 38.14** Washington state guard.
- 38.16** Enlistments and reserves.
- 38.20** Armories and rifle ranges.
- 38.24** Claims and compensation.
- 38.32** Offenses—Punishment.
- 38.36** Trial procedure.
- 38.38** Washington code of military justice.
- 38.40** Miscellaneous provisions.
- 38.42** Service members' civil relief.
- 38.44** Enrollment of persons.
- 38.48** State and national defense.
- 38.52** Emergency management.
- 38.56** Intrastate mutual aid system.

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

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

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

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

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

National guard high school career training and national guard youth challenge program—Rules: RCW 28A.300.165.

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

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

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

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

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

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

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

State flag furnished to armed forces: RCW 1.20.010.

State militia: State Constitution Art. 10.

Veterans and veterans' affairs: Title 73 RCW.

Chapter 38.04 RCW GENERAL PROVISIONS

Sections

- 38.04.010 General definitions.
- 38.04.020 "Officer," "enlisted persons" defined—Convictions and punishments.
- 38.04.030 Composition of the militia.
- 38.04.040 Composition of organized militia.

Acknowledgments and powers of attorney of military personnel: Chapter 73.20 RCW.

(2014 Ed.)

Military personnel classified as resident students: RCW 28B.15.014.

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

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

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

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

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

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

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

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

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

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

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

[Title 38 RCW—page 1]

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

Martial law: RCW 38.08.030.

Additional notes found at www.leg.wa.gov

38.04.020 "Officer," "enlisted persons" defined—Convictions and punishments. Whenever used in this title, the word "officer" shall be understood to designate commissioned and warrant officers, and the words "enlisted persons" shall be understood to designate members of the organized militia of Washington other than commissioned or warrant officers. The convictions and punishments mentioned unless otherwise specifically designated, shall be understood to be respectively convictions and punishments by military courts. [2009 c 549 § 1011; 1989 c 19 § 2; 1943 c 130 § 80; Rem. Supp. 1943 § 8603-80. Prior: 1917 c 107 § 60.]

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

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

Additional notes found at www.leg.wa.gov

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

Chapter 38.08 RCW POWERS AND DUTIES OF GOVERNOR

Sections

38.08.010	Conformance with federal laws.
38.08.020	Governor as commander-in-chief—Adjutant general executive head.
38.08.030	Proclamation of complete or limited martial law.
38.08.040	Governor may order out organized militia.
38.08.050	Governor may order out unorganized militia.
38.08.060	Governor's decision final.
38.08.070	Personal staff for governor.
38.08.090	Governor to promulgate rules.

38.08.100	Compacts with other states for guarding boundaries.
38.08.500	National guard mutual assistance counter-drug activities compact.

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

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

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

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

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

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

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

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

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

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

38.08.040 Governor may order out organized militia. In event of war, insurrection, rebellion, invasion, tumult, riot, mob, or organized body acting together by force with intent to commit a felony or to offer violence to persons or property,

or by force and violence to break and resist the laws of this state, or the United States, or in case of the imminent danger of the occurrence of any of said events, or at the lawful request of competent state or local authority in support of enforcement of controlled substance statutes, or whenever responsible civil authorities shall, for any reason, fail to preserve law and order, or protect life or property, or the governor believes that such failure is imminent, or in event of public disaster, or when otherwise required for the public health, safety, or welfare, or to perform any military duty authorized by state law, or to prepare for or recover from any of these events or the consequences thereof, the governor shall have power to order the organized militia of Washington, or any part thereof, into active service of the state to execute the laws, and to perform such duty as the governor shall deem proper. [2005 c 9 § 1; 1993 c 263 § 1; 1989 c 19 § 7; 1943 c 130 § 6; Rem. Supp. 1943 § 8603-6. Prior: 1917 c 107 § 7; 1913 c 66 § 2; 1909 c 134 § 15.]

Effective date—2005 c 9: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2005]." [2005 c 9 § 3.]

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

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

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

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

(2014 Ed.)

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

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

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

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

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

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

NATIONAL GUARD MUTUAL ASSISTANCE COUNTER-DRUG ACTIVITIES COMPACT

ARTICLE I PURPOSE

The purposes of this compact are to:

- (a) Provide for mutual assistance and support among the party states in the utilization of the national guard in drug interdiction, counter-drug, and demand reduction activities.
- (b) Permit the national guard of this state to enter into mutual assistance and support agreements, on the basis of

need, with one or more law enforcement agencies operating within this state, for activities within this state, or with a national guard of one or more other states, whether said activities are within or without this state in order to facilitate and coordinate efficient, cooperative enforcement efforts directed toward drug interdiction, counter-drug activities, and demand reduction.

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

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

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

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

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

ARTICLE II

ENTRY INTO FORCE AND WITHDRAWAL

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

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states.

ARTICLE III

MUTUAL ASSISTANCE AND SUPPORT

(a) As used in this article:

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

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

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

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

(iv) Providing available national guard personnel to operate and maintain equipment provided to federal, state, or

local law enforcement officials pursuant to activities defined and referred to in this compact;

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

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

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

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

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

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

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

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

(6) "Official" means the appointed, elected, designated, or otherwise duly selected representative of an agency, institution, or organization authorized to conduct those activities for which support is requested.

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

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

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

(b) Upon the request of a governor of a party state for assistance in the area of interdiction and counter-drug, and demand reduction activities, the governor of a responding state shall have authority under this compact to send without the borders of his or her state and place under the temporary operational control of the appropriate national guard or other military authorities of the requesting state, for the purposes of

providing such requested assistance, all or any part of the national guard forces of his or her state as he or she may deem necessary, and the exercise of his or her discretion in this regard shall be conclusive.

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

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

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

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

- (1) Its duration;
- (2) The organization, composition, and nature of any separate legal entity created thereby;
- (3) The purpose of the agreement;
- (4) The manner of financing the agreement and establishing and maintaining its budget;
- (5) The method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;
- (6) Provision for administering the agreement, which may include creation of a joint board responsible for such administration;
- (7) The manner of acquiring, holding, and disposing of real and personal property used in this agreement, if necessary;
- (8) The minimum standards for national guard personnel implementing the provisions of this agreement;
- (9) The minimum insurance required of each party to the agreement, if necessary;
- (10) The chain of command or delegation of authority to be followed by national guard personnel acting under the provisions of the agreement;
- (11) The duties and authority that the national guard personnel of each party state may exercise; and
- (12) Any other necessary and proper matters.

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

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

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

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

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

ARTICLE IV RESPONSIBILITIES

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

(1) Whenever national guard forces of any responding state are engaged in another state in carrying out the purposes of this compact, the members thereof so engaged shall have the same powers, duties, rights, privileges, and immunities as members of national guard forces of the requesting state. The requesting state shall save and hold members of the national guard forces of responding states harmless from civil liability, except as otherwise provided herein, for acts or omissions that occur in the performance of their duty while engaged in carrying out the purposes of this compact, whether responding forces are serving the requesting state within the borders of the responding state or are attached to the requesting state for purposes of operational control.

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

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

(4) Unless there is a written agreement to the contrary, each party state shall provide, in the same amounts and manner as if they were on duty within their state, for pay and

allowances of the personnel of its national guard units while engaged without the state pursuant to this compact and while going to and returning from such duty pursuant to this compact.

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

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

ARTICLE V DELEGATION

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

ARTICLE VI LIMITATIONS

Nothing in this compact shall:

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

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

ARTICLE VII CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the Constitution of the United States or of any state or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this

compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. [1993 c 263 § 2.]

Chapter 38.10 RCW EMERGENCY MANAGEMENT ASSISTANCE COMPACT

Sections

38.10.010	Emergency management assistance compact.
38.10.900	Severability—2001 c 288.

38.10.010 Emergency management assistance compact. The emergency management assistance compact is enacted and entered into by this state with all other states legally joining the compact in the form substantially as follows:

ARTICLE I PURPOSES AND AUTHORITIES

This compact is made and entered into by and between the participating party states which enact this compact. For the purposes of this agreement, the term "states" means the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state or states, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' national guard forces, either in accordance with the national guard mutual assistance compact, or by mutual agreement between states.

ARTICLE II GENERAL IMPLEMENTATION

Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to the emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III PARTY STATE RESPONSIBILITIES

(1) It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, as is practical, shall:

(a) Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack;

(b) Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency;

(c) Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans;

(d) Assist in warning communities adjacent to or crossing the state boundaries;

(e) Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material;

(f) Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness;

(g) Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the responsibilities listed in this compact.

(2) The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty days of the verbal request. Requests shall provide the following information:

(a) A description of the emergency services function for which assistance is needed, such as, but not limited to, fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue;

(b) The amount and type of personnel, equipment, materials, and supplies needed, and a reasonable estimate of the length of time they will be needed;

(c) The specific place and time for staging of the assisting party's response and a point of contact at that location.

(3) There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States government, with free exchange of information, plans, and resource records relating to emergency capabilities.

ARTICLE IV LIMITATIONS

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms of this compact. However, it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for the state. Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers except that of arrest unless specifically authorized by the receiving state, duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercise or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state or states, whichever is longer.

ARTICLE V LICENSES AND PERMITS

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE VI LIABILITY

Officers or employees of a party state rendering aid in another state under this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state under this compact shall be liable on account of

any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article may not include willful misconduct, gross negligence, or recklessness.

ARTICLE VII SUPPLEMENTARY AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party to this compact, this instrument contains elements of a broad base common to all states, and nothing in this compact shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

ARTICLE VIII COMPENSATION

Each party state shall provide for payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid under this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

ARTICLE IX REIMBURSEMENT

Any party state rendering aid in another state under this compact shall be reimbursed by the party state receiving the aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with the requests. However, any aiding party state may assume in whole or in part the loss, damage, expense, or other cost, or may loan equipment or donate services to the receiving party state without charge or cost; and any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses may not be reimbursable under this article.

ARTICLE X EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuation might occur. The plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting evacuees, the number of evacuees to be received in different areas, the manner in

which food, clothing, housing, and medical care will be provided, the registration of evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for the evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of the evacuees.

ARTICLE XI IMPLEMENTATION

(1) This compact shall become operative immediately upon its enactment into law by any two states. After the first enactment, this compact shall become effective as to any other state upon its enactment by such state.

(2) Any party state may withdraw from this compact by enacting a statute repealing the compact, but no withdrawal may take effect until thirty days after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. This action may not relieve the withdrawing state from obligations assumed under this compact before the effective date of withdrawal.

(3) Duly authenticated copies of this compact and such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states, and with the federal emergency management agency and other appropriate agencies of the United States government.

ARTICLE XII ADDITIONAL PROVISIONS

Nothing in this compact shall authorize or permit the use of military force by the national guard of a state at any place outside that state in any emergency for which the president is authorized by law to call into federal service the militia, or for any purpose for which the use of the army or the air force would in the absence of express statutory authorization be prohibited under 18 U.S.C. Sec. 1385. [2001 c 288 § 1.]

38.10.900 Severability—2001 c 288. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2001 c 288 § 2.]

Chapter 38.12 RCW MILITIA OFFICERS AND ADVISORY COUNCIL

Sections

- 38.12.010 Adjutant general—Bond.
- 38.12.015 Department organized into separate divisions—Army national guard—Air national guard—Assistant adjutants general.
- 38.12.020 Powers and duties.

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

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

38.12.010 Adjutant general—Bond. The governor, with the advice and consent of the senate, shall appoint an adjutant general who shall be chief of staff to the governor, and may be removed by the governor at will. The adjutant general shall appoint the civilian employees and other personnel of the department and may remove any of them in accordance with applicable law.

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

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

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

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

38.12.020 Powers and duties. The adjutant general shall:

(1) Subject to the orders of the commander-in-chief, command the Washington national guard and recruit, train,

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maintain, and administer the organized militia of the state of Washington.

(2) Supervise the preparation and submission of any records required by the federal government, the governor, or as otherwise required by law.

(3) Maintain records of the organized militia and state military department as required by law. The adjutant general shall deposit records with the state archivist for historical purposes.

(4) Cause to be published and distributed to the organized militia at state expense necessary documents or publications, to include the Washington code of military justice.

(5) Keep just and true accounts of all moneys received and disbursed by the military department.

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

(7) Be the custodian of the seal of the office of adjutant general and deliver the same to his or her successor. All orders issued from the office of the adjutant general shall be authenticated with the seal. Orders or records under the seal shall be prima facie proof of certification or authenticity.

(8) Promulgate in orders such regulations pertaining to the operation and function of the state military department and organized militia, as in his or her opinion the conditions demand.

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

(10) Issue the military property as the necessity of service requires and make purchases for that purpose.

(11) Be the custodian of all military relics, trophies, colors, and histories now in possession of, or which may be acquired by, the state.

(12) Keep a record of all real property owned or used by the state for military purposes, and in connection therewith he or she shall have sole power to execute all leases to acquire the use of real property by the state for military purposes, or lease it to other agencies for use for authorized activities. The adjutant general shall also have full power to execute and grant easements for rights-of-way for construction, operation, and maintenance of utility service, water, sewage, and drainage for such realty. [2009 c 21 § 1; 1989 c 19 § 12; 1977 c 75 § 32; 1957 c 250 § 3. Prior: 1943 c 130 § 16, part; 1917 c 107 § 11, part; 1913 c 66 § 4, part; 1909 c 134 § 27, part; 1901 c 78 § 4, part; 1895 c 108 § 38, part; Rem. Supp. 1943 § 8603-16, part.]

38.12.030 Adjutant general and assistant adjutants general—How chosen—Annual salaries—Members of judiciary eligible to serve in guard. Whenever a vacancy has occurred, or is about to occur in the office of the adjutant general, the governor shall order to active service for that position from the active list of the Washington army national

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

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

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

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

38.12.060 Officers to be commissioned by the governor. All commissioned and warrant officers of the organized militia of Washington shall be appointed and commissioned or warranted by the governor only as hereinafter provided. No person shall be so appointed and commissioned or warranted unless he or she shall be a citizen of the United States

and of this state and more than eighteen years of age. Every commissioned and warranted officer shall hold office under his or her commission or warrant until he or she shall have been regularly appointed and commissioned or warranted to another rank or office, or until he or she shall have been regularly retired, discharged, dismissed or placed in the reserve. [1989 c 19 § 14; 1971 ex.s. c 292 § 41; 1943 c 130 § 19; Rem. Supp. 1943 § 8603-19. Prior: 1917 c 107 § 12, part; 1909 c 134 § 31, part; 1895 c 108 § 42, part.]

Additional notes found at www.leg.wa.gov

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

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

38.12.105 Criteria and guidelines for promotion of commissioned officers. All promotions of commissioned officers in the organized militia will be made on a best-qualified basis. The officer promotion board will select the best-qualified officer for each promotion from among those officers fully qualified for promotion. To be promoted, the selected officer must also meet the requirements of RCW 38.12.070. In no event will seniority be the sole guideline for selecting the officer to be promoted. The officer promotion board will, in determining the best qualified officer, consider the overall qualifications of an officer and not just the qualifications for one position. [1974 ex.s. c 34 § 2.]

38.12.115 Officer promotion board—Meetings—Powers and duties. The officer promotion board will meet

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

38.12.125 Officer promotion board—Composition.

The officer promotion board shall be composed as follows:

(1) For promotions of army national guard officers, the adjutant general must appoint a board that includes at least five voting members who are officers in the army national guard senior in grade to those officers being considered by the board for promotion.

(a) Any officer appointed to the board who is not senior in grade to officers being considered for promotion must be recused from participating in the consideration for promotion of those officers to whom he or she is not senior.

(b) For consideration of an officer for promotion to the grade of O5 and above, the board must include at least one general officer appointed by the adjutant general as a voting member.

(2) For promotions of air national guard officers, the adjutant general must appoint a board that includes at least five voting members who are officers in the air national guard senior in grade to those officers being considered by the board for promotion.

(a) Any officer appointed to the board who is not senior in grade to officers being considered for promotion must be recused from participating in the consideration for promotion of those officers to whom he or she is not senior.

(b) For consideration of an officer for promotion to the grade of O5 and above, the board must include at least one general officer appointed by the adjutant general as a voting member.

(3) For promotions of state guard officers, the adjutant general must appoint a board that includes at least five voting members who are officers in the state guard senior in grade to those officers being considered by the board for promotion.

(a) Any officer appointed to the board who is not senior in grade to officers being considered for promotion must be recused from participating in the consideration for promotion of those officers to whom he or she is not senior.

(b) For consideration of an officer for promotion to the grade of O5 and above, the board must include at least one general officer appointed by the adjutant general as a voting member. [2014 c 178 § 1; 1989 c 19 § 18; 1974 ex.s. c 34 § 4.]

38.12.135 Officer promotion board—Official acts—

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

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

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

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

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

Subversive activities: Chapter 9.81 RCW.

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

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

The adjutant general shall annually appoint and convene qualitative retention boards to review the military personnel records of officers who have completed three or more years service in the Washington state guard to determine their retention potential and acceptability for continuation in an active status. In the conduct of the reviews, the regulation issued by the adjutant general to implement this provision shall conform to the extent practicable to that governing the

army national guard. [1989 c 19 § 20; 1984 c 198 § 1; 1943 c 130 § 31; 1925 ex.s. c 72 § 1; Rem. Supp. 1943 § 8603-31. Prior: 1917 c 107 § 28; 1909 c 134 § 39; 1895 c 108 § 63.]

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

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

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

Except as provided otherwise in RCW 38.16.015(2), commissioned officers of the state guard shall upon reaching the age of sixty-four years be retired.

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

Retired officers are subject, with their consent, to temporary detail on active state service by the commander-in-chief, and while on such duty shall receive the same pay and allowances as officers of like rank on the active list. [2012 c 12 § 2; 1989 c 19 § 21; 1984 c 198 § 2; 1943 c 130 § 33; Rem. Supp. 1943 § 8603-33. Prior: 1909 c 134 § 40; 1895 c 108 § 66.]

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

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

Chapter 38.14 RCW

WASHINGTON STATE GUARD

Sections

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

38.14.006 Availability and composition of state guard. The Washington state guard will be available to serve, at the call of the governor in the place of the national guard of the state of Washington under the provisions of this title when the national guard is in the service of the United States, or when otherwise ordered to active state service by

the governor. The Washington state guard shall consist of commissioned and warrant officers and enlisted persons commissioned, warranted, or enlisted under the provisions of this title. Persons enlisted under RCW 38.16.015 shall be enrolled in accordance with regulations promulgated by the adjutant general. [1989 c 19 § 23.]

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

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

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

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

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

Chapter 38.16 RCW

ENLISTMENTS AND RESERVES

Sections

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

38.16.010 Period of enlistment in national guard. The period of enlistment in the Washington national guard shall conform to the laws and regulations of the United States

department of defense governing such enlistments including the term of such enlistments and the maximum and minimum age of enlistment. [1989 c 19 § 29; 1943 c 130 § 35; Rem. Supp. 1943 § 8603-35. Prior: 1917 c 107 § 30; 1909 c 134 § 41; 1895 c 108 § 57.]

38.16.015 Period of enlistment in state guard. (1) The period of enlistment in the Washington state guard shall be set by regulation by the adjutant general. However, no original enlistment may be consummated unless the term thereof can be completed before the applicant attains the age of sixty-four.

(2) Notwithstanding subsection (1) of this section and RCW 38.12.180(2), the adjutant general may extend the service age upon request by an active member of the Washington state guard if the adjutant general determines the member's extension would be in the best interest of the Washington state guard. Extensions under this subsection have a one-year duration and may be renewed until the member attains the age of sixty-eight. [2012 c 12 § 1; 1989 c 19 § 30.]

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

38.16.030 Inactive national guard. The inactive national guard of this state shall respectively be organized by the governor in regulations in conformance with the laws, rules and regulations of the United States. It shall consist of such organizations, officers and enlisted persons as the governor shall prescribe. No commissioned officer shall be transferred or furloughed to the inactive national guard without the officer's written consent, except as otherwise expressly provided by law. Any officer of the inactive national guard may be restored to the active list by order of the governor, subject to the same examination as in the case of an original appointment to his or her rank, and in such event his or her service in the inactive national guard shall not be counted in computing total length of service for relative seniority. [2009 c 549 § 1012; 1991 c 43 § 3; 1989 c 19 § 32; 1943 c 130 § 34; Rem. Supp. 1943 § 8603-34. Prior: 1917 c 107 § 29.]

38.16.040 State guard reserve. In order to afford the utmost protection to the state of Washington and to the lives and property of citizens thereof, in times of emergency or anticipation thereof, the governor, through the state military department may provide for the organization and training of state guard reserve companies in communities not allocated a federally recognized or authorized state guard unit. [1943 c 130 § 86; Rem. Supp. 1943 § 8603-86.]

38.16.050 Appointment of members of the committee for employer support of the guard and reserve to civil affairs unit. To assist the state of Washington in the event of

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

Chapter 38.20 RCW

ARMORIES AND RIFLE RANGES

Sections

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

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

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

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

Joint armory sites: RCW 36.64.050.

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

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

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

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

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

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

(4) The adjutant general may, upon the recommendation of the executive head or governing body of a county, city or town, permit transient lodging of anyone in armories. The adjutant general may require the county, city or town to pay no more than the actual cost of staffing, heating, lighting and other miscellaneous expenses incidental to this use.

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

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

The adjutant general shall prepare a schedule of rental charges, including a cleaning deposit, and utility costs for each state-owned armory which may not be waived except for activities sponsored by the organized militia or activities provided for in subsection (4) of this section. The rental charges derived from armory rentals less the cleaning deposit shall be paid into the military department rental and lease account under RCW 38.40.210. [2009 c 34 § 1; 2005 c 252 § 3; 1989 c 19 § 33; 1985 c 295 § 1; 1983 c 268 § 1; 1975 1st ex.s. c 121 § 1; 1973 1st ex.s. c 154 § 56; 1963 c 149 § 1; 1949 c 125 § 1; 1947 c 204 § 1; 1943 c 130 § 93; Rem. Supp. 1949 § 8603-93. Prior: 1923 c 49 § 5; 1917 c 8 § 1; 1909 c 134 § 97; 1907 c 55 § 11; 1903 c 115 §§ 19, 20.]

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

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

Additional notes found at www.leg.wa.gov

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

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

38.20.040 Rental of property, armories, and small arms ranges. All armories and small arms ranges and all property, real or personal, used by the national guard and not owned by the state of Washington or the United States, shall be leased or rented to the state upon such terms and conditions as shall be approved by the commander-in-chief. [1989 c 19 § 34; 1909 c 134 § 98; RRS § 8599.]

38.20.050 Small arms ranges. Under the direction of the governor, the adjutant general shall, at the expense and in the name of the state, buy or lease, establish, equip, maintain and control such small arms ranges and issue such ammunition, transportation and supplies as may be necessary to provide each unit of the organized militia of Washington with adequate means and opportunity for thorough instruction in

small arms practice. [1989 c 19 § 35; 1943 c 130 § 91; Rem. Supp. 1943 § 8603-91. Prior: 1917 c 107 § 120; 1909 c 134 § 92; 1895 c 108 § 168.]

Chapter 38.24 RCW

CLAIMS AND COMPENSATION

Sections

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

38.24.010 Payment of military claims and expenses.

All bills, claims and demands for military purposes shall be certified or verified and audited in the manner prescribed by regulations promulgated by the governor and shall be paid by the state treasurer from funds available for that purpose. In all cases where the organized militia, or any part of the organized militia, is called into active state service to perform duties under RCW 38.08.040, except for anticipated planning, training, exercises, and other administrative duties that are not of an emergent nature, warrants for allowed pay and expenses for such services or compensation for injuries or death shall be drawn upon the general fund of the state treasury and paid out of any moneys in said fund not otherwise appropriated. All such warrants shall be the obligation of the state and shall bear interest at the legal rate from the date of their presentation for payment. Claims and expenses for organized militia in active state service under RCW 38.08.040 that are not paid under this section may be paid under RCW 38.40.220. [2008 c 44 § 2; 2005 c 9 § 2; 1991 c 43 § 4; 1989 c 19 § 36; 1973 c 106 § 14; 1943 c 130 § 42; Rem. Supp. 1943 § 8603-42. Prior: 1917 c 107 § 36; 1909 c 134 § 56, part; 1895 c 108 § 91, part.]

Effective date—2005 c 9: See note following RCW 38.08.040.

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

38.24.050 Pay of officers and enlisted personnel. Commissioned officers, warrant officers, and enlisted personnel of the organized militia of Washington, while in active state service or inactive duty, are entitled to and shall receive the same amount of pay and allowances from the state of Washington as provided by federal laws and regulations for commissioned officers, warrant officers, and enlisted personnel of the United States army only if federal pay and allowances are not authorized. For periods of such active state service, commissioned officers, warrant officers, and enlisted personnel of the organized militia of Washington shall receive either such pay and allowances or an amount equal to one and one-half of the federal minimum wage, whichever is greater.

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

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

Necessary transportation, quartermasters' stores, and subsistence for troops when ordered on active state service may be contracted for and paid for as are other military bills. [2011 c 336 § 767; 1989 c 19 § 37; 1984 c 198 § 3; 1975-'76 2nd ex.s. c 34 § 81; 1974 ex.s. c 46 § 1; 1943 c 130 § 43; Rem. Supp. 1943 § 8603-43. Prior: 1925 c 28 § 2, part; 1919 c 137 § 1, part; 1917 c 107 § 37, part; 1915 c 47 § 1, part; 1913 c 66 § 10, part; 1909 c 134 § 157, part; 1907 c 122 § 5, part; 1903 c 155 § 13, part; 1901 c 78 § 11, part; 1895 c 108 § 89, part.]

Additional notes found at www.leg.wa.gov

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

**Chapter 38.32 RCW
OFFENSES—PUNISHMENT**

Sections

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

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

38.32.010 Nonmilitary offenses by members on duty status. Any member of the organized militia committing nonmilitary offenses under chapter 38.38 RCW while on duty status or within state armories shall be promptly arrested by the military authorities and turned over to the civil authorities of the county or city in which the offense was committed. [2009 c 378 § 1; 1989 c 19 § 39; 1963 c 220 § 134; 1943 c 130 § 82; Rem. Supp. 1943 § 8603-82.]

38.32.020 Military offenses. (1) Military offenses under chapter 38.38 RCW committed by members of the organized militia may be tried and punished as provided under chapter 38.38 RCW.

(2) Primary jurisdiction over military offenses enumerated in chapter 38.38 RCW is with military authorities. Primary jurisdiction over nonmilitary offenses is with civilian authorities. If an offense may be both military and nonmilitary, the military authorities may proceed only after the civilian authorities have declined to prosecute or dismissed the charge, provided jeopardy has not attached. Jurisdiction over attempted crimes, conspiracy crimes, solicitation, and accessory crimes must be determined by whether the underlying offense is a military or nonmilitary offense.

(3) Any member of the organized militia committing any offense under chapter 38.38 RCW may, if such offense is committed on a military reservation of the United States within this state, be turned over to the civil authorities for trial as provided by federal law. [2009 c 378 § 2; 1989 c 19 § 40; 1963 c 220 § 135; 1943 c 130 § 81; Rem. Supp. 1943 § 8603-81.]

38.32.030 Exemptions while on duty. No person belonging to the military forces of this state shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from any place at which he or she may be required to attend military duty. Any members of the organized militia parading, or performing any duty according to the law shall have the right-of-way in any street or highway through which they may pass and while on field duty shall have the right to enter upon, cross, or occupy any uninclosed lands, or any inclosed lands where no damage will be caused thereby: PROVIDED, That the carriage of the United States mail and legitimate functions of the police and fire departments shall not be interfered with thereby. [2011 c 336 § 768; 1943 c 130 § 45; Rem. Supp. 1943 § 8603-45. Prior: 1917 c 107 § 40; 1909 c 134 § 66; 1895 c 108 § 103.]

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

38.32.080 Penalty for failure to obey call. Any member of the militia who shall have been ordered out for either state or federal service and who shall refuse or wilfully or negligently fail to report at the time and place and to the officer designated in the order or to the representative or successor of such officer, shall be deemed guilty of desertion, and shall suffer such penalty as a general court martial may direct, unless he or she shall produce a sworn certificate from a licensed physician of good standing that he or she was physically unable to appear at the time and place designated. Any person chargeable with desertion under this section may be taken by force and compelled to serve. [1989 c 19 § 42; 1943 c 130 § 10; Rem. Supp. 1943 § 8603-10. Prior: 1917 c 107 § 10; 1909 c 134 § 21; 1895 c 108 § 114.]

38.32.090 Penalty for physician making false certificate. Any physician who shall knowingly make and deliver a false certificate of physical disability concerning any member of the militia who shall have been ordered out or sum-

moned for active service is guilty of perjury under chapter 9A.72 RCW and, upon conviction, as an additional penalty, shall forfeit forever his or her license and right to practice in this state. [2003 c 53 § 209; 1989 c 19 § 43; 1943 c 130 § 11; Rem. Supp. 1943 § 8603-11. Prior: 1909 c 134 § 22.]

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

38.32.100 Buying and receiving military property.

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

38.32.120 Authority of commanding officer. (1) The commanding officer at any drill, parade, encampment or other duty may place in arrest for the time of such drill, parade, encampment or other duty any person or persons who shall trespass on the camp grounds, parade grounds, rifle range or armory, or in any way or manner interrupt or molest the orderly discharge of duty of those on duty, or who shall disturb or prevent the passage of troops going to or returning from any regularly ordered tour of duty; and may prohibit and prevent the sale or use of all spirituous liquors, wines, ale or beer, or holding of huckster or auction sales, and all gambling therein, and remove disorderly persons beyond the limits of such parade or encampment, or within a distance of two miles therefrom, and the commanding officer shall have full authority to abate as common nuisances all disorderly places, and bar all unauthorized sales within such limits.

(2) Any person violating this section, or any order issued in pursuance thereof, is guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars, or imprisoned not more than thirty days, or both such fine and imprisonment.

(3) No license or renewal thereof shall be issued or granted to any person, firm or corporation for the sale of intoxicating or spirituous liquors within a distance of three hundred feet from any armory used by the state of Washington for military purposes, without the approval of the adjutant general. [2003 c 53 § 210; 1989 c 19 § 44; 1963 c 220 § 137; 1943 c 130 § 52; Rem. Supp. 1943 § 8603-52. Prior: 1937 c 51 § 1; 1909 c 134 § 62; 1895 c 108 § 99.]

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

38.32.140 Sentence to confinement. All military courts of the organized militia of Washington shall have power to sentence to confinement in lieu of fines authorized to be imposed: PROVIDED, That such sentence of confinement shall not exceed one day for each dollar of fine authorized. [1943 c 130 § 61; 1917 c 107 § 53; Rem. Supp. 1943 § 8603-61.]

Chapter 38.36 RCW TRIAL PROCEDURE

Sections

38.36.120 Fees and mileage.

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

Juror expense payments: RCW 2.36.150.

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

Witness fees and mileage: RCW 2.40.010.

Chapter 38.38 RCW WASHINGTON CODE OF MILITARY JUSTICE

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

PART I—GENERAL PROVISIONS

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

(1) "A month's pay" or fraction thereof shall be calculated based upon a member's basic pay entitlement as if the member were serving for a thirty-day period.

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

(3) "Code" means this chapter.

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

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

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

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

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

(9) "Judge advocate" means an officer of the army or air national guard designated as a judge advocate by the judge advocate general of the army or the judge advocate general of the air force.

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

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

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

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

(14) "Military offense" means those offenses listed in RCW 38.38.644 through 38.38.800, 38.38.762, and 38.38.782.

(15) "Nonmilitary offense" means any offense other than those listed in Title 38 RCW.

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

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

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

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

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

(21) "Superior commissioned officer" means a commissioned officer superior in rank or command. [2009 c 378 § 3; 1989 c 48 § 1; 1963 c 220 § 1.]

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

Additional notes found at www.leg.wa.gov

38.38.008 [Art. 2] Persons subject to this code. This code applies to all members of the organized militia who are not in federal service pursuant to Title 10 U.S.C. [2009 c 378 § 4; 1989 c 48 § 2; 1963 c 220 § 2.]

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

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

Additional notes found at www.leg.wa.gov

38.38.016 [Art. 4] Dismissal of commissioned officer.

(1) If any commissioned officer, dismissed by order of the governor, makes a written application for trial by court-martial, setting forth, under oath, that he or she has been wrongfully dismissed, the governor, as soon as practicable, shall convene a general court-martial to try that officer on the charges on which the officer was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges, and the officer shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which the officer is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does

not include dismissal, the chief of staff to the governor or adjutant general shall substitute for the dismissal ordered by the governor a form of discharge authorized for administrative issue.

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

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

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

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

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

38.38.024 [Art. 6] Judge advocates and legal officers.

(1) The governor, on the recommendation of the adjutant general, shall appoint a judge advocate officer of the army or air national guard as state judge advocate. To be eligible for appointment, an officer must be a member of the bar of the highest court of the state and must have been a member of the bar of the state for at least five years.

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

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

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

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

(6) No judge advocate may be assigned nonlegal duties unless authorized by the state judge advocate. [2009 c 378 § 5; 1989 c 48 § 6; 1963 c 220 § 6.]

PART II—APPREHENSION AND RESTRAINT

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

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

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

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

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

(2) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this code or through any person authorized by this code to apprehend persons. A commanding officer may authorize warrant officers or noncommissioned officers to order enlisted members of the officer's command or subject to the officer's authority into arrest or confinement.

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

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

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

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

38.38.080 [Art. 10a] Confinement in jails. Persons confined other than in a guard house, whether before, during, or after trial by a military court, shall be confined in civil jails, penitentiaries, or prisons designated by the governor or the adjutant general. [2009 c 378 § 7; 1989 c 48 § 11; 1963 c 220 § 11.]

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

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

38.38.088 [Art. 13] Punishment prohibited before trial. Subject to RCW 38.38.488, no person, while being held for trial or the result of trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against the person, nor shall the arrest or confinement imposed upon the person be any more rigorous than the circumstances require to insure his or her presence, but the person may be subjected to minor punishment during that period for infractions of discipline. [1989 c 48 § 13; 1963 c 220 § 13.]

38.38.092 [Art. 14] Delivery of offenders to civil authorities. (1) Under such regulations as may be prescribed by the adjutant general, a person subject to this code who is accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(2) When delivery under this section is made to any civil authority of a person undergoing sentence of a court-martial,

the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for the offense shall, upon the request of competent military authority, be returned to military custody for the completion of the sentence. [2009 c 378 § 8; 1989 c 48 § 14; 1963 c 220 § 14.]

PART III—NONJUDICIAL PUNISHMENT

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

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

(a) Upon officers of his or her command:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) A person punished under this section who considers the punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior

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

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

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

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

(7) The governor may by regulation prescribe the form of records to be kept of proceedings under this section and may also prescribe that certain categories of those proceedings shall be in writing. [2009 c 378 § 9; 1991 c 43 § 5; 1989 c 48 § 15; 1963 c 220 § 15.]

PART IV—COURTS-MARTIAL JURISDICTION

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

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

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

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

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

38.38.176 [Art. 17] Jurisdiction of courts-martial in general. Each force of the organized militia has court-martial jurisdiction over all persons subject to this code. The

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exercise of jurisdiction by one force over personnel of another force shall be in accordance with regulations prescribed by the governor. [1989 c 48 § 17; 1963 c 220 § 17.]

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

- (1) A fine of not more than three hundred dollars;
- (2) Forfeiture of pay and allowances;
- (3) A reprimand;
- (4) Dismissal or dishonorable discharge;
- (5) Reduction of a noncommissioned officer to the ranks;

or

(6) Any combination of these punishments. [2009 c 378 § 10; 1963 c 220 § 18.]

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

38.38.188 [Art. 20] Jurisdiction of summary courts-martial. (1) Subject to RCW 38.38.176, summary courts-martial have jurisdiction to try persons subject to this code, except officers for any offense made punishable by this code.

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

(3) A summary court-martial may sentence to a fine of not more than twenty-five dollars for a single offense, to forfeiture of not more than one-half month's pay for two months, to reduction in rank of enlisted soldiers, and to reduction of a noncommissioned officer to the ranks. [2009 c 378 § 11; 1989 c 48 § 19; 1963 c 220 § 20.]

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

38.38.196 [Art. 21a] Complete record of proceedings and testimony if dishonorable discharge or dismissal adjudged. A dishonorable discharge or dismissal may not be adjudged by any court-martial unless a complete record of the proceedings and testimony before the court has been made. [1989 c 48 § 20; 1963 c 220 § 22.]

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

PART V—APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

38.38.240 [Art. 22] Who may convene general courts-martial. In the organized militia not in federal service pursuant to Title 10 U.S.C., general courts-martial may be convened by the president or by the governor, or by the adjutant general. [2009 c 378 § 12; 1989 c 48 § 22; 1963 c 220 § 24.]

38.38.244 [Art. 23] Special courts-martial of organized militia not in federal service—Who may convene. (1) In the organized militia not in federal service pursuant to Title 10 U.S.C., anyone authorized to convene a general court-martial, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command may convene special courts-martial. Special courts-martial may also be convened by superior authority. When any such officer is an accuser, the court shall be convened by superior competent authority.

(2) A special court-martial may not try a commissioned officer. [2009 c 378 § 13; 1989 c 48 § 23; 1963 c 220 § 25.]

38.38.248 [Art. 24] Summary courts-martial of organized militia not in federal service—Who may convene. (1) In the organized militia not in federal service pursuant to Title 10 U.S.C., anyone authorized to convene a special court-martial, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment may convene a summary court-martial consisting of one commissioned officer. The proceedings shall be informal.

(2) When only one commissioned officer is present with a command or detachment the commissioned officer shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him or her. Summary courts-martial may, however, be convened in any case by superior competent

authority when considered desirable. [2009 c 378 § 14; 1989 c 48 § 24; 1963 c 220 § 26.]

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

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

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

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

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

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

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

38.38.256 [Art. 26] Military judge of a general or special court-martial. (1) A military judge shall be detailed to each general court-martial. Subject to regulations of the governor, a military judge may be detailed to any special court-martial. The governor shall prescribe regulations providing

for the manner in which military judges are detailed for such courts-martial and for the persons who are authorized to detail military judges for such courts-martial. The military judge shall preside over each open session of the court-martial to which he or she has been detailed.

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

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

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

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

38.38.258 [Art. 26a] Military judges—Qualifications. A military judge must be a judge advocate. The adjutant general shall prescribe procedures for certifying, appointing, detailing, and removing military judges. [2009 c 378 § 6.]

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

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

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

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

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

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

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

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

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

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

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

(2) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below five members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than five members. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

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

the members of the court or a stipulation thereof is read to the court in the presence of the military judge, if any, the accused, and counsel for both sides.

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

PART VI—PRETRIAL PROCEDURE

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

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

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

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

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

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

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

(4) No statement obtained from any person in violation of this section, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against the person in a trial by court-martial. [2009 c 378 § 15; 1989 c 48 § 30; 1963 c 220 § 33.]

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

ommendation as to the disposition which should be made of the case in the interest of justice and discipline.

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

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

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

(4) If evidence adduced in an investigation under this chapter indicates that the accused committed an uncharged offense, the investigating officer may investigate the subject matter of that offense without the accused having first been charged with the offense if the accused:

(a) Is present at the investigation;

(b) Is informed of the nature of each uncharged offense investigated; and

(c) Is afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (2) of this section.

(5) The requirements of this section are binding on all persons administering this code but failure to follow them does not divest a military court of jurisdiction. [2009 c 378 § 16; 1989 c 48 § 31; 1963 c 220 § 34.]

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

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

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

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

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

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

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

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

38.38.328 [Art. 35] Service of charges. The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his or her objection, be brought to trial or be required to participate by himself or herself or counsel in a session called by a military judge under RCW 38.38.380(1), in a general court-martial within a period of five days after the service of the charges upon him or her, or before a special court-martial within a period of three days after the service of the charges upon him or her. [2011 c 336 § 769; 1989 c 48 § 34; 1963 c 220 § 37.]

PART VII—TRIAL PROCEDURE

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

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

command in the substantive and procedural aspects of courts-martial, or (b) to statements and instructions given in open court by the military judge, president of a special court-martial, or counsel.

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

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

(2) The accused has the right to be represented in his or her defense before a general or special court-martial or at an investigation under RCW 38.38.316 as provided in this subsection.

(a) The accused may be represented by civilian counsel if provided at his or her own expense.

(b) The accused may be represented by:

(i) Military counsel detailed under RCW 38.38.260; or

(ii) Military counsel of his or her own selection if that counsel is reasonably available, as determined under regulations prescribed under subsection (3) of this section.

(c) If the accused is represented by civilian counsel, military counsel detailed or selected under (b) of this subsection shall act as associate counsel unless excused at the request of the accused.

(d) Except as provided under (e) of this subsection, if the accused is represented by military counsel of his or her own selection under (b)(ii) of this subsection, any military counsel detailed under (b)(i) of this subsection shall be excused.

(e) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under RCW 38.38.260 to detail counsel in his or her sole discretion:

(i) May detail additional military counsel as assistant defense counsel; and

(ii) If the accused is represented by military counsel of his or her own selection under (b)(ii) of this subsection, may approve a request from the accused that military counsel detailed under (b)(i) of this subsection act as associate defense counsel.

(3) The state judge advocate shall, by regulation, define "reasonably available" for the purpose of subsection (2) of this section and establish procedures for determining whether the military counsel selected by an accused under subsection (2) of this section is reasonably available.

(4) In any court-martial proceeding resulting in a conviction, the defense counsel:

(a) May forward for attachment to the record of proceedings a brief of such matters as he or she determines should be considered in behalf of the accused on review, including any objection to the contents of the record which he or she considers appropriate;

(b) Shall assist the accused in the submission of any matter under RCW 38.38.536; and

(c) May take other action authorized by this chapter.

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

(6) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when qualified to be the defense counsel as required by RCW 38.38.260, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused. [2009 c 378 § 17; 1989 c 48 § 37; 1963 c 220 § 40.]

38.38.380 [Art. 39] Sessions. (1) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to RCW 38.38.328, call the court into session without the presence of the members for the purpose of:

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

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

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

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

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

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

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

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

(2) If exercise of a challenge for cause reduces the court below the minimum number of members required by RCW 38.38.172, all parties shall, notwithstanding RCW 38.38.268, either exercise or waive any challenge for cause then apparent against the remaining members of the court before additional members are detailed to the court. However, peremptory challenges shall not be exercised at that time.

(3) Each accused and the trial counsel is entitled to one peremptory challenge, but the military judge may not be challenged except for cause.

(4) If exercise of a peremptory challenge reduces the court below the minimum number of members required by RCW 38.38.172, the parties shall, notwithstanding RCW 38.38.268, either exercise or waive any remaining peremptory challenge, that has not been previously waived, against the remaining members of the court before additional members are detailed to the court.

(5) Whenever additional members are detailed to the court, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge. [2009 c 378 § 18; 1989 c 48 § 40; 1963 c 220 § 43.]

38.38.392 [Art. 42] Oaths. (1) Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant or associate defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The form of the oath, the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulations of the governor. These regulations may provide that an oath to perform faithfully duties as a military judge, trial counsel, assistant trial counsel, defense counsel, or assistant or associate defense counsel may be taken at any time by a judge advocate or other person certified to be qualified or competent for the duty, and if such an oath is taken it need not again be taken at the time the judge advocate, or other person, is detailed to that duty.

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

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

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

by an officer exercising summary court-martial jurisdiction over the command.

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

(4) Periods in which the accused was absent from territory in which the state has the authority to apprehend the accused, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this section.

(5) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitations:

(a) Has expired; or

(b) Will expire within one hundred eighty days after the date of dismissal of the charges and specifications[,] [then] trial and punishment under new charges and specifications are not barred by the statute of limitations if the conditions specified in subsection (6) of this section are met.

(6) The conditions referred to in subsection (5) of this section are that the new charges and specifications must:

(a) Be received by an officer exercising summary court-martial jurisdiction over the command within one hundred eighty days after the dismissal of the charges or specifications; and

(b) Allege the same acts or omissions that were alleged in the dismissed charges or specifications or allege acts or omissions that were included in the dismissed charges or specifications. [2009 c 378 § 19; 1989 c 48 § 42; 1963 c 220 § 45.]

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

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

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

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

(2) With respect to any other charge or specification to which a plea of guilty has been made by the accused and

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

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

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

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

(b) Issue subpoenas duces tecum and other subpoenas;

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

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

(3) Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall run to any part of the state and shall be executed by civil officers as prescribed by the laws of the state. [2009 c 378 § 20; 1989 c 48 § 45; 1963 c 220 § 48.]

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

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

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

(c) Willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce;

is guilty of an offense against the state.

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

(3) The prosecuting attorney in any such court, upon the certification of the facts by the military court, commission, court of inquiry, or board, shall prosecute any person violating this section. [2009 c 378 § 21; 1989 c 48 § 46; 1963 c 220 § 49.]

38.38.416 [Art. 48] Contempts. A military court may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment may not exceed confinement for thirty days or a fine of one hundred dollars, or both. [1963 c 220 § 50.]

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

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

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

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

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

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

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

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

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

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

38.38.428 [Art. 51] Voting, rulings, instructions. (1) Voting by members of a general or special court-martial on

the findings and on the sentence, and by members of a court-martial without a military judge upon questions of challenge, shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART VIII—SENTENCES

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

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

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

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

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

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

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

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

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

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

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

PART IX—REVIEW OF COURTS-MARTIAL

38.38.532 [Art. 59] Execution of sentence—Suspension of sentence. Except as provided in RCW 38.38.196 and 38.38.556, a court-martial sentence, unless suspended, may be ordered executed by the convening authority when approved by him or her. The convening authority shall approve the sentence or such part, amount, or commuted form of the sentence as he or she sees fit, and may suspend the execution of the sentence as approved by him or her. [1989 c 48 § 54; 1963 c 220 § 61.]

38.38.536 [Art. 60] Initial action on the record. After a trial by court martial the record shall be forwarded to the convening authority, as reviewing authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or by the governor. [1963 c 220 § 62.]

38.38.540 [Art. 61] Initial action on the record—General court-martial records. The convening authority shall refer the record of each general court-martial to the staff judge advocate, who shall submit a written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction. [1989 c 48 § 55; 1963 c 220 § 63.]

38.38.544 [Art. 62] Reconsideration and revision. (1) If a specification before a court martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

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

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

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

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

38.38.548 [Art. 63] Rehearings. (1) If the convening authority disapproves the findings and sentence of a court martial he or she may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case he or she shall state the reasons for disapproval. If he or she disapproves the findings and sentence and does not order a rehearing, he or she shall dismiss the charges.

(2) Each rehearing shall take place before a court martial composed of members not members of the court martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he or she was found not guilty by the first court martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. [2011 c 336 § 770; 1963 c 220 § 65.]

38.38.552 [Art. 64] Approval by the convening authority. In acting on the findings and sentence of a court martial, the convening authority may approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he or she finds correct in law and fact and as he or she in his or her discretion determines should be approved. Unless he or she indicates otherwise, approval of the sentence is approval of the findings and sentence. [2011 c 336 § 771; 1963 c 220 § 66.]

38.38.556 [Art. 65] Review of records—Disposition. (1) If the convening authority is the governor, the governor's action on the review of any record of trial is final.

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

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

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

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

(6) In a case reviewable by the state judge advocate under this section, the state judge advocate may act only with respect to the findings and sentence as approved by the convening authority. The state judge advocate may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the state judge advocate finds correct in law and fact and determines, on the basis of the entire

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

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

(8) The state judge advocate may order one or more boards of review each composed of not less than three commissioned officers of the organized militia, each of whom must be a member of the bar of the highest court of the state. Each board of review shall review the record of any trial by special court-martial, including a sentence to a dishonorable discharge, referred to it by the state judge advocate. Boards of review have the same authority on review as the state judge advocate has under this section. [2011 c 336 § 772; 1989 c 48 § 56; 1963 c 220 § 67.]

38.38.560 [Art. 66] Error of law—Lesser included offense. (1) A finding or sentence of a court martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

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

38.38.564 [Art. 67] Review counsel. (1) Upon the final review of a sentence of a general court-martial, the accused has the right to be represented by counsel before the reviewing authority, before the staff judge advocate, and before the state judge advocate.

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

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

38.38.568 [Art. 68] Vacation of suspension. (1) Before the vacation of the suspension of a special court-martial sentence, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the pro-

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bationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel if the probationer so desires.

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

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

38.38.572 [Art. 69] Petition for a new trial. At any time within two years after approval by the convening authority of a court-martial sentence which extends to dismissal or dishonorable discharge, the accused may petition the governor for a new trial on ground of newly discovered evidence or fraud on the court-martial. [1989 c 48 § 59; 1963 c 220 § 71.]

38.38.576 [Art. 70] Remission and suspension. (1) A convening authority may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures.

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

38.38.580 [Art. 71] Restoration. (1) Under such regulations as the governor may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon a new trial or rehearing.

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

(3) If a previously executed sentence of dismissal is not imposed on a new trial, the governor shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the governor alone to such commissioned grade and with such rank as in the opinion of the governor that former officer would have attained had he or she not been dismissed. The reappointment of such a former officer may be made if a position vacancy is available under applicable tables of organization. All time between the dismissal and reappointment shall be considered as service for all purposes. [2011 c 336 § 773; 1989 c 48 § 60; 1963 c 220 § 73.]

38.38.584 [Art. 72] Finality of proceedings, findings and sentences. The proceedings, findings and sentences of

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

PART X—PUNITIVE ARTICLES

38.38.624 [Art. 76] Persons to be tried or punished.

No person may be tried or punished for any offense provided for in RCW 38.38.628 through 38.38.800, unless he or she was a member of the organized militia at the time of the offense. [2009 c 378 § 22; 1963 c 220 § 75.]

38.38.628 [Art. 77] Principals. Any person subject to this code who:

- (1) Commits an offense punishable by this code, or aids, abets, counsels, commands, or procures its commission; or
- (2) Causes an act to be done which if directly performed by him or her would be punishable by this code; is a principal. [2011 c 336 § 774; 1963 c 220 § 76.]

38.38.632 [Art. 78] Accessory after the fact. Any person subject to this code who, knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his or her apprehension, trial, or punishment shall be punished as a court martial may direct. [2011 c 336 § 775; 1963 c 220 § 77.]

38.38.636 [Art. 79] Conviction of lesser included offense. An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein. [1963 c 220 § 78.]

38.38.640 [Art. 80] Attempts. (1) An act, done with specific intent to commit an offense under this code, amounting to more than mere preparation and tending, even though failing to effect its commission, is an attempt to commit that offense.

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

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

38.38.644 [Art. 81] Conspiracy. Any person subject to this code who conspires with any other person to commit an offense under this code shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court martial may direct. [1963 c 220 § 80.]

38.38.648 [Art. 82] Solicitation. (1) Any person subject to this code who solicits or advises another or others to

desert in violation of RCW 38.38.660 or mutiny in violation of RCW 38.38.696 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he or she shall be punished as a court martial may direct.

(2) Any person subject to this code who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of RCW 38.38.716 or sedition in violation of RCW 38.38.696 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he or she shall be punished as a court martial may direct. [2011 c 336 § 776; 1963 c 220 § 81.]

38.38.652 [Art. 83] Fraudulent enlistment, appointment, or separation. Any person who:

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

38.38.656 [Art. 84] Unlawful enlistment, appointment, or separation. Any person subject to this code who effects an enlistment or appointment in or a separation from the organized militia of any person who is known to the person to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct. [1989 c 48 § 62; 1963 c 220 § 83.]

38.38.660 [Art. 85] Desertion. (1) Any member of the organized militia who:

- (a) Without authority goes or remains absent from the member's unit, organization, or place of duty with intent to remain away therefrom permanently;
- (b) Quits the member's unit, organization or place of duty with intent to avoid hazardous duty or to shirk important service; or
- (c) Without being regularly separated from one of the organized militia enlists or accepts an appointment in the same or another one of the organized militia, or in one of the armed forces of the United States, without fully disclosing the fact that he or she has not been regularly separated; is guilty of desertion.

(2) Any commissioned officer of the organized militia who, after tender of a resignation and before notice of its acceptance, quits his or her post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

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

38.38.664 [Art. 86] Absence without leave. Any person subject to this code who, without authority:

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

(2) Goes from that place; or

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

shall be punished as a court martial may direct. [2011 c 336 § 777; 1963 c 220 § 85.]

38.38.668 [Art. 87] Missing movement. Any person subject to this code who through neglect or design misses the movement of a ship, aircraft, or unit with which he or she is required in the course of duty to move shall be punished as a court martial may direct. [2011 c 336 § 778; 1963 c 220 § 86.]

38.38.672 [Art. 88] Contempt towards officials. Any person subject to this code who uses contemptuous words against the president, the governor, or the governor of any other state, territory, commonwealth, or possession in which that person may be serving, shall be punished as a court martial may direct. [1963 c 220 § 87.]

38.38.676 [Art. 89] Disrespect towards superior commissioned officer. Any person subject to this code who behaves with disrespect towards his or her superior commissioned officer shall be punished as a court martial may direct. [2011 c 336 § 779; 1963 c 220 § 88.]

38.38.680 [Art. 90] Assaulting or willfully disobeying superior commissioned officer. Any person subject to this code who:

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

(2) Willfully disobeys a lawful command of his or her superior commissioned officer;

shall be punished as a court martial may direct. [2011 c 336 § 780; 1963 c 220 § 89.]

38.38.684 [Art. 91] Insubordinate conduct toward warrant officer or noncommissioned officer. Any warrant officer or enlisted member who:

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

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

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

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

38.38.688 [Art. 92] Failure to obey order or regulation. Any person subject to this code who:

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

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

(3) Is derelict in the performance of the person's duties;

shall be punished as a court-martial may direct. [1989 c 48 § 65; 1963 c 220 § 91.]

38.38.692 [Art. 93] Cruelty and maltreatment. Any person subject to this code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his or her orders shall be punished as a court martial may direct. [2011 c 336 § 781; 1963 c 220 § 92.]

38.38.696 [Art. 94] Mutiny or sedition. (1) Any person subject to this code who:

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

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

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

(2) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court martial may direct. [2011 c 336 § 782; 1963 c 220 § 93.]

38.38.700 [Art. 95] Resistance, breach of arrest, and escape. Any person subject to this code who resists apprehension or breaks arrest or who escapes from physical restraint lawfully imposed shall be punished as a court martial may direct. [1963 c 220 § 94.]

38.38.704 [Art. 96] Releasing prisoner without proper authority. Any person subject to this code who, without proper authority, releases any prisoner committed to his or her charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court martial may direct, whether or not the prisoner was committed in strict compliance with law. [2011 c 336 § 783; 1963 c 220 § 95.]

38.38.708 [Art. 97] Unlawful detention of another. Any person subject to this code who, except as provided by law or regulation, apprehends, arrests, or confines any person shall be punished as a court martial may direct. [1963 c 220 § 96.]

38.38.712 [Art. 98] Noncompliance with procedural rules. Any person subject to this code who:

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

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

38.38.716 [Art. 99] Misbehavior before the enemy.

Any person subject to this code who before or in the presence of the enemy:

(1) Runs away;

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

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

(4) Casts away arms or ammunition;

(5) Is guilty of cowardly conduct;

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

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

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

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

38.38.720 [Art. 100] Subordinate compelling surrender. Any person subject to this code who compels or attempts to compel the commander of any of the organized militia of the state, or of any other state, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct. [1989 c 48 § 67; 1963 c 220 § 99.]

38.38.724 [Art. 101] Improper use of countersign. Any person subject to this code who in time of war discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his or her knowledge, he or she was authorized and required to give, shall be punished as a court martial may direct. [2011 c 336 § 784; 1963 c 220 § 100.]

38.38.728 [Art. 102] Forcing a safeguard. Any person subject to this code who forces a safeguard shall be punished as a court martial may direct. [1963 c 220 § 101.]

38.38.732 [Art. 103] Captured or abandoned property. (1) All persons subject to this code shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the

proper authority without delay all captured or abandoned property in their possession, custody, or control.

(2) Any person subject to this code who:

(a) Fails to carry out the duties prescribed in subsection (1) of this section;

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

(c) Engages in looting or pillaging; shall be punished as a court martial may direct. [2011 c 336 § 785; 1963 c 220 § 102.]

38.38.736 [Art. 104] Aiding the enemy. Any person subject to this code who:

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

(2) Without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall be punished as a court martial may direct. [1963 c 220 § 103.]

38.38.740 [Art. 105] Misconduct of a prisoner. Any person subject to this code who, while in the hands of the enemy in time of war:

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

(2) While in a position of authority over such persons maltreats them without justifiable cause; shall be punished as a court martial may direct. [2011 c 336 § 786; 1963 c 220 § 104.]

38.38.744 [Art. 107] False official statements. Any person subject to this code who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court martial may direct. [1963 c 220 § 105.]

38.38.748 [Art. 108] Military property—Loss, damage, destruction, or wrongful disposition. Any person subject to this code who, without proper authority:

(1) Sells or otherwise disposes of;

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

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

38.38.752 [Art. 109] Property other than military property—Waste, spoilage, or destruction. Any person subject to this code who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages

any property other than military property of the United States or of the state shall be punished as a court-martial may direct. [2009 c 378 § 23; 1963 c 220 § 107.]

38.38.756 [Art. 110] Improper hazarding of vessel.

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

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

38.38.760 [Art. 111] Reckless or impaired operation of a vehicle, aircraft, or vessel. (1) Any person subject to this code who:

(a) Operates or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance described in RCW 38.38.762; or

(b) Operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood or breath is equal to or exceeds the applicable limit under subsection (2) of this section; or

(c) Operates or is in actual physical control of any vehicle, aircraft, or vessel in a reckless or wanton manner shall be punished as a court-martial may direct.

(2) For purposes of subsection (1) of this section, the blood alcohol content limit with respect to alcohol concentration in a person's blood is 0.08 grams of alcohol per one hundred milliliters of blood and with respect to alcohol concentration in a person's breath is 0.08 grams of alcohol per two hundred ten liters of breath, as shown by chemical analysis.

(3) For purposes of this section, "blood alcohol content limit" means the amount of alcohol concentration in a person's blood or breath at which operation or control of a vehicle, aircraft, or vessel is prohibited. [2009 c 378 § 24; 1963 c 220 § 109.]

38.38.762 [Art. 112a] Use, possession, or distribution of controlled substances. (1) Any person subject to this code who wrongfully uses, possesses, distributes, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces or organized militia a substance described in subsection (2) of this section shall be punished as a court-martial may direct.

(2) The substances referred to in subsection (1) of this section are the following:

(a) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance;

(b) Any substance not specified in (a) of this subsection that is listed on a schedule of controlled substances prohibited by the United States army; or

(c) Any other substance not specified in this subsection that is listed in Schedules I through V of section 202 of the federal controlled substances act, 21 U.S.C. Sec. 812, as amended. [2009 c 378 § 25.]

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38.38.764 [Art. 112] Drunk on duty—Sleeping on post—Leaving post before relief. Any person subject to this code who is found drunk on duty or sleeping upon his or her post, or who leaves his or her post before he or she is regularly relieved, shall be punished as a court martial may direct. [2011 c 336 § 787; 1963 c 220 § 110.]

38.38.768 [Art. 114] Dueling. Any person subject to this code who fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall be punished as a court martial may direct. [1963 c 220 § 111.]

38.38.772 [Art. 115] Malingering. Any person subject to this code who for the purpose of avoiding work, duty or service in the organized militia:

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

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

38.38.776 [Art. 116] Riot or breach of peace. Any person subject to this code who causes or participates in any riot or breach of the peace shall be punished as a court martial may direct. [1963 c 220 § 113.]

38.38.780 [Art. 117] Provoking speeches or gestures. Any person subject to this code who uses provoking or reproachful words or gestures toward any other person subject to this code shall be punished as a court martial may direct. [1963 c 220 § 114.]

38.38.782 [Art. 128] Assault upon another member of the organized militia. Any person subject to this code who attempts or offers with unlawful force or violence to do bodily harm to another member of the organized militia, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct. [2009 c 378 § 26.]

38.38.783 [Art. 121] Larceny and wrongful appropriation. (1) Any person subject to this code who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind:

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

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

(2) Any person found guilty of larceny or wrongful appropriation shall be punished as a court martial may direct. [1963 c 220 § 117. Formerly RCW 38.38.792.]

38.38.784 [Art. 131] Perjury. Any person subject to this code who in a judicial proceeding or in a course of justice

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

38.38.788 [Art. 132] Frauds against the government. Any person subject to this code:

- (1) Who, knowing it to be false or fraudulent:
 - (a) Makes any claim against the United States, the state, or any officer thereof; or
 - (b) Presents to any person in the civil or military service thereof, for approval or payment any claim against the United States, the state, or any officer thereof;
- (2) Who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the state, or any officer thereof:
 - (a) Makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;
 - (b) Makes any oath to any fact or to any writing or other paper knowing the oath to be false; or
 - (c) Forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;
- (3) Who, having charge, possession, custody, or control of any money, or other property of the United States or the state, furnished or intended for the armed forces of the United States or the organized militia, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which the person receives a certificate or receipt; or
- (4) Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or the state, furnished or intended for the armed forces of the United States or the organized militia, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States or the state; shall, upon conviction, be punished as a court-martial may direct. [1989 c 48 § 70; 1963 c 220 § 116.]

38.38.796 [Art. 133] Conduct unbecoming an officer and a gentleman. Any commissioned officer who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court martial may direct. [1963 c 220 § 118.]

38.38.800 [Art. 134] General article. Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the organized militia, of which persons subject to this code may be guilty, shall be taken cognizance of by a general, special or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. However, cognizance may not be taken of, and jurisdiction may not be extended to, the crimes of murder, manslaughter, rape, robbery, maiming, sodomy, arson, extortion, assault in the first degree, burglary, or housebreaking, jurisdiction of which is reserved to civil courts. [2009 c 378 § 27; 1989 c 48 § 71; 1963 c 220 § 119.]

PART XI—MISCELLANEOUS PROVISIONS

38.38.840 [Art. 135] Courts of inquiry. (1) Courts of inquiry to investigate any matter may be convened by the governor, the adjutant general, or by any other person designated by the governor for that purpose, whether or not the persons involved have requested such an inquiry: PROVIDED, That upon the request of the officer involved such an inquiry shall be instituted as hereinabove set forth.

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

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

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

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

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

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

(8) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel. [2009 c 378 § 28; 1989 c 48 § 72; 1963 c 220 § 120.]

38.38.844 [Art. 136] Authority to administer oaths. (1) The following members of the organized militia may administer oaths for the purposes of military administration, including military justice, and affidavits may be taken for those purposes before persons having the general powers of a notary public:

- (a) The state judge advocate and all assistant state judge advocates;
- (b) All law specialists or paralegals;
- (c) All summary courts-martial;
- (d) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants;
- (e) The military judge, president, trial counsel, and assistant trial counsel for all general and special courts-martial;
- (f) The president and the counsel for the court of any court of inquiry;
- (g) All officers designated to take a deposition;
- (h) All commanding officers of units of the organized militia;
- (i) All officers of the organized militia designated as recruiting officers;

(j) All persons detailed to conduct an investigation; and

(k) All other persons designated by regulations of the adjutant general.

(2) The signature without seal of any such person, together with the title of the person's office, is prima facie evidence of the person's authority. [2009 c 378 § 29; 1989 c 48 § 73; 1963 c 220 § 121.]

38.38.848 [Art. 137] Sections to be explained. (1) RCW 38.38.008, 38.38.012, 38.38.064 through 38.38.132, 38.38.252, 38.38.260, 38.38.372, 38.38.480, 38.38.624 through *38.38.792, and 38.38.848 through 38.38.860 shall be carefully explained to every enlisted member:

(a) At the time of the member's enlistment or transfer or induction;

(b) At the time of the member's order to duty in or with any of the organized militia; or

(c) Within forty days thereafter.

(2) These sections shall also be explained again to each member of the organized militia each time a member of the organized militia reenlists or extends his or her enlistment.

(3) A complete text of this code and of the regulations prescribed by the governor thereunder shall be made available to any member of the organized militia, upon request, for personal examination. [2009 c 378 § 30; 1989 c 48 § 74; 1963 c 220 § 122.]

*Reviser's note: RCW 38.38.792 was recodified as RCW 38.38.783 by the code reviser September 2009.

38.38.852 [Art. 138] Complaints of wrongs. Members of the organized militia who believe themselves wronged by their commanding officer, and who, upon due application to that commanding officer, are refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the governor or adjutant general. The governor or adjutant general shall examine the complaint and take proper measures for redressing the wrong complained of. [1989 c 48 § 75; 1963 c 220 § 123.]

38.38.856 [Art. 139] Redress of injuries to property.

(1) Whenever complaint is made to any commanding officer that wilful damage has been done to the property of any person or that the person's property has been wrongfully taken by members of the organized militia, the commanding officer may, subject to such regulations as the governor may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by the commanding officer shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive, except as provided in subsection (3) of this section, on any disbursing officer for the payment by the disbursing officer to the injured parties of the damages so assessed and approved.

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

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

38.38.860 [Art. 140] Execution of process and sentence. In the organized militia not in federal service, the processes and sentences of its courts-martial shall be executed by the civil officers prescribed by the laws of the state. [1989 c 48 § 77; 1963 c 220 § 125.]

38.38.864 [Art. 141] Process of military courts. (1) Military courts may issue any process or mandate necessary to carry into effect their powers. Such a court may issue subpoenae and subpoenae duces tecum and enforce by attachment attendance of witnesses and production of books and records, when it is sitting within the state and the witnesses, books and records sought are also so located.

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

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

38.38.868 [Art. 142] Payment of fines and disposition thereof. Fines imposed by a military court may be paid to it or to an officer executing its process. The amount of such a fine may be noted upon any state roll or account for pay of the delinquent and deducted from any pay or allowance due or thereafter to become due the person, until the fine is liquidated. Any sum so deducted shall be turned in to the military court which imposed the fine. Notwithstanding any other law, the officer collecting a fine or penalty imposed by a military court upon an officer or enlisted person shall pay it within thirty days to the state treasurer. Such a fine becomes a part of, is credited to, and may be spent from, the military fund of the organization or detachment to which the officer or enlisted person who paid the fine belonged. The treasurer of the state shall then report the amount thereof designating the organization or detachment to which it belongs, to the adjutant general of the state, and shall pay it over to the organization or detachment on request of its commanding officer. [1989 c 48 § 79; 1963 c 220 § 127.]

38.38.872 [Art. 143] Immunity for action of military courts. No accused may bring an action or proceeding against the convening authority or a member of a military court or officer or person acting under its authority or reviewing its proceedings because of the approval, imposition, or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any process or mandate of a military court. [1963 c 220 § 128.]

38.38.876 [Art. 144] Presumption of jurisdiction. The jurisdiction of the military courts and boards established by this code shall be presumed and the burden of proof rests on any person seeking to oust those courts or boards of jurisdiction in any action or proceeding. [1963 c 220 § 129.]

38.38.880 [Art. 145] Delegation of authority by the governor. The governor may delegate any authority vested in him or her under this code, and may provide for the subdelegation of any such authority, except the power given him or her by RCW 38.38.192 and 38.38.240. [2011 c 336 § 788; 1963 c 220 § 130.]

38.38.884 [Art. 146] Uniformity of interpretation. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and, so far as practical, to make that law uniform with the law of the United States. [1963 c 220 § 131.]

38.38.888 [Art. 147] Short title. This chapter may be cited as the "Washington code of military justice." [1963 c 220 § 132.]

Chapter 38.40 RCW MISCELLANEOUS PROVISIONS

Sections

38.40.010	Liability of officers and enlisted persons on duty.
38.40.020	Not liable for exercise of judgment.
38.40.025	Liability of state for federal activities.
38.40.030	Compensation for death or disability.
38.40.040	Interference with employment—Penalty.
38.40.050	Discharge from employment—Penalty.
38.40.060	Military leave for public employees.
38.40.100	Notice for duty.
38.40.110	Employment or membership in other organizations—Discrimination prohibited—Penalty—Civil cause of action.
38.40.120	Authorized military organizations.
38.40.130	Corporations may be formed.
38.40.150	Property to remain public property.
38.40.200	Military department capital account.
38.40.210	Military department rental and lease account.
38.40.220	Military department active state service account.

Acknowledgments and powers of attorney: Chapter 73.20 RCW.

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

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

*Eminent domain
condemnation for military purposes: RCW 8.04.170, 8.04.180.
notice where military land is involved: RCW 8.28.030.*

*Evidence
proof of missing in action, capture by enemy, etc.: RCW 5.40.030.
written finding of presumed death as prima facie evidence: RCW 5.40.020.*

Federal areas and jurisdiction: Title 37 RCW.

Gas bombs: RCW 70.74.310.

Joint armory sites: RCW 36.64.050.

Juries—Persons exempt: RCW 2.36.080.

*Mental illness hospitalization
authority over patient—Federal agencies, private establishments: RCW 71.02.490.
commitment to veterans administration or other federal agency—General provision: RCW 73.36.165.*

*Militia
privilege from arrest: State Constitution Art. 10 § 5.
soldiers' home: State Constitution Art. 10 § 3.*

Personal exemptions—Pension money exempt: RCW 6.15.020.

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

*Soldiers' and veterans' homes and veterans' cemetery: Chapter 72.36 RCW.
Statute of limitations tolled—As to person in military service of United States: RCW 4.16.220.*

Tidelands and shorelands grants to United States: RCW 79.125.760 through 79.125.790.

Unlawful firearms—Exception: RCW 9.41.190.

Veterans and veterans' affairs: Title 73 RCW.

Veterans' rehabilitation council: Chapter 43.61 RCW.

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

38.40.010 Liability of officers and enlisted persons on duty. Members of the militia ordered into active service of the state by any proper authority shall not be liable civilly or criminally for any act or acts done by them while on such duty nor shall any action lie against any officer or enlisted person for any acts done by the officer or enlisted person in line of duty by virtue of any order which may thereafter be held invalid by any civil court. When a suit or proceeding shall be commenced in any court by any person against any officer or enlisted person of the militia for any act done by such officer or enlisted person in his or her official capacity or in the discharge of any duty, or against any person acting under the authority or order of such officer or by virtue of any warrant issued pursuant to law, the defendant may require the person prosecuting or instituting the proceeding to give security for the payment of all costs that may be awarded to the defendant, and the defendant in all cases may make a general denial and, under such general denial, give all other or any special defense matter in evidence. In case the plaintiff shall be nonsuited or the verdict or judgment be in favor of the defendant, treble costs shall be assessed against the plaintiff. The defendant in such action shall be defended by the attorney general at the expense of the state, but private counsel may also be employed by the defendant. The venue of all such actions shall be Thurston county and the state of Washington shall be in all cases a necessary party defendant. [1989 c 19 § 45; 1943 c 130 § 13; Rem. Supp. 1943 § 8603-13. Cf. 1909 c 134 § 25, part; 1895 c 108 § 173, part.]

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

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

*Reviser's note: The reference to 26 U.S.C. appears to be incorrect. Reference to 28 U.S.C. was apparently intended.

Additional notes found at www.leg.wa.gov

38.40.030 Compensation for death or disability. If any member of the organized militia is injured, incapacitated, or otherwise disabled while in active state service or inactive duty as a member of the organized militia, he or she shall receive from the state of Washington just and reasonable relief in the amount to be determined as provided in this section, including necessary medical care. If the member dies from disease contracted or injury received or is killed while in active state service or inactive duty under order of the governor, then the dependents of the deceased shall receive such compensation as may be allowed as provided in this section. If the United States or any agent thereof, in accordance with any federal statute or regulation, furnishes monetary assistance, benefits, or other temporary or permanent relief to militia members or to their dependents for injuries arising out of and occurring in the course of their activities as militia members, but not including Social Security benefits, then the amount of compensation which any militia member or his or her dependents are otherwise entitled to receive from the state of Washington as provided in this section shall be reduced by the amount of monetary assistance, benefits, or other temporary or permanent relief the militia member or his or her dependents have received and will receive from the United States or any agent thereof as a result of his or her injury. All claims arising under this section shall be inquired into by a board of three officers, at least one being a medical officer, to be appointed by the adjutant general. The board has the same power to take evidence, administer oaths, issue subpoenas, compel witnesses to attend and testify and produce books and papers, and punish their failure to do so as is possessed by a general court martial. The amount of compensation or benefits payable shall conform as nearly as possible to the general schedule of payments and awards provided under the workers' compensation law in effect in the state of Washington at the time the disability or death occurred. The findings of the board shall be reviewed by the adjutant general and submitted to the governor for final approval. The reviewing officer or the governor may return the proceedings for revision or for the taking of further testimony. The action of the board when finally approved by the governor is final and conclusive and constitutes the fixed award for the injury or loss and is a debt of the state of Washington. [1989 c 19 § 47; 1987 c 185 § 5; 1984 c 198 § 5; 1943 c 130 § 40; Rem. Supp. 1943 § 8603-40. Prior: 1923 c 49 § 3; 1917 c 107 § 38; 1909 c 134 § 60; 1895 c 108 § 92.]

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

Workers' compensation: Title 51 RCW.

(2014 Ed.)

38.40.040 Interference with employment—Penalty.

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

38.40.050 Discharge from employment—Penalty.

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

38.40.060 Military leave for public employees. Every officer and employee of the state or of any county, city, or other political subdivision thereof who is a member of the Washington national guard or of the army, navy, air force, coast guard, or marine corps reserve of the United States, or of any organized reserve or armed forces of the United States shall be entitled to and shall be granted military leave of absence from such employment for a period not exceeding twenty-one days during each year beginning October 1st and ending the following September 30th in order that the person may report for required military duty, training, or drills including those in the national guard under Title 10 U.S.C., Title 32 U.S.C., or state active status. Such military leave of absence shall be in addition to any vacation or sick leave to which the officer or employee might otherwise be entitled, and shall not involve any loss of efficiency rating, privileges, or pay. During the period of military leave, the officer or employee shall receive from the state, or the county, city, or other political subdivision, his or her normal pay. The officer or employee shall be charged military leave only for days that he or she is scheduled to work for the state or the county, city, or other political subdivision. [2010 c 91 § 1; 2008 c 71 § 5; 2001 c 71 § 1; 1991 c 25 § 1; 1989 c 19 § 50; 1957 c 236 § 1; 1939 c 113 § 1.]

Military family leave act: Chapter 49.77 RCW.

Additional notes found at www.leg.wa.gov

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

38.40.110 Employment or membership in other organizations—Discrimination prohibited—Penalty—Civil cause of action. No club, society, association, corporation, employer, or organization shall by any constitution, rule, bylaws, resolution, vote or regulation, or otherwise, discriminate against or refuse to hire, employ, or reemploy any member of the organized militia of Washington because of his or her membership in said organized militia. Any person or persons, club, society, association, employer, corporation, or organization, violating or aiding, abetting, or assisting in the violation of any provision of this section shall be guilty of a misdemeanor and on conviction thereof shall be fined in any sum not exceeding one hundred dollars and in addition thereto shall forfeit the right to do business for a period of thirty days. Any person who has been discriminated against in violation of this section shall have a civil cause of action for damages. [1991 c 43 § 9; 1989 c 19 § 52; 1943 c 130 § 47; Rem. Supp. 1943 § 8603-47. Prior: 1917 c 107 § 42; 1909 c 134 § 68.]

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

38.40.130 Corporations may be formed. The officers, or the officers and enlisted persons of any regiment, battalion, company or similar unit of the organized militia of Washington, or the officers and enlisted persons of any two

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

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

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

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

38.40.200 Military department capital account. The military department capital account is created in the state treasury. All receipts from the sale of state-owned military department property must be deposited into the account. Money in the account may be spent only after appropriation. Expenditures from the account may be used only for military department capital projects. [2005 c 252 § 1.]

38.40.210 Military department rental and lease account. The military department rental and lease account is created in the state treasury. All receipts from the rental or lease of state-owned military department property must be deposited into the account. Money in the account may be spent only after appropriation. Expenditures from the account may be used only for operating and maintenance costs of military property. [2005 c 252 § 2.]

38.40.220 Military department active state service account. The military department active state service account is created in the state treasury. Moneys may be placed in the account from legislative appropriations and transfers, federal appropriations, or any other lawful source. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for claims and expenses for the organized militia called into active state service to perform duties under RCW 38.08.040 that are not paid under RCW 38.24.010 from nonappropriated funds, including but not limited to claims and expenses arising from anticipated planning, training, exercises, and other administrative duties that are not of an emergency nature. [2008 c 44 § 1.]

Chapter 38.42 RCW
SERVICE MEMBERS' CIVIL RELIEF

Sections

38.42.010	Definitions.
38.42.020	Applicability of chapter.
38.42.030	Protection of persons secondarily liable.
38.42.040	Waiver of rights pursuant to written agreement.
38.42.050	Protection of service members and their dependents against default judgments.
38.42.060	Stay of proceedings when service member has notice.
38.42.070	Fines and penalties under contracts.
38.42.080	Codefendants.
38.42.090	Computation of statutes of limitation.
38.42.100	Inappropriate use of chapter.
38.42.110	Restructure of business loan interest rate.
38.42.120	Federal servicemembers civil relief act—Applicability.
38.42.130	Civil action—Person aggrieved.
38.42.140	Civil action—Attorney general.
38.42.150	Civil investigative demands—Standards—Limitations—Enforcement.
38.42.900	Short title.
38.42.901	Captions not law—2005 c 254.
38.42.902	Severability—2005 c 254.
38.42.903	Effective date—2005 c 254.
38.42.904	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

38.42.010 Definitions. The definitions in this section apply throughout this chapter.

(1) "Attorney general" means the attorney general of the state of Washington or any person designated by the attorney general to carry out a responsibility of the attorney general under this chapter.

(2) "Business loan" means a loan or extension of credit granted to a business entity that: (a) Is owned and operated by a service member, in which the service member is either (i) a sole proprietor, or (ii) the owner of at least fifty percent of the entity; and (b) experiences a material reduction in revenue due to the service member's military service.

(3) "Dependent" means:

(a) The service member's spouse;

(b) The service member's minor child; or

(c) An individual for whom the service member provided more than one-half of the individual's support for one hundred eighty days immediately preceding an application for relief under this chapter.

(4) "Financial institution" means an institution as defined in *RCW 30.22.041.

(5) "Judgment" does not include temporary orders as issued by a judicial court or administrative tribunal in domestic relations cases under Title 26 RCW, including but not limited to establishment of a temporary child support obligation, creation of a temporary parenting plan, or entry of a temporary protective or restraining order.

(6) "Military service" means a service member:

(a) Under a call to active service authorized by the president of the United States or the secretary of defense for a period of more than thirty consecutive days; or

(b) Under a call to service authorized by the governor under RCW 38.08.040 for a period of more than thirty consecutive days.

(7) "National guard" has the meaning in RCW 38.04.010.

(8) "Service member" means any resident of Washington state who is a member of the national guard or member of a

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military reserve component. [2014 c 65 § 1; 2012 c 24 § 1; 2006 c 253 § 1; 2005 c 254 § 1.]

*Reviser's note: RCW 30.22.041 was recodified as RCW 30A.22.041 pursuant to 2014 c 37 § 4, effective January 5, 2015.

38.42.020 Applicability of chapter. (1) Any service member who is ordered to report for military service and his or her dependents are entitled to the rights and protections of this chapter during the period beginning on the date on which the service member receives the order and ending one hundred eighty days after termination of or release from military service.

(2) This chapter applies to any judicial or administrative proceeding commenced in any court or agency in Washington state in which a service member or his or her dependent is a party. This chapter does not apply to criminal proceedings.

(3) This chapter shall be construed liberally so as to provide fairness and do substantial justice to service members and their dependents. [2014 c 65 § 2; 2005 c 254 § 2.]

38.42.030 Protection of persons secondarily liable.

(1) Whenever pursuant to this chapter a court stays, postpones, or suspends (a) the enforcement of an obligation or liability, (b) the prosecution of a suit or proceeding, (c) the entry or enforcement of an order, writ, judgment, or decree, or (d) the performance of any other act, the court may likewise grant such a stay, postponement, or suspension to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily subject to the obligation or liability the performance or enforcement of which is stayed, postponed, or suspended.

(2) When a judgment or decree is vacated or set aside, in whole or in part, pursuant to this chapter, the court may also set aside or vacate, as the case may be, the judgment or decree as to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily liable on the contract or liability for the enforcement of the judgment decree. [2005 c 254 § 3.]

38.42.040 Waiver of rights pursuant to written agreement.

(1) A service member may waive any of the rights and protections provided by this chapter. In the case of a waiver that permits an action described in subsection (2) of this section, the waiver is effective only if made pursuant to a written agreement of the parties that is executed during or after the service member's period of military service. The written agreement shall specify the legal instrument to which the waiver applies and, if the service member is not party to that instrument, the service member concerned.

(2) The requirement in subsection (1) of this section for a written waiver applies to the following: (a) The modification, termination, or cancellation of a contract, lease, or bailment; or an obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage; and (b) the repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that is security for any obligation or was purchased or received under a contract, lease, or bailment. [2005 c 254 § 4.]

38.42.050 Protection of service members and their dependents against default judgments. (1) This section

applies to any civil action or proceeding in which a service member or his or her dependent is a defendant and does not make an appearance under applicable court rules or by law.

(2) In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit:

(a) Stating whether the defendant is in military service, or is a dependent of a service member in military service, and showing necessary facts to support the affidavit; or

(b) If the plaintiff is unable to determine whether the defendant is in military service or is a dependent of a service member in military service, stating that the plaintiff is unable to determine whether the defendant is in military service or is a dependent of a service member in military service.

(3)(a) To determine whether or not a defendant is a dependent of a service member in the military service under this chapter, the plaintiff may serve on or mail via first-class mail to the defendant a written notice in substantially the following form:

"NOTICE: State and federal law provide protections to defendants who are in the military service, and to their dependents. Dependents of a service member are the service member's spouse, the service member's minor child, or an individual for whom the service member provided more than one-half of the individual's support for one hundred eighty days immediately preceding an application for relief.

One protection provided is the protection against the entry of a default judgment in certain circumstances. This notice pertains only to a defendant who is a dependent of a member of the national guard or a military reserve component under a call to active service, or a national guard member under a call to service authorized by the governor of the state of Washington, for a period of more than thirty consecutive days. Other defendants in military service also have protections against default judgments not covered by this notice. If you are the dependent of a member of the national guard or a military reserve component under a call to active service, or a national guard member under a call to service authorized by the governor of the state of Washington, for a period of more than thirty consecutive days, you should notify the plaintiff or the plaintiff's attorneys in writing of your status as such within twenty days of the receipt of this notice. If you fail to do so, then a court or an administrative tribunal may presume that you are not a dependent of an active duty member of the national guard or reserves, or a national guard member under a call to service authorized by the governor of the state of Washington, and proceed with the entry of an order of default and/or a default judgment without further proof of your status. Your response to the plaintiff or plaintiff's attorneys about your status does not constitute an appearance for jurisdictional purposes in any pending litigation nor a waiver of your rights."

(b) If the notice is either served on the defendant twenty or more days prior to an application for an order of default or a default judgment, or mailed to the defendant more than twenty-three days prior to such application, and the defendant fails to timely respond, then for purposes of entry of an order of default or default judgment, the court or administrative tri-

bunal may presume that the defendant is not a dependent of a service member in the military service under this chapter.

(c) Nothing prohibits the plaintiff from allowing a defendant more than twenty days to respond to the notice, or from amending the notice to so provide.

(4) If in an action covered by this section it appears that the defendant is in military service or is a dependent of a service member in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a service member or his or her dependent cannot locate the service member or dependent, actions by the attorney in the case do not waive any defense of the service member or dependent or otherwise bind the service member or dependent.

(5) In an action covered by this section in which the defendant is in military service or is a dependent of a service member in military service, the court shall grant a stay of proceedings until one hundred eighty days after termination of or release from military service, upon application of defense counsel, or on the court's own motion, if the court determines that:

(a) There may be a defense to the action and a defense cannot be presented without presence of the defendant; or

(b) After due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists. The defendant's failure to communicate or cooperate with counsel after having been contacted is not grounds to find that counsel has been unable to contact the defendant or that counsel has been unable to determine if a meritorious defense exists.

(6) No bar to entry of judgment under subsection (4) of this section or requirement for grant of stay under subsection (5) of this section precludes the entry of temporary orders in domestic relations cases. If a court or administrative tribunal enters a temporary order as allowed under this subsection, it shall include a finding that failure to act, despite the absence of the service member, would result in manifest injustice to the other interested parties. Temporary orders issued without the service member's participation shall not set any precedent for the final disposition of the matters addressed therein.

(7) If a service member or dependent who is a defendant in an action covered by this section receives actual notice of the action, the service member or dependent may request a stay of proceedings pursuant to RCW 38.42.060.

(8) A person who makes or uses an affidavit permitted under this section knowing it to be false, is guilty of a class C felony.

(9) If a default judgment is entered in an action covered by this section against a service member or his or her dependent during the service member's period of military service or within one hundred eighty days after termination of or release from military service, the court entering the judgment shall, upon application by or on behalf of the service member or his or her dependent, reopen the judgment for the purpose of allowing the service member or his or her dependent to defend the action if it appears that:

(a) The service member or dependent was materially affected by reason of that military service in making a defense to the action; and

(b) The service member or dependent has a meritorious or legal defense to the action or some part of it.

(10) If a court vacates, sets aside, or reverses a default judgment against a service member or his or her dependent and the vacating, setting aside, or reversing is because of a provision of this chapter, that action does not impair a right or title acquired by a bona fide purchaser for value. [2012 c 24 § 2; 2006 c 80 § 1; 2005 c 254 § 5.]

38.42.060 Stay of proceedings when service member has notice. (1) This section applies to any civil action or proceeding in which a defendant at the time of filing an application under this section:

(a)(i) Is in military service, or it is within one hundred eighty days after termination of or release from military service; or

(ii) Is a dependent of a service member in military service; and

(b) Has received actual notice of the action or proceeding.

(2) At any stage before final judgment in a civil action or proceeding in which a service member or his or her dependent described in subsection (1) of this section is a party, the court may on its own motion and shall, upon application by the service member or his or her dependent, stay the action until one hundred eighty days after termination of or release from military service, if the conditions in subsection (3) of this section are met.

(3) An application for a stay under subsection (2) of this section shall include the following:

(a) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the service member's or dependent's ability to appear and stating a date when the service member or dependent will be available to appear; and

(b) A letter or other communication from the service member's commanding officer stating that the service member's current military duty prevents either the service member's or dependent's appearance and that military leave is not authorized for the service member at the time of the letter.

(4) An application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense, including a defense relating to lack of personal jurisdiction.

(5) A service member or dependent who is granted a stay of a civil action or proceeding under subsection (2) of this section may apply for an additional stay based on the continuing material affect of military duty on the service member's or dependent's ability to appear. Such application may be made by the service member or his or her dependent at the time of the initial application under subsection (2) of this section or when it appears that the service member or his or her dependent is unable to prosecute or defend the action. The same information required under subsection (3) of this subsection shall be included in an application under this subsection.

(6) If the court refuses to grant an additional stay of proceedings under subsection (2) of this section, the court shall appoint counsel to represent the service member or his or her dependent in the action or proceeding.

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(7) A service member or dependent who applies for a stay under this section and is unsuccessful may not seek the protections afforded by RCW 38.42.050. [2005 c 254 § 6.]

38.42.070 Fines and penalties under contracts. (1) If an action for compliance with the terms of a contract is stayed pursuant to this chapter, a penalty shall not accrue for failure to comply with the terms of the contract during the period of the stay.

(2) If a service member or his or her dependent fails to perform an obligation arising under a contract and a penalty is incurred arising from that nonperformance, a court may reduce or waive the fine or penalty if:

(a)(i) The service member was in military service at the time the fine or penalty was incurred; or

(ii) The action is against a dependent of the service member and the service member was in military service at the time the fine or penalty was incurred; and

(b) The ability of the service member or dependent to perform the obligation was materially affected by the military service. [2005 c 254 § 7.]

38.42.080 Codefendants. If the service member or his or her dependent is a codefendant with others who are not in military service and who are not entitled to the relief and protections provided under this chapter, the plaintiff may proceed against those other defendants with the approval of the court. [2005 c 254 § 8.]

38.42.090 Computation of statutes of limitation. (1) The period of a service member's military service may not be included in computing any period limited by law, rule, or order, for the bringing of any action or proceeding in a court, or in any board bureau, commission, department, or other agency of a state, or political subdivision of a state, or the United States by or against the service member or the service member's dependents, heirs, executors, administrators, or assigns.

(2) A period of military service may not be included in computing any period provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax, or assessment.

(3) This section does not apply to any period of limitation prescribed by or under the internal revenue laws of the United States. [2005 c 254 § 9.]

38.42.100 Inappropriate use of chapter. If a court determines, in any proceeding to enforce a civil right, that any interest, property, or contract has been transferred or acquired with the intent to delay the just enforcement of such right by taking advantage of this chapter, the court shall enter such judgment or make such order as might lawfully be entered or made concerning such transfer or acquisition. [2005 c 254 § 10.]

38.42.110 Restructure of business loan interest rate. (1) Upon the request of a service member with a qualifying business loan, the financial institution must restructure the interest rate of the loan to the equivalent provisions in the federal servicemembers civil relief act (50 U.S.C. App. 501 et seq.). The service member must notify the institution at

least five days prior to the beginning of military service and submit official documentation that substantiates their eligibility for the protections of this chapter.

(2) This section applies only to loans with an outstanding balance of less than one hundred thousand dollars at the time the service member is called to military service.

(3) This section applies only to business loans executed on or after January 1, 2007. [2006 c 253 § 2.]

38.42.120 Federal servicemembers civil relief act—Applicability. (1) The federal servicemembers civil relief act of 2003, P.L. 108-189, as amended, is specifically declared to apply in proper cases in all the courts of this state.

(2) A violation of the federal servicemembers civil relief act of 2003 is a violation of this chapter. [2014 c 65 § 3.]

38.42.130 Civil action—Person aggrieved. (1) Any person aggrieved by a violation of this chapter may in a civil action:

(a) Obtain any appropriate equitable or declaratory relief with respect to the violation; and

(b) Recover all other appropriate relief, including monetary damages.

(2) The court may award to a person aggrieved by a violation of this chapter who prevails in an action brought under subsection (1)(a) of this section the costs of the action, including reasonable attorneys' fees. [2014 c 65 § 4.]

38.42.140 Civil action—Attorney general. (1) Civil proceedings to enforce this chapter may be brought by the attorney general against any person that:

(a) Engages in a pattern or practice of violating this chapter; or

(b) Engages in a violation of this chapter that raises an issue of significant public importance.

(2) In a civil action commenced under subsection (1)(a) of this section, the court may:

(a) Grant any appropriate equitable or declaratory relief with respect to the violation of this chapter;

(b) Award all other appropriate relief, including monetary damages, to any person aggrieved by the violation; and

(c) May, to vindicate the public interest, assess a civil penalty:

(i) In an amount not exceeding fifty-five thousand dollars for a first violation; and

(ii) In an amount not exceeding one hundred ten thousand dollars for any subsequent violation.

(3) Upon timely application, a person aggrieved by a violation of this chapter with respect to which the civil action is commenced may intervene in such an action and may obtain appropriate relief as the person could obtain in a civil action under RCW 38.42.120 with respect to that violation, along with costs and reasonable attorneys' fees. [2014 c 65 § 5.]

38.42.150 Civil investigative demands—Standards—Limitations—Enforcement. (1) Whenever the attorney general believes that any person may: (a) Be in possession, custody, or control of any original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated,

which he or she believes to be relevant to the subject matter of an investigation of a possible violation of this chapter, or federal statutes dealing with the same or similar matters that the attorney general is authorized to enforce; or (b) have knowledge of any information that the attorney general believes relevant to the subject matter of such an investigation, he or she may, prior to the institution of a civil proceeding thereon, execute in writing and cause to be served upon such a person, a civil investigative demand requiring such a person to produce the documentary material and permit inspection and copying, to answer in writing written interrogatories, to give oral testimony, or any combination of these demands pertaining to the documentary material or information. Documents and information obtained under this section are not admissible in criminal prosecutions.

(2) Each demand must:

(a) State the statute and section or sections thereof, the alleged violation of which is under investigation, and the general subject matter of the investigation;

(b) If the demand is for the production of documentary material, describe the class or classes of documentary material to be produced thereunder with reasonable specificity so as fairly to indicate the material demanded;

(c) Prescribe a return date within which the documentary material is to be produced, the answers to written interrogatories are to be made, or a date, time, and place at which oral testimony is to be taken; and

(d) Identify the members of the attorney general's staff to whom the documentary material is to be made available for inspection and copying, to whom answers to written interrogatories are to be made, or who are to conduct the examination for oral testimony.

(3) No demand may:

(a) Contain any requirement that would be unreasonable or improper if contained in a subpoena duces tecum, a request for answers to written interrogatories, or a request for deposition upon oral examination issued by a court of this state; or

(b) Require the disclosure of any documentary material that would be privileged or which for any other reason would not be required by a subpoena duces tecum issued by a court of this state.

(4) Service of such a demand may be made by:

(a) Delivering a duly executed copy thereof to the person to be served, or, if such a person is not a natural person, to any officer or managing agent of the person to be served;

(b) Delivering a duly executed copy thereof to the principal place of business in this state of the person to be served; or

(c) Mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in this state, or, if the person has no place of business in this state, to his or her principal office or place of business.

(5)(a) Documentary material demanded pursuant to the provisions of this section must be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at such other times and places as may be agreed upon by the person served and the attorney general.

(b) Written interrogatories in a demand served under this section must be answered in the same manner as provided in the civil rules for superior court.

(c) The oral testimony of any person obtained pursuant to a demand served under this section must be taken in the same manner as provided in the civil rules for superior court for the taking of depositions. In the course of the deposition, the assistant attorney general conducting the examination may exclude from the place where the examination is held all persons other than the person being examined, the person's counsel, and the officer before whom the testimony is to be taken.

(d) Any person compelled to appear pursuant to a demand for oral testimony under this section may be accompanied by counsel.

(e) The oral testimony of any person obtained pursuant to a demand served under this section must be taken in the county within which the person resides, is found, or transacts business, or in another place as may be agreed upon between the person served and the attorney general.

(6) If, after prior court approval, a civil investigative demand specifically prohibits disclosure of the existence or content of the demand, unless otherwise ordered by a superior court for good cause shown, it is a misdemeanor for any person if not a bank, trust company, mutual savings bank, credit union, or savings and loan association organized under the laws of the United States or of any one of the states to disclose to any other person the existence or content of the demand, except for disclosure to counsel for the recipient of the demand or unless otherwise required by law.

(7) No documentary material, answers to written interrogatories, or transcripts of oral testimony produced pursuant to a demand, or copies thereof, shall, unless otherwise ordered by a superior court for good cause shown, be produced for inspection or copying by, nor may the contents thereof be disclosed to, other than an authorized employee of the attorney general, without the consent of the person who produced the material, answered written interrogatories, or gave oral testimony, except as otherwise provided in this section: PROVIDED, That:

(a) Under the reasonable terms and conditions as the attorney general prescribes, the copies of the documentary material, answers to written interrogatories, or transcripts of oral testimony must be available for inspection and copying by the person who produced the material, answered written interrogatories, or gave oral testimony, or any duly authorized representative of such a person;

(b) The attorney general or any assistant attorney general may use the copies of documentary material, answers to written interrogatories, or transcripts of oral testimony as he or she determines necessary in the enforcement of this chapter, including presentation before any court: PROVIDED, That any material, answers to written interrogatories, or transcripts of oral testimony that contain trade secrets may not be presented except with the approval of the court in which action is pending after adequate notice to the person furnishing the material, answers to written interrogatories, or oral testimony.

(8) At any time before the return date specified in the demand, or within twenty days after the demand has been served, whichever period is shorter, a petition to extend the

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return date for, or to modify or set aside a demand issued pursuant to subsection (1) of this section, stating good cause, may be filed in the superior court for Thurston county, or in another county where the parties reside. A petition, by the person on whom the demand is served, stating good cause, to require the attorney general or any person to perform any duty imposed by the provisions of this section, and all other petitions in connection with a demand, may be filed in the superior court for Thurston county, or in the county where the parties reside. The court has jurisdiction to impose such sanctions as are provided for in the civil rules for superior court with respect to discovery motions.

(9) Whenever any person fails to comply with any civil investigative demand for documentary material, answers to written interrogatories, or oral testimony duly served upon him or her under this section, or whenever satisfactory copying or reproduction of any such material cannot be done and the person refuses to surrender the material, the attorney general may file, in the trial court of general jurisdiction of the county in which the person resides, is found, or transacts business, and serve upon the person a petition for an order of the court for the enforcement of this section, except that if the person transacts business in more than one county the petition must be filed in the county in which the person maintains his or her principal place of business, or in another county as may be agreed upon by the parties to the petition. Whenever any petition is filed in the trial court of general jurisdiction of any county under this section, the court has jurisdiction to hear and determine the matter so presented and to enter such an order or orders as may be required to carry into effect the provisions of this section, and may impose such sanctions as are provided for in the civil rules for superior court with respect to discovery motions. [2014 c 65 § 6.]

38.42.900 Short title. This chapter may be known and cited as the Washington service members' civil relief act. [2005 c 254 § 11.]

38.42.901 Captions not law—2005 c 254. Captions used in this act are no part of the law. [2005 c 254 § 12.]

38.42.902 Severability—2005 c 254. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2005 c 254 § 14.]

38.42.903 Effective date—2005 c 254. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 3, 2005]. [2005 c 254 § 15.]

38.42.904 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply

equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 83.]

Chapter 38.44 RCW ENROLLMENT OF PERSONS

Sections

38.44.010	Commander-in-chief may order enrollment.
38.44.020	Notice of enrollment.
38.44.030	Exemptions.
38.44.040	Penalties for dereliction or false certificate.
38.44.050	Compensation of enrolling officer.
38.44.060	Examination of records.

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

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

Additional notes found at www.leg.wa.gov

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

38.44.030 Exemptions. Whenever an enrollment shall have been ordered under this chapter, the commanding officers of existing organizations of militia, and the chiefs of all

police and fire departments shall make and deliver to the enrolling officer of the county in which such organization and departments are stationed, verified lists in triplicate of the members of their respective commands and departments, and the enrolling officer shall mark "Exempt" opposite the names of all persons so listed, attaching one copy of each such list to each copy of the enrollment. The enrolling officer shall also mark "Exempt" opposite the names of all federal, state and county officers. All other persons claiming exemption must within fifteen days after service upon them of the notice of enrollment make a written verified claim in duplicate of such exemption and file the same in the office of the county auditor, who shall within five days thereafter forward one copy thereof with remarks and recommendations to the adjutant general. Upon the expiration of the time within which any claim of exemption may be filed and received by the adjutant general, the latter shall notify the county auditor of the decision in each case where exemption has been claimed, and the county auditor shall write upon the roll opposite the name of each person whose claim of exemption has been allowed by the adjutant general, the word "Exempt." All those on the roll not marked "Exempt" shall be subject to military duty. [1991 c 43 § 11; 1989 c 19 § 57; 1909 c 134 § 6; 1895 c 108 § 6, part; RRS § 8458.]

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

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

38.44.060 Examination of records. All civil officers in each county, city and town shall allow persons authorized under this chapter to make enrollments, at all proper times, to examine their records and take copies thereof or information therefrom. It shall be the duty of every person, under the penalties provided in RCW 38.44.040, upon application of any person legally authorized to make an enrollment, truthfully to state all of the facts within his or her knowledge concerning any individual of whom the enroller shall make inquiry. In

event of a violation of this section the enroller shall report the facts to the prosecuting attorney, who shall at once proceed to enforce the penalty. [1991 c 43 § 14; 1989 c 19 § 60; 1909 c 134 § 9; 1895 c 108 § 6, part; RRS § 8461.]

Chapter 38.48 RCW STATE AND NATIONAL DEFENSE

Sections

38.48.050 Acceptance of national defense facilities act.

Reviser's note: The following acts, which appear to have been of limited duration, are omitted from RCW:

(1) 1941 c 200, 1943 c 191; RRS §§ 8607-7 through 8607-15; Act in aid of national defense;

(2) 1943 c 93; Authorizing sale or lease of tools and equipment to federal agencies;

(3) 1943 c 200; Washington state war council; and

(4) 1945 c 211; Armory drill pay for active state guard.

38.48.050 Acceptance of national defense facilities act. The legislature hereby expresses its intention to secure to this state the benefits of the act of congress entitled the "National Defense Facilities Act" (10 U.S.C. Sec. 2231, et seq., as amended), and the state military department shall be charged with the duty to cooperate with any official or agency of the United States having powers or duties under the provisions of the said act of congress for the acquisition, construction, expansion, rehabilitation or conversion of facilities necessary for the administration and training of units of the state military department and reserve components of the armed forces of the United States. The provisions of the said act of congress are hereby accepted by this state and this state will observe and comply with the requirements thereof. [1989 c 19 § 61; 1953 c 181 § 1; 1953 c 277 § 4.]

Chapter 38.52 RCW EMERGENCY MANAGEMENT

Sections

38.52.005 State military department to administer emergency management program—Local organizations authorized to change name.

38.52.010 Definitions.

38.52.020 Declaration of policy and purpose.

38.52.030 Director—Comprehensive emergency management plan—Statewide enhanced 911 emergency communications network—State coordinator of search and rescue operations—State program for emergency assistance—State coordinator for radioactive and hazardous waste emergency response programs.

38.52.037 Comprehensive state mine rescue plan—Submittal to legislature.

38.52.040 Emergency management council—Members—Ad hoc committees—Function as state emergency response commission—Rules review—Intrastate mutual aid committee.

38.52.050 Governor's general powers and duties.

38.52.070 Local organizations and joint local organizations authorized—Establishment, operation—Emergency powers, procedures.

38.52.080 Outside aid—Rights and liabilities—Claims.

38.52.091 Mutual aid and interlocal agreements—Requirements.

38.52.100 Appropriations—Acceptance of funds, services, etc.

38.52.105 Disaster response account.

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38.52.900 Short title.

38.52.920 Repeal and saving.

38.52.930 Transfer of powers, duties, and functions to state military department.

38.52.940 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Hazardous materials incidents, handling and liability: RCW 70.136.010 through 70.136.070.

38.52.005 State military department to administer emergency management program—Local organizations authorized to change name. The department shall administer the comprehensive emergency management program of the state of Washington as provided for in this chapter. All local organizations, organized and performing emergency management functions pursuant to RCW 38.52.070, may change their name and be called the department/division of emergency management. [1995 c 391 § 1; 1986 c 266 § 22; 1984 c 38 § 1; 1972 ex.s. c 6 § 1.]

Transfer of powers and duties of department of emergency management and office of archaeology and historic preservation—Construction of statutory references: "The department of emergency management and the office of archaeology and historic preservation are hereby abolished and their powers, duties, and functions are hereby transferred to the department of community development. All references to the director of emergency management or the department of emergency management and the office of archaeology and historic preservation in the Revised Code of Washington shall be construed to mean the director or department of community development." [1986 c 266 § 1.]

Additional notes found at www.leg.wa.gov

38.52.010 Definitions. As used in this chapter:

(1) "Emergency management" or "comprehensive emergency management" means the preparation for and the carrying out of all emergency functions, other than functions for which the military forces are primarily responsible, to mitigate, prepare for, respond to, and recover from emergencies and disasters, and to aid victims suffering from injury or damage, resulting from disasters caused by all hazards, whether natural, technological, or human caused, and to provide support for search and rescue operations for persons and property in distress. However, "emergency management" or "comprehensive emergency management" does not mean preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack.

(2) "Local organization for emergency services or management" means an organization created in accordance with the provisions of this chapter by state or local authority to perform local emergency management functions.

(3) "Political subdivision" means any county, city or town.

(4) "Emergency worker" means any person who is registered with a local emergency management organization or the department and holds an identification card issued by the local emergency management director or the department for the purpose of engaging in authorized emergency management activities or is an employee of the state of Washington or any political subdivision thereof who is called upon to perform emergency management activities.

(5) "Injury" as used in this chapter shall mean and include accidental injuries and/or occupational diseases arising out of emergency management activities.

(6)(a) "Emergency or disaster" as used in all sections of this chapter except RCW 38.52.430 shall mean an event or set of circumstances which: (i) Demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrences, or (ii) reaches such a dimension or degree of destructiveness as to warrant the governor declaring a state of emergency pursuant to RCW 43.06.010.

(b) "Emergency" as used in RCW 38.52.430 means an incident that requires a normal police, coroner, fire, rescue,

emergency medical services, or utility response as a result of a violation of one of the statutes enumerated in RCW 38.52.430.

(7) "Search and rescue" means the acts of searching for, rescuing, or recovering by means of ground, marine, or air activity any person who becomes lost, injured, or is killed while outdoors or as a result of a natural, technological, or human caused disaster, including instances involving searches for downed aircraft when ground personnel are used. Nothing in this section shall affect appropriate activity by the department of transportation under chapter 47.68 RCW.

(8) "Executive head" and "executive heads" means the county executive in those charter counties with an elective office of county executive, however designated, and, in the case of other counties, the county legislative authority. In the case of cities and towns, it means the mayor in those cities and towns with mayor-council or commission forms of government, where the mayor is directly elected, and it means the city manager in those cities and towns with council manager forms of government. Cities and towns may also designate an executive head for the purposes of this chapter by ordinance.

(9) "Director" means the adjutant general.

(10) "Local director" means the director of a local organization of emergency management or emergency services.

(11) "Department" means the state military department.

(12) "Emergency response" as used in RCW 38.52.430 means a public agency's use of emergency services during an emergency or disaster as defined in subsection (6)(b) of this section.

(13) "Expense of an emergency response" as used in RCW 38.52.430 means reasonable costs incurred by a public agency in reasonably making an appropriate emergency response to the incident, but shall only include those costs directly arising from the response to the particular incident. Reasonable costs shall include the costs of providing police, coroner, firefighting, rescue, emergency medical services, or utility response at the scene of the incident, as well as the salaries of the personnel responding to the incident.

(14) "Public agency" means the state, and a city, county, municipal corporation, district, town, or public authority located, in whole or in part, within this state which provides or may provide firefighting, police, ambulance, medical, or other emergency services.

(15) "Incident command system" means: (a) An all-hazards, on-scene functional management system that establishes common standards in organization, terminology, and procedures; provides a means (unified command) for the establishment of a common set of incident objectives and strategies during multiagency/multijurisdiction operations while maintaining individual agency/jurisdiction authority, responsibility, and accountability; and is a component of the national interagency incident management system; or (b) an equivalent and compatible all-hazards, on-scene functional management system.

(16) "Radio communications service company" has the meaning ascribed to it in RCW 82.14B.020. [2007 c 292 § 1; 2002 c 341 § 2; 1997 c 49 § 1; 1995 c 391 § 2. Prior: 1993 c 251 § 5; 1993 c 206 § 1; 1986 c 266 § 23; 1984 c 38 § 2; 1979 ex.s. c 268 § 1; 1975 1st ex.s. c 113 § 1; 1974 ex.s. c 171 § 4; 1967 c 203 § 1; 1953 c 223 § 2; 1951 c 178 § 3.]

Finding—Intent—1993 c 251: See note following RCW 38.52.430.

Additional notes found at www.leg.wa.gov

38.52.020 Declaration of policy and purpose. (1)

Because of the existing and increasing possibility of the occurrence of disasters of unprecedented size and destructiveness as defined in RCW 38.52.010(6), and in order to insure that preparations of this state will be adequate to deal with such disasters, to insure the administration of state and federal programs providing disaster relief to individuals, and further to insure adequate support for search and rescue operations, and generally to protect the public peace, health, and safety, and to preserve the lives and property of the people of the state, it is hereby found and declared to be necessary:

(a) To provide for emergency management by the state, and to authorize the creation of local organizations for emergency management in the political subdivisions of the state;

(b) To confer upon the governor and upon the executive heads of the political subdivisions of the state the emergency powers provided herein;

(c) To provide for the rendering of mutual aid among the political subdivisions of the state and with other states and to cooperate with the federal government with respect to the carrying out of emergency management functions;

(d) To provide a means of compensating emergency management workers who may suffer any injury, as herein defined, or death; who suffer economic harm including personal property damage or loss; or who incur expenses for transportation, telephone or other methods of communication, and the use of personal supplies as a result of participation in emergency management activities; and

(e) To provide programs, with intergovernmental cooperation, to educate and train the public to be prepared for emergencies.

(2) It is further declared to be the purpose of this chapter and the policy of the state that all emergency management functions of this state and its political subdivisions be coordinated to the maximum extent with the comparable functions of the federal government including its various departments and agencies of other states and localities, and of private agencies of every type, to the end that the most effective preparation and use may be made of the nation's manpower, resources, and facilities for dealing with any disaster that may occur. [1986 c 266 § 24; 1984 c 38 § 3; 1979 ex.s. c 268 § 2; 1975 1st ex.s. c 113 § 2; 1974 ex.s. c 171 § 5; 1967 c 203 § 2; 1953 c 223 § 1; 1951 c 178 § 2.]

Additional notes found at www.leg.wa.gov

38.52.030 Director—Comprehensive emergency management plan—Statewide enhanced 911 emergency communications network—State coordinator of search and rescue operations—State program for emergency assistance—State coordinator for radioactive and hazardous waste emergency response programs. (1) The director may employ such personnel and may make such expenditures within the appropriation therefor, or from other funds made available for purposes of emergency management, as may be necessary to carry out the purposes of this chapter.

(2) The director, subject to the direction and control of the governor, shall be responsible to the governor for carry-

ing out the program for emergency management of this state. The director shall coordinate the activities of all organizations for emergency management within the state, and shall maintain liaison with and cooperate with emergency management agencies and organizations of other states and of the federal government, and shall have such additional authority, duties, and responsibilities authorized by this chapter, as may be prescribed by the governor.

(3) The director shall develop and maintain a comprehensive, all-hazard emergency plan for the state which shall include an analysis of the natural, technological, or human caused hazards which could affect the state of Washington, and shall include the procedures to be used during emergencies for coordinating local resources, as necessary, and the resources of all state agencies, departments, commissions, and boards. The comprehensive emergency management plan shall direct the department in times of state emergency to administer and manage the state's emergency operations center. This will include representation from all appropriate state agencies and be available as a single point of contact for the authorizing of state resources or actions, including emergency permits. The comprehensive emergency management plan must specify the use of the incident command system for multiagency/multijurisdiction operations. The comprehensive, all-hazard emergency plan authorized under this subsection may not include preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack. This plan shall be known as the comprehensive emergency management plan.

(4) In accordance with the comprehensive emergency management plans and the programs for the emergency management of this state, the director shall procure supplies and equipment, institute training programs and public information programs, and shall take all other preparatory steps, including the partial or full mobilization of emergency management organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of emergency management personnel in time of need.

(5) The director shall make such studies and surveys of the industries, resources, and facilities in this state as may be necessary to ascertain the capabilities of the state for emergency management, and shall plan for the most efficient emergency use thereof.

(6) The emergency management council shall advise the director on all aspects of the communications and warning systems and facilities operated or controlled under the provisions of this chapter.

(7) The director, through the state enhanced 911 coordinator, shall coordinate and facilitate implementation and operation of a statewide enhanced 911 emergency communications network.

(8) The director shall appoint a state coordinator of search and rescue operations to coordinate those state resources, services and facilities (other than those for which the state director of aeronautics is directly responsible) requested by political subdivisions in support of search and rescue operations, and on request to maintain liaison with and coordinate the resources, services, and facilities of political subdivisions when more than one political subdivision is engaged in joint search and rescue operations.

(9) The director, subject to the direction and control of the governor, shall prepare and administer a state program for emergency assistance to individuals within the state who are victims of a natural, technological, or human caused disaster, as defined by RCW 38.52.010(6). Such program may be integrated into and coordinated with disaster assistance plans and programs of the federal government which provide to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan for purposes of assistance to individuals affected by a disaster. Further, such program may include, but shall not be limited to, grants, loans, or gifts of services, equipment, supplies, materials, or funds of the state, or any political subdivision thereof, to individuals who, as a result of a disaster, are in need of assistance and who meet standards of eligibility for disaster assistance established by the department of social and health services: PROVIDED, HOWEVER, That nothing herein shall be construed in any manner inconsistent with the provisions of Article VIII, section 5 or section 7 of the Washington state Constitution.

(10) The director shall appoint a state coordinator for radioactive and hazardous waste emergency response programs. The coordinator shall consult with the state radiation control officer in matters relating to radioactive materials. The duties of the state coordinator for radioactive and hazardous waste emergency response programs shall include:

(a) Assessing the current needs and capabilities of state and local radioactive and hazardous waste emergency response teams on an ongoing basis;

(b) Coordinating training programs for state and local officials for the purpose of updating skills relating to emergency mitigation, preparedness, response, and recovery;

(c) Utilizing appropriate training programs such as those offered by the federal emergency management agency, the department of transportation and the environmental protection agency; and

(d) Undertaking other duties in this area that are deemed appropriate by the director. [1997 c 49 § 2; 1995 c 269 § 1201. Prior: 1991 c 322 § 20; 1991 c 54 § 2; 1986 c 266 § 25; 1984 c 38 § 4; 1975 1st ex.s. c 113 § 3; 1973 1st ex.s. c 154 § 58; 1967 c 203 § 3; 1951 c 178 § 4.]

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

Reviser's note: "This act," chapter 54, Laws of 1991, was adopted and ratified by the people at the November 5, 1991, general election (Referendum Bill No. 42).

Hazardous and radioactive wastes: Chapters 70.98, 70.99, 70.105, 70.136 RCW.

Additional notes found at www.leg.wa.gov

38.52.037 Comprehensive state mine rescue plan—Submittal to legislature. The department shall consult with appropriate local, state, federal, and private sector officials in developing a comprehensive state mine rescue plan. The plan shall identify mine rescue resources, set forth a framework for a coordinated response to mine rescue emergencies, identify shortfalls, and recommend solutions.

The draft of the comprehensive state mine rescue plan and a schedule for submittal of the final plan shall be submitted to the legislature on January 13, 1986. [1986 c 266 § 26; 1985 c 459 § 6.]

Additional notes found at www.leg.wa.gov

38.52.040 Emergency management council—Members—Ad hoc committees—Function as state emergency response commission—Rules review—Intrastate mutual aid committee. (1) There is hereby created the emergency management council (hereinafter called the council), to consist of not more than seventeen members who shall be appointed by the adjutant general. The membership of the council shall include, but not be limited to, representatives of city and county governments, sheriffs and police chiefs, the Washington state patrol, the military department, the department of ecology, state and local fire chiefs, seismic safety experts, state and local emergency management directors, search and rescue volunteers, medical professions who have expertise in emergency medical care, building officials, and private industry. The representatives of private industry shall include persons knowledgeable in emergency and hazardous materials management. The councilmembers shall elect a chair from within the council membership. The members of the council shall serve without compensation, but may be reimbursed for their travel expenses incurred in the performance of their duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(2) The emergency management council shall advise the governor and the director on all matters pertaining to state and local emergency management. The council may appoint such ad hoc committees, subcommittees, and working groups as are required to develop specific recommendations for the improvement of emergency management practices, standards, policies, or procedures. The council shall ensure that the governor receives an annual assessment of statewide emergency preparedness including, but not limited to, specific progress on hazard mitigation and reduction efforts, implementation of seismic safety improvements, reduction of flood hazards, and coordination of hazardous materials planning and response activities. The council or a subcommittee thereof shall periodically convene in special session and serve during those sessions as the state emergency response commission required by P.L. 99-499, the emergency planning and community right-to-know act. When sitting in session as the state emergency response commission, the council shall confine its deliberations to those items specified in federal statutes and state administrative rules governing the coordination of hazardous materials policy. The council shall review administrative rules governing state and local emergency management practices and recommend necessary revisions to the director.

(3)(a) The intrastate mutual aid committee is created and is a subcommittee of the emergency management council. The intrastate mutual aid committee consists of not more than five members who must be appointed by the council chair from council membership. The chair of the intrastate mutual aid committee is the military department representative appointed as a member of the council. Meetings of the intrastate mutual aid committee must be held at least annually.

(b) In support of the intrastate mutual aid system established in chapter 38.56 RCW, the intrastate mutual aid committee shall develop and update guidelines and procedures to facilitate implementation of the intrastate mutual aid system by member jurisdictions, including but not limited to the following: Projected or anticipated costs; checklists and forms for requesting and providing assistance; recordkeeping; reim-

bursement procedures; and other implementation issues. These guidelines and procedures are not subject to the rule-making requirements of chapter 34.05 RCW. [2011 1st sp.s. c 21 § 27; 2011 c 336 § 789; 2011 c 79 § 9; 1995 c 269 § 1202; 1988 c 81 § 18; 1984 c 38 § 5; 1979 ex.s. c 57 § 8; 1975-'76 2nd ex.s. c 34 § 82; 1974 ex.s. c 171 § 6; 1951 c 178 § 5.]

Reviser's note: This section was amended by 2011 c 79 § 9, 2011 c 336 § 789, and by 2011 1st sp.s. c 21 § 27, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Additional notes found at www.leg.wa.gov

38.52.050 Governor's general powers and duties. (1)

The governor, through the director, shall have general supervision and control of the emergency management functions in the department, and shall be responsible for the carrying out of the provisions of this chapter, and in the event of disaster beyond local control, may assume direct operational control over all or any part of the emergency management functions within this state.

(2) In performing his or her duties under this chapter, the governor is authorized to cooperate with the federal government, with other states, and with private agencies in all matters pertaining to the emergency management of this state and of the nation.

(3) In performing his or her duties under this chapter and to effect its policy and purpose, the governor is further authorized and empowered:

(a) To make, amend, and rescind the necessary orders, rules, and regulations to carry out the provisions of this chapter within the limits of the authority conferred upon him [or her] herein, with due consideration of the plans of the federal government;

(b) On behalf of this state, to enter into mutual aid arrangements with other states and territories, or provinces of the Dominion of Canada and to coordinate mutual aid interlocal agreements between political subdivisions of this state;

(c) To delegate any administrative authority vested in him [or her] under this chapter, and to provide for the subdelegation of any such authority;

(d) To appoint, with the advice of local authorities, metropolitan or regional area coordinators, or both, when practicable;

(e) To cooperate with the president and the heads of the armed forces, the emergency management agency of the United States, and other appropriate federal officers and agencies, and with the officers and agencies of other states in matters pertaining to the emergency management of the state and nation. [1997 c 49 § 3; 1986 c 266 § 27; 1984 c 38 § 6; 1974 ex.s. c 171 § 7; 1951 c 178 § 6.]

Additional notes found at www.leg.wa.gov

38.52.070 Local organizations and joint local organizations authorized—Establishment, operation—Emergency powers, procedures. (1) Each political subdivision of this state is hereby authorized and directed to establish a local organization or to be a member of a joint local organization for emergency management in accordance with the state comprehensive emergency management plan and program:

PROVIDED, That a political subdivision proposing such establishment shall submit its plan and program for emergency management to the state director and secure his or her recommendations thereon, and verification of consistency with the state comprehensive emergency management plan, in order that the plan of the local organization for emergency management may be coordinated with the plan and program of the state. Local comprehensive emergency management plans must specify the use of the incident command system for multiagency/multijurisdiction operations. No political subdivision may be required to include in its plan provisions for the emergency evacuation or relocation of residents in anticipation of nuclear attack. If the director's recommendations are adverse to the plan as submitted, and, if the local organization does not agree to the director's recommendations for modification to the proposal, the matter shall be referred to the council for final action. The director may authorize two or more political subdivisions to join in the establishment and operation of a joint local organization for emergency management as circumstances may warrant, in which case each political subdivision shall contribute to the cost of emergency management upon such fair and equitable basis as may be determined upon by the executive heads of the constituent subdivisions. If in any case the executive heads cannot agree upon the proper division of cost the matter shall be referred to the council for arbitration and its decision shall be final. When two or more political subdivisions join in the establishment and operation of a joint local organization for emergency management each shall pay its share of the cost into a special pooled fund to be administered by the treasurer of the most populous subdivision, which fund shall be known as the emergency management fund. Each local organization or joint local organization for emergency management shall have a director who shall be appointed by the executive head of the political subdivision, and who shall have direct responsibility for the organization, administration, and operation of such local organization for emergency management, subject to the direction and control of such executive officer or officers. In the case of a joint local organization for emergency management, the director shall be appointed by the joint action of the executive heads of the constituent political subdivisions. Each local organization or joint local organization for emergency management shall perform emergency management functions within the territorial limits of the political subdivision within which it is organized, and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of this chapter.

(2) In carrying out the provisions of this chapter each political subdivision, in which any disaster as described in RCW 38.52.020 occurs, shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster. Each political subdivision is authorized to exercise the powers vested under this section in the light of the exigencies of an extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements), including, but not limited to, budget law limitations, requirements of competitive bidding and publication of notices, pro-

visions pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes, and the appropriation and expenditures of public funds. [1997 c 49 § 4; 1986 c 266 § 28; 1984 c 38 § 7; 1974 ex.s. c 171 § 9; 1951 c 178 § 8.]

Additional notes found at www.leg.wa.gov

38.52.080 Outside aid—Rights and liabilities—

Claims. (1) Whenever the employees of any political subdivision are rendering outside aid pursuant to the authority contained in RCW 38.52.070 such employees shall have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the political subdivisions in which they are normally employed.

(2) The political subdivision in which any equipment is used pursuant to this section shall be liable for any loss or damage thereto and shall pay any expense incurred in the operation and maintenance thereof. No claim for such loss, damage, or expense shall be allowed unless, within sixty days after the same is sustained or incurred, an itemized notice of such claim under oath is served by mail or otherwise upon the executive head of such political subdivision where the equipment was used. The term "employee" as used in this section shall mean, and the provisions of this section shall apply with equal effect to, volunteer auxiliary employees, and emergency workers.

(3) The foregoing rights, privileges, and obligations shall also apply in the event such aid is rendered outside the state, provided that payment or reimbursement in such case shall or may be made by the state or political subdivision receiving such aid pursuant to a reciprocal mutual aid agreement or compact with such state or by the federal government. [1984 c 38 § 8; 1974 ex.s. c 171 § 10; 1951 c 178 § 9.]

38.52.091 Mutual aid and interlocal agreements—

Requirements. (1) The director of each local organization for emergency management may, in collaboration with other public and private agencies within this state, develop or cause to be developed mutual aid arrangements for reciprocal emergency management aid and assistance in case of disaster too great to be dealt with unassisted. Such arrangements must be consistent with the state emergency management plan and program, and in time of emergency it is the duty of each local organization for emergency management to render assistance in accordance with the provisions of such mutual aid arrangements. The adjutant general shall maintain and distribute a mutual aid and interlocal agreement handbook.

(2) The adjutant general and the director of each local organization for emergency management may, subject to the approval of the governor, enter into mutual aid arrangements with emergency management agencies or organizations in other states for reciprocal emergency management aid and assistance in case of disaster too great to be dealt with unassisted. All such arrangements must contain the language and provisions in subsection (3) of this section.

(3) Mutual aid and interlocal agreements must include the following:

Purpose

The purpose must state the reason the mutual aid or interlocal agreement or compact is coordinated, the parties to the agreement or compact, and the assistance to be provided.

Authorization

Article I, section 10 of the Constitution of the United States permits a state to enter into an agreement or compact with another state, subject to the consent of Congress. Congress, through enactment of Title 50 U.S.C. Sections 2281(g), 2283 and the Executive Department, by issuance of Executive Orders No. 10186 of December 1, 1950, encourages the states to enter into emergency, disaster and civil defense mutual aid agreements or pacts.

Implementation

The conditions that guide the agreement or compacts may include, but are not limited to:

(a) A statement of which authority or authorities are authorized to request and receive assistance and the conditions that must exist for the request or receipt of assistance.

(b) A statement of how the requests for assistance may be made, what documentation of the request is required, the specifics of any details included in the request, and the required approval for the request.

(c) A statement of the direction and control relationship between the personnel and equipment provided by the jurisdiction to the requester and the requirements of the requester to coordinate the activities of the jurisdiction providing the assets.

(d) A statement of the circumstances by which the assisting jurisdiction may withdraw support from the requester and the method by which this is to be communicated.

General Fiscal Provisions

The terms of reimbursement must be stated defining the relationship between the requesting jurisdiction and the aiding jurisdiction, when reimbursement will be made, and details of the claim for reimbursement. The provisions may include statements that discuss but are not limited to:

(a) A statement of what costs are incurred by the requesting jurisdiction.

(b) A statement of what costs and compensation benefits are made to individuals from the aiding jurisdiction by the requesting jurisdiction.

Privileges and Immunities

The conditions and immunities that are enjoyed by the individuals from the aiding jurisdiction to the requesting jurisdiction must be stated. These provisions may include but are not limited to:

(a) A statement of the privileges and immunities from liability and the law an employee of a supporting jurisdiction enjoys while supporting the requesting jurisdiction.

(b) A statement of the privileges and immunities from liability and the law a volunteer from a supporting jurisdiction enjoys while supporting the requesting jurisdiction.

(c) A statement on the use of the national guard between the requesting and supporting jurisdictions.

(d) A hold harmless agreement between the signatory jurisdictions.

(e) The precedence this agreement takes with existing agreements.

(f) A time line by which information required by the agreement is exchanged and updated annually.

(g) The time in which the agreement becomes effective.

(h) The time and conditions when a signatory may withdraw and render the agreement ineffective. [1997 c 195 § 1.]

38.52.100 Appropriations—Acceptance of funds, services, etc. (1) Each political subdivision shall have the power to make appropriations in the manner provided by law for making appropriations for the ordinary expenses of such political subdivision for the payment of expenses of its local organization for emergency management.

(2) Whenever the federal government or any agency or officer thereof shall offer to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of emergency management, the state, acting through the governor, or such political subdivision, acting with the consent of the governor and through its executive head, may accept such offer and upon such acceptance the governor of the state or executive head of such political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

(3) Whenever any person, firm, or corporation shall offer to the state or to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for the purposes of emergency management, the state, acting through the governor, or such political subdivision, acting through its executive head, may accept such offer and upon such acceptance the governor of the state or executive head of such political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision, and subject to the terms of the offer. [1984 c 38 § 10; 1974 ex.s. c 171 § 12; 1951 c 178 § 12.]

38.52.105 Disaster response account. The disaster response account is created in the state treasury. Moneys may be placed in the account from legislative appropriations and transfers, federal appropriations, or any other lawful source. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for support of state agency and local government disaster response and recovery efforts and to reimburse the workers' compensation funds and self-insured employers under RCW 51.16.220. During the 2009-2011 fiscal biennium, the legislature may transfer from the disaster response account to the state drought preparedness account such amounts as reflect the excess fund balance of the account to support expenditures related to a state drought declaration. During the 2009-2011 fiscal biennium, the legislature may transfer from the disaster response account to the state general fund such amounts as

reflect the excess fund balance of the account. [2010 2nd sp.s. c 1 § 901; 2010 1st sp.s. c 37 § 919; 2005 c 422 § 2; 2002 c 371 § 903; 1997 c 251 § 1.]

Effective date—2010 2nd sp.s. c 1: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [December 11, 2010]." [2010 2nd sp.s. c 1 § 909.]

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Rules—Effective date—2005 c 422: See notes following RCW 51.16.220.

Additional notes found at www.leg.wa.gov

38.52.110 Use of existing services and facilities—Impressment of citizenry. (1) In carrying out the provisions of this chapter, the governor and the executive heads of the political subdivisions of the state are directed to utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the state, political subdivisions, and all other municipal corporations thereof including but not limited to districts and quasi municipal corporations organized under the laws of the state of Washington to the maximum extent practicable, and the officers and personnel of all such departments, offices, and agencies are directed to cooperate with and extend such services and facilities to the governor and to the emergency management organizations of the state upon request notwithstanding any other provision of law.

(2) The governor, the chief executive of counties, cities and towns and the emergency management directors of local political subdivisions appointed in accordance with this chapter, in the event of a disaster, after proclamation by the governor of the existence of such disaster, shall have the power to command the service and equipment of as many citizens as considered necessary in the light of the disaster proclaimed: PROVIDED, That citizens so commandeered shall be entitled during the period of such service to all privileges, benefits and immunities as are provided by this chapter and federal and state emergency management regulations for registered emergency workers. [1984 c 38 § 11; 1974 ex.s. c 171 § 13; 1971 ex.s. c 8 § 1; 1955 c 210 § 1; 1951 c 178 § 13.]

38.52.120 Political activity prohibited. No organization for emergency management established under the authority of this chapter shall participate in any form of political activity, nor shall it be employed directly or indirectly for political purposes. [1984 c 38 § 12; 1974 ex.s. c 171 § 14; 1951 c 178 § 14.]

38.52.140 Status of civil service employee preserved. Any civil service employee of the state of Washington or of any political subdivision thereof while on leave of absence and on duty with any emergency management agency authorized under the provisions of this chapter shall be preserved in his or her civil service status as to seniority and retirement rights so long as he or she regularly continues to make the usual contributions incident to the retention of such beneficial rights as if he or she were not on leave of absence. [2011 c 336 § 790; 1984 c 38 § 13; 1974 ex.s. c 171 § 16; 1951 c 178 § 16.]

38.52.150 Orders, rules, regulations—Enforcement—Availability—Penalty. (1) It shall be the duty of every organization for emergency management established pursuant to this chapter and of the officers thereof to execute and enforce such orders, rules, and regulations as may be made by the governor under authority of this chapter. Each such organization shall have available for inspection at its office all orders, rules, and regulations made by the governor, or under his or her authority.

(2)(a) Except as provided in (b) of this subsection, every violation of any rule, regulation, or order issued under the authority of this chapter is a misdemeanor.

(b) A second offense hereunder the same is a gross misdemeanor. [2003 c 53 § 211; 1984 c 38 § 14; 1974 ex.s. c 171 § 17; 1951 c 178 § 18.]

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

38.52.160 Matching funds from political subdivision may be required. The emergency management agency is hereby authorized to require of any political subdivision to which funds are allocated under this chapter for any project, use or activity that such subdivision shall provide matching funds in equal amounts with respect to such project, use or activity. [1984 c 38 § 15; 1974 ex.s. c 171 § 18; 1951 c 178 § 19.]

38.52.170 Plan for federal area. Whenever the director finds that it will be in the interest of the emergency management of this state or of the United States, the director may, with the approval of the governor, agree with the federal government, or any agency thereof carrying on activities within this state, upon a plan of emergency management applicable to a federally owned area, which plan may or may not conform to all of the other provisions of this chapter with the view to integrating federally owned areas into the comprehensive plan and program of the emergency management of this state. Such plan may confer upon persons carrying out such plan any or all of the rights, powers, privileges and immunities granted employees or representatives of the state and/or its political subdivisions by this chapter. The plan of emergency management authorized under this section may not include preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack. [1986 c 266 § 30; 1984 c 38 § 16; 1974 ex.s. c 171 § 19; 1951 c 178 § 20.]

Additional notes found at www.leg.wa.gov

38.52.180 Liability for property damage, bodily injury, death—Immunity—Assumption by state—Indemnification—Immunity from liability for covered volunteers. (1) There shall be no liability on the part of anyone including any person, partnership, corporation, the state of Washington or any political subdivision thereof who owns or maintains any building or premises which have been designated by a local organization for emergency management as a shelter from destructive operations or attacks by enemies of the United States for any injuries sustained by any person while in or upon said building or premises, as a result of the condition of said building or premises or as a result of any act or omission, or in any way arising from the designation of such premises as a shelter, when such person has entered or

gone upon or into said building or premises for the purpose of seeking refuge therein during destructive operations or attacks by enemies of the United States or during tests ordered by lawful authority, except for an act of willful negligence by such owner or occupant or his or her servants, agents, or employees.

(2) All legal liability for damage to property or injury or death to persons (except an emergency worker, regularly enrolled and acting as such), caused by acts done or attempted during or while traveling to or from an emergency or disaster, search and rescue, or training or exercise authorized by the department in preparation for an emergency or disaster or search and rescue, under the color of this chapter in a bona fide attempt to comply therewith, except as provided in subsections (3), (4), and (5) of this section regarding covered volunteer emergency workers, shall be the obligation of the state of Washington. Suits may be instituted and maintained against the state for the enforcement of such liability, or for the indemnification of persons appointed and regularly enrolled as emergency workers while actually engaged in emergency management duties, or as members of any agency of the state or political subdivision thereof engaged in emergency management activity, or their dependents, for damage done to their private property, or for any judgment against them for acts done in good faith in compliance with this chapter: PROVIDED, That the foregoing shall not be construed to result in indemnification in any case of willful misconduct, gross negligence, or bad faith on the part of any agent of emergency management: PROVIDED, That should the United States or any agency thereof, in accordance with any federal statute, rule, or regulation, provide for the payment of damages to property and/or for death or injury as provided for in this section, then and in that event there shall be no liability or obligation whatsoever upon the part of the state of Washington for any such damage, death, or injury for which the United States government assumes liability.

(3) No act or omission by a covered volunteer emergency worker while engaged in a covered activity shall impose any liability for civil damages resulting from such an act or omission upon:

- (a) The covered volunteer emergency worker;
- (b) The supervisor or supervisors of the covered volunteer emergency worker;
- (c) Any facility or their officers or employees;
- (d) The employer of the covered volunteer emergency worker;
- (e) The owner of the property or vehicle where the act or omission may have occurred during the covered activity;
- (f) Any local organization that registered the covered volunteer emergency worker; and
- (g) The state or any state or local governmental entity.

(4) The immunity in subsection (3) of this section applies only when the covered volunteer emergency worker was engaged in a covered activity:

- (a) Within the scope of his or her assigned duties;
- (b) Under the direction of a local emergency management organization or the department, or a local law enforcement agency for search and rescue; and
- (c) The act or omission does not constitute gross negligence or willful or wanton misconduct.

(5) For purposes of this section:

(a) "Covered volunteer emergency worker" means an emergency worker as defined in RCW 38.52.010 who (i) is not receiving or expecting compensation as an emergency worker from the state or local government, or (ii) is not a state or local government employee unless on leave without pay status.

(b) "Covered activity" means:

(i) Providing assistance or transportation authorized by the department during an emergency or disaster or search and rescue as defined in RCW 38.52.010, whether such assistance or transportation is provided at the scene of the emergency or disaster or search and rescue, at an alternative care site, at a hospital, or while in route to or from such sites or between sites; or

(ii) Participating in training or exercise authorized by the department in preparation for an emergency or disaster or search and rescue.

(6) Any requirement for a license to practice any professional, mechanical, or other skill shall not apply to any authorized emergency worker who shall, in the course of performing his or her duties as such, practice such professional, mechanical, or other skill during an emergency described in this chapter.

(7) The provisions of this section shall not affect the right of any person to receive benefits to which he or she would otherwise be entitled under this chapter, or under the workers' compensation law, or under any pension or retirement law, nor the right of any such person to receive any benefits or compensation under any act of congress. [2011 c 336 § 791; 2007 c 292 § 2; 1987 c 185 § 7; 1984 c 38 § 17; 1974 ex.s. c 171 § 20; 1971 ex.s. c 8 § 2; 1953 c 145 § 1; 1951 c 178 § 11.]

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

38.52.190 Compensation for injury or death—Chapter exclusive. Except as provided in this chapter, an emergency worker and his or her dependents shall have no right to receive compensation from the state, from the agency, from the local organization for emergency management with which he or she is registered, or from the county or city which has empowered the local organization for emergency management to register him or her and direct his or her activities, for an injury or death arising out of and occurring in the course of his or her activities as an emergency worker. [2011 c 336 § 792; 1984 c 38 § 18; 1974 ex.s. c 171 § 21; 1953 c 223 § 3.]

38.52.195 Exemption from liability while providing construction, equipment, or work. Notwithstanding any other provision of law, no person, firm, corporation, or other entity acting under the direction or control of the proper authority to provide construction, equipment, or work as provided for in RCW 38.52.110, 38.52.180, 38.52.195, 38.52.205, 38.52.207, 38.52.220, and 38.52.390 while complying with or attempting to comply with RCW 38.52.110, 38.52.180, 38.52.195, 38.52.205, 38.52.207, 38.52.220, and 38.52.390 or any rule or regulation promulgated pursuant to the provisions of RCW 38.52.110, 38.52.180, 38.52.195, 38.52.205, 38.52.207, 38.52.220, and 38.52.390 shall be liable for the death of or any injury to persons or damage to

property as a result of any such activity: PROVIDED, That said exemption shall only apply where all of the following conditions occur:

(1) Where, at the time of the incident the worker is performing services as an emergency worker, and is acting within the course of his or her duties as an emergency worker;

(2) Where, at the time of the injury, loss, or damage, the organization for emergency management which the worker is assisting is an approved organization for emergency management;

(3) Where the injury, loss, or damage is proximately caused by his or her service either with or without negligence as an emergency worker;

(4) Where the injury, loss, or damage is not caused by the intoxication of the worker; and

(5) Where the injury, loss, or damage is not due to willful misconduct or gross negligence on the part of a worker. [2011 c 336 § 793; 1984 c 38 § 19; 1974 ex.s. c 171 § 22; 1971 ex.s. c 8 § 7.]

38.52.1951 Application of exemption from liability for architects and engineers. For purposes of the liability of an architect or engineer serving as a volunteer emergency worker, the exemption from liability provided under RCW 38.52.195 extends to all damages, so long as the conditions specified in RCW 38.52.195 (1) through (5) occur. [1993 c 206 § 2.]

38.52.198 Emergency care, rescue, assistance, or recovery services in mine rescue or recovery work—Immunity from liability. No person engaged in mine rescue or recovery work who, in good faith, renders emergency care, rescue, assistance, or recovery services at the scene of any emergency at or in a mine in this state or who employs, sponsors, or represents any person rendering emergency care, rescue, assistance, or recovery services shall be liable for any civil damages as a result of any act or omission by any person in rendering emergency care, rescue, assistance, or recovery service. [1985 c 459 § 9.]

Additional notes found at www.leg.wa.gov

38.52.200 Liability for compensation is in lieu of other liability—Exception. Liability for the compensation provided by this chapter, as limited by the provisions thereof, is in lieu of any other liability whatsoever to an emergency worker or his or her dependents or any other person on the part of the state, the agency, the local organization for emergency management with which the emergency worker is registered, and the county or city which has empowered the local organization for emergency management to register him or her and direct his or her activities, for injury or death arising out of and in the course of his or her activities while on duty as an emergency worker: PROVIDED, That nothing in this chapter shall limit or bar the liability of the state or its political subdivisions engaged in proprietary functions as distinguished from governmental functions that may exist by reason of injury or death sustained by an emergency worker. [2011 c 336 § 794; 1984 c 38 § 20; 1974 ex.s. c 171 § 23; 1953 c 223 § 9.]

38.52.205 Claims arising from emergency management related activities—Filing—Contents. All claims against the state for property damages or indemnification therefor arising from emergency management related activities will be presented to and filed with the director of financial management. Contents of all such claims shall conform to the tort claim filing requirements found in RCW 4.92.100 as now or hereafter amended. [1984 c 38 § 21; 1979 c 151 § 43; 1977 ex.s. c 144 § 6; 1974 ex.s. c 171 § 24; 1971 ex.s. c 8 § 4.]

38.52.207 Claims arising from emergency management related activities—Filing—Consideration, adjustment, settlement, etc., by director—Effect. The director, with the approval of the attorney general, may consider, ascertain, adjust, determine, compromise and settle property loss or damage claims arising out of conduct or circumstances for which the state of Washington would be liable in law for money damages of two thousand dollars or less. The acceptance by the claimant of any such award, compromise, or settlement shall be final and conclusive on the claimant; and upon the state of Washington, unless procured by fraud, and shall constitute a complete release of any claim against the state of Washington. A request for administrative settlement shall not preclude a claimant from filing court action pending administrative determination, or limit the amount recoverable in such a suit, or constitute an admission against interest of either the claimant or the state. [1986 c 266 § 31; 1984 c 38 § 22; 1974 ex.s. c 171 § 25; 1971 ex.s. c 8 § 5.]

Additional notes found at www.leg.wa.gov

38.52.210 Compensation boards—Established. (1) In each local organization for emergency management established by the legislative authority of the county in accordance with the provisions of RCW 38.52.070, there is hereby created and established a compensation board for the processing of claims as provided in this chapter. The compensation board shall be composed of: (a) The county executive if the county has an elected county executive or, if it does not, one member of the county legislative authority selected by the authority. The executive or the member will serve as the chair of the compensation board; (b) the county director of emergency services; (c) the prosecuting attorney; (d) the emergency services coordinator for medical and health services; and (e) the county auditor who will serve as secretary of the compensation board.

(2) In each local organization for emergency management established by cities and towns in accordance with RCW 38.52.070, there is hereby created and established a compensation board for the processing of claims as provided in this chapter. The compensation board shall be composed of the mayor; the city director of emergency management; one councilmember or commissioner selected by the council or the commission; the city attorney or corporation counsel; and the local coordinator of medical and health services. The councilmember or commissioner so selected shall serve as the chair of the compensation board and the city director of emergency management shall serve as secretary of the board. [1986 c 266 § 32; 1984 c 38 § 23; 1981 c 213 § 6; 1974 ex.s. c 171 § 26; 1953 c 223 § 4.]

Additional notes found at www.leg.wa.gov

38.52.220 Compensation boards—Meetings—Claims not necessitating board meeting. Said compensation board shall meet on the call of its chair on a regular monthly meeting day when there is business to come before it. The chair shall be required to call a meeting on any monthly meeting day when any claim for compensation under this chapter has been submitted to the board: PROVIDED, That as to claims involving amounts of two thousand dollars or less, the local organization director shall submit recommendations directly to the state without convening a compensation board. [2011 c 336 § 795; 1984 c 38 § 24; 1971 ex.s. c 8 § 3; 1953 c 223 § 5.]

38.52.230 Compensation boards—Attendance of witnesses, oaths, rules—Members uncompensated. The compensation board, in addition to other powers herein granted, shall have the power to compel the attendance of witnesses to testify before it on all matters connected with the operation of this chapter and its chair or any member of said board may administer oath to such witnesses; to make all necessary rules and regulations for its guidance in conformity with the provisions of this chapter: PROVIDED, HOWEVER, That no compensation or emoluments shall be paid to any member of said board for any duties performed as a member of said compensation board. [2011 c 336 § 796; 1953 c 223 § 6.]

38.52.240 Compensation boards—Duties as to compensation applications. The compensation board shall hear and decide all applications for compensation under this chapter. The board shall submit its recommendations to the director on such forms as he or she may prescribe. In case the decision of the director is different from the recommendation of the compensation board, the matter shall be submitted to the state emergency management council for action. [1986 c 266 § 33; 1984 c 38 § 25; 1974 ex.s. c 171 § 27; 1953 c 223 § 7.]

Additional notes found at www.leg.wa.gov

38.52.250 Compensation boards—Quorum—Transmittal of minutes, claims—Appeal to department. A majority of the compensation board shall constitute a quorum, and no business shall be transacted when a majority is not present, and no claim shall be allowed when a majority of the board has not voted favorably thereon.

The board shall send a copy of the minutes of all meetings to the department with copies of all material pertaining to each claim submitted and noting the action of the board on each claim. Appeals may be made by the emergency worker from any action by the board within one year by writing to the department. [1986 c 266 § 34; 1984 c 38 § 26; 1974 ex.s. c 171 § 28; 1953 c 223 § 8.]

Additional notes found at www.leg.wa.gov

38.52.260 When compensation furnished. Compensation shall be furnished to an emergency worker either within or without the state for any injury arising out of and occurring in the course of his or her activities as an emergency worker, and for the death of any such worker if the injury proximately causes death, in those cases where the following conditions occur:

(1) Where, at the time of the injury the emergency worker is performing services as an emergency worker, and

is acting within the course of his or her duties as an emergency worker.

(2) Where, at the time of the injury the local organization for emergency management with which the emergency worker is registered is an approved local organization for emergency management.

(3) Where the injury is proximately caused by his or her service as an emergency worker, either with or without negligence.

(4) Where the injury is not caused by the intoxication of the injured emergency worker.

(5) Where the injury is not intentionally self-inflicted. [2011 c 336 § 797; 1984 c 38 § 27; 1974 ex.s. c 171 § 29; 1953 c 223 § 10.]

38.52.270 Minors entitled to benefits. Emergency workers who are minors shall have the same rights as adults for the purpose of receiving benefits under the provisions of this chapter, but this provision shall not prevent the requirements that a guardian be appointed to receive and administer such benefits until the majority of such minor. Work as an emergency worker shall not be deemed as employment or in violation of any of the provisions of chapter 49.12 RCW. [1984 c 38 § 28; 1974 ex.s. c 171 § 30; 1953 c 223 § 11.]

38.52.280 Compensation and benefits limited by appropriation. No compensation or benefits shall be paid or furnished to emergency workers or their dependents pursuant to the provisions of this chapter except from money appropriated for the purpose of this chapter. [1984 c 38 § 29; 1974 ex.s. c 171 § 31; 1953 c 223 § 12.]

38.52.290 Applicability of workers' compensation law. Insofar as not inconsistent with the provisions of this chapter, the maximum amount payable to a claimant shall be not greater than the amount allowable for similar disability under the workers' compensation act, chapter 51.32 RCW as amended by chapter 289, Laws of 1971 ex.sess., and any amendments thereto. "Employee" as used in said title shall include an emergency worker when liability for the furnishing of compensation and benefits exists pursuant to the provisions of this chapter and as limited by the provisions of this chapter. Where liability for compensation and benefits exists, such compensation and benefits shall be provided in accordance with the applicable provisions of said sections of chapter 51.32 RCW and at the maximum rate provided therein, subject, however, to the limitations set forth in this chapter. [1987 c 185 § 8; 1984 c 38 § 30; 1974 ex.s. c 171 § 32; 1971 ex.s. c 289 § 71; 1953 c 223 § 13.]

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

Additional notes found at www.leg.wa.gov

38.52.300 Right of action against third party. If the injury to an emergency worker is due to the negligence or wrong of another not on emergency duty, the injured worker, or if death results from the injury, the surviving spouse, children, parents or dependents, as the case may be, shall elect whether to take under this chapter or seek a remedy against such other, such election to be in advance of any suit under this chapter; and if the surviving spouse takes under this

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chapter, the cause of action against such other shall be assigned to the department; if the other choice is made, the compensation under this chapter shall be only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated for such case under authority of this chapter: PROVIDED, That the department shall prosecute all claims assigned to it and do any and all things necessary to recover on behalf of the state any and all amounts which an employer or insurance carrier might recover under the provisions of the law. [1986 c 266 § 35; 1984 c 38 § 31; 1973 1st ex.s. c 154 § 59; 1953 c 223 § 14.]

Additional notes found at www.leg.wa.gov

38.52.310 Coverage, classification, registration, of workers. The department shall establish by rule and regulation various classes of emergency workers, the scope of the duties of each class, and the conditions under which said workers shall be deemed to be on duty and covered by the provisions of this chapter. The department shall also adopt rules and regulations prescribing the manner in which emergency workers of each class are to be registered. [1986 c 266 § 36; 1984 c 38 § 32; 1974 ex.s. c 171 § 33; 1953 c 223 § 15.]

Additional notes found at www.leg.wa.gov

38.52.320 Schedule of payments. The department shall provide each compensation board with the approved maximum schedule of payments for injury or death prescribed in chapter 51.32 RCW: PROVIDED, That nothing in this chapter shall be construed as establishing any liability on the part of the department of labor and industries. [1986 c 266 § 37; 1984 c 38 § 33; 1974 ex.s. c 171 § 34; 1953 c 223 § 16.]

Additional notes found at www.leg.wa.gov

38.52.330 Expenditures authorized—Claims, payment and disposition—Appeals. The department is authorized to make all expenditures necessary and proper to carry out the provisions of this chapter including payments to claimants for compensation as emergency workers and their dependents; to adjust and dispose of all claims submitted by a local compensation board. When medical treatment is necessary, the department is authorized to make medical and compensation payments on an interim basis. Nothing herein shall be construed to mean that the department or the state emergency management council or its officers or agents shall have the final decision with respect to the compensability of any case or the amount of compensation or benefits due, but any emergency worker or his or her dependents shall have the same right of appeal from any order, decision, or award to the same extent as provided in chapter 51.32 RCW. [1986 c 266 § 38; 1984 c 38 § 34; 1979 ex.s. c 268 § 3; 1974 ex.s. c 171 § 35; 1971 ex.s. c 289 § 72; 1953 c 223 § 17.]

Additional notes found at www.leg.wa.gov

38.52.340 Benefits under other compensation plans. Nothing in this chapter shall deprive any emergency worker or his or her dependents of any right to compensation for injury or death sustained in the course of his or her regular employment even though his or her regular work is under direction of emergency management authorities: PRO-

VIDED, That such worker, if he or she is eligible for some other compensation plan, and receives the benefits of such plan shall not also receive any compensation under this chapter. The department shall adopt such rules and regulations as may be necessary to protect the rights of such workers and may enter into agreements with authorities in charge of other compensation plans to insure protection of such workers: PROVIDED, That if the compensation from some other plan is less than would have been available under this chapter, he or she shall be entitled to receive the deficiency between the amount received under such other plan and the amount available under this chapter. [1986 c 266 § 39; 1984 c 38 § 35; 1974 ex.s. c 171 § 36; 1953 c 223 § 18.]

Additional notes found at www.leg.wa.gov

38.52.350 Benefits furnished under federal law—Reduction of state benefits. Should the United States or any agent thereof, in accordance with any federal statute or rule or regulation, furnish monetary assistance, benefits, or other temporary or permanent relief to emergency workers or to their dependents for injuries arising out of and occurring in the course of their activities as emergency workers, then the amount of compensation which any emergency worker or his or her dependents are otherwise entitled to receive from the state of Washington as provided herein, shall be reduced by the amount of monetary assistance, benefits, or other temporary or permanent relief the emergency worker or his or her dependents have received and will receive from the United States or any agent thereof as a result of his or her injury. [2011 c 336 § 798; 1984 c 38 § 36; 1974 ex.s. c 171 § 37; 1953 c 223 § 19.]

38.52.360 Medical, surgical or hospital treatment. If, in addition to monetary assistance, benefits or other temporary or permanent relief, the United States or any agent thereof furnishes medical, surgical or hospital treatment or any combination thereof to an injured emergency worker, then the emergency worker has no right to receive similar medical, surgical or hospital treatment as provided in this chapter. However, the department may furnish medical, surgical or hospital treatment as part of the compensation provided under the provisions of this chapter. [1986 c 266 § 40; 1984 c 38 § 37; 1974 ex.s. c 171 § 38; 1953 c 223 § 20.]

Additional notes found at www.leg.wa.gov

38.52.370 Medical, surgical or hospital treatment—Reimbursement. If, in addition to monetary assistance, benefits, or other temporary or permanent relief, the United States or any agent thereof, will reimburse an emergency worker or his or her dependents for medical, surgical or hospital treatment, or any combination thereof, furnished to the injured emergency worker, the emergency worker has no right to receive similar medical, surgical or hospital treatment as provided in this chapter, but the department, may furnish a medical, surgical or hospital treatment as part of the compensation provided under the provisions of this chapter and apply to the United States or its agent for the reimbursement which will be made to the emergency worker or his or her dependents. As a condition to the furnishing of such medical, surgical or hospital treatment, the department shall require the emergency worker and his dependents to assign to the state of

Washington, for the purpose of reimbursing for any medical, surgical or hospital treatment furnished or to be furnished by the state, any claim or right such emergency worker or his or her dependents may have to reimbursement from the United States or any agent thereof. [1986 c 266 § 41; 1984 c 38 § 38; 1974 ex.s. c 171 § 39; 1953 c 223 § 21.]

Additional notes found at www.leg.wa.gov

38.52.380 State compensation denied if payment prevents federal benefits. If the furnishing of compensation under the provisions of this chapter to an emergency worker or his or her dependents prevents such emergency worker or his or her dependents from receiving assistance, benefits, or other temporary or permanent relief under the provisions of a federal statute or rule or regulation, then the emergency worker and his or her dependents shall have no right to, and shall not receive, any compensation from the state of Washington under the provisions of this chapter for any injury for which the United States or any agent thereof will furnish assistance, benefits, or other temporary or permanent relief in the absence of the furnishing of compensation by the state of Washington. [2011 c 336 § 799; 1984 c 38 § 39; 1974 ex.s. c 171 § 40; 1953 c 223 § 22.]

38.52.390 Contracts or work on cost basis for emergency management activities. The governor, or upon his or her direction, the director, or any political subdivision of the state, is authorized to contract with any person, firm, corporation, or entity to provide construction or work on a cost basis to be used in emergency management functions or activities as defined in RCW 38.52.010(1) or as hereafter amended, said functions or activities to expressly include natural disasters, as well as all other emergencies of a type contemplated by RCW 38.52.110, 38.52.180, 38.52.195, 38.52.205, 38.52.207, 38.52.220 and 38.52.390. All funds received for purposes of RCW 38.52.110, 38.52.180, 38.52.195, 38.52.205, 38.52.207, 38.52.220 and 38.52.390, whether appropriated funds, local funds, or from whatever source, may be used to pay for the construction, equipment, or work contracted for under this section. [1986 c 266 § 42; 1984 c 38 § 40; 1971 ex.s. c 8 § 6.]

Additional notes found at www.leg.wa.gov

38.52.400 Search and rescue activities—Powers and duties of local officials. (1) The chief law enforcement officer of each political subdivision shall be responsible for local search and rescue activities. Operation of search and rescue activities shall be in accordance with state and local operations plans adopted by the elected governing body of each local political subdivision. These state and local plans must specify the use of the incident command system for multi-agency/multijurisdiction search and rescue operations. The local emergency management director shall notify the department of all search and rescue missions. The local director of emergency management shall work in a coordinating capacity directly supporting all search and rescue activities in that political subdivision and in registering emergency search and rescue workers for employee status. The chief law enforcement officer of each political subdivision may restrict access to a specific search and rescue area to personnel authorized by him or her. Access shall be restricted only for the period of

time necessary to accomplish the search and rescue mission. No unauthorized person shall interfere with a search and rescue mission.

(2) When search and rescue activities result in the discovery of a deceased person or search and rescue workers assist in the recovery of human remains, the chief law enforcement officer of the political subdivision shall insure compliance with chapter 68.50 RCW. [2011 c 336 § 800; 1997 c 49 § 5; 1986 c 266 § 43; 1984 c 38 § 41; 1979 ex.s. c 268 § 4.]

Additional notes found at www.leg.wa.gov

38.52.410 Search and rescue activities—Distribution of funds for compensation and reimbursement of volunteers. Funds received by the department specifically for the purposes of compensating search and rescue volunteers shall be distributed by the director to help fund medical and compensation coverage provided by this chapter and provide reimbursement by the state for: (1) Costs involved in extraordinary search and rescue operations such as search and rescue operations lasting over twenty-four hours where food and lodging for workers is necessary; (2) excessive transportation and rescue costs incurred by out-of-county residents which would not be otherwise collectible; and (3) compensation as provided in RCW 38.52.020(1)(d) as now or hereafter amended. [1986 c 266 § 44; 1984 c 38 § 42; 1979 ex.s. c 268 § 5.]

Additional notes found at www.leg.wa.gov

38.52.420 Model contingency plan for pollution control facilities and hazardous waste management. (1) The department, in consultation with appropriate federal agencies, the departments of natural resources, fish and wildlife, and ecology, representatives of local government, and any other person the director may deem appropriate, shall assist in the development of a model contingency plan, consistent with other plans required for hazardous materials by federal and state law, to serve as a draft plan for local governments which may be incorporated into the state and local emergency management plans.

(2) The model contingency plan shall:

(a) Include specific recommendations for pollution control facilities which are deemed to be most appropriate for the control, collection, storage, treatment, disposal, and recycling of oil and other spilled material and furthering the prevention and mitigation of such pollution;

(b) Include recommendations for the training of local personnel consistent with other training proposed, funded, or required by federal or state laws for hazardous materials;

(c) Suggest cooperative training exercises between the public and private sector consistent with other training proposed, funded, or required by federal or state laws for hazardous materials;

(d) Identify federal and state laws requiring contingency or management plans applicable or related to prevention of pollution, emergency response capabilities, and hazardous waste management, together with a list of funding sources that local governments may use in development of their specific plans;

(e) Promote formal agreements between the department and local entities for effective spill response; and

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(f) Develop policies and procedures for the augmentation of emergency services and agency spill response personnel through the use of volunteers: PROVIDED, That no contingency plan may require the use of volunteers by a responding responsible party without that party's consent. [1997 c 49 § 6; 1995 c 391 § 4; 1994 c 264 § 11; 1988 c 36 § 11; 1987 c 479 § 3.]

Additional notes found at www.leg.wa.gov

38.52.430 Emergency response caused by person's intoxication—Recovery of costs from convicted person.

A person whose intoxication causes an incident resulting in an appropriate emergency response, and who, in connection with the incident, has been found guilty of or has had their prosecution deferred for (1) driving while under the influence of intoxicating liquor or any drug, RCW 46.61.502; (2) operating an aircraft under the influence of intoxicants or drugs, RCW 47.68.220; (3) use of a vessel while under the influence of alcohol or drugs, RCW 79A.60.040; (4) vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a); or (5) vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), is liable for the expense of an emergency response by a public agency to the incident.

The expense of an emergency response is a charge against the person liable for expenses under this section. The charge constitutes a debt of that person and is collectible by the public agency incurring those costs in the same manner as in the case of an obligation under a contract, expressed or implied. Following a conviction of an offense listed in this section, and prior to sentencing, the prosecution may present to the court information setting forth the expenses incurred by the public agency for its emergency response to the incident. Upon a finding by the court that the expenses are reasonable, the court shall order the defendant to reimburse the public agency. The cost reimbursement shall be included in the sentencing order as an additional monetary obligation of the defendant and may not be substituted for any other fine or cost required or allowed by statute. The court may establish a payment schedule for the payment of the cost reimbursement, separate from any payment schedule imposed for other fines and costs.

In no event shall a person's liability under this section for the expense of an emergency response exceed two thousand five hundred dollars for a particular incident.

If more than one public agency makes a claim for payment from an individual for an emergency response to a single incident under the provisions of this section, and the sum of the claims exceeds the amount recovered, the division of the amount recovered shall be determined by an interlocal agreement consistent with the requirements of chapter 39.34 RCW. [2012 c 183 § 6; 1993 c 251 § 2.]

Effective date—2012 c 183: See note following RCW 2.28.175.

Finding—Intent—1993 c 251: "The legislature finds that a public agency incurs expenses in an emergency response. It is the intent of the legislature to allow a public agency to recover the expenses of an emergency response to an incident involving persons who operate a motor vehicle, boat or vessel, or a civil aircraft while under the influence of an alcoholic beverage or a drug, or the combined influence of an alcoholic beverage and a drug. It is the intent of the legislature that the recovery of expenses of an emergency response under this act shall supplement and shall not supplant other

provisions of law relating to the recovery of those expenses." [1993 c 251 § 1.]

38.52.500 Statewide enhanced 911 service—Finding.

The legislature finds that a statewide emergency communications network of enhanced 911 telephone service, which allows an immediate display of a caller's identification and location, would serve to further the safety, health, and welfare of the state's citizens, and would save lives. The legislature, after reviewing the study outlined in section 1, chapter 260, Laws of 1990, further finds that statewide implementation of enhanced 911 telephone service is feasible and should be accomplished as soon as practicable. [1991 c 54 § 1.]

Additional notes found at www.leg.wa.gov

38.52.501 Statewide enhanced 911 service—Findings. The legislature finds that statewide enhanced 911 has proven to be a lifesaving service and that routing a 911 call to the appropriate public safety answering point with a display of the caller's identification and location should be available for all users of telecommunications services, regardless of the technology used to make and transmit the 911 call. The legislature also finds that it is in the best public interest to ensure that there is adequate ongoing funding to support enhanced 911 service. [2002 c 341 § 1.]

Additional notes found at www.leg.wa.gov

38.52.505 Statewide enhanced 911 service—Automatic location identification—Rules. The adjutant general shall establish rules on minimum information requirements of automatic location identification for the purposes of enhanced 911 emergency service. Such rules shall permit the chief of a local fire department or a chief fire protection officer or such other person as may be designated by the governing body of a city or county to take into consideration local circumstances when approving the accuracy of location information generated when calls are made to 911 from facilities within his or her service area. [1999 c 24 § 2.]

Findings—1999 c 24: "The legislature finds that the citizens of the state increasingly rely on the dependability of enhanced 911, a system that allows the person answering an emergency call to determine the location of the emergency immediately without the caller needing to speak. The legislature further finds that the degree of accuracy of the displayed information must be adequate to permit rapid location of the caller while taking into consideration variables specific to local conditions. The legislature further finds that it is appropriate that rules permitting local fire agencies to evaluate and approve the accuracy of location information relating to their service areas be adopted." [1999 c 24 § 1.]

38.52.510 Statewide enhanced 911 service—Funding by counties. Each county, singly or in combination with one or more adjacent counties, must implement countywide or multicounty-wide enhanced 911 emergency communications systems so that enhanced 911 is available throughout the state. The county must provide funding for the enhanced 911 communications system in the county in an amount equal to the amount the maximum tax under RCW 82.14B.030(1) would generate in the county less any applicable administrative fee charged by the department of revenue or the amount necessary to provide full funding of the system in the county. The state enhanced 911 coordination office established by RCW 38.52.520 must assist and facilitate enhanced 911

implementation throughout the state. [2010 1st sp.s. c 19 § 14; 1991 c 54 § 3.]

Effective dates—2010 1st sp.s. c 19: See note following RCW 82.14B.010.

Additional notes found at www.leg.wa.gov

38.52.520 State enhanced 911 coordination office. A state enhanced 911 coordination office, headed by the state enhanced 911 coordinator, is established in the emergency management division of the department. Duties of the office include:

- (1) Coordinating and facilitating the implementation and operation of enhanced 911 emergency communications systems throughout the state;
- (2) Seeking advice and assistance from, and providing staff support for, the enhanced 911 advisory committee;
- (3) Recommending to the utilities and transportation commission by August 31st of each year the level of the state enhanced 911 excise tax for the following year;
- (4) Considering base needs of individual counties for specific assistance, specify rules defining the purposes for which available state enhanced 911 funding may be expended, with the advice and assistance of the enhanced 911 advisory committee; and
- (5) Providing an annual update to the enhanced 911 advisory committee on how much money each county has spent on:

- (a) Efforts to modernize their existing enhanced 911 emergency communications system; and
- (b) Enhanced 911 operational costs. [2010 1st sp.s. c 19 § 15; 1991 c 54 § 4.]

Effective dates—2010 1st sp.s. c 19: See note following RCW 82.14B.010.

Additional notes found at www.leg.wa.gov

38.52.525 State enhanced 911 coordination office—Public education materials. The state enhanced 911 coordination office may develop and implement public education materials regarding the capability of specific equipment used as part of a private telecommunications system or in the provision of private shared telecommunications services to forward automatic location identification and automatic number identification. [1995 c 243 § 9.]

Findings—Severability—1995 c 243: See notes following RCW 80.36.555.

38.52.530 Enhanced 911 advisory committee (as amended by 2010 1st sp.s. c 7). (Expires December 31, 2011.) The enhanced 911 advisory committee is created to advise and assist the state enhanced 911 coordinator in coordinating and facilitating the implementation and operation of enhanced 911 throughout the state. The director shall appoint members of the committee who represent diverse geographical areas of the state and include state residents who are members of the national emergency number association, the associated public communications officers Washington chapter, the Washington state fire chiefs association, the Washington association of sheriffs and police chiefs, the Washington state council of firefighters, the Washington state council of police officers, the Washington ambulance association, ~~((the state fire protection policy board.))~~ the Washington state firefighters association, the Washington state association of fire marshals, the Washington fire commissioners association, the Washington state patrol, the association of Washington cities, the Washington state association of counties, the utilities and transportation commission or commission staff, a representative of a voice over internet protocol company, and an equal number of representatives of large and small local exchange telephone companies and large and small radio communications service companies offering

commercial mobile radio service in the state. This section expires December 31, 2011. [2010 1st sp.s. c 7 § 51; 2006 c 210 § 1; 2002 c 341 § 3; 2000 c 34 § 1; 1997 c 49 § 7; 1991 c 54 § 5.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

38.52.530 Enhanced 911 advisory committee (as amended by 2010 1st sp.s. c 19). (Effective January 1, 2011.) The enhanced 911 advisory committee is created to advise and assist the state enhanced 911 coordinator in coordinating and facilitating the implementation and operation of enhanced 911 throughout the state. The director shall appoint members of the committee who represent diverse geographical areas of the state and include state residents who are members of the national emergency number association, the ~~(associated)~~ association of public communications officers Washington chapter, the Washington state fire chiefs association, the Washington association of sheriffs and police chiefs, the Washington state council of firefighters, the Washington state council of police officers, the Washington ambulance association, the state fire protection policy board, the Washington fire commissioners association, the Washington state patrol, the association of Washington cities, the Washington state association of counties, the utilities and transportation commission or commission staff, a representative of a voice over internet protocol service company, and an equal number of representatives of large and small local exchange telephone companies and large and small radio communications service companies offering commercial mobile radio service in the state. ~~(This section expires December 31, 2011.)~~ [2010 1st sp.s. c 19 § 16; 2006 c 210 § 1; 2002 c 341 § 3; 2000 c 34 § 1; 1997 c 49 § 7; 1991 c 54 § 5.]

Reviser's note: RCW 38.52.530 was amended twice during the 2010 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective dates—2010 1st sp.s. c 19: See note following RCW 82.14B.010.

Additional notes found at www.leg.wa.gov

38.52.532 Enhanced 911 advisory committee—Annual legislative update. On an annual basis, the enhanced 911 advisory committee must provide an update on the status of enhanced 911 service in the state to the appropriate committees in the legislature. The update must include progress by counties towards creating greater efficiencies in enhanced 911 operations including, but not limited to, regionalization of facilities, centralization of equipment, and statewide purchasing. [2010 1st sp.s. c 19 § 17; 2006 c 210 § 2.]

Effective dates—2010 1st sp.s. c 19: See note following RCW 82.14B.010.

38.52.535 State enhanced 911 coordination office and advisory committee—Uniform national standards. The state enhanced 911 coordination office and the enhanced 911 advisory committee may participate in efforts to set uniform national standards for automatic number identification and automatic location identification data transmission for private telecommunications systems and private shared telecommunications services. [1998 c 245 § 32; 1995 c 243 § 10.]

Findings—Severability—1995 c 243: See notes following RCW 80.36.555.

38.52.540 Enhanced 911 account. (1) The enhanced 911 account is created in the state treasury. All receipts from the state enhanced 911 excise taxes imposed by RCW 82.14B.030 must be deposited into the account. Moneys in the account must be used only to support the statewide coordination and management of the enhanced 911 system, for the implementation of wireless enhanced 911 statewide, for

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the modernization of enhanced 911 emergency communications systems statewide, and to help supplement, within available funds, the operational costs of the system, including adequate funding of counties to enable implementation of wireless enhanced 911 service and reimbursement of radio communications service companies for costs incurred in providing wireless enhanced 911 service pursuant to negotiated contracts between the counties or their agents and the radio communications service companies. For the 2013-2015 fiscal biennium, the account may be used for a criminal history system upgrade in the Washington state patrol and for activities and programs in the military department. A county must show just cause, including but not limited to a true and accurate accounting of the funds expended, for any inability to provide reimbursement to radio communications service companies of costs incurred in providing enhanced 911 service.

(2) Funds generated by the enhanced 911 excise tax imposed by RCW 82.14B.030(5) may not be distributed to any county that has not imposed the maximum county enhanced 911 excise tax allowed under RCW 82.14B.030(1). Funds generated by the enhanced 911 excise tax imposed by RCW 82.14B.030(6) may not be distributed to any county that has not imposed the maximum county enhanced 911 excise tax allowed under RCW 82.14B.030(2).

(3) The state enhanced 911 coordinator, with the advice and assistance of the enhanced 911 advisory committee, is authorized to enter into statewide agreements to improve the efficiency of enhanced 911 services for all counties and shall specify by rule the additional purposes for which moneys, if available, may be expended from this account. [2013 2nd sp.s. c 4 § 966; 2012 2nd sp.s. c 7 § 915; 2010 1st sp.s. c 19 § 18. Prior: 2002 c 371 § 905; 2002 c 341 § 4; 2001 c 128 § 2; 1998 c 304 § 14; 1994 c 96 § 7; 1991 c 54 § 6.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 7: See note following RCW 2.68.020.

Effective dates—2010 1st sp.s. c 19: See note following RCW 82.14B.010.

Findings—2001 c 128: "The legislature finds that the statewide emergency communications network of enhanced 911 telephone service, which allows an immediate display of a caller's identification and location, has served to further the safety, health, and welfare of the state's citizens, and has saved lives.

The legislature further finds that statewide operation and management of the enhanced 911 system will create efficiencies of operation and permit greater local control of county 911 operations, and further that some counties will continue to need assistance from the state to maintain minimum enhanced 911 service levels." [2001 c 128 § 1.]

Findings—Effective dates—1998 c 304: See notes following RCW 82.14B.020.

Finding—Intent—Effective dates—1994 c 96: See notes following RCW 82.14B.020.

Additional notes found at www.leg.wa.gov

38.52.545 Priorities for enhanced 911 funding. In specifying rules defining the purposes for which available state enhanced 911 moneys may be expended, the state enhanced 911 coordinator, with the advice and assistance of the enhanced 911 advisory committee, must consider base needs of individual counties for specific assistance. Priorities for available enhanced 911 funding are as follows:

(1) To assure that 911 dialing is operational statewide;

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(2) To assist counties as necessary to assure that they can achieve a basic service level for 911 operations; and

(3) To assist counties as practicable to acquire items of a capital nature appropriate to modernize 911 systems and increase 911 effectiveness. [2010 1st sp.s. c 19 § 19; 2001 c 128 § 3.]

Effective dates—2010 1st sp.s. c 19: See note following RCW 82.14B.010.

Findings—Effective date—2001 c 128: See notes following RCW 38.52.540.

38.52.550 Emergency communications systems and information—Immunity from civil liability. A telecommunications company, radio communications service company, or interconnected voice over internet protocol service company, providing emergency communications systems or services or a business or individual providing database information to enhanced 911 emergency communications personnel is not liable for civil damages caused by an act or omission of the company, business, or individual in the:

(1) Good faith release of information not in the public record, including unpublished or unlisted subscriber information to emergency service providers responding to calls placed to an enhanced 911 emergency communications service; or

(2) Design, development, installation, maintenance, or provision of consolidated enhanced 911 emergency communications systems or services other than an act or omission constituting gross negligence or wanton or willful misconduct. [2010 1st sp.s. c 19 § 20; 2002 c 341 § 5; 1991 c 329 § 7.]

Effective dates—2010 1st sp.s. c 19: See note following RCW 82.14B.010.

Additional notes found at www.leg.wa.gov

38.52.561 911 calls from radio communications and interconnected voice over internet protocol service companies—Technical and operational standards. The state enhanced 911 coordinator, with the advice and assistance of the enhanced 911 advisory committee, must set nondiscriminatory, uniform technical and operational standards consistent with the rules of the federal communications commission for the transmission of 911 calls from radio communications service companies and interconnected voice over internet protocol service companies to enhanced 911 emergency communications systems. These standards must not exceed the requirements set by the federal communications commission. The authority given to the state enhanced 911 coordinator in this section is limited to setting standards as set forth in this section and does not constitute authority to regulate radio communications service companies or interconnected voice over internet protocol service companies. [2010 1st sp.s. c 19 § 21; 2002 c 341 § 6.]

Effective dates—2010 1st sp.s. c 19: See note following RCW 82.14B.010.

Additional notes found at www.leg.wa.gov

38.52.900 Short title. This chapter may be cited as the Washington Emergency Management Act. [1984 c 38 § 43; 1974 ex.s. c 171 § 41; 1951 c 178 § 1.]

38.52.920 Repeal and saving. Chapter 177, Laws of 1941, chapters 6 and 24, Laws of 1943, and chapter 88, Laws of 1949 are repealed: PROVIDED, That this section shall not affect the validity of any order, rule, regulation, contract, or agreement made or promulgated under authority of the repealed acts, which orders, rules, regulations, contracts, or agreements shall remain in force until they may be repealed, amended, or superseded by orders, rules, regulations, contracts, or agreements made or promulgated under this chapter: PROVIDED FURTHER, That this section shall not affect the tenure of any officer, employee, or person serving under authority of any repealed act and such officer, employee, or person shall continue in his or her position until such time as a successor is appointed or employed under the provisions of this chapter. [2011 c 336 § 801; 1951 c 178 § 17.]

38.52.930 Transfer of powers, duties, and functions to state military department. All powers, duties, and functions of the *department of community, trade, and economic development pertaining to emergency management are transferred to the state military department. All references to the director or the department of community development or the *department of community, trade, and economic development in the Revised Code of Washington shall be construed to mean the adjutant general or the state military department when referring to the functions transferred in this section. [1995 c 391 § 10.]

*Reviser's note: The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Additional notes found at www.leg.wa.gov

38.52.940 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 84.]

Chapter 38.56 RCW

INTRASTATE MUTUAL AID SYSTEM

Sections

38.56.010	Definitions.
38.56.020	Intrastate mutual aid system—Established.
38.56.030	Member jurisdiction may request assistance from other member jurisdictions—Provisions.
38.56.040	Qualifications of emergency responders for the purposes of the requesting member jurisdiction.
38.56.050	Death or injury of emergency responder—Benefits.
38.56.060	Emergency responder—Not an employee of a requesting member jurisdiction.
38.56.070	Reimbursement for assistance provided.
38.56.080	Emergency responder of a responding member jurisdiction—Tort liability or immunity.

38.56.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Assistance" means emergency responders and resources provided by a responding member jurisdiction in response to a request from a requesting member jurisdiction.

(2) "Department" means the state military department.

(3) "Emergency" means an event or set of circumstances that: (a) Demand immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrence; or (b) reach such a dimension or degree of destructiveness as to warrant the governor declaring a state of emergency pursuant to RCW 43.06.010.

(4) "Emergency responder" means an employee of a responding member jurisdiction who is designated in writing by that responding member jurisdiction as possessing skills, qualifications, training, knowledge, or experience that may be needed, pursuant to a request for assistance under this chapter, for: (a) Response, mitigation, or recovery activities related to an emergency; or (b) participation in drills or exercises in preparation for an emergency.

(5) "Operational control" means the limited authority to direct tasks, assignments, and use of assistance provided pursuant to a request for assistance under this chapter to address: (a) Response, mitigation, or recovery activities related to an emergency; or (b) participation in drills or exercises in preparation for an emergency. "Operational control" does not include any right, privilege, or benefit of ownership or employment such as disposition, compensation, wages, salary, pensions, health benefits, leave, seniority, discipline, promotion, hiring, or firing.

(6) "Political subdivision" means any county, city, or town in the state of Washington.

(7) "Requesting member jurisdiction" means a member jurisdiction that requests assistance from another member jurisdiction under this chapter.

(8) "Resources" includes supplies, materials, equipment, facilities, energy, services, information, systems, and other assets except for emergency responders that may be needed, pursuant to a request for assistance under this chapter, for: (a) Response, mitigation, or recovery activities related to an emergency; or (b) participation in drills or exercises in preparation for an emergency.

(9) "Responding member jurisdiction" means a member jurisdiction providing or intending to provide assistance to a requesting member jurisdiction under this chapter. [2011 c 79 § 1.]

38.56.020 Intrastate mutual aid system—Established. (1) The intrastate mutual aid system is established to provide for mutual assistance in an emergency among political subdivisions and federally recognized Indian tribes that choose to participate as member jurisdictions.

(2) Except as provided in subsection (3) of this section, member jurisdictions of the intrastate mutual aid system include:

(a) A political subdivision; and

(b) Any federally recognized Indian tribe located within the boundaries of the state of Washington upon receipt by the department of a tribal government resolution declaring its

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intention to be a member jurisdiction in the intrastate mutual aid system under this chapter.

(3)(a) A member jurisdiction is released from membership in the intrastate mutual aid system established under this chapter upon receipt by the department of a resolution or ordinance declaring that the member jurisdiction elects not to participate in the system.

(b) Nothing in this chapter may be construed to affect other mutual aid systems or agreements otherwise authorized by law, including the Washington state fire services mobilization plan and the law enforcement mobilization plan under chapter 43.43 RCW, nor preclude a political subdivision or Indian tribe from entering or participating in those mutual aid systems or agreements.

(4) Mutual assistance may be requested by, and provided to, member jurisdictions under this chapter for: (a) Response, mitigation, or recovery activities related to an emergency; or (b) participation in drills or exercises in preparation for an emergency. [2011 c 79 § 2.]

38.56.030 Member jurisdiction may request assistance from other member jurisdictions—Provisions. A member jurisdiction may request assistance from other member jurisdictions under the intrastate mutual aid system for response, mitigation, or recovery activities related to an emergency, or to participate in drills or exercises in preparation for an emergency, subject to each of the following provisions:

(1) Prior to requesting assistance, a requesting member jurisdiction must: (a) Have determined an emergency exists within its territorial limits consistent with applicable law, rule, regulation, code, ordinance, resolution, or other applicable legal authority; or (b) anticipate undertaking drills or exercises in preparation for an emergency.

(2) The chief executive officer of a requesting member jurisdiction, or authorized designee, must request assistance directly from the chief executive officer, or authorized designee, of another member jurisdiction. If this request is verbal, it must be confirmed in writing within thirty days after the date of the request.

(3) A responding member jurisdiction may withhold or withdraw requested assistance at any time and for any reason, in its sole discretion.

(4) A responding member jurisdiction shall designate in writing all assistance it provides to a requesting member jurisdiction at the time provided consistent with the guidelines and procedures developed by the intrastate mutual aid committee, and deliver copies of this documentation to the requesting member jurisdiction within thirty days after the assistance is provided.

(5) The requesting member jurisdiction only has operational control of assistance provided under this chapter, which may not interfere with a responding member jurisdiction's right to withdraw assistance. [2011 c 79 § 3.]

38.56.040 Qualifications of emergency responders for the purposes of the requesting member jurisdiction. An emergency responder holding a license, certificate, or other permit evidencing qualification in a professional, mechanical, or other skill, issued by the state of Washington or a political subdivision thereof, is deemed to be licensed,

certified, or permitted in the requesting member jurisdiction for the duration of the emergency, drill, or exercise, subject to any limitations and conditions the chief executive officer of the requesting member jurisdiction may prescribe in writing. [2011 c 79 § 4.]

38.56.050 Death or injury of emergency responder—

Benefits. An emergency responder designated by a responding member jurisdiction under RCW 38.56.030(4), who dies or sustains an injury while providing assistance to a requesting member jurisdiction as an emergency responder under this chapter, is entitled to receive only the benefits otherwise authorized by law for death or injury sustained in the course of employment with the responding member jurisdiction. Any such benefits provided by a responding member jurisdiction to an emergency responder must be included in the true and full value of assistance provided for purposes of reimbursement under RCW 38.56.070. [2011 c 79 § 5.]

38.56.060 Emergency responder—Not an employee of a requesting member jurisdiction.

An emergency responder is not an employee of the requesting member jurisdiction and is not entitled to any right, privilege, or benefit of employment from the requesting member jurisdiction, including but not limited to, compensation, wages, salary, leave, pensions, health, or other advantage. [2011 c 79 § 6.]

38.56.070 Reimbursement for assistance provided.

(1) A requesting member jurisdiction shall reimburse a responding member jurisdiction for the true and full value of all assistance provided under this chapter. However, if authorized by law, a responding member jurisdiction may donate assistance provided under this chapter to a requesting member jurisdiction.

(2) If a dispute regarding reimbursement arises between member jurisdictions, the member jurisdiction asserting the dispute shall provide written notice to the other identifying the reimbursement issues in dispute. If the dispute is not resolved within ninety days after receipt of the dispute notice by the other party, either party to the dispute may invoke binding arbitration to resolve the reimbursement dispute by giving written notice to the other party. Within thirty days after receipt of the notice invoking binding arbitration, each party shall furnish the other a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel. Costs of the arbitration, including compensation for the arbitrator's services, must be borne equally by the parties participating in the arbitration and each party bears its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding. [2011 c 79 § 7.]

38.56.080 Emergency responder of a responding member jurisdiction—Tort liability or immunity.

For purposes of tort liability or immunity, an emergency responder of a responding member jurisdiction is considered an agent of the requesting member jurisdiction. No responding member jurisdiction or its officers or employees providing assistance under this chapter is liable for any act or omis-

sion while providing or attempting to provide assistance under this chapter in good faith. For purposes of this section, good faith does not include willful misconduct, gross negligence, or recklessness. [2011 c 79 § 8.]

Title 39

PUBLIC CONTRACTS AND INDEBTEDNESS

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- 39.06 Public works—Registration, licensing, of contractors.
- 39.08 Contractor's bond.
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39.04.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Award" means the formal decision by the state or municipality notifying a responsible bidder with the lowest responsive bid of the state's or municipality's acceptance of the bid and intent to enter into a contract with the bidder.

(2) "Contract" means a contract in writing for the execution of public work for a fixed or determinable amount duly awarded after advertisement and competitive bid, or a contract awarded under the small works roster process in RCW 39.04.155.

(3) "Municipality" means every city, county, town, port district, district, or other public agency authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts, or other districts authorized by law for the reclamation or development of waste or undeveloped lands.

(4) "Public work" means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein. All public works, including maintenance when performed by contract shall comply with chapter 39.12 RCW. "Public work" does not include work, construction, alteration, repair, or improvement performed under contracts entered into under RCW 36.102.060(4) or under development agreements entered into under RCW 36.102.060(7) or leases entered into under RCW 36.102.060(8).

(5) "Responsible bidder" means a contractor who meets the criteria in RCW 39.04.350.

(6) "State" means the state of Washington and all departments, supervisors, commissioners, and agencies of the state. [2008 c 130 § 16; 2007 c 133 § 1; 2000 c 138 § 102; 1997 c 220 § 402 (Referendum Bill No. 48, approved June 17, 1997); 1993 c 174 § 1; 1989 c 363 § 5; 1986 c 282 § 1; 1982 c 98 § 1; 1977 ex.s. c 177 § 1; 1923 c 183 § 1; RRS § 10322-1.]

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.155.

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Municipalities—Energy audits and efficiency: RCW 43.19.691.

Additional notes found at www.leg.wa.gov

39.04.015 Adjustment to bid price—Conditions. Notwithstanding the provisions of RCW 39.04.010, a state contracting authority is authorized to negotiate an adjustment to a bid price, based upon agreed changes to the contract

plans and specifications, with a low responsive bidder under the following conditions:

(1) All bids for a state public works project involving buildings and any associated building utilities and appendants exceed the available funds, as certified by the appropriate fiscal officer;

(2) The apparent low responsive bid does not exceed the available funds by: (a) Five percent on projects valued under one million dollars; (b) the greater of fifty thousand dollars or two and one-half percent for projects valued between one million dollars and five million dollars; or (c) the greater of one hundred twenty-five thousand dollars or one percent for projects valued over five million dollars; and

(3) The negotiated adjustment will bring the bid price within the amount of available funds. [1989 c 59 § 1.]

39.04.020 Plans and specifications—Estimates—Publication—Emergencies. Whenever the state or any municipality shall determine that any public work is necessary to be done, it shall cause plans, specifications, or both thereof and an estimate of the cost of such work to be made and filed in the office of the director, supervisor, commissioner, trustee, board, or agency having by law the authority to require such work to be done. The plans, specifications, and estimates of cost shall be approved by the director, supervisor, commissioner, trustee, board, or agency and the original draft or a certified copy filed in such office before further action is taken.

If the state or such municipality shall determine that it is necessary or advisable that such work shall be executed by any means or method other than by contract or by a small works roster process, and it shall appear by such estimate that the probable cost of executing such work will exceed the sum of twenty-five thousand dollars, then the state or such municipality shall at least fifteen days before beginning work cause such estimate, together with a description of the work, to be published at least once in a legal newspaper of general circulation published in or as near as possible to that part of the county in which such work is to be done. When any emergency shall require the immediate execution of such public work, upon a finding of the existence of such emergency by the authority having power to direct such public work to be done and duly entered of record, publication of description and estimate may be made within seven days after the commencement of the work. [1994 c 243 § 1; 1993 c 379 § 111; 1986 c 282 § 2; 1982 c 98 § 4; 1975 1st ex.s. c 230 § 2; 1967 c 70 § 1; 1923 c 183 § 2; RRS § 10322-2. Formerly RCW 39.04.020 and 39.04.030.]

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

Additional notes found at www.leg.wa.gov

39.04.040 Work to be executed according to plans—Supplemental plans. Whenever plans and specifications shall have been filed the work to be done shall be executed in accordance with such plans and specifications unless supplemental plans and specifications of the alterations to be made therein shall be made and filed in the office where the original plans and specifications are filed.

In the event that the probable cost of executing such work in accordance with the supplemental plans and speci-

cations shall be increased or decreased from the estimated cost as shown by the original estimate to an amount in excess of ten percent of such estimate, then a supplemental estimate shall be made of the increased or decreased cost of executing the work in accordance with the supplemental plans and specifications and filed in the office where the original estimate is filed. [1923 c 183 § 3; RRS § 10322-3.]

39.04.050 Contents of original estimates. Original estimates shall show in detail the estimated cost of the work; the estimated quantities of each class of work; the estimated unit cost for each class; the estimated total cost for each class; the time limit, allowed for the completion of the work and the estimated dates of commencement and completion. [1986 c 282 § 3; 1923 c 183 § 4; RRS § 10322-4.]

Additional notes found at www.leg.wa.gov

39.04.060 Supplemental estimates. Supplemental estimates shall show the estimated increase or decrease in the total quantities of each class, in the unit cost of each class, in the total cost for each class and in the total cost of the work as shown by the original estimate, together with any change in the time limit and in the estimated dates of commencing and completing the work. [1923 c 183 § 5; RRS § 10322-5.]

39.04.070 Account and record of cost. Whenever the state or any municipality shall execute any public work by any means or method other than by contract or small works roster, it shall cause to be kept and preserved a full, true and accurate account and record of the costs of executing such work in accordance with the budgeting, accounting, and reporting system provisions prescribed by law for the state agency or municipality. [1986 c 282 § 4; 1923 c 183 § 6; RRS § 10322-6.]

State auditor to prescribe standard form for costs of public works: RCW 43.09.205.

Additional notes found at www.leg.wa.gov

39.04.080 Certified copy to be filed—Engineers' certificate. A true copy of such account or record, duly certified by the officer or officers having by law authority to direct such work to be done, to be a full, true, and accurate account of the costs of executing such work shall be filed in the office where the original plans and specifications are filed within sixty days after the completion of the work.

The engineer or other officer having charge of the execution of such work shall execute a certificate which shall be attached to and filed with such certified copy, certifying that such work was executed in accordance with the plans and specifications on file and the times of commencement and completion of such work. If the work is not in accordance with such plans and specifications he or she shall set forth the manner and extent of the variance therefrom. [2011 c 336 § 802; 1923 c 183 § 7; RRS § 10322-7.]

39.04.100 Records open to public inspection—Certified copies. All plans, specifications, estimates, and copies of accounts or records and all certificates attached thereto shall, when filed, become public records and shall at all reasonable times be subject to public inspection.

Certified copies of any estimate, account or record shall be furnished by the officer having the custody thereof to any person on demand and the payment of the legal fees for making and certifying the same. [1923 c 183 § 9; RRS § 10322-9.]

39.04.105 Competitive bidding—Written protests—Notice of contract execution. When a municipality receives a written protest from a bidder for a public works project which is the subject of competitive bids, the municipality shall not execute a contract for the project with anyone other than the protesting bidder without first providing at least two full business days' written notice of the municipality's intent to execute a contract for the project; provided that the protesting bidder submits notice in writing of its protest no later than two full business days following bid opening. Intermediate Saturdays, Sundays, and legal holidays are not counted. [2003 c 300 § 1.]

39.04.107 Competitive bidding—Bidder claiming error. A low bidder on a public works project who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. [2003 c 300 § 2.]

39.04.110 Penalty for false entries. Any director, supervisor, officer or employee of the state and any commissioner, trustee, supervisor, officer or employee of any municipality who shall knowingly make any false entry in any account or record required by this chapter or who shall knowingly certify to any false statement in any certificate required by this chapter, shall be guilty of a misdemeanor. [1923 c 183 § 10; RRS § 10322-10.]

Falsifying accounts: RCW 42.20.070.

Misconduct of public officers: Chapter 42.20 RCW.

39.04.120 Change orders due to environmental protection requirements—Costs—Dispute resolution. If the successful bidder must undertake additional work for public construction projects issued by the state of Washington, its authorities or agencies, or a political subdivision of the state due to the enactment of new environmental protection requirements or the amendment of existing environmental protection statutes, ordinances, or rules occurring after the submission of the successful bid, the awarding agency shall issue a change order setting forth the additional work that must be undertaken, which shall not invalidate the contract. The cost of such a change order to the awarding agency shall be determined in accordance with the provisions of the contract for change orders or, if no such provision is set forth in the contract, then the cost to the awarding agency shall be the contractor's costs for wages, labor costs other than wages, wage taxes, materials, equipment rentals, insurance, and sub-contracts attributable to the additional activity plus a reasonable sum for overhead and profit. However, the additional costs to undertake work not specified in the contract documents shall not be approved unless written authorization is given the successful bidder prior to his or her undertaking such additional activity. In the event of a dispute between the awarding agency and the contractor, dispute resolution procedures may be commenced under the applicable terms of the

construction contract, or, if the contract contains no such provision for dispute resolution, the then obtaining rules of the American arbitration association. [2011 c 336 § 803; 1998 c 196 § 1; 1973 1st ex.s. c 62 § 1.]

Delay due to litigation, change orders, costs, arbitration, termination: RCW 60.28.080.

Additional notes found at www.leg.wa.gov

39.04.130 Application of RCW 39.04.120. RCW 39.04.120 shall take effect in ninety days but shall not apply to any contract awarded pursuant to an invitation for bids issued on or before the date it takes effect, or to any persons or bonds in respect of any such contract. [1973 1st ex.s. c 62 § 2.]

Additional notes found at www.leg.wa.gov

39.04.133 State capital improvement or construction projects—Product standards. (1) The state's preferences for the purchase and use of recycled content products shall be included as a factor in the design and development of state capital improvement projects.

(2) If a construction project receives state public funding, the product standards, as provided in RCW 43.19A.020, shall apply to the materials used in the project, whenever the administering agency and project owner determine that such products would be cost-effective and are readily available.

(3) This section does not apply to contracts entered into by a municipality. [2002 c 299 § 2; 1996 c 198 § 5.]

39.04.135 Demolition projects—Recycling or reuse of materials. Material from demolition projects shall be recycled or reused whenever practicable. [1996 c 198 § 6.]

39.04.155 Small works roster contract procedures—Limited public works process—Definition. (1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of three hundred thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.

(2)(a) A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. A state agency or local government establishing a small works roster or rosters may require eligible contractors desiring to be placed on a roster or rosters to keep current records of any applicable licenses, certifications, registra-

tions, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on a roster or rosters. At least once a year, the state agency or local government shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required to be signed that become effective when a specific award is made using a small works roster.

(b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution implementing this subsection. Procedures included in rules adopted by the *department of general administration in implementing this subsection must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the *department of general administration under chapter 43.19 RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection.

(c) Procedures shall be established for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.010. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. However, if the estimated cost of the work is from one hundred fifty thousand dollars to three hundred thousand dollars, a state agency or local government that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The government has the sole option of determining whether this notice to the remaining contractors is made by: (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile or other electronic means. For purposes of this subsection (2)(c), "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on

the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

(d) A contract awarded from a small works roster under this section need not be advertised.

(e) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(3) In lieu of awarding contracts under subsection (2) of this section, a state agency or authorized local government may award a contract for work, construction, alteration, repair, or improvement projects estimated to cost less than thirty-five thousand dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (2) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW 39.04.010.

For limited public works projects, a state agency or authorized local government shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 39.04.010. After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local government shall attempt to distribute opportunities for limited public works projects equitably among contractors willing to perform in the geographic area of the work. A state agency or authorized local government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded. For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialpersons, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

(4) The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

(5)(a) A state agency or authorized local government may use the limited public works process of subsection (3) of this section to solicit and award small works roster contracts to small businesses that are registered contractors with gross revenues under one million dollars annually as reported on their federal tax return.

(b) A state agency or authorized local government may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under two

hundred fifty thousand dollars annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.

(6) As used in this section, "state agency" means the *department of general administration, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the *department of general administration to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities. [2009 c 74 § 1; 2008 c 130 § 17. Prior: 2007 c 218 § 87; 2007 c 210 § 1; 2007 c 133 § 4; 2001 c 284 § 1; 2000 c 138 § 101; 1998 c 278 § 12; 1993 c 198 § 1; 1991 c 363 § 109.]

***Reviser's note:** The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Purpose—2000 c 138: "The purpose of this act is to establish a common small works roster procedure that state agencies and local governments may use to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property." [2000 c 138 § 1.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Competitive bids—Contract procedure: RCW 36.32.250.

Additional notes found at www.leg.wa.gov

39.04.156 Small works roster manual—Notification to local governments. The *department of community, trade, and economic development, in cooperation with the municipal research and services center, shall prepare a small works roster manual and periodically notify the different types of local government authorized to use a small works roster process about this authority. [2000 c 138 § 104.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.155.

39.04.160 Contracts subject to requirements established under office of minority and women's business enterprises. All contracts entered into under this chapter by the state on or after September 1, 1983, are subject to the requirements established under chapter 39.19 RCW. [1983 c 120 § 11.]

Additional notes found at www.leg.wa.gov

39.04.162 Awards of procurement contracts to veteran-owned businesses. All procurement contracts entered into under this chapter on or after June 10, 2010, are subject to the requirements established under RCW 43.60A.200. [2010 c 5 § 8.]

Purpose—Construction—2010 c 5: See notes following RCW 43.60A.010.

39.04.170 Application of chapter to performance-based contracts for energy equipment. This chapter shall not apply to performance-based contracts, as defined in *RCW 39.35A.020(3), that are negotiated under chapter 39.35A RCW. [1985 c 169 § 5.]

***Reviser's note:** RCW 39.35A.020 was amended by 2001 c 214 § 18, changing subsection (3) to subsection (4).

39.04.175 Application of chapter to certain agreements relating to water pollution control, solid waste handling facilities. This chapter does not apply to the selection of persons or entities to construct or develop water pollution control facilities or to provide water pollution control services under RCW 70.150.040 or the selection of persons or entities to construct or develop solid waste handling facilities or to provide solid waste handling services under RCW 35.21.156 or under RCW 36.58.090. [1989 c 399 § 11; 1986 c 244 § 13.]

Additional notes found at www.leg.wa.gov

39.04.180 Trench excavations—Safety systems required. On public works projects in which trench excavation will exceed a depth of four feet, any contract therefor shall require adequate safety systems for the trench excavation that meet the requirements of the Washington industrial safety and health act, chapter 49.17 RCW. This requirement shall be included in the cost estimates and bidding forms as a separate item. The costs of trench safety systems shall not be considered as incidental to any other contract item and any attempt to include the trench safety systems as an incidental cost is prohibited. [1988 c 180 § 1.]

39.04.190 Purchase contract process—Other than formal sealed bidding. (1) This section provides a uniform process to award contracts for the purchase of any materials, equipment, supplies, or services by those municipalities that are authorized to use this process in lieu of the requirements for formal sealed bidding. The state statutes governing a specific type of municipality shall establish the maximum dollar thresholds of the contracts that can be awarded under this process, and may include other matters concerning the awarding of contracts for purchases, for the municipality.

(2) At least twice per year, the municipality shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of vendor lists and solicit the names of vendors for the lists. Municipalities shall by resolution establish a procedure for securing telephone or written quotations, or both, from at least three different vendors whenever possible to assure that a competitive price is established and for awarding the contracts for the purchase of any materials, equipment, supplies, or services to the lowest responsible bidder as defined in *RCW 43.19.1911. Immediately after the award is made, the bid quotations obtained shall be recorded, open to public inspection, and shall be available by telephone inquiry. A contract awarded pursuant to this section need not be advertised. [1993 c 198 § 2; 1991 c 363 § 110.]

***Reviser's note:** RCW 43.19.1911 was repealed by 2012 c 224 § 29, effective January 1, 2013.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

39.04.200 Small works roster or purchase contracts—Listing of contracts awarded required. Any local government using the uniform process established in RCW 39.04.190 to award contracts for purchases must post a list of the contracts awarded under that process at least once every two months. Any state agency or local government using the small works roster process established in RCW 39.04.155 to award contracts for construction, building, renovation,

remodeling, alteration, repair, or improvement of real property must make available a list of the contracts awarded under that process at least once every year. The list shall contain the name of the contractor or vendor awarded the contract, the amount of the contract, a brief description of the type of work performed or items purchased under the contract, and the date it was awarded. The list shall also state the location where the bid quotations for these contracts are available for public inspection. [2000 c 138 § 103; 1993 c 198 § 3; 1991 c 363 § 111.]

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.155.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

39.04.210 Correctional facilities construction and repair—Findings. The legislature recognizes that fair and open competition is a basic tenet of public works procurement, that such competition reduces the appearance of and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically, and that effective monitoring mechanisms are important means of curbing any improprieties and establishing public confidence in the process by which contractual services are procured. The legislature finds that there will continue to exist a need for additional correctional facilities due to the inadequate capacity of existing correctional facilities to accommodate the predicted growth of offender populations and that it is necessary to provide public works contract options for the effective construction and repair of additional department of corrections facilities. [1994 c 80 § 1; 1991 c 130 § 1.]

Additional notes found at www.leg.wa.gov

39.04.220 Correctional facilities construction and repair—Use of general contractor/construction manager method for awarding contracts—Demonstration projects. (1) In addition to currently authorized methods of public works contracting, and in lieu of the requirements of RCW 39.04.010 and 39.04.020 through 39.04.060, capital projects funded for over ten million dollars authorized by the legislature for the department of corrections to construct or repair facilities may be accomplished under contract using the general contractor/construction manager method described in this section. In addition, the general contractor/construction manager method may be used for up to two demonstration projects under ten million dollars for the department of corrections. Each demonstration project shall aggregate capital projects authorized by the legislature at a single site to total no less than three million dollars with the approval of the office of financial management. The *department of general administration shall present its plan for the aggregation of projects under each demonstration project to the oversight advisory committee established under subsection (2) of this section prior to soliciting proposals for general contractor/construction manager services for the demonstration project.

(2) For the purposes of this section, "general contractor/construction manager" means a firm with which the *department of general administration has selected and negotiated a maximum allowable construction cost to be guaranteed by the firm, after competitive selection through a formal

advertisement, and competitive bids to provide services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work, and to act as the construction manager and general contractor during the construction phase. The *department of general administration shall establish an independent oversight advisory committee with representatives of interest groups with an interest in this subject area, the department of corrections, and the private sector, to review selection and contracting procedures and contracting documents. The oversight advisory committee shall discuss and review the progress of the demonstration projects. The general contractor/construction manager method is limited to projects authorized on or before July 1, 1997.

(3) Contracts for the services of a general contractor/construction manager awarded under the authority of this section shall be awarded through a competitive process requiring the public solicitation of proposals for general contractor/construction manager services. Minority and women enterprise total project goals shall be specified in the bid instructions to the general contractor/construction manager finalists. The *director of general administration is authorized to include an incentive clause in any contract awarded under this section for savings of either time or cost or both from that originally negotiated. No incentives granted shall exceed five percent of the maximum allowable construction cost. The *director of general administration or his or her designee shall establish a committee to evaluate the proposals considering such factors as: Ability of professional personnel; past performance in negotiated and complex projects; ability to meet time and budget requirements; location; recent, current, and projected work loads of the firm; and the concept of their proposal. After the committee has selected the most qualified finalists, these finalists shall submit sealed bids for the percent fee, which is the percentage amount to be earned by the general contractor/construction manager as overhead and profit, on the estimated maximum allowable construction cost and the fixed amount for the detailed specified general conditions work. The maximum allowable construction cost may be negotiated between the *department of general administration and the selected firm after the scope of the project is adequately determined to establish a guaranteed contract cost for which the general contractor/construction manager will provide a performance and payment bond. The guaranteed contract cost includes the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable construction cost, the percent fee on the negotiated maximum allowable construction cost, and sales tax. If the *department of general administration is unable to negotiate a satisfactory maximum allowable construction cost with the firm selected that the *department of general administration determines to be fair, reasonable, and within the available funds, negotiations with that firm shall be formally terminated and the *department of general administration shall negotiate with the next low bidder and continue until an agreement is reached or the process is terminated. If the maximum allowable construction cost varies more than fifteen percent from the bid estimated maximum allowable construction cost due to requested and approved changes in the scope by the state, the percent fee shall be renegotiated. All subcontract work

shall be competitively bid with public bid openings. Specific contract requirements for women and minority enterprise participation shall be specified in each subcontract bid package that exceeds ten percent of the department's estimated project cost. All subcontractors who bid work over two hundred thousand dollars shall post a bid bond and the awarded subcontractor shall provide a performance and payment bond for their contract amount if required by the general contractor/construction manager. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. Bidding on subcontract work by the general contractor/construction manager or its subsidiaries is prohibited. The general contractor/construction manager may negotiate with the low-responsive bidder only in accordance with RCW 39.04.015 or, if unsuccessful in such negotiations, rebid.

(4) If the project is completed for less than the agreed upon maximum allowable construction cost, any savings not otherwise negotiated as part of an incentive clause shall accrue to the state. If the project is completed for more than the agreed upon maximum allowable construction cost, excepting increases due to any contract change orders approved by the state, the additional cost shall be the responsibility of the general contractor/construction manager.

(5) The powers and authority conferred by this section shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained in this section may be construed as limiting any other powers or authority of the *department of general administration. However, all actions taken pursuant to the powers and authority granted to the director or the *department of general administration under this section may only be taken with the concurrence of the department of corrections. [1996 c 18 § 5; 1994 c 80 § 2; 1991 c 130 § 2.]

*Reviser's note: The "department of general administration" and the "director of general administration" were renamed the "department of enterprise services" and the "director of enterprise services" by 2011 1st sp.s. c 43.

Additional notes found at www.leg.wa.gov

39.04.230 Correctional facilities construction and repair—Alternative contracting method to remain in force until contracts completed. Methods of public works contracting authorized by RCW 39.04.210 and 39.04.220 shall remain in full force and effect until completion of projects authorized on or before July 1, 1997. [1994 c 80 § 3; 1991 c 130 § 3.]

Additional notes found at www.leg.wa.gov

39.04.240 Public works contracts—Awarding of attorneys' fees. (1) The provisions of RCW 4.84.250 through 4.84.280 shall apply to an action arising out of a public works contract in which the state or a municipality, or other public body that contracts for public works, is a party, except that: (a) The maximum dollar limitation in RCW 4.84.250 shall not apply; and (b) in applying RCW 4.84.280, the time period for serving offers of settlement on the adverse party shall be the period not less than thirty days and not more than one hundred twenty days after completion of the service and filing of the summons and complaint.

(2) The rights provided for under this section may not be waived by the parties to a public works contract that is entered into on or after June 11, 1992, and a provision in such a contract that provides for waiver of these rights is void against public policy. However, this subsection shall not be construed as prohibiting the parties from mutually agreeing to a clause in a public works contract that requires submission of a dispute arising under the contract to arbitration. [1999 c 107 § 1; 1992 c 171 § 1.]

39.04.250 Payments received on account of work performed by subcontractor—Disputed amounts—Remedies. (1) When payment is received by a contractor or subcontractor for work performed on a public work, the contractor or subcontractor shall pay to any subcontractor not later than ten days after the receipt of the payment, amounts allowed the contractor on account of the work performed by the subcontractor, to the extent of each subcontractor's interest therein.

(2) In the event of a good faith dispute over all or any portion of the amount due on a payment from the state or a municipality to the prime contractor, or from the prime contractor or subcontractor to a subcontractor, then the state or the municipality, or the prime contractor or subcontractor, may withhold no more than one hundred fifty percent of the disputed amount. Those not a party to a dispute are entitled to full and prompt payment of their portion of a draw, progress payment, final payment, or released retainage.

(3) In addition to all other remedies, any person from whom funds have been withheld in violation of this section shall be entitled to receive from the person wrongfully withholding the funds, for every month and portion thereof that payment including retainage is not made, interest at the highest rate allowed under RCW 19.52.025. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to costs of suit and reasonable attorneys' fees. [1992 c 223 § 5.]

Additional notes found at www.leg.wa.gov

39.04.260 Private construction performed pursuant to contract for rental, lease, or purchase by state—Must comply with prevailing wage law. Any work, construction, alteration, repair, or improvement, other than ordinary maintenance, that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least fifty percent of the project by one or more state agencies or municipalities shall comply with chapter 39.12 RCW. [1993 c 110 § 1.]

Additional notes found at www.leg.wa.gov

39.04.270 Electronic data processing and telecommunications systems—Municipalities—Acquisition method—Competitive negotiation—Findings, intent. (1) The legislature finds that the unique aspects of electronic data processing and telecommunications systems and the importance of these systems for effective administration warrant separate acquisition authority for electronic data processing and telecommunication systems. It is the intent of the legislature that municipalities utilize an acquisition method for electronic data processing and telecommunication systems that is

both competitive and compatible with the needs of the municipalities.

(2) A municipality may acquire electronic data processing or telecommunication equipment, software, or services through competitive negotiation rather than through competitive bidding.

(3) "Competitive negotiation," for the purposes of this section, shall include, as a minimum, the following requirements:

(a) A request for proposal shall be prepared and submitted to an adequate number of qualified sources, as determined by the municipality in its discretion, to permit reasonable competition consistent with the requirements of the procurement. Notice of the request for the proposal must be published in a newspaper of general circulation in the municipality at least thirteen days before the last date upon which proposals will be received. The request for proposal shall identify significant evaluation factors, including price, and their relative importance.

(b) The municipality shall provide reasonable procedures for technical evaluation of the proposals received, identification of qualified sources, and selection for awarding the contract.

(c) The award shall be made to the qualified bidder whose proposal is most advantageous to the municipality with price and other factors considered. The municipality may reject any and all proposals for good cause and request new proposals. [1996 c 257 § 1.]

39.04.280 Competitive bidding requirements—Exemptions. This section provides uniform exemptions to competitive bidding requirements utilized by municipalities when awarding contracts for public works and contracts for purchases. The statutes governing a specific type of municipality may also include other exemptions from competitive bidding requirements. The purpose of this section is to supplement and not to limit the current powers of any municipality to provide exemptions from competitive bidding requirements.

(1) Competitive bidding requirements may be waived by the governing body of the municipality for:

(a) Purchases that are clearly and legitimately limited to a single source of supply;

(b) Purchases involving special facilities or market conditions;

(c) Purchases in the event of an emergency;

(d) Purchases of insurance or bonds; and

(e) Public works in the event of an emergency.

(2)(a) The waiver of competitive bidding requirements under subsection (1) of this section may be by resolution or by the terms of written policies adopted by the municipality, at the option of the governing body of the municipality. If the governing body elects to waive competitive bidding requirements by the terms of written policies adopted by the municipality, immediately after the award of any contract, the contract and the factual basis for the exception must be recorded and open to public inspection.

If a resolution is adopted by a governing body to waive competitive bidding requirements under (b) of this subsection, the resolution must recite the factual basis for the excep-

tion. This subsection (2)(a) does not apply in the event of an emergency.

(b) If an emergency exists, the person or persons designated by the governing body of the municipality to act in the event of an emergency may declare an emergency situation exists, waive competitive bidding requirements, and award all necessary contracts on behalf of the municipality to address the emergency situation. If a contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency must be made by the governing body or its designee and duly entered of record no later than two weeks following the award of the contract.

(3) For purposes of this section "emergency" means unforeseen circumstances beyond the control of the municipality that either: (a) Present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken. [1998 c 278 § 1.]

39.04.290 Contracts for building engineering systems. (1) A state agency or local government may award contracts of any value for the design, fabrication, and installation of building engineering systems by: (a) Using a competitive bidding process or request for proposals process where bidders are required to provide final specifications and a bid price for the design, fabrication, and installation of building engineering systems, with the final specifications being approved by an appropriate design, engineering, and/or public regulatory body; or (b) using a competitive bidding process where bidders are required to provide final specifications for the final design, fabrication, and installation of building engineering systems as part of a larger project with the final specifications for the building engineering systems portion of the project being approved by an appropriate design, engineering, and/or public regulatory body. The provisions of chapter 39.80 RCW do not apply to the design of building engineering systems that are included as part of a contract described under this section.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Building engineering systems" means those systems where contracts for the systems customarily have been awarded with a requirement that the contractor provide final approved specifications, including fire alarm systems, building sprinkler systems, pneumatic tube systems, extensions of heating, ventilation, or air conditioning control systems, chlorination and chemical feed systems, emergency generator systems, building signage systems, pile foundations, and curtain wall systems.

(b) "Local government" means any county, city, town, school district, or other special district, municipal corporation, or quasi-municipal corporation.

(c) "State agency" means the *department of general administration, the state parks and recreation commission, the department of fish and wildlife, the department of natural resources, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the *department of general administration to engage in building, renovation, remodeling, alteration, improvement, or repair activities. [2001 c 34 § 1.]

*Reviser's note: The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

39.04.300 Apprenticeship training programs—Purpose. A well-trained construction trades workforce is critical to the ability of the state of Washington to construct public works. Studies of the state's workforce highlight population trends that, without a concerted effort to offset them, will lead to an inadequate supply of skilled workers in the construction industry. State government regularly constructs public works. The efficient and economical construction of public works projects will be harmed if there is not an ample supply of trained construction workers. Apprenticeship training programs are particularly effective in providing training and experience to individuals seeking to enter or advance in the workforce. By providing for apprenticeship utilization on public works projects, state government can create opportunities for training and experience that will help assure that a trained workforce will be available, including returning veterans, in sufficient numbers in the future for the construction of public works. Furthermore, the state of Washington hereby establishes its intent to assist returning veterans through programs such as the "helmets to hardhats" program, which is administered by the center for military recruitment, assessment, and veterans employment. It is the state's intent to assist returning veterans with apprenticeship placement career opportunities, in order to expedite the transition from military service to the construction workforce. [2006 c 321 § 1; 2005 c 3 § 1.]

Effective date—2005 c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 24, 2005]." [2005 c 3 § 5.]

39.04.310 Apprenticeship training programs—Definitions. The definitions in this section apply throughout this section and RCW 39.04.300 and 39.04.320 unless the context clearly requires otherwise.

(1) "Apprentice" means an apprentice enrolled in a state-approved apprenticeship training program.

(2) "Apprentice utilization requirement" means the requirement that the appropriate percentage of labor hours be performed by apprentices.

(3) "Labor hours" means the total hours of workers receiving an hourly wage who are directly employed on the site of the public works project. "Labor hours" includes hours performed by workers employed by the contractor and all subcontractors working on the project. "Labor hours" does not include hours worked by foremen, superintendents, owners, and workers who are not subject to prevailing wage requirements.

(4) "School district" has the same meaning as in RCW 28A.315.025.

(5) "State-approved apprenticeship training program" means an apprenticeship training program approved by the Washington state apprenticeship council. [2007 c 437 § 1; 2005 c 3 § 2.]

Effective date—2005 c 3: See note following RCW 39.04.300.

39.04.320 Apprenticeship training programs—Public works contracts—Adjustment of specific projects—Report and collection of agency data—Apprenticeship

utilization advisory committee created. (1)(a) Except as provided in (b) through (d) of this subsection, from January 1, 2005, and thereafter, for all public works estimated to cost one million dollars or more, all specifications shall require that no less than fifteen percent of the labor hours be performed by apprentices.

(b)(i) This section does not apply to contracts advertised for bid before July 1, 2007, for any public works by the department of transportation.

(ii) For contracts advertised for bid on or after July 1, 2007, and before July 1, 2008, for all public works by the department of transportation estimated to cost five million dollars or more, all specifications shall require that no less than ten percent of the labor hours be performed by apprentices.

(iii) For contracts advertised for bid on or after July 1, 2008, and before July 1, 2009, for all public works by the department of transportation estimated to cost three million dollars or more, all specifications shall require that no less than twelve percent of the labor hours be performed by apprentices.

(iv) For contracts advertised for bid on or after July 1, 2009, for all public works by the department of transportation estimated to cost two million dollars or more, all specifications shall require that no less than fifteen percent of the labor hours be performed by apprentices.

(c)(i) This section does not apply to contracts advertised for bid before January 1, 2008, for any public works by a school district, or to any project funded in whole or in part by bond issues approved before July 1, 2007.

(ii) For contracts advertised for bid on or after January 1, 2008, for all public works by a school district estimated to cost three million dollars or more, all specifications shall require that no less than ten percent of the labor hours be performed by apprentices.

(iii) For contracts advertised for bid on or after January 1, 2009, for all public works by a school district estimated to cost two million dollars or more, all specifications shall require that no less than twelve percent of the labor hours be performed by apprentices.

(iv) For contracts advertised for bid on or after January 1, 2010, for all public works by a school district estimated to cost one million dollars or more, all specifications shall require that no less than fifteen percent of the labor hours be performed by apprentices.

(d)(i) For contracts advertised for bid on or after January 1, 2010, for all public works by a four-year institution of higher education estimated to cost three million dollars or more, all specifications must require that no less than ten percent of the labor hours be performed by apprentices.

(ii) For contracts advertised for bid on or after January 1, 2011, for all public works by a four-year institution of higher education estimated to cost two million dollars or more, all specifications must require that no less than twelve percent of the labor hours be performed by apprentices.

(iii) For contracts advertised for bid on or after January 1, 2012, for all public works by a four-year institution of higher education estimated to cost one million dollars or more, all specifications must require that no less than fifteen percent of the labor hours be performed by apprentices.

(2) Awarding entities may adjust the requirements of this section for a specific project for the following reasons:

(a) The demonstrated lack of availability of apprentices in specific geographic areas;

(b) A disproportionately high ratio of material costs to labor hours, which does not make feasible the required minimum levels of apprentice participation;

(c) Participating contractors have demonstrated a good faith effort to comply with the requirements of RCW 39.04.300 and 39.04.310 and this section; or

(d) Other criteria the awarding entity deems appropriate, which are subject to review by the office of the governor.

(3) The secretary of the department of transportation shall adjust the requirements of this section for a specific project for the following reasons:

(a) The demonstrated lack of availability of apprentices in specific geographic areas; or

(b) A disproportionately high ratio of material costs to labor hours, which does not make feasible the required minimum levels of apprentice participation.

(4) This section applies to public works contracts awarded by the state, to public works contracts awarded by school districts, and to public works contracts awarded by state four-year institutions of higher education. However, this section does not apply to contracts awarded by state agencies headed by a separately elected public official.

(5)(a) The *department of general administration must provide information and technical assistance to affected agencies and collect the following data from affected agencies for each project covered by this section:

(i) The name of each apprentice and apprentice registration number;

(ii) The name of each project;

(iii) The dollar value of each project;

(iv) The date of the contractor's notice to proceed;

(v) The number of apprentices and labor hours worked by them, categorized by trade or craft;

(vi) The number of journey level workers and labor hours worked by them, categorized by trade or craft; and

(vii) The number, type, and rationale for the exceptions granted under subsection (2) of this section.

(b) The department of labor and industries shall assist the *department of general administration in providing information and technical assistance.

(6) The secretary of transportation shall establish an apprenticeship utilization advisory committee, which shall include statewide geographic representation and consist of equal numbers of representatives of contractors and labor. The committee must include at least one member representing contractor businesses with less than thirty-five employees. The advisory committee shall meet regularly with the secretary of transportation to discuss implementation of this section by the department of transportation, including development of the process to be used to adjust the requirements of this section for a specific project. The committee shall provide a report to the legislature by January 1, 2008, on the effects of the apprentice labor requirement on transportation projects and on the availability of apprentice labor and programs statewide.

(7) At the request of the senate labor, commerce, research and development committee, the house of represen-

tatives commerce and labor committee, or their successor committees, and the governor, the *department of general administration and the department of labor and industries shall compile and summarize the agency data and provide a joint report to both committees. The report shall include recommendations on modifications or improvements to the apprentice utilization program and information on skill shortages in each trade or craft. [2009 c 197 § 1; 2007 c 437 § 2; 2006 c 321 § 2; 2005 c 3 § 3.]

*Reviser's note: The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

Rules—Implementation—2009 c 197: "The Washington state apprenticeship and training council shall adopt rules necessary to implement sections 2 and 3 of this act. Rules shall address due process protections for all parties and shall strengthen the accountability for apprenticeship committees approved under chapter 49.04 RCW in enforcing the apprenticeship program standards adopted by the council." [2009 c 197 § 4.]

Effective date—2005 c 3: See note following RCW 39.04.300.

39.04.330 Use of wood products—Compliance with chapter 39.35D RCW. For purposes of determining compliance with chapter 39.35D RCW, the *department of general administration shall credit the project for using wood products with a credible third party sustainable forest certification or from forests regulated under chapter 76.09 RCW, the Washington forest practices act. [2005 c 12 § 11.]

*Reviser's note: The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

39.04.340 Apprenticeship and training council outreach effort. The Washington state apprenticeship and training council shall lead and coordinate an outreach effort to educate returning veterans about apprenticeship and career opportunities in the construction industry. The outreach effort shall include information about the "helmets to hard-hats" program and other paths for making the transition from military service to the construction workforce. The outreach effort shall be developed and coordinated with apprenticeship programs, other state agencies involved in workforce training, and representatives of contractors and labor. [2006 c 321 § 3.]

39.04.350 Bidder responsibility criteria—Supplemental criteria. (1) Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:

(a) At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW;

(b) Have a current state unified business identifier number;

(c) If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW;

(d) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3);

(e) If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside

their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation; and

(f) Until December 31, 2013, not have violated RCW 39.04.370 more than one time as determined by the department of labor and industries.

(2) In addition to the bidder responsibility criteria in subsection (1) of this section, the state or municipality may adopt relevant supplemental criteria for determining bidder responsibility applicable to a particular project which the bidder must meet.

(a) Supplemental criteria for determining bidder responsibility, including the basis for evaluation and the deadline for appealing a determination that a bidder is not responsible, must be provided in the invitation to bid or bidding documents.

(b) In a timely manner before the bid submittal deadline, a potential bidder may request that the state or municipality modify the supplemental criteria. The state or municipality must evaluate the information submitted by the potential bidder and respond before the bid submittal deadline. If the evaluation results in a change of the criteria, the state or municipality must issue an addendum to the bidding documents identifying the new criteria.

(c) If the bidder fails to supply information requested concerning responsibility within the time and manner specified in the bid documents, the state or municipality may base its determination of responsibility upon any available information related to the supplemental criteria or may find the bidder not responsible.

(d) If the state or municipality determines a bidder to be not responsible, the state or municipality must provide, in writing, the reasons for the determination. The bidder may appeal the determination within the time period specified in the bidding documents by presenting additional information to the state or municipality. The state or municipality must consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, the state or municipality may not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.

(3) The capital projects advisory review board created in RCW 39.10.220 shall develop suggested guidelines to assist the state and municipalities in developing supplemental bidder responsibility criteria. The guidelines must be posted on the board's web site. [2010 c 276 § 2; 2009 c 197 § 2; 2007 c 133 § 2.]

Rules—Implementation—2009 c 197: See note following RCW 39.04.320.

39.04.360 Payment of undisputed claims. No later than thirty days after satisfactory completion of any additional work or portion of any additional work by a contractor on a public works project, the state or municipality shall issue a change order to the contract for the full dollar amount of the work not in dispute between the state or municipality and the contractor. If the state or municipality does not issue such a change order within the thirty days, interest must accrue on the dollar amount of the additional work satisfactorily com-

pleted and not in dispute until a change order is issued. The state or municipality shall pay this interest at a rate of one percent per month. For the purposes of this section, additional work is work beyond the scope defined in the contract between the contractor and the state or municipality. [2009 c 193 § 1.]

39.04.370 Contract requirements—Off-site prefabricated items—Submission of information. (1) For any public work estimated to cost over one million dollars, the contract must contain a provision requiring the submission of certain information about off-site, prefabricated, nonstandard, project specific items produced under the terms of the contract and produced outside Washington. The information must be submitted to the department of labor and industries under subsection (2) of this section. The information that must be provided is:

(a) The estimated cost of the public works project;

(b) The name of the awarding agency and the title of the public works project;

(c) The contract value of the off-site, prefabricated, nonstandard, project specific items produced outside Washington, including labor and materials; and

(d) The name, address, and federal employer identification number of the contractor that produced the off-site, prefabricated, nonstandard, project specific items.

(2)(a) The required information under this section must be submitted by the contractor or subcontractor as a part of the affidavit of wages paid form filed with the department of labor and industries under RCW 39.12.040. This information is only required to be submitted by the contractor or subcontractor who directly contracted for the off-site, prefabricated, nonstandard, project specific items produced outside Washington.

(b) The department of labor and industries shall include requests for the information about off-site, prefabricated, nonstandard, project specific items produced outside Washington on the affidavit of wages paid form required under RCW 39.12.040.

(c) The *department of general administration shall develop standard contract language to meet the requirements of subsection (1) of this section and make the language available on its web site.

(d) Failure to submit the information required in subsection (1) of this section as part of the affidavit of wages paid form does not constitute a violation of RCW 39.12.050.

(3) For the purposes of this section, "off-site, prefabricated, nonstandard, project specific items" means products or items that are: (a) Made primarily of architectural or structural precast concrete, fabricated steel, pipe and pipe systems, or sheet metal and sheet metal duct work; (b) produced specifically for the public work and not considered to be regularly available shelf items; (c) produced or manufactured by labor expended to assemble or modify standard items; and (d) produced at an off-site location.

(4) The department of labor and industries shall transmit information collected under this section to the capital projects advisory review board created in RCW 39.10.220 for review.

(5) This section applies to contracts entered into between September 1, 2010, and December 31, 2013.

(6) This section does not apply to department of transportation public works projects.

(7) This section does not apply to local transportation public works projects. [2010 c 276 § 1.]

*Reviser's note: The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

39.04.380 Preference for resident contractors. (1) The *department of general administration must conduct a survey and compile the results into a list of which states provide a bidding preference on public works contracts for their resident contractors. The list must include details on the type of preference, the amount of the preference, and how the preference is applied. The list must be updated periodically as needed. The initial survey must be completed by November 1, 2011, and by December 1, 2011, the department must submit a report to the appropriate committees of the legislature on the results of the survey. The report must include the list and recommendations necessary to implement the intent of this section and section 2, chapter 345, Laws of 2011.

(2) The *department of general administration must distribute the report, along with the requirements of this section and section 2, chapter 345, Laws of 2011, to all state and local agencies with the authority to procure public works. The department may adopt rules and procedures to implement the reciprocity requirements in subsection (3) of this section. However, subsection (3) [of this section] does not take effect until the *department of general administration has adopted the rules and procedures for reciprocity under subsection (2) of this section [this subsection] or announced that it will not be issuing rules or procedures pursuant to this section.

(3) In any bidding process for public works in which a bid is received from a nonresident contractor from a state that provides a percentage bidding preference, a comparable percentage disadvantage must be applied to the bid of that nonresident contractor. This subsection does not apply until the *department of general administration has adopted the rules and procedures for reciprocity under subsection (2) of this section, or has determined and announced that rules are not necessary for implementation.

(4) A nonresident contractor from a state that provides a percentage bid preference means a contractor that:

(a) Is from a state that provides a percentage bid preference to its resident contractors bidding on public works contracts; and

(b) At the time of bidding on a public works project, does not have a physical office located in Washington.

(5) The state of residence for a nonresident contractor is the state in which the contractor was incorporated or, if not a corporation, the state where the contractor's business entity was formed.

(6) This section does not apply to public works procured pursuant to RCW 39.04.155, 39.04.280, or any other procurement exempt from competitive bidding. [2011 c 345 § 1.]

*Reviser's note: The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

Conflict with federal requirements—2011 c 345: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or local authority, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not

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affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or local authority." [2011 c 345 § 2.]

39.04.390 Electronic competitive bidding. (1) Any state agency authorized to conduct public works contracting and competitive bidding under this chapter may do so electronically and may use or accept electronic signatures in these processes. Such signatures are deemed presumptively valid and enforceable.

(2) For purposes of this section:

(a) "Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record.

(b) "State agency" means any state office or activity of the executive and judicial branches of state government, including state departments, offices, divisions, boards, commissions, institutions of higher education as defined in RCW 28B.10.016, and correctional and other types of institutions.

(3) The office of chief information officer, in coordination with the department of enterprise services and all state agencies with contracting authority under this chapter, must establish standards and policies for the electronic submittal of bids and electronic signatures in public works contracting and competitive bidding processes. [2014 c 151 § 1.]

39.04.900 Rights may not be waived—Construction—1992 c 223. (1) The rights provided in chapter 223, Laws of 1992 may not be waived by the parties and a contract provision that provides for waiver of the rights provided in chapter 223, Laws of 1992 is void as against public policy.

(2) Chapter 223, Laws of 1992 is to be liberally construed to provide security for all parties intended to be protected by its provisions. [1992 c 223 § 6.]

Additional notes found at www.leg.wa.gov

39.04.901 Application—1992 c 223. RCW 39.76.011, 60.28.011, 60.28.021, 60.28.051, 39.04.250, and 39.04.900 are applicable to all public works contracts entered into on or after September 1, 1992, relating to the construction of any work of improvement. [2009 c 219 § 1; 1992 c 223 § 7.]

Additional notes found at www.leg.wa.gov

Chapter 39.06 RCW

PUBLIC WORKS—REGISTRATION, LICENSING, OF CONTRACTORS

Sections

39.06.010 Contracts with unregistered or unlicensed contractors and with other violators prohibited.

39.06.020 Verification of subcontractor responsibility criteria.

39.06.010 Contracts with unregistered or unlicensed contractors and with other violators prohibited. No agency of the state or any of its political subdivisions may execute a contract:

(1) With any contractor who is not registered or licensed as may be required by the laws of this state other than contractors on highway projects who have been prequalified as required by RCW 47.28.070, with the department of trans-

portation to perform highway construction, reconstruction, or maintenance; or

(2) For two years from the date that a violation is finally determined, with any person or entity who has been determined by the respective administering agency to have violated RCW 50.12.070(1)(b), 51.16.070(1)(b), or *82.32.070(1)(b). During this two-year period, the person or entity may not be permitted to bid, or have a bid considered, on any public works contract. [1997 c 54 § 1; 1984 c 7 § 43; 1967 c 70 § 3.]

***Reviser's note:** RCW 82.32.070 was amended by 1999 c 358 § 14, changing subsection (1)(b) to subsection (2).

Construction building permits—Cities, towns or counties prohibited from issuing without verification of registration: RCW 18.27.110.

Additional notes found at www.leg.wa.gov

39.06.020 Verification of subcontractor responsibility criteria. A public works contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and possesses an electrical contractor license, if required by chapter 19.28 RCW, or an elevator contractor license, if required by chapter 70.87 RCW. This verification requirement, as well as the responsibility criteria, must be included in every public works contract and subcontract of every tier. [2007 c 133 § 3.]

Chapter 39.08 RCW CONTRACTOR'S BOND

Sections

39.08.010	Bond required—Conditions—Retention of contract amount in lieu of bond.
39.08.015	Liability for failure to take bond.
39.08.030	Conditions of bond—Notice of claim—Action on bond—Attorneys' fees (<i>as amended by 2013 c 28</i>).
39.08.030	Conditions of bond—Notice of claim—Action on bond—Attorneys' fees (<i>as amended by 2013 c 113</i>).
39.08.065	Notice to contractor condition to suit on bond when supplies are furnished to subcontractor.
39.08.100	Marine vessel construction—Security in lieu of bond.

Public officer requiring bond or insurance from particular insurer, agent or broker, procuring bond or insurance, violations: RCW 48.30.270.

39.08.010 Bond required—Conditions—Retention of contract amount in lieu of bond. (1)(a) Whenever any board, council, commission, trustees, or body acting for the state or any county or municipality or any public body must contract with any person or corporation to do any work for the state, county, or municipality, or other public body, city, town, or district, such board, council, commission, trustees, or body must require the person or persons with whom such contract is made to make, execute, and deliver to such board, council, commission, trustees, or body a good and sufficient bond, with a surety company as surety, conditioned that such person or persons must:

- (i) Faithfully perform all the provisions of such contract;
- (ii) Pay all laborers, mechanics, and subcontractors and material suppliers, and all persons who supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work; and

(iii) Pay the taxes, increases, and penalties incurred on the project under Titles 50, 51, and 82 RCW on: (A) Projects referred to in RCW 60.28.011(1)(b); and/or (B) projects for which the bond is conditioned on the payment of such taxes, increases, and penalties.

(b) The bond, in cases of cities and towns, must be filed with the clerk or comptroller thereof, and any person or persons performing such services or furnishing material to any subcontractor has the same right under the provisions of such bond as if such work, services, or material was furnished to the original contractor.

(2) The provisions of RCW 39.08.010 through 39.08.030 do not apply to any money loaned or advanced to any such contractor, subcontractor, or other person in the performance of any such work.

(3) On contracts of thirty-five thousand dollars or less, at the option of the contractor the respective public entity may, in lieu of the bond, retain fifty percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue, the employment security department, and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later.

(4) For contracts of one hundred thousand dollars or less, the public entity may accept a full payment and performance bond from an individual surety or sureties.

(5) The surety must agree to be bound by the laws of the state of Washington and subjected to the jurisdiction of the state of Washington. [2013 c 113 § 2. Prior: 2007 c 218 § 88; 2007 c 210 § 3; 1989 c 145 § 1; 1982 c 98 § 5; 1975 1st ex.s. c 278 § 23; 1967 c 70 § 2; 1915 c 28 § 1; 1909 c 207 § 1; RRS § 1159; prior: 1897 c 44 § 1; 1888 p 15 § 1.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

State highway construction and maintenance, bond and surety requirements: Chapter 47.28 RCW.

Additional notes found at www.leg.wa.gov

39.08.015 Liability for failure to take bond. If any board of county commissioners of any county, or mayor and common council of any incorporated city or town, or tribunal transacting the business of any municipal corporation shall fail to take such bond as herein required, such county, incorporated city or town, or other municipal corporation, shall be liable to the persons mentioned in RCW 39.08.010, to the full extent and for the full amount of all such debts so contracted by such contractor. [1909 c 207 § 2; RRS § 1160. Prior: 1888 p 15 § 2. Formerly RCW 39.08.070.]

39.08.030 Conditions of bond—Notice of claim—Action on bond—Attorneys' fees (*as amended by 2013 c 28*). (*Effective until June 30, 2016.*) (1) The bond mentioned in RCW 39.08.010 shall be in an amount equal to the full contract price agreed to be paid for such work or improvement, except under subsections (2) and (3) of this section, and shall be to the state of Washington, except as otherwise provided in RCW 39.08.100, and except in cases of cities (~~and~~), towns, and water-sewer districts, in which cases such municipalities may by general ordinance fix and determine the amount of such bond and to whom such bond shall run: PROVIDED, The same shall not be for a less amount than twenty-five percent of the contract price of any such improvement for cities and towns, and not less than the full contract price of any such improvement for water-sewer districts, and may designate that the same shall be payable to such city, town, or water-sewer district and not to the state of Washington, and all such persons mentioned in RCW 39.08.010 shall have a right of action in his, her, or their own name or names on such bond for work done by such laborers or mechanics, and for

materials furnished or provisions and goods supplied and furnished in the prosecution of such work, or the making of such improvements: PROVIDED, That such persons shall not have any right of action on such bond for any sum whatever, unless within thirty days from and after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county or municipality, or other public body, city, town or district, the laborer, mechanic or subcontractor, or material supplier, or person claiming to have supplied materials, provisions or goods for the prosecution of such work, or the making of such improvement, shall present to and file with such board, council, commission, trustees or body acting for the state, county or municipality, or other public body, city, town or district, a notice in writing in substance as follows:

To (here insert the name of the state, county or municipality or other public body, city, town or district):

Notice is hereby given that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or material supplier, or person claiming to have furnished labor, materials or provisions for or upon such contract or work) has a claim in the sum of dollars (here insert the amount) against the bond taken from (here insert the name of the principal and surety or sureties upon such bond) for the work of (here insert a brief mention or description of the work concerning which said bond was taken).

(here to be signed)

Such notice shall be signed by the person or corporation making the claim or giving the notice, and said notice, after being presented and filed, shall be a public record open to inspection by any person, and in any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items hereinbefore specified, the claimant shall be entitled to recover in addition to all other costs, ((attorney's)) attorneys' fees in such sum as the court shall adjudge reasonable: PROVIDED, HOWEVER, That no ((attorney's)) attorneys' fees shall be allowed in any suit or action brought or instituted before the expiration of thirty days following the date of filing of the notice hereinbefore mentioned: PROVIDED FURTHER, That any city may avail itself of the provisions of RCW 39.08.010 through 39.08.030, notwithstanding any charter provisions in conflict herewith: AND PROVIDED FURTHER, That any city or town may impose any other or further conditions and obligations in such bond as may be deemed necessary for its proper protection in the fulfillment of the terms of the contract secured thereby, and not in conflict herewith.

(2) Under the job order contracting procedure described in RCW 39.10.420, bonds will be in an amount not less than the dollar value of all open work orders.

(3)(a) On highway construction contracts administered by the department of transportation with an estimated contract price of two hundred fifty million dollars or more, the department may authorize bonds in an amount less than the full contract price of the project. If a bond less than the full contract price is authorized by the department, the bond must be in the form of a performance bond and a separate payment bond. The department shall fix the amount of the performance bond on a contract-by-contract basis to adequately protect one hundred percent of the state's exposure to loss. The amount of the performance bond must not be less than two hundred fifty million dollars. The payment bond must be in an amount fixed by the department but must not be less than the amount of the performance bond. The secretary of transportation must approve each performance bond and payment bond authorized to be less than the full contract price of a project. Before the secretary may approve any bond authorized to be less than the full contract price of a project, the office of financial management shall review and approve the analysis supporting the amount of the bond set by the department to ensure that one hundred percent of the state's exposure to loss is adequately protected. All the requirements of this chapter apply respectively to the individual performance and payment bonds. The performance bond is solely for the protection of the department. The payment bond is solely for the protection of laborers, mechanics, subcontractors, and suppliers mentioned in RCW 39.08.010.

(b) The department shall develop risk assessment guidelines and gain approval of these guidelines from the office of financial management before implementing (a) of this subsection. The guidelines must include a clear process for how the department measures the state's exposure to loss and how the performance bond amount, determined under (a) of this subsection, adequately protects one hundred percent of the state's exposure to loss.

((e) The department shall report to the house of representatives and senate transportation committees by December 1, 2012: Each project where the department authorized bonds that were less than the full contract price;

~~the difference between the project amount and the bond requirements; the number of bidders on the project; and other information that documents the effects of the reduced bond amounts on the project.)~~ [2013 c 28 § 1; 2009 c 473 § 1; 2007 c 218 § 89; 2003 c 301 § 4; 1989 c 58 § 1; 1977 ex.s. c 166 § 4; 1915 c 28 § 2; 1909 c 207 § 3; RRS § 1161. Prior: 1899 c 105 § 1; 1888 p 16 § 3. Formerly RCW 39.08.030 through 39.08.060.]

Expiration date—2013 c 28 § 1: "Section 1 of this act expires June 30, 2016." [2013 c 28 § 3.]

39.08.030 Conditions of bond—Notice of claim—Action on bond—Attorneys' fees (as amended by 2013 c 113). (Effective until June 30, 2016.)

(1)(a) The bond mentioned in RCW 39.08.010 ((shall)) must be in an amount equal to the full contract price agreed to be paid for such work or improvement, except under subsections (2) and (3) of this section, and ((shall)) must be to the state of Washington, except as otherwise provided in RCW 39.08.100, and except in cases of cities and towns, in which cases such municipalities may by general ordinance fix and determine the amount of such bond and to whom such bond ((shall run: PROVIDED,)) runs. However, the same ((shall)) may not be for a less amount than twenty-five percent of the contract price of any such improvement, and may designate that the same ((shall be)) is payable to such city, and not to the state of Washington, and all such persons mentioned in RCW 39.08.010 ((shall)) have a right of action in his, her, or their own name or names on such bond for work done by such laborers or mechanics, and for materials furnished or provisions and goods supplied and furnished in the prosecution of such work, or the making of such improvements, and the state has a right of action for the collection of taxes, increases, and penalties specified in RCW 39.08.010: PROVIDED, That, except for the state with respect to claims for taxes, increases, and penalties specified in RCW 39.08.010, such persons ((shall)) do not have any right of action on such bond for any sum whatever, unless within thirty days from and after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county or municipality, or other public body, city, town or district, the laborer, mechanic or subcontractor, or material supplier, or person claiming to have supplied materials, provisions or goods for the prosecution of such work, or the making of such improvement, ((shall)) must present to and file with such board, council, commission, trustees or body acting for the state, county or municipality, or other public body, city, town or district, a notice in writing in substance as follows:

To (here insert the name of the state, county or municipality or other public body, city, town or district):

Notice is hereby given that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or material supplier, or person claiming to have furnished labor, materials or provisions for or upon such contract or work) has a claim in the sum of dollars (here insert the amount) against the bond taken from (here insert the name of the principal and surety or sureties upon such bond) for the work of (here insert a brief mention or description of the work concerning which said bond was taken).

(here to be signed)

(b) Such notice ((shall)) must be signed by the person or corporation making the claim or giving the notice, and ((said)) the notice, after being presented and filed, ((shall be)) is a public record open to inspection by any person, and in any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items ((hereinbefore)) specified in this section, the claimant ((shall be)) is entitled to recover in addition to all other costs, attorney's fees in such sum as the court ((shall)) adjudge reasonable(~~(: PROVIDED, HOWEVER, That no)~~), However, attorney's fees ((shall be)) are not allowed in any suit or action brought or instituted before the expiration of thirty days following the date of filing of the notice ((hereinbefore mentioned: PROVIDED FURTHER, That)) as provided in this section. However, any city may avail itself of the provisions of RCW 39.08.010 through 39.08.030, notwithstanding any charter provisions in conflict ((herewith: AND PROVIDED FURTHER, That)) with this section. Moreover, any city or town may impose any other or further conditions and obligations in such bond as may be deemed necessary for its proper protection in the fulfillment of the terms of the contract secured thereby, and not in conflict ((herewith)) with this section. The thirty-day notice requirement under this subsection does not apply to claims made by the state for taxes, increases, and penalties specified in RCW 39.08.010.

(2) Under the job order contracting procedure described in RCW 39.10.420, bonds will be in an amount not less than the dollar value of all open work orders.

(3)(a) On highway construction contracts administered by the department of transportation with an estimated contract price of two hundred fifty million dollars or more, the department may authorize bonds in an amount less than the full contract price of the project. If a bond less than the full contract price is authorized by the department, the bond must be in the form of a performance bond and a separate payment bond. The department ~~((shall))~~ must fix the amount of the performance bond on a contract-by-contract basis to adequately protect one hundred percent of the state's exposure to loss. The amount of the performance bond must not be less than two hundred fifty million dollars. The payment bond must be in an amount fixed by the department but must not be less than the amount of the performance bond. The secretary of transportation must approve each performance bond and payment bond authorized to be less than the full contract price of a project. Before the secretary may approve any bond authorized to be less than the full contract price of a project, the office of financial management ~~((shall))~~ must review and approve the analysis supporting the amount of the bond set by the department to ensure that one hundred percent of the state's exposure to loss is adequately protected. All the requirements of this chapter apply respectively to the individual performance and payment bonds. The performance bond is solely for the protection of the department. The payment bond is solely for: (i) The protection of laborers, mechanics, subcontractors, and suppliers mentioned in RCW 39.08.010; and (ii) the state, with respect to the taxes specified in RCW 39.08.010.

(b) The department ~~((shall))~~ must develop risk assessment guidelines and gain approval of these guidelines from the office of financial management before implementing (a) of this subsection. The guidelines must include a clear process for how the department measures the state's exposure to loss and how the performance bond amount, determined under (a) of this subsection, adequately protects one hundred percent of the state's exposure to loss.

(c) The department ~~((shall))~~ must report to the house of representatives and senate transportation committees by December 1, 2012: Each project where the department authorized bonds that were less than the full contract price; the difference between the project amount and the bond requirements; the number of bidders on the project; and other information that documents the effects of the reduced bond amounts on the project.

(4) Where retainage is not withheld pursuant to RCW 60.28.011(1)(b), upon final acceptance of the public works project, the state, county, municipality, or other public body must within thirty days notify the department of revenue, the employment security department, and the department of labor and industries of the completion of contracts over thirty-five thousand dollars. [2013 c 113 § 3; 2009 c 473 § 1; 2007 c 218 § 89; 2003 c 301 § 4; 1989 c 58 § 1; 1977 ex.s. c 166 § 4; 1915 c 28 § 2; 1909 c 207 § 3; RRS § 1161. Prior: 1899 c 105 § 1; 1888 p 16 § 3. Formerly RCW 39.08.030 through 39.08.060.]

Reviser's note: RCW 39.08.030 was amended twice during the 2013 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Expiration date—2013 c 113 § 3: "Section 3 of this act expires June 30, 2016." [2013 c 113 § 9.]

Expiration date—2009 c 473: "This act expires June 30, 2016." [2009 c 473 § 3.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

39.08.030 Conditions of bond—Notice of claim—Action on bond—Attorneys' fees. (Effective June 30, 2016.) (1)(a) The bond mentioned in RCW 39.08.010 must be in an amount equal to the full contract price agreed to be paid for such work or improvement, except under subsection (2) of this section, and must be to the state of Washington, except as otherwise provided in RCW 39.08.100, and except in cases of cities, towns, and water-sewer districts, in which cases such municipalities may by general ordinance fix and determine the amount of such bond and to whom such bond runs. However, the same may not be for a less amount than twenty-five percent of the contract price of any such improvement for cities and towns, and not less than the full contract price of any such improvement for water-sewer districts, and may designate that the same must be payable to

such city, town, or water-sewer district and not to the state of Washington, and all such persons mentioned in RCW 39.08.010 have a right of action in his, her, or their own name or names on such bond for work done by such laborers or mechanics, and for materials furnished or provisions and goods supplied and furnished in the prosecution of such work, or the making of such improvements, and the state has a right of action for the collection of taxes, increases, and penalties specified in RCW 39.08.010: PROVIDED, That, except for the state with respect to claims for taxes, increases, and penalties specified in RCW 39.08.010, such persons do not have any right of action on such bond for any sum whatever, unless within thirty days from and after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county or municipality, or other public body, city, town or district, the laborer, mechanic or subcontractor, or material supplier, or person claiming to have supplied materials, provisions or goods for the prosecution of such work, or the making of such improvement, must present to and file with such board, council, commission, trustees or body acting for the state, county or municipality, or other public body, city, town or district, a notice in writing in substance as follows:

To (here insert the name of the state, county or municipality or other public body, city, town or district):

Notice is hereby given that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or material supplier, or person claiming to have furnished labor, materials or provisions for or upon such contract or work) has a claim in the sum of dollars (here insert the amount) against the bond taken from (here insert the name of the principal and surety or sureties upon such bond) for the work of (here insert a brief mention or description of the work concerning which said bond was taken).

(here to be signed)

(b) Such notice must be signed by the person or corporation making the claim or giving the notice, and the notice, after being presented and filed, is a public record open to inspection by any person, and in any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items specified in this section, the claimant is entitled to recover in addition to all other costs, attorneys' fees in such sum as the court adjudges reasonable. However, attorneys' fees are not allowed in any suit or action brought or instituted before the expiration of thirty days following the date of filing of the notice as provided in this section. However, any city may avail itself of the provisions of RCW 39.08.010 through 39.08.030, notwithstanding any charter provisions in conflict with this section. Moreover, any city or town may impose any other or further conditions and obligations in such bond as may be deemed necessary for its proper protection in the fulfillment of the terms of the contract secured thereby, and not in conflict with this section. The thirty-day notice requirement under this subsection does not apply to claims made by the state for taxes, increases, and penalties specified in RCW 39.08.010.

(2) Under the job order contracting procedure described in RCW 39.10.420, bonds will be in an amount not less than the dollar value of all open work orders.

(3) Where retainage is not withheld pursuant to RCW 60.28.011(1)(b), upon final acceptance of the public works project, the state, county, municipality, or other public body must within thirty days notify the department of revenue, the employment security department, and the department of labor and industries of the completion of contracts over thirty-five thousand dollars. [2013 c 113 § 4; 2013 c 28 § 2; 2007 c 218 § 89; 2003 c 301 § 4; 1989 c 58 § 1; 1977 ex.s. c 166 § 4; 1915 c 28 § 2; 1909 c 207 § 3; RRS § 1161. Prior: 1899 c 105 § 1; 1888 p 16 § 3. Formerly RCW 39.08.030 through 39.08.060.]

Reviser's note: This section was amended by 2013 c 28 § 2 and by 2013 c 113 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2013 c 113 § 4: "Section 4 of this act takes effect June 30, 2016." [2013 c 113 § 10.]

Effective date—2013 c 28 § 2: "Section 2 of this act takes effect June 30, 2016." [2013 c 28 § 4.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

39.08.065 Notice to contractor condition to suit on bond when supplies are furnished to subcontractor. Every person, firm, or corporation furnishing materials, supplies, or provisions to be used in the construction, performance, carrying on, prosecution, or doing of any work for the state, or any county, city, town, district, municipality, or other public body, shall, not later than ten days after the date of the first delivery of such materials, supplies, or provisions to any subcontractor or agent of any person, firm, or corporation having a subcontract for the construction, performance, carrying on, prosecution, or doing of such work, deliver or mail to the contractor a notice in writing stating in substance and effect that such person, firm, or corporation has commenced to deliver materials, supplies, or provisions for use thereon, with the name of the subcontractor or agent ordering or to whom the same is furnished and that such contractor and his or her bond will be held for the payment of the same, and no suit or action shall be maintained in any court against the contractor or his or her bond to recover for such material, supplies, or provisions or any part thereof unless the provisions of this section have been complied with. [2011 c 336 § 804; 1915 c 167 § 1; RRS § 1159-1. Formerly RCW 39.08.020.]

39.08.100 Marine vessel construction—Security in lieu of bond. On contracts for construction, maintenance, or repair of a marine vessel, the department of transportation or any county may permit, subject to specified format and conditions, the substitution of one or more of the following alternate forms of security in lieu of all or part of the bond: Certified check, replacement bond, cashier's check, treasury bills, an irrevocable bank letter of credit, assignment of a savings account, or other liquid assets specifically approved by the secretary of transportation or county engineer, for their respective projects. The secretary of transportation or county engineer, respectively, shall predetermine and include in the special provisions of the bid package the amount of this alter-

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native form of security or bond, or a combination of the two, on a case-by-case basis, in an amount adequate to protect one hundred percent of the state's or county's exposure to loss. Assets used as an alternative form of security shall not be used to secure the bond. By October 1, 1989, the department shall develop and adopt rules under chapter 34.05 RCW that establish the procedures for determining the state's exposure to loss on contracts for construction, maintenance, or repair of a marine vessel. Prior to awarding any contract limiting security to the county's exposure to loss, a county shall develop and adopt an ordinance that establishes the procedure for determining the county's exposure to loss on contracts for construction, maintenance, or repair of a marine vessel. [2005 c 101 § 1; 1989 c 58 § 2.]

Effective date—2005 c 101: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 20, 2005]." [2005 c 101 § 2.]

Chapter 39.10 RCW ALTERNATIVE PUBLIC WORKS CONTRACTING PROCEDURES

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39.10.450	Job order procedure—Work orders.
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39.10.470	Public inspection of certain records—Protection of trade secrets—Protection of proposals submitted by design-build finalists.
39.10.480	Construction of chapter—Waiver of other limits and requirements.
39.10.490	Application of chapter.
39.10.900	Captions not law—1994 c 132.
39.10.901	Severability—1994 c 132.
39.10.903	Part headings and captions not law—2007 c 494.
39.10.904	Effective dates—2007 c 494.
39.10.905	Severability—2007 c 494.

Reviser's note—Sunset Act application: The alternative public works contracting procedures are subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.407.

RCW 39.10.200 through 39.10.905 are scheduled for future repeal under RCW 43.131.408.

39.10.200 Finding—Purpose—Intent. The legislature finds that the traditional process of awarding public works contracts in lump sum to the lowest responsible bidder is a fair and objective method of selecting a contractor. However, under certain circumstances, alternative public works contracting procedures may best serve the public interest if such procedures are implemented in an open and fair process based on objective and equitable criteria. The purpose of this chapter is to authorize the use of certain supplemental alternative public works contracting procedures, to prescribe appropriate requirements to ensure that such contracting procedures serve the public interest, and to establish a process for evaluation of such contracting procedures. It is the intent of the legislature to establish that, unless otherwise specifically provided for in law, public bodies may use only those alternative public works contracting procedures specifically authorized in this chapter, subject to the requirements of this chapter. [2010 1st sp.s. c 21 § 2; 2007 c 494 § 1; 1994 c 132 § 1. Formerly RCW 39.10.010.]

Sunset Act application: See note following chapter digest.

Intent—2010 1st sp.s. c 21: "The establishment of alternative public works contracting procedures authorized for use by public bodies has been a complex, controversial, and challenging undertaking, but it has been successful. The key to the successful adoption and consideration of these procedures has depended, in great part, on the review and oversight mechanisms put in place by the legislature in chapter 39.10 RCW, as well as the countless hours of dedicated work by numerous stakeholders over many years. It is the intent of the legislature to clarify that, unless otherwise specifically provided for in law, public bodies that want to use an alternative public works contracting procedure may use only those procedures specifically authorized in chapter 39.10 RCW." [2010 1st sp.s. c 21 § 1.]

39.10.210 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Alternative public works contracting procedure" means the design-build, general contractor/construction manager, and job order contracting procedures authorized in RCW 39.10.300, 39.10.340, and 39.10.420, respectively.

(2) "Board" means the capital projects advisory review board.

(3) "Certified public body" means a public body certified to use design-build or general contractor/construction manager contracting procedures, or both, under RCW 39.10.270.

(4) "Committee," unless otherwise noted, means the project review committee.

(5) "Design-build procedure" means a contract between a public body and another party in which the party agrees to both design and build the facility, portion of the facility, or other item specified in the contract.

(6) "Disadvantaged business enterprise" means any business entity certified with the office of minority and women's business enterprises under chapter 39.19 RCW.

(7) "General contractor/construction manager" means a firm with which a public body has selected to provide services during the design phase and negotiated a maximum allowable construction cost to act as construction manager and general contractor during the construction phase.

(8) "Heavy civil construction project" means a civil engineering project, the predominant features of which are infrastructure improvements.

(9) "Job order contract" means a contract in which the contractor agrees to a fixed period, indefinite quantity delivery order contract which provides for the use of negotiated, definitive work orders for public works as defined in RCW 39.04.010.

(10) "Job order contractor" means a registered or licensed contractor awarded a job order contract.

(11) "Maximum allowable construction cost" means the maximum cost of the work to construct the project including a percentage for risk contingency, negotiated support services, and approved change orders.

(12) "Negotiated support services" means items a general contractor would normally manage or perform on a construction project including, but not limited to surveying, hoisting, safety enforcement, provision of toilet facilities, temporary heat, cleanup, and trash removal, and that are negotiated as part of the maximum allowable construction cost.

(13) "Percent fee" means the percentage amount to be earned by the general contractor/construction manager as overhead and profit.

(14) "Public body" means any general or special purpose government in the state of Washington, including but not limited to state agencies, institutions of higher education, counties, cities, towns, ports, school districts, and special purpose districts.

(15) "Public works project" means any work for a public body within the definition of "public work" in RCW 39.04.010.

(16) "Small business entity" means a small business as defined in RCW 39.26.010.

(17) "Total contract cost" means the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable construction cost, and the percent fee on the negotiated maximum allowable construction cost.

(18) "Total project cost" means the cost of the project less financing and land acquisition costs.

(19) "Unit price book" means a book containing specific prices, based on generally accepted industry standards and information, where available, for various items of work to be performed by the job order contractor. The prices may include: All the costs of materials; labor; equipment; overhead, including bonding costs; and profit for performing the items of work. The unit prices for labor must be at the rates in effect at the time the individual work order is issued.

(20) "Work order" means an order issued for a definite scope of work to be performed pursuant to a job order contract. [2014 c 42 § 1; 2013 c 222 § 1. Prior: 2010 1st sp.s. c 36 § 6014; 2007 c 494 § 101; 2005 c 469 § 3; prior: 2003 c 352 § 1; 2003 c 301 § 2; 2003 c 300 § 3; 2001 c 328 § 1; 2000 c 209 § 1; 1997 c 376 § 1; 1994 c 132 § 2. Formerly RCW 39.10.020.]

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

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: "Sections 1 through 23 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 30, 2013." [2013 c 222 § 26.]

Effective date—2010 1st sp.s. c 36: See note following RCW 43.155.050.

Additional notes found at www.leg.wa.gov

39.10.220 Board—Membership—Vacancies. (1) The board is created in the department of enterprise services to provide an evaluation of public capital projects construction processes, including the impact of contracting methods on project outcomes, and to advise the legislature on policies related to public works delivery methods.

(2) Members of the board are appointed as follows:

(a) Two representatives from construction general contracting; one representative from the architectural profession; one representative from the engineering profession; two representatives from construction specialty subcontracting; two representatives from construction trades labor organizations; one representative from the office of minority and women's business enterprises; one representative from a higher education institution; one representative from the department of enterprise services; one individual representing Washington cities; two representatives from private industry; and one representative of a domestic insurer authorized to write surety bonds for contractors in Washington state, each appointed by the governor. All appointed members must be knowledgeable about public works contracting procedures. If a vacancy occurs, the governor shall fill the vacancy for the unexpired term;

(b) One member representing counties, selected by the Washington state association of counties;

(c) One member representing public ports, selected by the Washington public ports association;

(d) One member representing public hospital districts, selected by the association of Washington public hospital districts;

(e) One member representing school districts, selected by the Washington state school directors' association; and

(f) Two members of the house of representatives, one from each major caucus, appointed by the speaker of the house of representatives, and two members of the senate, one from each major caucus, appointed by the president of the senate. Legislative members are nonvoting.

(3) Members selected under subsection (2)(a) of this section shall serve for terms of four years, with the terms expiring on June 30th on the fourth year of the term.

(4) The board chair is selected from among the appointed members by the majority vote of the voting members.

(5) Legislative members of the board shall be reimbursed for travel expenses in accordance with RCW 44.04.120. Non-legislative members of the board, project review committee members, and committee chairs shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(6) Vacancies are filled in the same manner as appointed. Members of the board may be removed for malfeasance or misfeasance in office, upon specific written charges by the governor, under chapter 34.05 RCW.

(7) The board shall meet as often as necessary.

(8) Board members are expected to consistently attend board meetings. The chair of the board may ask the governor to remove any member who misses more than two meetings in any calendar year without cause.

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(9) The department of enterprise services shall provide staff support as may be required for the proper discharge of the function of the board.

(10) The board may establish committees as it desires and may invite nonmembers of the board to serve as committee members.

(11) The board shall encourage participation from persons and entities not represented on the board. [2013 c 222 § 2; 2007 c 494 § 102; 2005 c 377 § 1. Formerly RCW 39.10.800.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.230 Board—Powers and duties. The board has the following powers and duties:

(1) Develop and recommend to the legislature policies to further enhance the quality, efficiency, and accountability of capital construction projects through the use of traditional and alternative delivery methods in Washington, and make recommendations regarding expansion, continuation, elimination, or modification of the alternative public works contracting methods;

(2) Evaluate the use of existing contracting procedures and the potential future use of other alternative contracting procedures including competitive negotiation contracts;

(3) Submit recommendations to the appropriate committees of the legislature evaluating alternative contracting procedures that are not authorized under this chapter;

(4) Appoint members of committees; and

(5) Develop and administer questionnaires designed to provide quantitative and qualitative data on alternative public works contracting procedures on which evaluations are based.

The capital projects advisory review board is directed to review current statutes regarding life-cycle cost analysis and energy efficiency as related to the design-build procurement method performed under chapter 39.10 RCW. Capital projects advisory review board shall report to the appropriate committees of the legislature by December 31, 2013, with recommendations for statutory changes that promote energy efficiency and reduce the total cost to construct, operate and maintain public buildings. Recommendation must include provisions for postoccupancy validation of estimated energy efficiency measures, and operating and maintenance cost estimates. Life-cycle estimates of energy use must include estimates of energy consumptions for materials used in construction. [2013 c 222 § 3; 2010 1st sp.s. c 21 § 3; 2009 c 75 § 1; 2007 c 494 § 103; 2005 c 377 § 2. Formerly RCW 39.10.810.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

Intent—2010 1st sp.s. c 21: See note following RCW 39.10.200.

39.10.240 Project review committee—Creation—Members. (1) The board shall establish a project review committee to review and approve public works projects using the design-build and general contractor/construction manager contracting procedures authorized in RCW 39.10.300 and 39.10.340 and to certify public bodies as provided in RCW 39.10.270.

(2) The board shall, by a majority vote of the board, appoint persons to the committee who are knowledgeable in the use of the design-build and general contractor/construction manager contracting procedures. Appointments must represent a balance among the industries and public owners on the board listed in RCW 39.10.220.

(a) Each member of the committee shall be appointed for a term of three years. However, for initial appointments, the board shall stagger the appointment of committee members so that the first members are appointed to serve terms of one, two, or three years from the date of appointment. Appointees may be reappointed to serve more than one term.

(b) The committee shall, by a majority vote, elect a chair and vice chair for the committee.

(c) The committee chair may select a person or persons on a temporary basis as a nonvoting member if project specific expertise is needed to assist in a review.

(3) The chair of the committee, in consultation with the vice chair, may appoint one or more panels of at least six committee members to carry out the duties of the committee. Each panel shall have balanced representation of the private and public sector representatives serving on the committee.

(4) Any member of the committee directly or indirectly affiliated with a submittal before the committee must recuse himself or herself from the committee consideration of that submittal.

(5) Any person who sits on the committee or panel is not precluded from subsequently bidding on or participating in projects that have been reviewed by the committee.

(6) The committee shall meet as often as necessary to ensure that certification and approvals are completed in a timely manner. [2013 c 222 § 4; 2007 c 494 § 104.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.250 Project review committee—Duties. The committee shall:

(1) Certify, or renew certification for, public bodies to use design-build or general contractor/construction manager contracting procedures, or both;

(2) Review and approve the use of the design-build or general contractor/construction manager contracting procedures on a project by project basis for public bodies that are not certified under RCW 39.10.270;

(3) Review and approve not more than fifteen projects using the design-build contracting procedure by noncertified public bodies for projects that have a total project cost between two million and ten million dollars. Projects must meet the criteria in RCW 39.10.300(1). Where possible, the committee shall approve projects among multiple public bodies. At least annually, the committee shall report to the board regarding the committee's review procedure of these projects and its recommendations for further use; and

(4) Review and approve not more than two design-build demonstration projects that include procurement of operations and maintenance services for a period longer than three years. [2013 c 222 § 5; 2009 c 75 § 2; 2007 c 494 § 105.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.260 Project review committee—Meetings—Open and public. (1) The committee shall hold regular public meetings to carry out its duties as described in RCW 39.10.250. Committee meetings are subject to chapter 42.30 RCW.

(2) The committee shall publish notice of its public meetings at least twenty days before the meeting in a legal newspaper circulated in the area where the public body seeking certification is located, or where each of the proposed projects under consideration will be constructed. All meeting notices must be posted on the committee's web site.

(3) The meeting notice must identify the public body that is seeking certification or project approval, and where applicable, a description of projects to be considered at the meeting. The notice must indicate when, where, and how the public may present comments regarding the committee's certification of a public body or approval of a project. Information submitted by a public body to be reviewed at the meeting shall be available on the committee's web site at the time the notice is published.

(4) The committee must allow for public comment on the appropriateness of certification of a public body or on the appropriateness of the use of the proposed contracting procedure and the qualifications of a public body to use the contracting procedure. The committee shall receive and record both written and oral comments at the public meeting. [2013 c 222 § 6; 2007 c 494 § 106.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.270 Project review committee—Certification of public bodies. (1) A public body may apply for certification to use the design-build or general contractor/construction manager contracting procedure, or both. Once certified, a public body may use the contracting procedure for which it is certified on individual projects without seeking committee approval for a period of three years. Public bodies certified to use the design-build procedure are limited to no more than five projects with a total project cost between two and ten million dollars during the certification period. A public body seeking certification must submit to the committee an application in a format and manner as prescribed by the committee. The application must include a description of the public body's qualifications, its capital plan during the certification period, and its intended use of alternative contracting procedures.

(2) A public body seeking certification for the design-build procedure must demonstrate successful management of at least one design-build project within the previous five years. A public body seeking certification for the general contractor/construction manager procedure must demonstrate successful management of at least one general contractor/construction manager project within the previous five years.

(3) To certify a public body, the committee shall determine that the public body:

(a) Has the necessary experience and qualifications to determine which projects are appropriate for using alternative contracting procedures;

(b) Has the necessary experience and qualifications to carry out the alternative contracting procedure including, but

not limited to: (i) Project delivery knowledge and experience; (ii) personnel with appropriate construction experience; (iii) a management plan and rationale for its alternative public works projects; (iv) demonstrated success in managing public works projects; (v) the ability to properly manage its capital facilities plan including, but not limited to, appropriate project planning and budgeting experience; and (vi) the ability to meet requirements of this chapter; and

(c) Has resolved any audit findings on previous public works projects in a manner satisfactory to the committee.

(4) The committee shall, if practicable, make its determination at the public meeting during which an application for certification is reviewed. Public comments must be considered before a determination is made. Within ten business days of the public meeting, the committee shall provide a written determination to the public body, and make its determination available to the public on the committee's web site.

(5) The committee may revoke any public body's certification upon a finding, after a public hearing, that its use of design-build or general contractor/construction manager contracting procedures no longer serves the public interest.

(6) The committee may renew the certification of a public body for additional three-year periods. The public body must submit an application for recertification at least three months before the initial certification expires. The application shall include updated information on the public body's experience and current staffing with the procedure it is applying to renew, and any other information requested in advance by the committee. The committee must review the application for recertification at a meeting held before expiration of the applicant's initial certification period. A public body must reapply for certification under the process described in subsection (1) of this section once the period of recertification expires.

(7) Certified public bodies must submit project data information as required in RCW 39.10.320 and 39.10.350. [2013 c 222 § 7; 2009 c 75 § 3; 2007 c 494 § 107.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.280 Project review committee—Project approval process. (1) A public body not certified under RCW 39.10.270 must apply for approval from the committee to use the design-build or general contractor/construction manager contracting procedure on a project. A public body seeking approval must submit to the committee an application in a format and manner as prescribed by the committee. The application must include a description of the public body's qualifications, a description of the project, the public body's intended use of alternative contracting procedures, and, if applicable, a declaration that the public body has elected to procure the project as a heavy civil construction project.

(2) To approve a proposed project, the committee shall determine that:

(a) The alternative contracting procedure will provide a substantial fiscal benefit or the use of the traditional method of awarding contracts in lump sum to the low responsive bidder is not practical for meeting desired quality standards or delivery schedules;

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(b) The proposed project meets the requirements for using the alternative contracting procedure as described in RCW 39.10.300 or 39.10.340;

(c) The public body has the necessary experience or qualified team to carry out the alternative contracting procedure including, but not limited to: (i) Project delivery knowledge and experience; (ii) sufficient personnel with construction experience to administer the contract; (iii) a written management plan that shows clear and logical lines of authority; (iv) the necessary and appropriate funding and time to properly manage the job and complete the project; (v) continuity of project management team, including personnel with experience managing projects of similar scope and size to the project being proposed; and (vi) necessary and appropriate construction budget;

(d) For design-build projects, public body personnel or consultants are knowledgeable in the design-build process and are able to oversee and administer the contract; and

(e) The public body has resolved any audit findings related to previous public works projects in a manner satisfactory to the committee.

(3) The committee shall, if practicable, make its determination at the public meeting during which a submittal is reviewed. Public comments must be considered before a determination is made.

(4) Within ten business days after the public meeting, the committee shall provide a written determination to the public body, and make its determination available to the public on the committee's web site. If the committee fails to make a written determination within ten business days of the public meeting, the request of the public body to use the alternative contracting procedure on the requested project shall be deemed approved.

(5) Failure of the committee to meet within sixty calendar days of a public body's application to use an alternative contracting procedure on a project shall be deemed an approval of the application. [2014 c 42 § 2; 2013 c 222 § 8; 2007 c 494 § 108.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.290 Appeal process. Final determinations by the committee may be appealed to the board within seven days by the public body or by an interested party. A written notice of an appeal must be provided to the committee and, as applicable, to the public body. The board shall resolve an appeal within forty-five days of receipt of the appeal and shall send a written determination of its decision to the party making the appeal and to the appropriate public body, as applicable. The public body shall comply with the determination of the board. [2007 c 494 § 109.]

Sunset Act application: See note following chapter digest.

39.10.300 Design-build procedure—Uses. (1) Subject to the requirements in RCW 39.10.250, 39.10.270, or 39.10.280, public bodies may utilize the design-build procedure for public works projects in which the total project cost is over ten million dollars and where:

(a) The construction activities are highly specialized and a design-build approach is critical in developing the construction methodology; or

(b) The projects selected provide opportunity for greater innovation or efficiencies between the designer and the builder; or

(c) Significant savings in project delivery time would be realized.

(2) Subject to the process in RCW 39.10.270 or 39.10.280, public bodies may use the design-build procedure for parking garages, regardless of cost.

(3) The design-build procedure may be used for the construction or erection of portable facilities as defined in WAC 392-343-018, preengineered metal buildings, or not more than ten prefabricated modular buildings per installation site, regardless of cost and is not subject to approval by the committee.

(4) Except for utility projects and approved demonstration projects, the design-build procedure may not be used to procure operations and maintenance services for a period longer than three years. State agency projects that propose to use the design-build-operate-maintain procedure shall submit cost estimates for the construction portion of the project consistent with the office of financial management's capital budget requirements. Operations and maintenance costs must be shown separately and must not be included as part of the capital budget request.

(5) Subject to the process in RCW 39.10.280, public bodies may use the design-build procedure for public works projects in which the total project cost is between two million and ten million dollars and that meet one of the criteria in subsection (1)(a), (b), or (c) of this section.

(6) Subject to the process in RCW 39.10.280, a public body may seek committee approval for a design-build demonstration project that includes procurement of operations and maintenance services for a period longer than three years. [2013 c 222 § 9; 2009 c 75 § 4; 2007 c 494 § 201. Prior: 2003 c 352 § 2; 2003 c 300 § 4; 2002 c 46 § 1; 2001 c 328 § 2. Formerly RCW 39.10.051.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

Additional notes found at www.leg.wa.gov

39.10.320 Design-build procedure—Project management and contracting requirements. (1) A public body utilizing the design-build contracting procedure shall provide:

(a) Reasonable budget contingencies totaling not less than five percent of the anticipated contract value;

(b) Staff or consultants with expertise and prior experience in the management of comparable projects;

(c) Contract documents that include alternative dispute resolution procedures to be attempted prior to the initiation of litigation;

(d) Submission of project information, as required by the board; and

(e) Contract documents that require the contractor, subcontractors, and designers to submit project information required by the board.

(2) A public body utilizing the design-build contracting procedure may provide incentive payments to contractors for early completion, cost savings, or other goals if such payments are identified in the request for proposals. [2013 c 222 § 10; 2007 c 494 § 203; 1994 c 132 § 7. Formerly RCW 39.10.070.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.330 Design-build contract award process. (1) Contracts for design-build services shall be awarded through a competitive process using public solicitation of proposals for design-build services. The public body shall publish at least once in a legal newspaper of general circulation published in, or as near as possible to, that part of the county in which the public work will be done, a notice of its request for qualifications from proposers for design-build services, and the availability and location of the request for proposal documents. The request for qualifications documents shall include:

(a) A general description of the project that provides sufficient information for proposers to submit qualifications;

(b) The reasons for using the design-build procedure;

(c) A description of the qualifications to be required of the proposer including, but not limited to, submission of the proposer's accident prevention program;

(d) A description of the process the public body will use to evaluate qualifications and finalists' proposals, including evaluation factors and the relative weight of factors and any specific forms to be used by the proposers;

(i) Evaluation factors for request for qualifications shall include, but not be limited to, technical qualifications, such as specialized experience and technical competence; capability to perform; past performance of the proposers' team, including the architect-engineer and construction members; and other appropriate factors. Evaluation factors may also include: (A) The proposer's past performance in utilization of small business entities; and (B) disadvantaged business enterprises. Cost or price-related factors are not permitted in the request for qualifications phase;

(ii) Evaluation factors for finalists' proposals shall include, but not be limited to, the factors listed in (d)(i) of this subsection, as well as technical approach design concept; ability of professional personnel; past performance on similar projects; ability to meet time and budget requirements; ability to provide a performance and payment bond for the project; recent, current, and projected workloads of the firm; location; and cost or price-related factors that may include operating costs. The public body may also consider a proposer's outreach plan to include small business entities and disadvantaged business enterprises as subcontractor and suppliers for the project. Alternatively, if the public body determines that all finalists will be capable of producing a design that adequately meets project requirements, the public body may award the contract to the firm that submits the responsive proposal with the lowest price;

(e) Protest procedures including time limits for filing a protest, which in no event may limit the time to file a protest to fewer than four business days from the date the proposer was notified of the selection decision;

(f) The form of the contract to be awarded;

(g) The honorarium to be paid to finalists submitting responsive proposals and who are not awarded a design-build contract;

(h) The schedule for the procurement process and the project; and

(i) Other information relevant to the project.

(2) The public body shall establish an evaluation committee to evaluate the responses to the request for qualifications based solely on the factors, weighting, and process identified in the request for qualifications and any addenda issued by the public body. Based on the evaluation committee's findings, the public body shall select not more than five responsive and responsible finalists to submit proposals. The public body may, in its sole discretion, reject all proposals and shall provide its reasons for rejection in writing to all proposers.

(3) The public body must notify all proposers of the finalists selected to move to the next phase of the selection process. The process may not proceed to the next phase until two business days after all proposers are notified of the committee's selection decision. At the request of a proposer not selected as a finalist, the public body must provide the requesting proposer with a scoring summary of the evaluation factors for its proposal. Proposers filing a protest on the selection of the finalists must file the protest in accordance with the published protest procedures. The selection process may not advance to the next phase of selection until two business days after the final protest decision is transmitted to the protestor.

(4) Upon selection of the finalists, the public body shall issue a request for proposals to the finalists, which shall provide the following information:

(a) A detailed description of the project including programmatic, performance, and technical requirements and specifications; functional and operational elements; building performance goals and validation requirements; minimum and maximum net and gross areas of any building; and, at the discretion of the public body, preliminary engineering and architectural drawings; and

(b) The target budget for the design-build portion of the project.

(5) The public body shall establish an evaluation committee to evaluate the proposals submitted by the finalists. Design-build contracts shall be awarded using the procedures in (a) or (b) of this subsection. The public body must identify in the request for qualifications which procedure will be used.

(a) The finalists' proposals shall be evaluated and scored based solely on the factors, weighting, and process identified in the initial request for qualifications and in any addenda published by the public body. Public bodies may request best and final proposals from finalists. The public body may initiate negotiations with the firm submitting the highest scored proposal. If the public body is unable to execute a contract with the firm submitting the highest scored proposal, negotiations with that firm may be suspended or terminated and the public body may proceed to negotiate with the next highest scored firm. Public bodies shall continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated.

(b) If the public body determines that all finalists are capable of producing a design that adequately meets project requirements, the public body may award the contract to the firm that submits the responsive proposal with the lowest price.

(6) The public body shall notify all finalists of the selection decision and make a selection summary of the final proposals available to all proposers within two business days of

such notification. If the public body receives a timely written protest from a finalist firm, the public body may not execute a contract until two business days after the final protest decision is transmitted to the protestor. The protestor must submit its protest in accordance with the published protest procedures.

(7) The firm awarded the contract shall provide a performance and payment bond for the contracted amount.

(8) The public body shall provide appropriate honorarium payments to finalists submitting responsive proposals that are not awarded a design-build contract. Honorarium payments shall be sufficient to generate meaningful competition among potential proposers on design-build projects. In determining the amount of the honorarium, the public body shall consider the level of effort required to meet the selection criteria. [2014 c 19 § 1; 2013 c 222 § 11; 2009 c 75 § 5; 2007 c 494 § 204.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.340 General contractor/construction manager procedure—Uses. Subject to the process in RCW 39.10.270 or 39.10.280, public bodies may utilize the general contractor/construction manager procedure for public works projects where at least one of the following is met:

(1) Implementation of the project involves complex scheduling, phasing, or coordination;

(2) The project involves construction at an occupied facility which must continue to operate during construction;

(3) The involvement of the general contractor/construction manager during the design stage is critical to the success of the project;

(4) The project encompasses a complex or technical work environment;

(5) The project requires specialized work on a building that has historic significance; or

(6) The project is, and the public body elects to procure the project as, a heavy civil construction project. However, no provision of this chapter pertaining to a heavy civil construction project applies unless the public body expressly elects to procure the project as a heavy civil construction project. [2014 c 42 § 3; 2013 c 222 § 12; 2007 c 494 § 301. Prior: 2003 c 352 § 3; 2003 c 300 § 5; 2002 c 46 § 2; 2001 c 328 § 3. Formerly RCW 39.10.061.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

Additional notes found at www.leg.wa.gov

39.10.350 General contractor/construction manager procedure—Project management and contracting requirements. (1) A public body using the general contractor/construction manager contracting procedure shall provide for:

(a) The preparation of appropriate, complete, and coordinated design documents;

(b) Confirmation that a constructability analysis of the design documents has been performed prior to solicitation of a subcontract bid package;

(c) Reasonable budget contingencies totaling not less than five percent of the anticipated contract value;

(d) To the extent appropriate, on-site architectural or engineering representatives during major construction or installation phases;

(e) Employment of staff or consultants with expertise and prior experience in the management of comparable projects, critical path method schedule review and analysis, and the administration, pricing, and negotiation of change orders;

(f) Contract documents that include alternative dispute resolution procedures to be attempted before the initiation of litigation;

(g) Contract documents that: (i) Obligate the public owner to accept or reject a request for equitable adjustment, change order, or claim within a specified time period but no later than sixty calendar days after the receipt by the public body of related documentation; and (ii) provide that if the public owner does not respond in writing to a request for equitable adjustment, change order, or claim within the specified time period, the request is deemed denied;

(h) Submission of project information, as required by the board; and

(i) Contract documents that require the contractor, subcontractors, and designers to submit project information required by the board.

(2) A public body using the general contractor/construction manager contracting procedure may include an incentive clause for early completion, cost savings, or other performance goals if such incentives are identified in the request for proposals. No incentives granted may exceed five percent of the maximum allowable construction cost. No incentives may be paid from any contingency fund established for coordination of the construction documents or coordination of the work.

(3) If the construction is completed for less than the maximum allowable construction cost, any savings not otherwise negotiated as part of an incentive clause shall accrue to the public body. If the construction is completed for more than the maximum allowable construction cost, the additional cost is the responsibility of the general contractor/construction manager.

(4) If the public body and the general contractor/construction manager agree, in writing, on a price for additional work, the public body must issue a change order within thirty days of the written agreement. If the public body does not issue a change order within the thirty days, interest shall accrue on the dollar amount of the additional work satisfactorily completed until a change order is issued. The public body shall pay this interest at a rate of one percent per month.

(5) For a project procured as a heavy civil construction project, an independent audit, paid for by the public body, must be conducted to confirm the proper accrual of costs as outlined in the contract. [2014 c 42 § 4; 2007 c 494 § 302.]

Sunset Act application: See note following chapter digest.

39.10.360 General contractor/construction manager procedure—Contract award process. (1) Public bodies should select general contractor/construction managers early in the life of public works projects, and in most situations no later than the completion of schematic design.

(2) Contracts for the services of a general contractor/construction manager under this section shall be awarded through a competitive process requiring the public solici-

tion of proposals for general contractor/construction manager services. The public solicitation of proposals shall include:

(a) A description of the project, including programmatic, performance, and technical requirements and specifications when available;

(b) The reasons for using the general contractor/construction manager procedure including, if applicable, a clear statement that the public body is electing to procure the project as a heavy civil construction project, in which case the solicitation must additionally:

(i) Indicate the minimum percentage of the cost of the work to construct the project that will constitute the negotiated self-perform portion of the project;

(ii) Indicate whether the public body will allow the price to be paid for the negotiated self-perform portion of the project to be deemed a cost of the work to which the general contractor/construction manager's percent fee applies; and

(iii) Require proposals to indicate the proposer's fee for the negotiated self-perform portion of the project;

(c) A description of the qualifications to be required of the firm, including submission of the firm's accident prevention program;

(d) A description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors, the relative weight of factors, and protest procedures including time limits for filing a protest, which in no event may limit the time to file a protest to fewer than four business days from the date the proposer was notified of the selection decision;

(e) The form of the contract, including any contract for preconstruction services, to be awarded;

(f) The estimated maximum allowable construction cost; and

(g) The bid instructions to be used by the general contractor/construction manager finalists.

(3)(a) Evaluation factors for selection of the general contractor/construction manager shall include, but not be limited to:

(i) Ability of the firm's professional personnel;

(ii) The firm's past performance in negotiated and complex projects;

(iii) The firm's ability to meet time and budget requirements;

(iv) The scope of work the firm proposes to self-perform and its ability to perform that work;

(v) The firm's proximity to the project location;

(vi) Recent, current, and projected workloads of the firm; and

(vii) The firm's approach to executing the project.

(b) An agency may also consider the firm's outreach plan to include small business entities and disadvantaged business enterprises, and the firm's past performance in the utilization of such firms as an evaluation factor.

(4) A public body shall establish a committee to evaluate the proposals. After the committee has selected the most qualified finalists, at the time specified by the public body, these finalists shall submit final proposals, including sealed bids for the percent fee on the estimated maximum allowable construction cost and the fixed amount for the general conditions work specified in the request for proposal. The public body shall establish a time and place for the opening of sealed

bids for the percent fee on the estimated maximum allowable construction cost and the fixed amount for the general conditions work specified in the request for proposal. At the time and place named, these bids must be publicly opened and read and the public body shall make all previous scoring available to the public. The public body shall select the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors published in the public solicitation of proposals. A public body shall not evaluate or disqualify a proposal based on the terms of a collective bargaining agreement.

(5) The public body shall notify all finalists of the selection decision and make a selection summary of the final proposals available to all proposers within two business days of such notification. If the public body receives a timely written protest from a proposer, the public body may not execute a contract until two business days after the final protest decision is transmitted to the protestor. The protestor must submit its protest in accordance with the published protest procedures.

(6) Public bodies may contract with the selected firm to provide services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work, and to act as the construction manager and general contractor during the construction phase. [2014 c 42 § 5; 2013 c 222 § 13; 2009 c 75 § 6; 2007 c 494 § 303.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.370 General contractor/construction manager procedure—Maximum allowable construction cost. (1) The maximum allowable construction cost shall be used to establish a total contract cost for which the general contractor/construction manager shall provide a performance and payment bond. The maximum allowable construction cost shall be negotiated between the public body and the selected firm when the construction documents and specifications are at least ninety percent complete.

(2) Major bid packages may be bid in accordance with RCW 39.10.380 before agreement on the maximum allowable construction cost between the public body and the selected general contractor/construction manager. The general contractor/construction manager may issue an intent to award to the responsible bidder submitting the lowest responsive bid.

(3) The public body may, at its option, authorize the general contractor/construction manager to proceed with the bidding and award of bid packages and construction before receipt of complete project plans and specifications. Any contracts awarded under this subsection shall be incorporated in the negotiated maximum allowable construction cost.

(4) The total contract cost includes the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable construction cost, the negotiated support services, and the percent fee on the negotiated maximum allowable construction cost. Negotiated support services may be included in the specified general conditions at the discretion of the public body.

(5) If the public body is unable to negotiate a satisfactory maximum allowable construction cost with the firm selected that the public body determines to be fair, reasonable, and within the available funds, negotiations with that firm shall be formally terminated and the public body shall negotiate with the next highest scored firm and continue until an agreement is reached or the process is terminated.

(6) If the maximum allowable construction cost varies more than fifteen percent from the bid estimated maximum allowable construction cost due to requested and approved changes in the scope by the public body, the percent fee shall be renegotiated.

(7) As part of the negotiation of the maximum allowable construction cost under subsection (1) of this section, on a project that the public body has elected to procure as a heavy civil construction project:

(a) The general contractor/construction manager shall submit a proposed construction management and contracting plan, which must include, at a minimum:

(i) The scope of work and cost estimates for each bid package;

(ii) A proposed price and scope of work for the negotiated self-perform portion of the project;

(iii) The bases used by the general contractor/construction manager to develop all cost estimates, including the negotiated self-perform portion of the project; and

(iv) The general contractor/construction manager's updated outreach plan to include small business entities, disadvantaged business entities, and any other disadvantaged or underutilized businesses as the public body may designate in the public solicitation of proposals, as subcontractors and suppliers for the project;

(b) The public body and general contractor/construction manager may negotiate the scopes of work to be procured by bid and the price and scope of work for the negotiated self-perform portion of the project, if any;

(c) The negotiated self-perform portion of the project must not exceed fifty percent of the cost of the work to construct the project;

(d) Subject to the limitation of RCW 39.10.390(4), the public body may additionally negotiate with the general contractor/construction manager to determine on which scopes of work the general contractor/construction manager will be permitted to bid, if any;

(e) The public body and general contractor/construction manager shall negotiate, to the public body's satisfaction, a fair and reasonable outreach plan;

(f) If the public body is unable to negotiate to its reasonable satisfaction a component of this subsection (7), negotiations with the firm must be terminated and the public body shall negotiate with the next highest scored firm and continue until an agreement is reached or the process is terminated. [2014 c 42 § 6; 2007 c 494 § 304.]

Sunset Act application: See note following chapter digest.

39.10.380 General contractor/construction manager procedure—Subcontract bidding procedure. (1) All subcontract work and equipment and material purchases shall be competitively bid with public bid openings. Subcontract bid packages and equipment and materials purchases shall be awarded to the responsible bidder submitting the lowest

responsive bid. In preparing subcontract bid packages, the general contractor/construction manager shall not be required to violate or waive terms of a collective bargaining agreement.

(2) All subcontract bid packages in which bidder eligibility was not determined in advance shall include the specific objective criteria that will be used by the general contractor/construction manager and the public body to evaluate bidder responsibility. If the lowest bidder submitting a responsive bid is determined by the general contractor/construction manager and the public body not to be responsible, the general contractor/construction manager and the public body must provide written documentation to that bidder explaining their intent to reject the bidder as not responsible and afford the bidder the opportunity to establish that it is a responsible bidder. Responsibility shall be determined in accordance with criteria listed in the bid documents. Protests concerning bidder responsibility determination by the general contractor/construction manager and the public body shall be in accordance with subsection (4) of this section.

(3) All subcontractors who bid work over three hundred thousand dollars shall post a bid bond. All subcontractors who are awarded a contract over three hundred thousand dollars shall provide a performance and payment bond for the contract amount. All other subcontractors shall provide a performance and payment bond if required by the general contractor/construction manager.

(4) If the general contractor/construction manager receives a written protest from a subcontractor bidder or an equipment or material supplier, the general contractor/construction manager shall not execute a contract for the subcontract bid package or equipment or material purchase order with anyone other than the protesting bidder without first providing at least two full business days' written notice to all bidders of the intent to execute a contract for the subcontract bid package. The protesting bidder must submit written notice of its protest no later than two full business days following the bid opening. Intermediate Saturdays, Sundays, and legal holidays are not counted.

(5) A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(6) The general contractor/construction manager may negotiate with the lowest responsible and responsive bidder to negotiate an adjustment to the lowest bid or proposal price based upon agreed changes to the contract plans and specifications under the following conditions:

(a) All responsive bids or proposal prices exceed the available funds;

(b) The apparent low responsive bid or proposal does not exceed the available funds by the greater of one hundred twenty-five thousand dollars or two percent for projects valued over ten million dollars; and

(c) The negotiated adjustment will bring the bid or proposal price within the amount of available funds.

(7) If the negotiation is unsuccessful, the subcontract work or equipment or material purchases must be rebid.

(8) The general contractor/construction manager must provide a written explanation if all bids are rejected. [2013 c 222 § 14; 2007 c 494 § 305.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.385 General contractor/construction manager procedure—Alternative subcontractor selection process.

As an alternative to the subcontractor selection process outlined in RCW 39.10.380, a general contractor/construction manager may, with the approval of the public body, select mechanical subcontractors, electrical subcontractors, or both, using the process outlined in this section. This alternative selection process may only be used when the anticipated value of the subcontract will exceed three million dollars. When using the alternative selection process, the general contractor/construction manager should select the subcontractor early in the life of the public works project.

(1) In order to use this alternative selection process, the general contractor/construction manager and the public body must determine that it is in the best interest of the public. In making this determination the general contractor/construction manager and the public body must:

(a) Publish a notice of intent to use this alternative selection process in a legal newspaper published in or as near as possible to that part of the county where the public work will be constructed. Notice must be published at least fourteen calendar days before conducting a public hearing. The notice must include the date, time, and location of the hearing; a statement justifying the basis and need for the alternative selection process; how interested parties may, prior to the hearing, obtain the evaluation criteria and applicable weight given to each criteria that will be used for evaluation; and protest procedures including time limits for filing a protest, which may in no event, limit the time to file a protest to fewer than four business days from the date the proposer was notified of the selection decision;

(b) Conduct a hearing and provide an opportunity for any interested party to submit written and verbal comments regarding the justification for using this selection process, the evaluation criteria, weights for each criteria, and protest procedures;

(c) After the public hearing, consider the written and verbal comments received and determine if using this alternative selection process is in the best interests of the public; and

(d) Issue a written final determination to all interested parties. All protests of the decision to use the alternative selection process must be in writing and submitted to the public body within seven calendar days of the final determination. Any modifications to the criteria, weights, and protest procedures based on comments received during the public hearing process must be included in the final determination.

(2) Contracts for the services of a subcontractor under this section must be awarded through a competitive process requiring a public solicitation of proposals. Notice of the public solicitation of proposals must be provided to the office of minority and women's business enterprises. The public solicitation of proposals must include:

(a) A description of the project, including programmatic, performance, and technical requirements and specifications when available;

(b) The reasons for using the alternative selection process;

(c) A description of the minimum qualifications required of the firm;

(d) A description of the process used to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors;

(e) Protest procedures;

(f) The form of the contract, including any contract for preconstruction services, to be awarded;

(g) The estimated maximum allowable subcontract cost; and

(h) The bid instructions to be used by the finalists.

(3) Evaluation factors for selection of the subcontractor must include, but not be limited to:

(a) Ability of the firm's professional personnel;

(b) The firm's past performance on similar projects;

(c) The firm's ability to meet time and budget requirements;

(d) The scope of work the firm proposes to perform with its own forces and its ability to perform that work;

(e) The firm's plan for outreach to minority and women-owned businesses;

(f) The firm's proximity to the project location;

(g) The firm's capacity to successfully complete the project;

(h) The firm's approach to executing the project;

(i) The firm's approach to safety on the project;

(j) The firm's safety history; and

(k) If the firm is selected as one of the most qualified finalists, the firm's fee and cost proposal.

(4) The general contractor/construction manager shall establish a committee to evaluate the proposals. At least one representative from the public body shall serve on the committee. Final proposals, including sealed bids for the percent fee on the estimated maximum allowable subcontract cost, and the fixed amount for the subcontract general conditions work specified in the request for proposal, will be requested from the most qualified firms.

(5) The general contractor/construction manager must notify all proposers of the most qualified firms that will move to the next phase of the selection process. The process may not proceed to the next phase until two business days after all proposers are notified of the committee's selection decision. At the request of a proposer, the general contractor/construction manager must provide the requesting proposer with a scoring summary of the evaluation factors for its proposal. Proposers filing a protest on the selection of the most qualified finalists must file the protest with the public body in accordance with the published protest procedures. The selection process may not advance to the next phase of selection until two business days after the final protest decision issued by the public body is transmitted to the protestor.

(6) The general contractor/construction manager and the public body shall select the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors identified in the solicitation of proposals. The scoring of the nonprice factors must be made available at the opening of the fee and cost proposals. The general contractor/construction manager shall notify all proposers of the selection decision and make a selection summary of the final proposals, which shall be available to all proposers within two business days of such notification. The general contractor/construction manager may not evaluate or disqualify

ify a proposal based on the terms of a collective bargaining agreement.

(7) If the public body receives a timely written protest from a "most qualified firm," the general contractor/construction manager may not execute a contract for the protested subcontract work until two business days after the final protest decision issued by the public body is transmitted to the protestor. The protestor must submit its protest in accordance with the published protest procedures.

(8) If the general contractor/construction manager is unable to negotiate a satisfactory maximum allowable subcontract cost with the firm selected deemed by public body and the general contractor/construction manager to be fair, reasonable, and within the available funds, negotiations with that firm must be formally terminated and the general contractor/construction manager may negotiate with the next highest scored firm until an agreement is reached or the process is terminated.

(9) With the approval of the public body, the general contractor/construction manager may contract with the selected firm to provide preconstruction services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work; and to act as the mechanical or electrical subcontractor during the construction phase.

(10) The maximum allowable subcontract cost must be used to establish a total subcontract cost for purposes of a performance and payment bond. Total subcontract cost means the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable subcontract cost, and the percent fee on the negotiated maximum allowable subcontract cost. Maximum allowable subcontract cost means the maximum cost to complete the work specified for the subcontract, including the estimated cost of work to be performed by the subcontractor's own forces, a percentage for risk contingency, negotiated support services, and approved change orders. The maximum allowable subcontract cost must be negotiated between the general contractor/construction manager and the selected firm when the construction documents and specifications are at least ninety percent complete. Final agreement on the maximum allowable subcontract cost is subject to the approval of the public body.

(11) If the work of the mechanical contractor or electrical contractor is completed for less than the maximum allowable subcontract cost, any savings not otherwise negotiated as part of an incentive clause becomes part of the risk contingency included in the general contractor/construction manager's maximum allowable construction cost. If the work of the mechanical contractor or the electrical contractor is completed for more than the maximum allowable subcontract cost, the additional cost is the responsibility of that subcontractor. An independent audit, paid for by the public body, must be conducted to confirm the proper accrual of costs as outlined in the contract.

(12) A mechanical or electrical contractor selected under this section may perform work with its own forces. In the event it elects to subcontract some of its work, it must select a subcontractor utilizing the procedure outlined in RCW 39.10.380. [2013 c 222 § 15; 2010 c 163 § 1.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.390 General contractor/construction manager procedure—Subcontract work. (1) Except as provided in this section, bidding on subcontract work or for the supply of equipment or materials by the general contractor/construction manager or its subsidiaries is prohibited.

(2) The general contractor/construction manager, or its subsidiaries, may bid on subcontract work or for the supply of equipment or materials if:

(a) The work within the subcontract bid package or equipment or materials is customarily performed or supplied by the general contractor/construction manager;

(b) The bid opening is managed by the public body and is in compliance with RCW 39.10.380; and

(c) Notification of the general contractor/construction manager's intention to bid is included in the public solicitation of bids for the bid package or for the equipment or materials.

(3) In no event may the general contractor/construction manager or its subsidiaries assign warranty responsibility or the terms of its contract or purchase order with vendors for equipment or material purchases to subcontract bid package bidders or subcontractors who have been awarded a contract. The value of subcontract work performed and equipment and materials supplied by the general contractor/construction manager may not exceed thirty percent of the negotiated maximum allowable construction cost, unless procured as a heavy civil construction project under this chapter. Negotiated support services performed by the general contractor/construction manager shall not be considered subcontract work for purposes of this subsection.

(4) Notwithstanding any contrary provision of this chapter, for a project that a public body has elected to procure as a heavy civil construction project under this chapter, at least thirty percent of the cost of the work to construct the project included in the negotiated maximum allowable construction cost must be procured through competitive sealed bidding in which bidding by the general contractor/construction manager or its subsidiaries is prohibited. [2014 c 42 § 7; 2013 c 222 § 16; 2007 c 494 § 306.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.400 General contractor/construction manager procedure—Prebid determination of subcontractor eligibility. (1) If determination of subcontractor eligibility prior to seeking bids is in the best interest of the project and critical to the successful completion of a subcontract bid package, the general contractor/construction manager and the public body may determine subcontractor eligibility to bid. The general contractor/construction manager and the public body must:

(a) Conduct a hearing and provide an opportunity for any interested party to submit written and verbal comments regarding the justification for conducting bidder eligibility, the evaluation criteria, and weights for each criteria and subcriteria;

(b) Publish a notice of intent to evaluate and determine bidder eligibility in a legal newspaper published in or as near as possible to that part of the county where the public work

will be constructed at least fourteen calendar days before conducting a public hearing;

(c) Ensure the public hearing notice includes the date, time, and location of the hearing, a statement justifying the basis and need for performing eligibility analysis before bid opening, and how interested parties may, at least five days before the hearing, obtain the specific eligibility criteria and applicable weights given to each criteria and subcriteria that will be used during evaluation;

(d) After the public hearing, consider written and verbal comments received and determine if establishing bidder eligibility in advance of seeking bids is in the best interests of the project and critical to the successful completion of a subcontract bid package; and

(e) Issue a written final determination to all interested parties. All protests of the decision to establish bidder eligibility before issuing a subcontractor bid package must be filed with the superior court within seven calendar days of the final determination. Any modifications to the eligibility criteria and weights shall be based on comments received during the public hearing process and shall be included in the final determination.

(2) Determinations of bidder eligibility shall be in accordance with the evaluation criteria and weights for each criteria established in the final determination and shall be provided to interested persons upon request. Any potential bidder determined not to meet eligibility criteria must be afforded one opportunity to establish its eligibility. Protests concerning bidder eligibility determinations shall be in accordance with subsection (1) of this section. [2013 c 222 § 17; 2007 c 494 § 307.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.410 General contractor/construction manager procedure—Subcontract agreements. Subcontract agreements used by the general contractor/construction manager shall not:

(1) Delegate, restrict, or assign the general contractor/construction manager's implied duty not to hinder or delay the subcontractor. Nothing in this subsection (1) prohibits the general contractor/construction manager from requiring subcontractors not to hinder or delay the work of the general contractor/construction manager or other subcontractors and to hold subcontractors responsible for such damages;

(2) Delegate, restrict, or assign the general contractor/construction manager's authority to resolve subcontractor conflicts. The general contractor/construction manager may delegate or assign coordination of specific elements of the work, including: (a) The coordination of shop drawings among subcontractors; (b) the coordination among subcontractors in ceiling spaces and mechanical rooms; and (c) the coordination of a subcontractor's lower tier subcontractors. Nothing in this subsection prohibits the general contractor/construction manager from imposing a duty on its subcontractors to cooperate with the general contractor/construction manager and other subcontractors in the coordination of the work;

(3) Restrict the subcontractor's right to damages for changes to the construction schedule or work to the extent

that the delay or disruption is caused by the general contractor/construction manager or entities acting for it. The general contractor/construction manager may require the subcontractor to provide notice that rescheduling or resequencing will result in delays or additional costs;

(4) Require the subcontractor to bear the cost of trade damage repair except to the extent the subcontractor is responsible for the damage. Nothing in this subsection (4) precludes the general contractor/construction manager from requiring the subcontractor to take reasonable steps to protect the subcontractor's work from trade damage; or

(5) Require the subcontractor to execute progress payment applications that waive claims for additional time or compensation or bond or retainage rights as a condition of receipt of progress payment, except to the extent the subcontractor has received or will receive payment. Nothing in this section precludes the general contractor/construction manager from requiring the subcontractor to provide notice of claims for additional time or compensation as a condition precedent to right of recovery or to execute a full and final release, including a waiver of bond and retainage rights, as a condition of final payment. [2007 c 494 § 308.]

Sunset Act application: See note following chapter digest.

39.10.420 Job order procedure—Which public bodies may use—Authorized use. (1) The following public bodies of the state of Washington are authorized to award job order contracts and use the job order contracting procedure:

- (a) The department of enterprise services;
- (b) The state universities, regional universities, and The Evergreen State College;
- (c) Sound transit (central Puget Sound regional transit authority);
- (d) Every city with a population greater than seventy thousand and any public authority chartered by such city under RCW 35.21.730 through 35.21.755;
- (e) Every county with a population greater than four hundred fifty thousand;
- (f) Every port district with total revenues greater than fifteen million dollars per year;
- (g) Every public utility district with revenues from energy sales greater than twenty-three million dollars per year;
- (h) Every school district;
- (i) The state ferry system; and
- (j) The Washington state department of transportation, for the administration of building improvement, replacement, and renovation projects only.

(2)(a) The department of enterprise services may issue job order contract work orders for Washington state parks department projects.

(b) The department of enterprise services, the University of Washington, and Washington State University may issue job order contract work orders for the state regional universities and The Evergreen State College.

(3) Public bodies may use a job order contract for public works projects when a determination is made that the use of job order contracts will benefit the public by providing an effective means of reducing the total lead-time and cost for the construction of public works projects for repair and renovation required at public facilities through the use of unit

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price books and work orders by eliminating time-consuming, costly aspects of the traditional public works process, which require separate contracting actions for each small project. [2013 c 222 § 18; 2013 c 186 § 1; 2012 c 102 § 1; 2009 c 75 § 7; 2007 c 494 § 401; 2003 c 301 § 1. Formerly RCW 39.10.130.]

Reviser's note: This section was amended by 2013 c 186 § 1 and by 2013 c 222 § 18, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.430 Job order procedure—Contract award process. (1) Job order contracts shall be awarded through a competitive process using public requests for proposals.

(2) The public body shall make an effort to solicit proposals from certified minority or certified woman-owned contractors to the extent permitted by the Washington state civil rights act, RCW 49.60.400.

(3) The public body shall publish, at least once in a statewide publication and legal newspaper of general circulation published in every county in which the public works project is anticipated, a request for proposals for job order contracts and the availability and location of the request for proposal documents. The public body shall ensure that the request for proposal documents at a minimum includes:

- (a) A detailed description of the scope of the job order contract including performance, technical requirements and specifications, functional and operational elements, minimum and maximum work order amounts, duration of the contract, and options to extend the job order contract;
- (b) The reasons for using job order contracts;
- (c) A description of the qualifications required of the proposer;
- (d) The identity of the specific unit price book to be used;
- (e) The minimum contracted amount committed to the selected job order contractor;
- (f) A description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors. The public body shall ensure that evaluation factors include, but are not limited to, proposal price and the ability of the proposer to perform the job order contract. In evaluating the ability of the proposer to perform the job order contract, the public body may consider: The ability of the professional personnel who will work on the job order contract; past performance on similar contracts; ability to meet time and budget requirements; ability to provide a performance and payment bond for the job order contract; recent, current, and projected workloads of the proposer; location; and the concept of the proposal;
- (g) The form of the contract to be awarded;
- (h) The method for pricing renewals of or extensions to the job order contract;
- (i) A notice that the proposals are subject to RCW 39.10.470; and
- (j) Other information relevant to the project.

(4) A public body shall establish a committee to evaluate the proposals. After the committee has selected the most qualified finalists, the finalists shall submit final proposals, including sealed bids based upon the identified unit price

book. Such bids may be in the form of coefficient markups from listed price book costs. The public body shall award the contract to the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors published in the public request for proposals and will notify the board of the award of the contract.

(5) The public body shall provide a protest period of at least ten business days following the day of the announcement of the apparent successful proposal to allow a protester to file a detailed statement of the grounds of the protest. The public body shall promptly make a determination on the merits of the protest and provide to all proposers a written decision of denial or acceptance of the protest. The public body shall not execute the contract until two business days following the public body's decision on the protest.

(6) The requirements of RCW 39.30.060 do not apply to requests for proposals for job order contracts. [2007 c 494 § 402.]

Sunset Act application: See note following chapter digest.

39.10.440 Job order procedure—Contract requirements. (1) The maximum total dollar amount that may be awarded under a job order contract is four million dollars per year for a maximum of three years. The maximum total dollar amount that may be awarded under a job order contract for counties with a population of more than one million is six million dollars per year for a maximum of three years.

(2) Job order contracts may be executed for an initial contract term of not to exceed two years, with the option of extending or renewing the job order contract for one year. All extensions or renewals must be priced as provided in the request for proposals. The extension or renewal must be mutually agreed to by the public body and the job order contractor.

(3) A public body may have no more than two job order contracts in effect at any one time, with the exception of the department of enterprise services, which may have four job order contracts in effect at any one time.

(4) At least ninety percent of work contained in a job order contract must be subcontracted to entities other than the job order contractor. The job order contractor must distribute contracts as equitably as possible among qualified and available subcontractors including minority and woman-owned subcontractors to the extent permitted by law.

(5) The job order contractor shall publish notification of intent to perform public works projects at the beginning of each contract year in a statewide publication and in a legal newspaper of general circulation in every county in which the public works projects are anticipated.

(6) Job order contractors shall pay prevailing wages for all work that would otherwise be subject to the requirements of chapter 39.12 RCW. Prevailing wages for all work performed pursuant to each work order must be the rates in effect at the time the individual work order is issued.

(7) If, in the initial contract term, the public body, at no fault of the job order contractor, fails to issue the minimum amount of work orders stated in the public request for proposals, the public body shall pay the contractor an amount equal to the difference between the minimum work order amount and the actual total of the work orders issued multiplied by an appropriate percentage for overhead and profit contained in

the contract award coefficient for services as specified in the request for proposals. This is the contractor's sole remedy.

(8) All job order contracts awarded under this section must be signed before July 1, 2021; however the job order contract may be extended or renewed as provided for in this section.

(9) Public bodies may amend job order contracts awarded prior to July 1, 2007, in accordance with this chapter. [2013 c 222 § 19; 2007 c 494 § 403.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.450 Job order procedure—Work orders. (1) The maximum dollar amount for a work order is three hundred fifty thousand dollars.

(2) All work orders issued for the same project shall be treated as a single work order for purposes of the dollar limit on work orders.

(3) No more than twenty percent of the dollar value of a work order may consist of items of work not contained in the unit price book.

(4) Any new permanent, enclosed building space constructed under a work order shall not exceed two thousand gross square feet.

(5) A public body may issue no work orders under a job order contract until it has approved, in consultation with the office of minority and women's business enterprises or the equivalent local agency, a plan prepared by the job order contractor that equitably spreads certified women and minority business enterprise subcontracting opportunities, to the extent permitted by the Washington state civil rights act, RCW 49.60.400, among the various subcontract disciplines.

(6) For purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW, each work order issued shall be treated as a separate contract. The alternate filing provisions of RCW 39.12.040(2) apply to each work order that otherwise meets the eligibility requirements of RCW 39.12.040(2).

(7) The job order contract shall not be used for the procurement of architectural or engineering services not associated with specific work orders. Architectural and engineering services shall be procured in accordance with RCW 39.80.040. [2012 c 102 § 2; 2007 c 494 § 404.]

Sunset Act application: See note following chapter digest.

39.10.460 Job order procedure—Required information to board. Each year, a public body shall provide to the board the following information for each job order contract for the period July 1st through June 30th:

- (1) A list of work orders issued;
- (2) The cost of each work order;
- (3) A list of subcontractors hired under each work order;
- (4) If requested by the board, a copy of the intent to pay prevailing wage and the affidavit of wages paid for each work order subcontract; and

(5) Any other information requested by the board. [2012 c 102 § 3; 2007 c 494 § 405.]

Sunset Act application: See note following chapter digest.

39.10.470 Public inspection of certain records—Protection of trade secrets—Protection of proposals submitted by design-build finalists. (1) Except as provided in sub-

sections (2) and (3) of this section, all proceedings, records, contracts, and other public records relating to alternative public works transactions under this chapter shall be open to the inspection of any interested person, firm, or corporation in accordance with chapter 42.56 RCW.

(2) Trade secrets, as defined in RCW 19.108.010, or other proprietary information submitted by a bidder, offeror, or contractor in connection with an alternative public works transaction under this chapter shall not be subject to chapter 42.56 RCW if the bidder, offeror, or contractor specifically states in writing the reasons why protection is necessary, and identifies the data or materials to be protected.

(3) Proposals submitted by design-build finalists are exempt from disclosure until the notification of the highest scoring finalist is made in accordance with RCW 39.10.330(5) or the selection process is terminated. [2014 c 19 § 2; 2005 c 274 § 275; 1994 c 132 § 10. Formerly RCW 39.10.100.]

Sunset Act application: See note following chapter digest.

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

39.10.480 Construction of chapter—Waiver of other limits and requirements. This chapter shall not be construed to affect or modify the existing statutory, regulatory, or charter powers of public bodies except to the extent that a procedure authorized by this chapter is adopted by a public body for a particular public works project. In that event, the normal contracting or procurement limits or requirements of a public body as imposed by statute, ordinance, resolution, or regulation shall be deemed waived or amended only to the extent necessary to accommodate such procedures for a particular public works project. [1994 c 132 § 9. Formerly RCW 39.10.090.]

Sunset Act application: See note following chapter digest.

39.10.490 Application of chapter. The alternative public works contracting procedures authorized under this chapter are limited to public works contracts signed before July 1, 2021. Methods of public works contracting authorized under this chapter shall remain in full force and effect until completion of contracts signed before July 1, 2021. [2013 c 222 § 20; 2007 c 494 § 501; 2001 c 328 § 5. Prior: 1997 c 376 § 7; 1997 c 220 § 404 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 305; 1994 c 132 § 12. Formerly RCW 39.10.120.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Additional notes found at www.leg.wa.gov

39.10.900 Captions not law—1994 c 132. Captions as used in this act do not constitute any part of law. [1994 c 132 § 13.]

Sunset Act application: See note following chapter digest.

39.10.901 Severability—1994 c 132. If any provision of this act or its application to any person or circumstance is

held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1994 c 132 § 14.]

Sunset Act application: See note following chapter digest.

39.10.903 Part headings and captions not law—2007 c 494. Part headings and captions used in chapter 494, Laws of 2007 are not any part of the law. [2007 c 494 § 510.]

Sunset Act application: See note following chapter digest.

39.10.904 Effective dates—2007 c 494. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007, except for section 104 of this act, which takes effect immediately [May 15, 2007], and section 508 of this act, which takes effect June 30, 2007. [2007 c 494 § 512.]

Sunset Act application: See note following chapter digest.

39.10.905 Severability—2007 c 494. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2007 c 494 § 513.]

Sunset Act application: See note following chapter digest.

Chapter 39.12 RCW

PREVAILING WAGES ON PUBLIC WORKS

Sections

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Hours of labor on public works: Chapter 49.28 RCW.

Workers' compensation applicable to public works contracts: RCW 51.12.050, 51.12.070.

39.12.010 Definitions. (1) The "prevailing rate of wage", for the intents and purposes of this chapter, shall be the rate of hourly wage, usual benefits, and overtime paid in

the locality, as hereinafter defined, to the majority of workers, laborers, or mechanics, in the same trade or occupation. In the event that there is not a majority in the same trade or occupation paid at the same rate, then the average rate of hourly wage and overtime paid to such laborers, workers, or mechanics in the same trade or occupation shall be the prevailing rate. If the wage paid by any contractor or subcontractor to laborers, workers, or mechanics on any public work is based on some period of time other than an hour, the hourly wage for the purposes of this chapter shall be mathematically determined by the number of hours worked in such period of time.

(2) The "locality" for the purposes of this chapter shall be the largest city in the county wherein the physical work is being performed.

(3) The "usual benefits" for the purposes of this chapter shall include the amount of:

(a) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(b) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to workers, laborers, and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the workers, laborers, and mechanics affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of such benefits.

(4) An "interested party" for the purposes of this chapter shall include a contractor, subcontractor, an employee of a contractor or subcontractor, an organization whose members' wages, benefits, and conditions of employment are affected by this chapter, and the director of labor and industries or the director's designee. [1989 c 12 § 6; 1985 c 15 § 1; 1965 ex.s. c 133 § 1; 1945 c 63 § 3; Rem. Supp. 1945 § 10322-22.]

Additional notes found at www.leg.wa.gov

39.12.015 Industrial statistician to make determinations of prevailing rate. All determinations of the prevailing rate of wage shall be made by the industrial statistician of the department of labor and industries. [1965 ex.s. c 133 § 2.]

39.12.020 Prevailing rate to be paid on public works and under public building service maintenance contracts—Posting of statement of intent—Exception. The hourly wages to be paid to laborers, workers, or mechanics, upon all public works and under all public building service maintenance contracts of the state or any county, municipality or political subdivision created by its laws, shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the state where such labor is performed. For a contract in excess of ten thousand dollars, a contractor required to pay the prevailing rate of wage shall post in a location readily visible to workers at

the job site: PROVIDED, That on road construction, sewer line, pipeline, transmission line, street, or alley improvement projects for which no field office is needed or established, a contractor may post the prevailing rate of wage statement at the contractor's local office, gravel crushing, concrete, or asphalt batch plant as long as the contractor provides a copy of the wage statement to any employee on request:

(1) A copy of a statement of intent to pay prevailing wages approved by the industrial statistician of the department of labor and industries under RCW 39.12.040; and

(2) The address and telephone number of the industrial statistician of the department of labor and industries where a complaint or inquiry concerning prevailing wages may be made.

This chapter shall not apply to workers or other persons regularly employed by the state, or any county, municipality, or political subdivision created by its laws. [2007 c 169 § 1; 1989 c 12 § 7; 1982 c 130 § 1; 1981 c 46 § 1; 1967 ex.s. c 14 § 1; 1945 c 63 § 1; Rem. Supp. 1945 § 10322-20.]

39.12.021 Prevailing rate to be paid on public works—Apprentice workers. Apprentice workers employed upon public works projects for whom an apprenticeship agreement has been registered and approved with the state apprenticeship council pursuant to chapter 49.04 RCW, must be paid at least the prevailing hourly rate for an apprentice of that trade. Any worker for whom an apprenticeship agreement has not been registered and approved by the state apprenticeship council shall be considered to be a fully qualified journey level worker, and, therefore, shall be paid at the prevailing hourly rate for journey level workers. [1989 c 12 § 8; 1963 c 93 § 1.]

39.12.022 Vocationally handicapped—Exemption from RCW 39.12.020—Procedure. The director of the department of labor and industries, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations provide for the employment of individuals whose earning capacity is impaired by physical or mental deficiency or injury, under special certificates issued by the director, at such wages lower than the prevailing rate applicable under RCW 39.12.020 and for such period as shall be fixed in such certificates. [1972 ex.s. c 91 § 1.]

39.12.026 Surveys—Applicability by county. (1) In establishing the prevailing rate of wage under RCW 39.12.010, 39.12.015, and 39.12.020, all data collected by the department may be used only in the county for which the work was performed.

(2) This section applies only to prevailing wage surveys initiated on or after August 1, 2003. [2003 c 363 § 206.]

Findings—Intent—2003 c 363 §§ 201-206: See note following RCW 49.04.041.

Additional notes found at www.leg.wa.gov

39.12.030 Contract specifications must state minimum hourly rate—Stipulation for payment—Residential and commercial construction work. (1) The specifications for every contract for the construction, reconstruction, maintenance or repair of any public work to which the state or any county, municipality, or political subdivision created by its

laws is a party, shall contain a provision stating the hourly minimum rate of wage, not less than the prevailing rate of wage, which may be paid to laborers, workers, or mechanics in each trade or occupation required for such public work employed in the performance of the contract either by the contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract, and the contract shall contain a stipulation that such laborers, workers, or mechanics shall be paid not less than such specified hourly minimum rate of wage. If the awarding agency determines that the work contracted for meets the definition of residential construction, the contract must include that information.

(2) If the hourly minimum rate of wage stated in the contract specifies residential construction rates and it is later determined that the work performed is commercial and subject to commercial construction rates, the state, county, municipality, or political subdivision that entered into the contract must pay the difference between the residential rate stated and the actual commercial rate to the contractor, subcontractor, or other person doing or contracting to do the whole or any part of the work under the contract. [2009 c 62 § 1; 1989 c 12 § 9; 1945 c 63 § 2; Rem. Supp. 1945 § 10322-21.]

39.12.040 Statement of intent to pay prevailing wages, affidavit of wages paid—Alternative procedure.

(1)(a) Except as provided in subsection (2) of this section, before payment is made by or on behalf of the state, or any county, municipality, or political subdivision created by its laws, of any sum or sums due on account of a public works contract, it is the duty of the officer or person charged with the custody and disbursement of public funds to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer a "Statement of Intent to Pay Prevailing Wages". For a contract in excess of ten thousand dollars, the statement of intent to pay prevailing wages must include:

- (i) The contractor's registration certificate number; and
- (ii) The prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020 and the estimated number of workers in each classification.

(b) Each statement of intent to pay prevailing wages must be approved by the industrial statistician of the department of labor and industries before it is submitted to the disbursing officer. Unless otherwise authorized by the department of labor and industries, each voucher claim submitted by a contractor for payment on a project estimate must state that the prevailing wages have been paid in accordance with the prefiled statement or statements of intent to pay prevailing wages on file with the public agency. Following the final acceptance of a public works project, it is the duty of the officer charged with the disbursement of public funds, to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer an affidavit of wages paid before the funds retained according to the provisions of RCW 60.28.011 are released to the contractor. On a public works project where no retainage is withheld pursuant to RCW 60.28.011(1)(b), the affidavit of wages paid must be submitted to the state, county, municipality, or other public body charged with the duty of disbursing or authoriz-

ing disbursement of public funds prior to final acceptance of the public works project. If a subcontractor performing work on a public works project fails to submit an affidavit of wages paid form, the contractor or subcontractor with whom the subcontractor had a contractual relationship for the project may file the forms on behalf of the nonresponsive subcontractor. Affidavit forms may only be filed on behalf of a non-responsive subcontractor who has ceased operations or failed to file as required by this section. The contractor filing the affidavit must accept responsibility for payment of prevailing wages unpaid by the subcontractor on the project pursuant to RCW 39.12.020 and 39.12.065. Intentionally filing a false affidavit on behalf of a subcontractor subjects the filer to the same penalties as are provided in RCW 39.12.050. Each affidavit of wages paid must be certified by the industrial statistician of the department of labor and industries before it is submitted to the disbursing officer.

(2) As an alternate to the procedures provided for in subsection (1) of this section, for public works projects of two thousand five hundred dollars or less and for projects where the limited public works process under RCW 39.04.155(3) is followed:

(a) An awarding agency may authorize the contractor or subcontractor to submit the statement of intent to pay prevailing wages directly to the officer or person charged with the custody or disbursement of public funds in the awarding agency without approval by the industrial statistician of the department of labor and industries. The awarding agency must retain such statement of intent to pay prevailing wages for a period of not less than three years.

(b) Upon final acceptance of the public works project, the awarding agency must require the contractor or subcontractor to submit an affidavit of wages paid. Upon receipt of the affidavit of wages paid, the awarding agency may pay the contractor or subcontractor in full, including funds that would otherwise be retained according to the provisions of RCW 60.28.011. Within thirty days of receipt of the affidavit of wages paid, the awarding agency must submit the affidavit of wages paid to the industrial statistician of the department of labor and industries for approval.

(c) A statement of intent to pay prevailing wages and an affidavit of wages paid must be on forms approved by the department of labor and industries.

(d) In the event of a wage claim and a finding for the claimant by the department of labor and industries where the awarding agency has used the alternative process provided for in this subsection (2), the awarding agency must pay the wages due directly to the claimant. If the contractor or subcontractor did not pay the wages stated in the affidavit of wages paid, the awarding agency may take action at law to seek reimbursement from the contractor or subcontractor of wages paid to the claimant, and may prohibit the contractor or subcontractor from bidding on any public works contract of the awarding agency for up to one year.

(e) Nothing in this section may be interpreted to allow an awarding agency to subdivide any public works project of more than two thousand five hundred dollars for the purpose of circumventing the procedures required by subsection (1) of this section. [2013 c 113 § 5; 2012 c 129 § 1; 2009 c 219 § 2; 2007 c 210 § 4; 1991 c 15 § 1; 1982 c 130 § 2; 1981 c 46

§ 2; 1975-'76 2nd ex.s. c 49 § 1; 1965 ex.s. c 133 § 3; 1945 c 63 § 4; Rem. Supp. 1945 § 10322-23.]

39.12.042 Compliance with RCW 39.12.040—Liability of public agencies to workers, laborers, or mechanics.

If any agency of the state, or any county, municipality, or political subdivision created by its laws shall knowingly fail to comply with the provisions of RCW 39.12.040 as now or hereafter amended, such agency of the state, or county, municipality, or political subdivision created by its laws, shall be liable to all workers, laborers, or mechanics to the full extent and for the full amount of wages due, pursuant to the prevailing wage requirements of RCW 39.12.020. [1993 c 404 § 3; 1989 c 12 § 11; 1975-'76 2nd ex.s. c 49 § 2.]

Additional notes found at www.leg.wa.gov

39.12.050 False statement or failure to file—Penalty—Unpaid wages lien against bond and retainage—Prohibitions on bidding on future contracts—Hearing.

(1) Any contractor or subcontractor who files a false statement or fails to file any statement or record required to be filed under this chapter and the rules adopted under this chapter, shall, after a determination to that effect has been issued by the director after hearing under chapter 34.05 RCW, forfeit as a civil penalty the sum of five hundred dollars for each false filing or failure to file, and shall not be permitted to bid, or have a bid considered, on any public works contract until the penalty has been paid in full to the director. The civil penalty under this subsection shall not apply to a violation determined by the director to be an inadvertent filing or reporting error. Civil penalties shall be deposited in the public works administration account.

To the extent that a contractor or subcontractor has not paid wages at the rate due pursuant to RCW 39.12.020, and a finding to that effect has been made as provided by this subsection, such unpaid wages shall constitute a lien against the bonds and retainage as provided in RCW 18.27.040, 19.28.041, 39.08.010, and 60.28.011.

(2) If a contractor or subcontractor is found to have violated the provisions of subsection (1) of this section for a second time within a five year period, the contractor or subcontractor shall be subject to the sanctions prescribed in subsection (1) of this section and shall not be allowed to bid on any public works contract for one year. The one year period shall run from the date of notice by the director of the determination of noncompliance. When an appeal is taken from the director's determination, the one year period shall commence from the date of the final determination of the appeal.

The director shall issue his or her findings that a contractor or subcontractor has violated the provisions of this subsection after a hearing held subject to the provisions of chapter 34.05 RCW. [2009 c 219 § 3; 2001 c 219 § 1; 1985 c 15 § 3; 1977 ex.s. c 71 § 1; 1973 c 120 § 1; 1945 c 63 § 5; Rem. Supp. 1945 § 10322-24.]

Additional notes found at www.leg.wa.gov

39.12.055 Prohibitions on bidding on future contracts. A contractor shall not be allowed to bid on any public works contract for one year from the date of a final determination that the contractor has committed any combination of

two of the following violations or infractions within a five-year period:

- (1) Violated RCW 51.48.020(1) or 51.48.103;
- (2) Committed an infraction or violation under chapter 18.27 RCW for performing work as an unregistered contractor; or
- (3) Determined to be out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW. [2009 c 197 § 3; 2008 c 120 § 3.]

Rules—Implementation—2009 c 197: See note following RCW 39.04.320.

Conflict with federal requirements—Severability—2008 c 120: See notes following RCW 18.27.030.

39.12.060 Director of labor and industries to arbitrate disputes. Such contract shall contain a further provision that in case any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the director of the department of labor and industries of the state and his or her decision therein shall be final and conclusive and binding on all parties involved in the dispute. [1989 c 12 § 10; 1965 ex.s. c 133 § 4; 1945 c 63 § 6; Rem. Supp. 1945 § 10322-25.]

Arbitration of disputes: Chapter 49.08 RCW.

Uniform arbitration act: Chapter 7.04A RCW.

39.12.065 Investigation of complaints—Hearing—

Remedies—Penalties. (1) Upon complaint by an interested party, the director of labor and industries shall cause an investigation to be made to determine whether there has been compliance with this chapter and the rules adopted hereunder, and if the investigation indicates that a violation may have occurred, a hearing shall be held in accordance with chapter 34.05 RCW. The director shall issue a written determination including his or her findings after the hearing. A judicial appeal from the director's determination may be taken in accordance with chapter 34.05 RCW, with the prevailing party entitled to recover reasonable costs and attorneys fees.

A complaint concerning nonpayment of the prevailing rate of wage shall be filed with the department of labor and industries no later than thirty days from the acceptance date of the public works project. The failure to timely file such a complaint shall not prohibit a claimant from pursuing a private right of action against a contractor or subcontractor for unpaid prevailing wages. The remedy provided by this section is not exclusive and is concurrent with any other remedy provided by law.

(2) To the extent that a contractor or subcontractor has not paid the prevailing rate of wage under a determination issued as provided in subsection (1) of this section, the director shall notify the agency awarding the public works contract of the amount of the violation found, and the awarding agency shall withhold, or in the case of a bond, the director shall proceed against the bond in accordance with the applicable statute to recover, such amount from the following

sources in the following order of priority until the total of such amount is withheld:

(a) The retainage or bond in lieu of retainage as provided in RCW 60.28.011;

(b) If the claimant was employed by the contractor or subcontractor on the public works project, the bond filed by the contractor or subcontractor with the department of labor and industries as provided in RCW 18.27.040 and 19.28.041;

(c) A surety bond, or at the contractor's or subcontractor's option an escrow account, running to the director in the amount of the violation found; and

(d) That portion of the progress payments which is properly allocable to the contractor or subcontractor who is found to be in violation of this chapter. Under no circumstances shall any portion of the progress payments be withheld that are properly allocable to a contractor, subcontractor, or supplier, that is not found to be in violation of this chapter.

The amount withheld shall be released to the director to distribute in accordance with the director's determination.

(3) A contractor or subcontractor that is found, in accordance with subsection (1) of this section, to have violated the requirement to pay the prevailing rate of wage shall be subject to a civil penalty of not less than one thousand dollars or an amount equal to twenty percent of the total prevailing wage violation found on the contract, whichever is greater, and shall not be permitted to bid, or have a bid considered, on any public works contract until such civil penalty has been paid in full to the director. If a contractor or subcontractor is found to have participated in a violation of the requirement to pay the prevailing rate of wage for a second time within a five-year period, the contractor or subcontractor shall be subject to the sanctions prescribed in this subsection and as an additional sanction shall not be allowed to bid on any public works contract for two years. Civil penalties shall be deposited in the public works administration account. If a previous or subsequent violation of a requirement to pay a prevailing rate of wage under federal or other state law is found against the contractor or subcontractor within five years from a violation under this section, the contractor or subcontractor shall not be allowed to bid on any public works contract for two years. A contractor or subcontractor shall not be barred from bidding on any public works contract if the contractor or subcontractor relied upon written information from the department to pay a prevailing rate of wage that is later determined to be in violation of this chapter. The civil penalty and sanctions under this subsection shall not apply to a violation determined by the director to be an inadvertent filing or reporting error. To the extent that a contractor or subcontractor has not paid the prevailing wage rate under a determination issued as provided in subsection (1) of this section, the unpaid wages shall constitute a lien against the bonds and retainage as provided herein and in RCW 18.27.040, 19.28.041, 39.08.010, and 60.28.011. [2009 c 219 § 4; 2001 c 219 § 2; 1994 c 88 § 1; 1985 c 15 § 2.]

Additional notes found at www.leg.wa.gov

39.12.070 Fees authorized for approvals, certifications, and arbitrations. (1) The department of labor and industries may charge fees to awarding agencies on public works for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages paid.

(2014 Ed.)

The department may also charge fees to persons or organizations requesting the arbitration of disputes under RCW 39.12.060. The amount of the fees shall be established by rules adopted by the department under the procedures in the administrative procedure act, chapter 34.05 RCW. Except as provided in subsection (3) of this section, the fees shall apply to all approvals, certifications, and arbitration requests made after the effective date of the rules. All fees shall be deposited in the public works administration account. The department may refuse to arbitrate for contractors, subcontractors, persons, or organizations which have not paid the proper fees. The department may, if necessary, request the attorney general to take legal action to collect delinquent fees.

(2) The department shall set the fees permitted by this section at a level that generates revenue that is as near as practicable to the amount of the appropriation to administer this chapter, including, but not limited to, the performance of adequate wage surveys, and to investigate and enforce all alleged violations of this chapter, including, but not limited to, incorrect statements of intent to pay prevailing wage, incorrect certificates of affidavits of wages paid, and wage claims, as provided for in this chapter and chapters 49.48 and 49.52 RCW. However, the fees charged for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages paid shall be forty dollars.

(3) If, at the time an individual or entity files an affidavit of wages paid, the individual or entity is exempt from the requirement to pay the prevailing rate of wage under RCW 39.12.020, the department of labor and industries may not charge a fee to certify the affidavit of wages paid. [2014 c 148 § 1; 2008 c 285 § 2; 2006 c 230 § 1; 1993 c 404 § 1; 1982 1st ex.s. c 38 § 1.]

Effective date—2008 c 285 § 2: "Section 2 of this act takes effect July 1, 2008." [2008 c 285 § 3.]

Intent—Captions not law—2008 c 285: See notes following RCW 43.22.434.

Effective date—2006 c 230: "This act takes effect July 1, 2007." [2006 c 230 § 3.]

Additional notes found at www.leg.wa.gov

39.12.080 Public works administration account. The public works administration account is created in the state treasury. The department of labor and industries shall deposit in the account all moneys received from fees or civil penalties collected under RCW 39.12.050, 39.12.065, and 39.12.070. Appropriations from the account may be made only for the purposes of administration of this chapter, including, but not limited to, the performance of adequate wage surveys, and for the investigation and enforcement of all alleged violations of this chapter as provided for in this chapter and chapters 49.48 and 49.52 RCW. [2006 c 230 § 2; 2001 c 219 § 3; 1993 c 404 § 2.]

Effective date—2006 c 230: See note following RCW 39.12.070.

Additional notes found at www.leg.wa.gov

39.12.100 Independent contractors—Criteria. For the purposes of this chapter, an individual employed on a public works project is not considered to be a laborer, worker, or mechanic when:

(1) The individual has been and is free from control or direction over the performance of the service, both under the contract of service and in fact;

(2) The service is either outside the usual course of business for the contractor or contractors for whom the individual performs services, or the service is performed outside all of the places of business of the enterprise for which the individual performs services, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;

(3) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes other than that furnished by the employer for which the business has contracted to furnish services;

(4) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting;

(5) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract of service, the individual has an active and valid certificate of registration with the department of revenue, and an active and valid account with any other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington;

(6) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting; and

(7) On the effective date of the contract of service, if the nature of the work performed requires registration under chapter 18.27 RCW or licensure under chapter 19.28 RCW, the individual has a valid contractor registration pursuant to chapter 18.27 RCW or an electrical contractor license pursuant to chapter 19.28 RCW. [2009 c 63 § 1.]

39.12.110 Failure to provide or allow inspection of records. Any employer, contractor, or subcontractor who fails to provide requested records, or fails to allow adequate inspection of records in an investigation by the department of labor and industries under this chapter within sixty calendar days of service of the department's request may not use the records in any proceeding under this chapter to challenge the correctness of any determination by the department that wages are owed, that a record or statement is false, or that the employer, contractor, or subcontractor has failed to file a record or statement. [2011 c 92 § 1.]

39.12.900 Severability—1945 c 63. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part

thereof not adjudged invalid or unconstitutional. [1945 c 63 § 7.]

Chapter 39.19 RCW OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES

Sections

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Minority and women business development office: RCW 43.31.0925.

39.19.010 Intent. The legislature finds that minority and women-owned businesses are significantly under-represented and have been denied equitable competitive opportunities in contracting. It is the intent of this chapter to mitigate societal discrimination and other factors in participating in public works and in providing goods and services and to delineate a policy that an increased level of participation by minority and women-owned and controlled businesses is desirable at all levels of state government. The purpose and intent of this chapter are to provide the maximum practicable opportunity for increased participation by minority and women-owned and controlled businesses in participating in public works and the process by which goods and services are procured by state agencies and educational institutions from the private sector. [1987 c 328 § 1; 1983 c 120 § 1.]

39.19.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Advisory committee" means the advisory committee on minority and women's business enterprises.

(2) "Broker" means a person that provides a bona fide service, such as professional, technical, consultant, brokerage, or managerial services and assistance in the procurement

of essential personnel, facilities, equipment, materials, or supplies required for performance of a contract.

(3) "Director" means the director of the office of minority and women's business enterprises.

(4) "Educational institutions" means the state universities, the regional universities, The Evergreen State College, and the community colleges.

(5) "Goals" means annual overall agency goals, expressed as a percentage of dollar volume, for participation by minority and women-owned and controlled businesses and shall not be construed as a minimum goal for any particular contract or for any particular geographical area. It is the intent of this chapter that such overall agency goals shall be achievable and shall be met on a contract-by-contract or class-of-contract basis.

(6) "Goods and/or services" includes professional services and all other goods and services.

(7) "Office" means the office of minority and women's business enterprises.

(8) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons.

(9) "Procurement" means the purchase, lease, or rental of any goods or services.

(10) "Public works" means all work, construction, highway and ferry construction, alteration, repair, or improvement other than ordinary maintenance, which a state agency or educational institution is authorized or required by law to undertake.

(11) "State agency" includes the state of Washington and all agencies, departments, offices, divisions, boards, commissions, and correctional and other types of institutions. [1996 c 69 § 4; 1987 c 328 § 2; 1983 c 120 § 2.]

Intent—1996 c 69: See note following RCW 39.19.030.

39.19.030 Office of minority and women's business enterprises—Director—Powers and duties. There is hereby created the office of minority and women's business enterprises. The governor shall appoint a director for the office, subject to confirmation by the senate. The director may employ a deputy director and a confidential secretary, both of which shall be exempt under chapter 41.06 RCW, and such staff as are necessary to carry out the purposes of this chapter.

The office shall consult with the minority and women's business enterprises advisory committee to:

(1) Develop, plan, and implement programs to provide an opportunity for participation by qualified minority and women-owned and controlled businesses in public works and the process by which goods and services are procured by state agencies and educational institutions from the private sector;

(2) Develop a comprehensive plan insuring that qualified minority and women-owned and controlled businesses are provided an opportunity to participate in public contracts for public works and goods and services;

(3) Identify barriers to equal participation by qualified minority and women-owned and controlled businesses in all state agency and educational institution contracts;

(4) Establish annual overall goals for participation by qualified minority and women-owned and controlled busi-

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nesses for each state agency and educational institution to be administered on a contract-by-contract basis or on a class-of-contracts basis;

(5) Develop and maintain a central minority and women's business enterprise certification list for all state agencies and educational institutions. No business is entitled to certification under this chapter unless it meets the definition of small business concern as established by the office. All applications for certification under this chapter shall be sworn under oath;

(6) Develop, implement, and operate a system of monitoring compliance with this chapter;

(7) Adopt rules under chapter 34.05 RCW, the Administrative Procedure Act, governing: (a) Establishment of agency goals; (b) development and maintenance of a central minority and women's business enterprise certification program, including a definition of "small business concern" which shall be consistent with the small business requirements defined under section 3 of the Small Business Act, 15 U.S.C. Sec. 632, and its implementing regulations as guidance; (c) procedures for monitoring and enforcing compliance with goals, regulations, contract provisions, and this chapter; (d) utilization of standard clauses by state agencies and educational institutions, as specified in RCW 39.19.050; and (e) determination of an agency's or educational institution's goal attainment consistent with the limitations of RCW 39.19.075;

(8) Submit an annual report to the governor and the legislature outlining the progress in implementing this chapter;

(9) Investigate complaints of violations of this chapter with the assistance of the involved agency or educational institution; and

(10) Cooperate and act jointly or by division of labor with the United States or other states, and with political subdivisions of the state of Washington and their respective minority, socially and economically disadvantaged and women business enterprise programs to carry out the purposes of this chapter. However, the power which may be exercised by the office under this subsection permits investigation and imposition of sanctions only if the investigation relates to a possible violation of chapter 39.19 RCW, and not to violation of local ordinances, rules, regulations, however denominated, adopted by political subdivisions of the state. [1996 c 69 § 5; 1989 c 175 § 85; 1987 c 328 § 3; 1983 c 120 § 3.]

Intent—1996 c 69: "It is the intent of the legislature to ensure that the counting of the dollar value of an agency's or educational institution's expenditures to certified minority and women's business enterprises meaningfully reflects the actual financial participation of the certified businesses." [1996 c 69 § 3.]

Additional notes found at www.leg.wa.gov

39.19.041 Ad hoc advisory committees. The director may establish ad hoc advisory committees, as necessary, to assist in the development of policies to carry out the purposes of this chapter. [1995 c 269 § 1302.]

Additional notes found at www.leg.wa.gov

39.19.050 Standard clauses required in requests for proposals, advertisements, and bids. The rules adopted under RCW 39.19.030 shall include requirements for stan-

dard clauses in requests for proposals, advertisements, bids, or calls for bids, necessary to carry out the purposes of this chapter, which shall include notice of the statutory penalties under RCW 39.19.080 and 39.19.090 for noncompliance. [1983 c 120 § 5.]

39.19.060 Compliance with public works and procurement goals—Plan to maximize opportunity for minority and women-owned businesses. Each state agency and educational institution shall comply with the annual goals established for that agency or institution under this chapter for public works and procuring goods or services. This chapter applies to all public works and procurement by state agencies and educational institutions, including all contracts and other procurement under chapters 28B.10, 39.04, *39.29, 43.19, and 47.28 RCW. Each state agency shall adopt a plan, developed in consultation with the director and the advisory committee, to insure that minority and women-owned businesses are afforded the maximum practicable opportunity to directly and meaningfully participate in the execution of public contracts for public works and goods and services. The plan shall include specific measures the agency will undertake to increase the participation of certified minority and women-owned businesses. The office shall annually notify the governor, the state auditor, and the joint legislative audit and review committee of all agencies and educational institutions not in compliance with this chapter. [1996 c 288 § 28; 1993 c 512 § 9; 1983 c 120 § 6.]

*Reviser's note: Chapter 39.29 RCW was repealed by 2012 c 224 § 29, effective January 1, 2013. See chapter 39.26 RCW.

Compliance with chapter 39.19 RCW: RCW 28B.10.023, 39.04.160, 39.26.245, 47.28.030, 47.28.050, 47.28.090.

39.19.070 Compliance with goals—Bidding procedures. It is the intent of this chapter that the goals established under this chapter for participation by minority and women-owned and controlled businesses be achievable. If necessary to accomplish this intent, contracts may be awarded to the next lowest responsible bidder in turn, or all bids may be rejected and new bids obtained, if the lowest responsible bidder does not meet the goals established for a particular contract under this chapter. The dollar value of the total contract used for the calculation of the specific contract goal may be increased or decreased to reflect executed change orders. An apparent low-bidder must be in compliance with the contract provisions required under this chapter as a condition precedent to the granting of a notice of award by any state agency or educational institution. [1994 c 15 § 1; 1987 c 328 § 4; 1983 c 120 § 7.]

39.19.075 Compliance with goals—Valuation of goods or services. For purposes of measuring an agency's or educational institution's goal attainment, any regulations adopted under RCW 39.19.030(7)(e) must provide that if a certified minority and women's business enterprise is a broker of goods or materials required under a contract, the contracting agency or educational institution may count only the dollar value of the fee or commission charged and not the value of goods or materials provided. The contracting agency or educational institution may, at its discretion, fix the dollar value of the fee or commission charged at either the actual

dollar value of the fee or commission charged or at a standard percentage of the total value of the brokered goods, which percentage must reflect the fees or commissions generally paid to brokers for providing such services. [1996 c 69 § 6.]

Intent—1996 c 69: See note following RCW 39.19.030.

39.19.080 Prohibited activities—Penalties. (1) A person, firm, corporation, business, union, or other organization shall not:

(a) Prevent or interfere with a contractor's or subcontractor's compliance with this chapter, or any rule adopted under this chapter;

(b) Submit false or fraudulent information to the state concerning compliance with this chapter or any such rule;

(c) Fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a minority or women's business enterprise for the purpose of this chapter;

(d) Knowingly make a false statement, whether by affidavit, verified statement, report, or other representation, to a state official or employee for the purpose of influencing the certification or denial of certification of any entity as a minority or women's business enterprise;

(e) Knowingly obstruct, impede, or attempt to obstruct or impede any state official or employee who is investigating the qualification of a business entity that has requested certification as a minority or women's business enterprise;

(f) Fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public moneys to which the person is not entitled under this chapter; or

(g) Knowingly make false statements that any entity is or is not certified as a minority or women's business enterprise for purposes of obtaining a contract governed by this chapter.

(2) Any person or entity violating this chapter or any rule adopted under this chapter shall be subject to the penalties in RCW 39.19.090. Nothing in this section prevents the state agency or educational institution from pursuing such procedures or sanctions as are otherwise provided by statute, rule, or contract provision. [1987 c 328 § 5; 1983 c 120 § 8.]

39.19.090 Compliance with chapter or contract—Remedies. If a person, firm, corporation, or business does not comply with any provision of this chapter or with a contract requirement established under this chapter, the state may withhold payment, debar the contractor, suspend, or terminate the contract and subject the contractor to civil penalties of up to ten percent of the amount of the contract or up to five thousand dollars for each violation. The office shall adopt, by rule, criteria for the imposition of penalties under this section. Wilful repeated violations, exceeding a single violation, may disqualify the contractor from further participation in state contracts for a period of up to three years. An apparent low-bidder must be in compliance with the contract provisions required under this chapter as a condition precedent to the granting of a notice of award by any state agency or educational institution.

The office shall follow administrative procedures under chapter 34.05 RCW in determining a violation and imposing penalties under this chapter.

The procedures and sanctions in this section are not exclusive; nothing in this section prevents the state agency or educational institution administering the contracts from pursuing such procedures or sanctions as are otherwise provided by statute, rule, or contract provision. [1987 c 328 § 6; 1983 c 120 § 9.]

39.19.100 Enforcement by attorney general—Injunctive relief. The attorney general may bring an action in the name of the state against any person to restrain and prevent the doing of any act prohibited or declared to be unlawful in this chapter. The attorney general may, in the discretion of the court, recover the costs of the action including reasonable attorneys' fees and the costs of investigation. [1987 c 328 § 12.]

39.19.110 Enforcement by attorney general—Investigative powers. (1) Whenever the attorney general believes that any person (a) may be in possession, custody, or control of any original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated, that the attorney general believes to be relevant to the subject matter of an investigation, the attorney general may require such person to answer written interrogatories or give oral testimony regarding a possible violation of this chapter, or of any provision of a contract as required by this chapter, or (b) may have knowledge of any information that the attorney general believes relevant to the subject matter of such an investigation, the attorney general may, before instituting a civil proceeding thereon, execute in writing and cause to be served upon such a person, a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying, to answer in writing written interrogatories, to give oral testimony, or any combination of demands pertaining to the documentary material or information. Documents and information obtained under this section shall not be admissible in criminal prosecutions.

(2) Each such demand shall:

(a) State the statute, the alleged violation of which is under investigation, and the general subject matter of the investigation;

(b) State with reasonable specificity what documentary material is required, if the demand is for the production of documentary material;

(c) Prescribe a return date governed by the court rules within which the documentary material is to be produced, the answers to written interrogatories are to be made, or a date, time, and place at which oral testimony is to be taken; and

(d) Identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying, to whom answers to written interrogatories are to be made, or who are to conduct the examination for oral testimony.

(3) No such demand may:

(a) Contain any requirement that would be unreasonable or improper if contained in a subpoena duces tecum, a request for answers to written interrogatories, or a notice of deposition upon oral examination issued under the court rules of this state; or

(b) Require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this state.

(4) Service of any such demand may be made by:

(a) Delivering a duly executed copy thereof to the person to be served, or, if that person is not a natural person, to any officer or managing agent of the person to be served;

(b) Delivering a duly executed copy thereof to the principal place of business in this state of the person to be served; or

(c) Mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in this state, or, if that person has no place of business in this state, to the person's principal office or place of business.

(5)(a) Documentary material demanded under this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at such other times and places as may be agreed upon by the person served and the attorney general;

(b) Written interrogatories in a demand served under this section shall be answered in the same manner as provided in the civil rules for superior court;

(c) The oral testimony of any person obtained pursuant to a demand served under this section shall be taken in the same manner as provided in the civil rules for superior court for the taking of depositions. In the course of the deposition, the assistant attorney general conducting the examination may exclude all persons other than the person being examined, the person's counsel, and the officer before whom the testimony is to be taken from the place where the examination is held;

(d) Any person compelled to appear pursuant to a demand for oral testimony under this section may be accompanied by counsel;

(e) The oral testimony of any person obtained pursuant to a demand served under this section shall be taken in the county within which the person resides, is found, or transacts business, or in such other place as may be agreed upon between the person served and the attorney general.

(6) No documentary material, answers to written interrogatories, or transcripts of oral testimony produced pursuant to a demand, or copies thereof, may, unless otherwise ordered by a superior court for good cause shown, be produced for inspection or copying by, nor may the contents thereof be disclosed to, anyone other than an authorized employee or agent of the attorney general, without the consent of the person who produced such material, answered written interrogatories, or gave oral testimony: PROVIDED, That under such reasonable terms and conditions as the attorney general shall prescribe, the copies of such documentary material, answers to written interrogatories, or transcripts of oral testimony shall be available for inspection and copying by the person who produced the material, answered written interrogatories, or gave oral testimony, or any duly authorized representative of that person. The attorney general or any assistant attorney general may use such copies of documentary material, answers to written interrogatories, or transcripts of oral testimony as he or she determines necessary to enforce this chapter, including presentation before any court: PROVIDED

FURTHER, That any such material, answers to written interrogatories, or transcripts of oral testimony that contain material designated by the declarant to be trade secrets shall not be presented except with the approval of the court in which the action is pending after adequate notice to the person furnishing the material, answers to written interrogatories, or oral testimony.

(7) At any time before the return date specified in the demand, or within twenty days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or set aside a demand issued pursuant to subsection (1) of this section, stating good cause, may be filed in the superior court for Thurston county, or in any other county where the parties reside or are found. A petition, by the person on whom the demand is served, stating good cause, to require the attorney general or any person to perform any duty imposed by this section, and all other petitions in connection with a demand, may be filed in the superior court for Thurston county, or in the county where the parties reside. The court shall have jurisdiction to impose such sanctions as are provided for in the civil rules for superior court with respect to discovery motions.

(8) Whenever any person fails to comply with any civil investigative demand for documentary material, answers to written interrogatories, or oral testimony duly served upon that person under this section, or whenever satisfactory copying or reproduction of any such material cannot be done and the person refuses to surrender such material, the attorney general may file, in the trial court of general jurisdiction in the county in which the person resides, is found, or transacts business, and serve upon that person a petition for an order of the court for the enforcement of this section, except that if such person transacts business in more than one county, the petition shall be filed in the county in which the person maintains his or her principal place of business or in such other county as may be agreed upon by the parties to the petition. Whenever any petition is filed under this section in the trial court of general jurisdiction in any county, the court shall have jurisdiction to hear and determine the matter so presented and to enter such order or orders as may be required to carry into effect this section, and may impose such sanctions as are provided for in the civil rules for superior court with respect to discovery motions. [1987 c 328 § 13.]

39.19.120 Certification of business enterprises. The office shall be the sole authority to perform certification of minority business enterprises, socially and economically disadvantaged business enterprises, and women's business enterprises throughout the state of Washington. Certification by the state office will allow these firms to participate in programs for these enterprises administered by the state of Washington, any city, town, county, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation within the state of Washington.

This statewide certification process will prevent duplication of effort, achieve efficiency, and permit local jurisdictions to further develop, implement, and/or enhance comprehensive systems of monitoring and compliance for contracts issued by their agencies. [1987 c 328 § 7.]

39.19.140 Implementation of statewide certification.

Implementation of statewide certification shall be effective January 1, 1988, following consultation by the office with appropriate state and local officials who currently administer similar certification programs. Any business having been certified under any of the programs identified pursuant to *RCW 39.19.130 as a minority and women's business enterprise shall be deemed certified by the office as of January 1, 1988. [1987 c 328 § 9.]

*Reviser's note: RCW 39.19.130 expired June 30, 1991.

39.19.150 Local government may petition for reconsideration of business certification.

(1) Any city, county, town, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation having reason to believe that a particular minority and women's business enterprise should not have been certified under RCW 39.19.140 may petition the office for reconsideration. The basis for the petition may be one or more of the following:

(a) The office's rules or regulations were improperly applied; or

(b) Material facts relating to the minority and women's business enterprise's certification application to the office are untrue.

(2) The petitioner shall carry the burden of persuasion. The affected minority or women's business enterprise shall receive notice of the petition and an opportunity to respond.

(3) After reviewing the information presented in support of and in opposition to the petition, the office shall issue a written decision, granting or denying the petition. If the office grants the petition, it may revoke, suspend, or refuse to renew the certification or impose sanctions under this chapter as appropriate.

(4) The office's decision on a petition is administratively final and the rights of appeal set out in the office regulations shall apply. A certification shall remain in effect while a petition is pending. [1987 c 328 § 10.]

39.19.160 Local government responsible for monitoring compliance.

Any city, town, county, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation within the state of Washington utilizing the certification by the office retains the responsibility for monitoring compliance with the programs under its jurisdiction. The office shall not be responsible for enforcement of local ordinances, rules, or regulations, however titled. [1987 c 328 § 11.]

39.19.170 Prequalification of minority and woman-owned businesses—Waiver of performance bond.

(1) State agencies shall not require a performance bond for any public works project that does not exceed twenty-five thousand dollars awarded to a prequalified and certified minority or woman-owned business that has been prequalified as provided under subsection (2) of this section.

(2) A limited prequalification questionnaire shall be required assuring:

(a) That the bidder has adequate financial resources or the ability to secure such resources;

(b) That the bidder can meet the performance schedule;

(c) That the bidder is experienced in the type of work to be performed; and

(d) That all equipment to be used is adequate and functioning and that all equipment operators are qualified to operate such equipment. [1993 c 512 § 10.]

39.19.200 Minority and women's business enterprises account—Created. The minority and women's business enterprises account is created in the custody of the state treasurer. All receipts from RCW 39.19.210, 39.19.220, and 39.19.230 shall be deposited in the account. Expenditures from the account may be used only for the purposes defraying all or part of the costs of the office in administering this chapter. Only the director or the director's designee may authorize expenditures from the account. Moneys in the account may be spent only after appropriation. [1993 c 195 § 1.]

Additional notes found at www.leg.wa.gov

39.19.210 Businesses using the office—Fees. The office may charge a reasonable fee or other appropriate charge, to be set by rule adopted by the office under chapter 34.05 RCW, to a business using the services of the office. [1993 c 195 § 2.]

Additional notes found at www.leg.wa.gov

39.19.220 Political subdivisions—Fees. The office may charge to a political subdivision in this state a reasonable fee or other appropriate charge, to be set by rule adopted by the office under chapter 34.05 RCW, prorated on the relative benefit to the political subdivision, for the certification under this chapter of a business. [1993 c 195 § 3.]

Additional notes found at www.leg.wa.gov

39.19.230 State agencies and educational institutions—Fees. The office may charge to a state agency and educational institutions, as both are defined in RCW 39.19.020, a reasonable fee or other appropriate charge, to be set by rule adopted by the office under chapter 34.05 RCW, based upon the state agency's or educational institution's expenditure level of funds subject to the office. [1993 c 195 § 4.]

Additional notes found at www.leg.wa.gov

39.19.240 Linked deposit program—Compilation of information—Notification regarding enterprises no longer certified—Monitoring loans. (1) The office shall, in consultation with the state treasurer and the *department of community, trade, and economic development, compile information on minority and women's business enterprises that have received financial assistance through a qualified public depository under the provisions of RCW 43.86A.060. The information shall include, but is not limited to:

- (a) Name of the qualified public depository;
- (b) Geographic location of the minority or women's business enterprise;
- (c) Name of the minority or women's business enterprise;
- (d) Date of last certification by the office and certification number;
- (e) Type of business;

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(f) Amount and term of the loan to the minority or women's business enterprise; and

(g) Other information the office deems necessary for the implementation of this section.

(2) The office shall notify the state treasurer of minority or women's business enterprises that are no longer certified under the provisions of this chapter. The written notification shall contain information regarding the reason for the decertification and information on financing provided to the minority or women's business enterprise under RCW 43.86A.060.

(3) The office shall, in consultation with the state treasurer and the *department of community, trade, and economic development, monitor the performance of loans made to minority and women-owned business enterprises under RCW 43.86A.060. [2005 c 302 § 5; 2002 c 305 § 2.]

*Reviser's note: The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Intent—2005 c 302: See note following RCW 43.86A.030.

39.19.250 Participation in contracts by qualified minority and women-owned and controlled businesses—Data—Contact people—Reports. (1) For the purpose of annual reporting on progress required by *section 1 of this act, each state agency and educational institution shall submit data to the office and the office of minority and women's business enterprises on the participation by qualified minority and women-owned and controlled businesses in the agency's or institution's contracts and other related information requested by the director. The director of the office of minority and women's business enterprises shall determine the content and format of the data and the reporting schedule, which must be at least annually.

(2) The office must develop and maintain a list of contact people at each state agency and educational institution that is able to present to hearings of the appropriate committees of the legislature its progress in carrying out the purposes of chapter 39.19 RCW.

(3) The office must submit a report aggregating the data received from each state agency and educational institution to the legislature and the governor. [2009 c 348 § 2.]

Reviser's note: *(1) "Section 1 of this act" was vetoed.

(2) 2009 c 348 directed that this section be added to chapter 43.41 RCW, but codification in chapter 39.19 RCW appears to be more appropriate.

39.19.910 Effective date—Applicability—1983 c 120.

(1) This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1983.

(2) Contracts entered into before September 1, 1983, are not subject to this act. [1983 c 120 § 21.]

39.19.920 Severability—Conflict with federal requirements—1983 c 120. (1) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

(2) If any part of this chapter is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state the conflicting part

of this chapter is hereby declared to be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this chapter in its application to the agencies concerned. The rules under this chapter shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1983 c 120 § 18.]

39.19.921 Severability—1987 c 328. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 328 § 17.]

Chapter 39.23 RCW

PURCHASE OF PRODUCTS AND SERVICES OF SHELTERED WORKSHOPS, DSHS PROGRAMS

Sections

39.23.005	Declaration of intent.
39.23.010	Definitions.
39.23.020	Products and/or services, purchase of—Authorization—Determining fair market price.

39.23.005 Declaration of intent. It is the intent of the legislature to encourage municipalities to purchase products and/or services manufactured or provided by sheltered workshops and programs of the department of social and health services which operate facilities serving the handicapped and disadvantaged. [1975 c 20 § 1.]

39.23.010 Definitions. As used in RCW 39.23.005 and 39.23.020 the term "sheltered workshops" shall have the meaning ascribed to it by RCW 82.04.385 and "programs of the department of social and health services" shall mean the group training homes and day training centers defined in *RCW 72.33.800 and "municipality" shall have the meaning ascribed to it by RCW 39.04.010. [1975 c 20 § 2.]

*Reviser's note: RCW 72.33.800 was repealed by 1988 c 176 § 1007. See Title 71A RCW.

39.23.020 Products and/or services, purchase of—Authorization—Determining fair market price. Municipalities are hereby authorized to purchase products and/or services manufactured or provided by sheltered workshops and programs of the department of social and health services. Such purchases shall be at the fair market price of such products and services as determined by a municipality. To determine the fair market price a municipality shall use the last comparable bid on the products and/or services or in the alternative the last price paid for the products and/or services. The increased cost of labor, materials, and other documented costs since the last comparable bid or the last price paid are additional cost factors which shall be considered in determining fair market price. Upon the establishment of the fair market price as provided for in this section a municipality is hereby empowered to negotiate directly with sheltered workshops or officials in charge of the programs of the department of social and health services for the purchase of the products or services. [1977 ex.s. c 10 § 1; 1975 c 20 § 3.]

Chapter 39.24 RCW

PUBLIC PURCHASE PREFERENCES

Sections

39.24.050	Purchase of paper products meeting certain specifications required.
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Powers and duties of director of enterprise services: RCW 39.26.080, 39.26.090.

Purchase of correctional industries produced products: Chapter 72.60 RCW.

Reciprocity in bidding: RCW 39.26.271.

39.24.050 Purchase of paper products meeting certain specifications required. A governmental unit shall, to the maximum extent economically feasible, purchase paper products which meet the specifications established by the *department of general administration under **RCW 43.19.538. [1982 c 61 § 3.]

Reviser's note: *(1) The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

** (2) RCW 43.19.538 was recodified as RCW 39.26.255 pursuant to 2012 c 224 § 28, effective January 1, 2013.

Chapter 39.26 RCW

PROCUREMENT OF GOODS AND SERVICES

Sections

39.26.005	Intent.
39.26.010	Definitions.
39.26.020	Ethics in public contracting.
39.26.030	State procurement records—Disclosure.
39.26.040	Prohibition on certain contracts.
39.26.050	Provision of goods and services.
39.26.060	Cooperative purchasing.
39.26.070	Convenience contracts.
39.26.080	Procurement policy—Director's responsibility and authority—Master contracts.
39.26.090	Director's duties and responsibilities—Rules.
39.26.100	Exemptions.
39.26.102	Exemption—Department of corrections.
39.26.110	Training.
39.26.120	Competitive solicitation.
39.26.125	Competitive solicitation—Exceptions.
39.26.130	Emergency purchases.
39.26.140	Sole source contracts.
39.26.150	Public notice—Posting on enterprise vendor registration and bid notification system.
39.26.160	Bid awards—Considerations—Requirements and criteria to be set forth—Negotiations—Use of enterprise vendor registration and bid notification system.
39.26.170	Complaints—Protests.
39.26.180	Contract management.
39.26.190	Bonds.
39.26.200	Authority to debar.
39.26.210	List of agency contracts—Contract audits.
39.26.220	Contract audit and investigative findings, enforcement actions, and status of agency resolution—Report.
39.26.230	Purchases from entities serving or providing opportunities through community rehabilitation programs.
39.26.235	Purchase of wireless devices or services.
39.26.240	Awards of procurement contracts to veteran-owned businesses.
39.26.245	Awards of procurement contracts to office of minority and women's business enterprises.
39.26.250	Preferences—Purchase of goods and services from inmate work programs.
39.26.251	Purchase of articles or products from inmate work programs—Replacement of goods and services obtained from outside the state—Rules.
39.26.255	Preferences—Purchase of products containing recycled material—Directory of suppliers—Rules.
39.26.260	Preferences—In-state procurement.
39.26.265	Preferences—Purchase of electronic products meeting environmental performance standards—Requirements for surplus electronic products.

39.26.270	List of statutes and regulations of each state that grants preference to in-state vendors.
39.26.271	Rules for reciprocity in bidding.
39.26.280	Preference—Products and products in packaging that does not contain polychlorinated biphenyls—Limitations—Products and products in packaging containing polychlorinated biphenyls.
39.26.290	Tests and data of products procured.
39.26.900	Effective date—2012 c 224.

39.26.005 Intent. It is the intent of this chapter to promote open competition and transparency for all contracts for goods and services entered into by state agencies, unless specifically exempted under this chapter. It is further the intent of this chapter to centralize within one agency the authority and responsibility for the development and oversight of policies related to state procurement and contracting. To ensure the highest ethical standards, proper accounting for contract expenditures, and for ease of public review, it is further the intent to centralize the location of information about state procurements and contracts. It is also the intent of the legislature to provide state agency contract data to the public in a searchable manner.

In addition, the legislature intends that the state develop procurement policies, procedures, and materials that encourage and facilitate state agency purchase of goods and services from Washington small businesses. [2012 c 224 § 1.]

39.26.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" means any state office or activity of the executive and judicial branches of state government, including state agencies, departments, offices, divisions, boards, commissions, institutions of higher education as defined in RCW 28B.10.016, and correctional and other types of institutions.

(2) "Bid" means an offer, proposal, or quote for goods or services in response to a solicitation issued for such goods or services by the department or an agency of Washington state government.

(3) "Bidder" means an individual or entity who submits a bid, quotation, or proposal in response to a solicitation issued for such goods or services by the department or an agency of Washington state government.

(4) "Businesses owned and operated by persons with disabilities" means any for-profit business certified under chapter 39.19 RCW as being owned and controlled by persons who have been either:

(a) Determined by the department of social and health services to have a developmental disability, as defined in RCW 71A.10.020;

(b) Determined by an agency established under Title I of the federal vocational rehabilitation act to be or have been eligible for vocational rehabilitation services;

(c) Determined by the federal social security administration to be or have been eligible for either social security disability insurance or supplemental security income; or

(d) Determined by the United States department of veterans affairs to be or have been eligible for vocational rehabilitation services due to service-connected disabilities, under 38 U.S.C. Sec. 3100 et seq.

(5) "Client services" means services provided directly to agency clients including, but not limited to, medical and dental services, employment and training programs, residential care, and subsidized housing.

(6) "Community rehabilitation program of the department of social and health services" means any entity that:

(a) Is registered as a nonprofit corporation with the secretary of state; and

(b) Is recognized by the department of social and health services, division of vocational rehabilitation as eligible to do business as a community rehabilitation program.

(7) "Competitive solicitation" means a documented formal process providing an equal and open opportunity to bidders and culminating in a selection based on predetermined criteria.

(8) "Contractor" means an individual or entity awarded a contract with an agency to perform a service or provide goods.

(9) "Debar" means to prohibit a contractor, individual, or other entity from submitting a bid, having a bid considered, or entering into a state contract during a specified period of time as set forth in a debarment order.

(10) "Department" means the department of enterprise services.

(11) "Director" means the director of the department of enterprise services.

(12) "Estimated useful life" of an item means the estimated time from the date of acquisition to the date of replacement or disposal, determined in any reasonable manner.

(13) "Goods" means products, materials, supplies, or equipment provided by a contractor.

(14) "In-state business" means a business that has its principal office located in Washington.

(15) "Life-cycle cost" means the total cost of an item to the state over its estimated useful life, including costs of selection, acquisition, operation, maintenance, and where applicable, disposal, as far as these costs can reasonably be determined, minus the salvage value at the end of its estimated useful life.

(16) "Master contracts" means a contract for specific goods or services, or both, that is solicited and established by the department in accordance with procurement laws and rules on behalf of and for general use by agencies as specified by the department.

(17) "Microbusiness" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that: (a) Is owned and operated independently from all other businesses; and (b) has a gross revenue of less than one million dollars annually as reported on its federal tax return or on its return filed with the department of revenue.

(18) "Minibusiness" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that: (a) Is owned and operated independently from all other businesses; and (b) has a gross revenue of less than three million dollars, but one million dollars or more annually as reported on its federal tax return or on its return filed with the department of revenue.

(19) "Polychlorinated biphenyls" means any polychlorinated biphenyl congeners and homologs.

(20) "Practical quantification limit" means the lowest concentration that can be reliably measured within specified

limits of precision, accuracy, representativeness, completeness, and comparability during routine laboratory operating conditions.

(21) "Purchase" means the acquisition of goods or services, including the leasing or renting of goods.

(22) "Services" means labor, work, analysis, or similar activities provided by a contractor to accomplish a specific scope of work.

(23) "Small business" means an in-state business, including a sole proprietorship, corporation, partnership, or other legal entity, that:

(a) Certifies, under penalty of perjury, that it is owned and operated independently from all other businesses and has either:

(i) Fifty or fewer employees; or

(ii) A gross revenue of less than seven million dollars annually as reported on its federal income tax return or its return filed with the department of revenue over the previous three consecutive years; or

(b) Is certified with the office of women and minority business enterprises under chapter 39.19 RCW.

(24) "Sole source" means a contractor providing goods or services of such a unique nature or sole availability at the location required that the contractor is clearly and justifiably the only practicable source to provide the goods or services.

(25) "Washington grown" has the definition in RCW 15.64.060. [2014 c 135 § 2. Prior: 2012 c 224 § 2.]

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

Findings—2014 c 135: See note following RCW 39.26.280.

39.26.020 Ethics in public contracting. (1)(a) A state officer or employee of an agency who seeks to acquire goods or services or who participates in those contractual matters is subject to the requirements in RCW 42.52.150.

(b) A contractor who contracts with an agency to perform services related to the acquisition of goods and services for or on behalf of the state is subject to the requirements in RCW 42.52.150.

(2) No person or entity who seeks or may seek a contract with a state agency may give, loan, transfer, or deliver to any person something of economic value for which receipt of such item would cause a state officer or employee to be in a violation of RCW 42.52.040, 42.52.110, 42.52.120, 42.52.140, or 42.52.150. [2012 c 224 § 3.]

39.26.030 State procurement records—Disclosure.

(1) Records related to state procurements are public records subject to disclosure to the extent provided in chapter 42.56 RCW except as provided in subsection (2) of this section.

(2) Bid submissions and bid evaluations are exempt from disclosure until the agency announces the apparent successful bidder. [2012 c 224 § 4.]

39.26.040 Prohibition on certain contracts. Agencies that are authorized or directed to establish a board, commission, council, committee, or other similar group made up of volunteers to advise the activities and management of the agency are prohibited from entering into contracts with any or all volunteer members as a means to reimburse or otherwise pay members of such board, commission, council, com-

mittee, or other similar group for the work performed as part of the entity, except where payment is specifically authorized by statute. [2012 c 224 § 5.]

39.26.050 Provision of goods and services. (1) In addition to the powers and duties provided in chapter 43.19 RCW, the department shall make available goods and services to support state agencies, and may enter into agreements with any other local or federal governmental agency or entity or a public benefit nonprofit organization, in compliance with RCW 39.34.055, and any tribes located in the state, to furnish such products and services as deemed appropriate by both parties.

(2) The department shall ensure full cost recovery from state agencies, other local or federal governmental agency or entity, public benefit nonprofit organizations, or any tribes located in the state, for activities performed pursuant to subsection (1) of this section. Cost recovery must ensure that the department is reimbursed its full cost for providing the goods and services furnished as determined by the department. Cost recovery may be collected through the state agency, other governmental entity, nonprofit organization, or through the contractor.

(3) All governmental entities of this state may enter into agreements under this section with the department, unless otherwise prohibited. [2012 c 224 § 6.]

39.26.060 Cooperative purchasing. (1) On behalf of the state, the department may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any goods or services with one or more states, state agencies, local governments, local government agencies, federal agencies, or tribes located in the state, in accordance with an agreement entered into between the participants. The cooperative purchasing may include, but is not limited to, joint or multiparty contracts between the entities, and master contracts or convenience contracts that are made available to other public agencies.

(2) All cooperative purchasing conducted under this chapter must be through contracts awarded through a competitive solicitation process. [2012 c 224 § 7.]

39.26.070 Convenience contracts. A convenience contract is a contract for specific goods or services, or both, that is solicited and established by the department in accordance with procurement laws and rules on behalf of and for use by a specific agency or group of agencies as needed from time to time. A convenience contract is not available for general use and may only be used as specified by the department. [2012 c 224 § 8.]

39.26.080 Procurement policy—Director's responsibility and authority—Master contracts. (1) The director is responsible for the development and oversight of policy for the procurement of goods and services by all state agencies under this chapter. When establishing policies, standards, and procedures, the director shall account for differentiation in procurement practices and needs among state agencies and strive to establish policies, standards, and procedures that promote greater efficiency in procurement.

(2) The director is authorized to adopt rules, policies, and guidelines governing the procurement, contracting, and contract management of any and all goods and services procured by state agencies under this chapter.

(3) The director or designee is the sole authority to enter into master contracts on behalf of the state. [2012 c 224 § 9.]

39.26.090 Director's duties and responsibilities—Rules. The director shall:

(1) Establish overall state policies, standards, and procedures regarding the procurement of goods and services by all state agencies;

(2) Develop policies and standards for the use of credit cards or similar methods to make purchases;

(3) Establish procurement processes for information technology goods and services, using technology standards and policies established by the office of the chief information officer under chapter 43.41A RCW;

(4) Enter into contracts or delegate the authority to enter into contracts on behalf of the state to facilitate the purchase, lease, rent, or otherwise acquire all goods and services and equipment needed for the support, maintenance, and use of all state agencies, except as provided in RCW 39.26.100;

(5) Have authority to delegate to agencies authorization to purchase goods and services. The authorization must specify restrictions as to dollar amount or to specific types of goods and services, based on a risk assessment process developed by the department. Acceptance of the purchasing authorization by an agency does not relieve the agency from conformance with this chapter or from policies established by the director. Also, the director may not delegate to a state agency the authorization to purchase goods and services if the agency is not in substantial compliance with overall procurement policies as established by the director;

(6) Develop procurement policies and procedures, such as unbundled contracting and subcontracting, that encourage and facilitate the purchase of goods and services from Washington small businesses, microbusinesses, and minibusinesses, and minority and women-owned businesses to the maximum extent practicable and consistent with international trade agreement commitments;

(7) Develop and implement an enterprise system for electronic procurement;

(8) Provide for a commodity classification system and provide for the adoption of goods and services commodity standards;

(9) Establish overall state policy for compliance by all agencies regarding:

(a) Food procurement procedures and materials that encourage and facilitate the purchase of Washington grown food by state agencies and institutions to the maximum extent practicable and consistent with international trade agreement commitments; and

(b) Policies requiring all food contracts to include a plan to maximize to the extent practicable and consistent with international trade agreement commitments the availability of Washington grown food purchased through the contract;

(10) Develop guidelines and criteria for the purchase of vehicles, high gas mileage vehicles, and alternate vehicle fuels and systems, equipment, and materials, that reduce overall energy-related costs and energy use by the state,

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including investigations into all opportunities to aggregate the purchasing of clean technologies by state and local governments, and including the requirement that new passenger vehicles purchased by the state meet the minimum standards for passenger automobile fuel economy established by the United States secretary of transportation pursuant to the energy policy and conservation act (15 U.S.C. Sec. 2002); and

(11) Develop and enact rules to implement the provisions of this chapter. [2012 c 224 § 10.]

39.26.100 Exemptions. (1) The provisions of this chapter do not apply in any manner to the operation of the state legislature except as requested by the legislature.

(2) The provisions of this chapter do not apply to the contracting for services, equipment, and activities that are necessary to establish, operate, or manage the state data center, including architecture, design, engineering, installation, and operation of the facility, that are approved by the technology services board or the acquisition of proprietary software, equipment, and information technology services necessary for or part of the provision of services offered by the consolidated technology services agency.

(3) Primary authority for the purchase of specialized equipment, and instructional and research material, for their own use rests with the institutions of higher education as defined in RCW 28B.10.016.

(4) Universities operating hospitals with approval from the director, as the agent for state hospitals as defined in RCW 72.23.010, and for health care programs provided in state correctional institutions as defined in RCW 72.65.010(3) and veterans' institutions as defined in RCW 72.36.010 and 72.36.070, may make purchases for hospital operation by participating in contracts for materials, supplies, and equipment entered into by nonprofit cooperative hospital group purchasing organizations if documented to be more cost-effective.

(5) Primary authority for the purchase of materials, supplies, and equipment, for resale to other than public agencies, rests with the state agency concerned.

(6) The authority for the purchase of insurance and bonds rests with the risk manager under RCW 43.19.769, except for institutions of higher education that choose to exercise independent purchasing authority under RCW 28B.10.029.

(7) The authority to purchase interpreter services and interpreter brokerage services on behalf of limited-English speaking or sensory-impaired applicants and recipients of public assistance rests with the department of social and health services and the health care authority.

(8) The provisions of this chapter do not apply to information technology purchases by state agencies, other than institutions of higher education and agencies of the judicial branch, if (a) the purchase is less than one hundred thousand dollars, (b) the initial purchase is approved by the chief information officer of the state, and (c) the agency director and the chief information officer of the state jointly prepare a public document providing a detailed justification for the expenditure. [2013 2nd sp.s. c 33 § 2; 2012 c 224 § 11.]

39.26.102 Exemption—Department of corrections.

The department of corrections shall be exempt from the following provisions of this chapter in respect to goods or services purchased or sold pursuant to the operation of correctional industries: RCW *43.19.180, *43.19.190, *43.19.1901, *43.19.1905, *43.19.1906, *43.19.1908, *43.19.1911, *43.19.1913, *43.19.1915, 43.19.1917, 43.19.1919, 43.19.1921, and *43.19.200. [2011 1st sp.s. c 43 § 220; 1989 c 185 § 2; 1981 c 136 § 14. Formerly RCW 43.19.1932.]

***Reviser's note:** RCW 43.19.180, 43.19.190, 43.19.1901, 43.19.1905, 43.19.1906, 43.19.1908, 43.19.1911, 43.19.1913, 43.19.1915, and 43.19.200 were repealed by 2012 c 224 § 29, effective January 1, 2013.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

39.26.110 Training. (1) The department must provide expertise and training on best practices for state procurement.

(2) The department must establish either training or certification programs, or both, to ensure consistency in procurement practices for employees authorized to perform procurement functions under the provisions of this chapter. When establishing training or certification programs, the department may approve existing training or certification programs at state agencies. When establishing programs or approving existing programs, the department shall work with agencies with existing training programs to ensure coordination and minimize additional costs associated with training requirements.

(3) Beginning July 1, 2013, state agencies must require agency employees responsible for developing, executing, or managing procurements or contracts, or both, to complete department-approved training or certification programs, or both. Beginning July 1, 2015, no agency employee may execute or manage contracts unless the employee has met the training or certification requirements or both as set by the department. Any request for exception to this requirement must be submitted to the director for approval before the employee or group of employees executes or manages contracts. [2012 c 224 § 12.]

39.26.120 Competitive solicitation. (1) Insofar as practicable, all purchases of or contracts for goods and services must be based on a competitive solicitation process. This process may include electronic or web-based solicitations, bids, and signatures. This requirement also applies to procurement of goods and services executed by agencies under delegated authority granted in accordance with RCW 39.26.090 or under RCW 28B.10.029.

(2) Subsection (1) of this section applies to contract amendments that substantially change the scope of work of the original contract or substantially increase the value of the original contract. [2012 c 224 § 13.]

39.26.125 Competitive solicitation—Exceptions. All contracts must be entered into pursuant to competitive solicitation, except for:

- (1) Emergency contracts;
- (2) Sole source contracts that comply with the provisions of RCW 39.26.140;

(3) Direct buy purchases, as designated by the director. The director shall establish policies to define criteria for direct buy purchases. These criteria may be adjusted to accommodate special market conditions and to promote market diversity for the benefit of the citizens of the state of Washington;

(4) Purchases involving special facilities, services, or market conditions, in which instances of direct negotiation is in the best interest of the state;

(5) Purchases from master contracts established by the department or an agency authorized by the department;

(6) Client services contracts;

(7) Other specific contracts or classes or groups of contracts exempted from the competitive solicitation process when the director determines that a competitive solicitation process is not appropriate or cost-effective;

(8) Off-contract purchases of Washington grown food when such food is not available from Washington sources through an existing contract. However, Washington grown food purchased under this subsection must be of an equivalent or better quality than similar food available through the contract and must be able to be paid from the agency's existing budget. This requirement also applies to purchases and contracts for purchases executed by state agencies, including institutions of higher education as defined in RCW 28B.10.016, under delegated authority granted in accordance with this chapter or under RCW 28B.10.029;

(9) Contracts awarded to companies that furnish a service where the tariff is established by the utilities and transportation commission or other public entity;

(10) Intergovernmental agreements awarded to any governmental entity, whether federal, state, or local and any department, division, or subdivision thereof;

(11) Contracts for services that are necessary to the conduct of collaborative research if the use of a specific contractor is mandated by the funding source as a condition of granting funds;

(12) Contracts for architectural and engineering services as defined in RCW 39.80.020, which shall be entered into under chapter 39.80 RCW;

(13) Contracts for the employment of expert witnesses for the purposes of litigation; and

(14) Contracts for bank supervision authorized under *RCW 30.38.040. [2012 c 224 § 14.]

***Reviser's note:** RCW 30.38.040 was recodified as RCW 30A.38.040 pursuant to 2014 c 37 § 4, effective January 5, 2015.

39.26.130 Emergency purchases. (1) An agency may make emergency purchases as defined in subsection (3) of this section. When an emergency purchase is made, the agency head shall submit written notification of the purchase within three business days of the purchase to the director. This notification must contain a description of the purchase, a description of the emergency and the circumstances leading up to the emergency, and an explanation of why the circumstances required an emergency purchase.

(2) Emergency contracts must be submitted to the department and made available for public inspection within three working days following the commencement of work or execution of the contract, whichever occurs first.

(3) As used in this section, "emergency" means a set of unforeseen circumstances beyond the control of the agency that either:

(a) Present a real, immediate, and extreme threat to the proper performance of essential functions; or

(b) May reasonably be expected to result in material loss or damage to property, bodily injury, or loss of life, if immediate action is not taken. [2012 c 224 § 15.]

39.26.140 Sole source contracts. (1) Agencies must submit sole source contracts to the department and make the contracts available for public inspection not less than ten working days before the proposed starting date of the contract. Agencies must provide documented justification for sole source contracts to the department when the contract is submitted, and must include evidence that the agency posted the contract opportunity at a minimum on the state's enterprise vendor registration and bid notification system.

(2) The department must approve sole source contracts before any such contract becomes binding and before any services may be performed or goods provided under the contract. These requirements shall also apply to all sole source contracts except as otherwise exempted by the director.

(3) The director may provide an agency an exemption from the requirements of this section for a contract or contracts. Requests for exemptions must be submitted to the director in writing.

(4) Contracts awarded by institutions of higher education from nonstate funds are exempt from the requirements of this section. [2012 c 224 § 16.]

39.26.150 Public notice—Posting on enterprise vendor registration and bid notification system. (1) Agencies must provide public notice for all competitive solicitations. Agencies must post all contract opportunities on the state's enterprise vendor registration and bid notification system. In addition, agencies may notify contractors and potential bidders by sending notices by mail, electronic transmission, newspaper advertisements, or other means as may be appropriate.

(2) Agencies should try to anticipate changes in a requirement before the bid submittal date and to provide reasonable notice to all prospective bidders of any resulting modification or cancellation. If, in the opinion of the agency, it is not possible to provide reasonable notice, the submittal date for receipt of bids may be postponed and all bidders notified. [2012 c 224 § 17.]

39.26.160 Bid awards—Considerations—Requirements and criteria to be set forth—Negotiations—Use of enterprise vendor registration and bid notification system. (1)(a) After bids that are submitted in response to a competitive solicitation process are reviewed by the awarding agency, the awarding agency may:

(i) Reject all bids and rebid or cancel the competitive solicitation;

(ii) Request best and final offers from responsive and responsible bidders; or

(iii) Award the purchase or contract to the lowest responsive and responsible bidder.

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(b) The agency may award one or more contracts from a competitive solicitation.

(2) In determining whether the bidder is a responsible bidder, the agency must consider the following elements:

(a) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;

(b) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

(c) Whether the bidder can perform the contract within the time specified;

(d) The quality of performance of previous contracts or services;

(e) The previous and existing compliance by the bidder with laws relating to the contract or services; and

(f) Such other information as may be secured having a bearing on the decision to award the contract.

(3) In determining the lowest responsive and responsible bidder, an agency may consider best value criteria, including but not limited to:

(a) Whether the bid satisfies the needs of the state as specified in the solicitation documents;

(b) Whether the bid encourages diverse contractor participation;

(c) Whether the bid provides competitive pricing, economies, and efficiencies;

(d) Whether the bid considers human health and environmental impacts;

(e) Whether the bid appropriately weighs cost and non-cost considerations; and

(f) Life-cycle cost.

(4) The solicitation document must clearly set forth the requirements and criteria that the agency will apply in evaluating bid submissions.

(5) The awarding agency may at its discretion reject the bid of any contractor who has failed to perform satisfactorily on a previous contract with the state.

(6) After reviewing all bid submissions, an agency may enter into negotiations with the lowest responsive and responsible bidder in order to determine if the bid may be improved. An agency may not use this negotiation opportunity to permit a bidder to change a nonresponsive bid into a responsive bid.

(7) The procuring agency must enter into the state's enterprise vendor [registration] and bid notification system the name of each bidder and an indication as to the successful bidder. [2012 c 224 § 18.]

39.26.170 Complaints—Protests. (1) All agencies that have original or delegated procurement authority for goods or services must have a clear and transparent complaint process. The complaint process must provide for the complaint to be submitted and response provided before the deadline for bid submissions.

(2) All agencies that have original or delegated procurement authority for goods or services must have a clear and transparent protest process. The protest process must include a protest period after the apparent successful bidder is announced but before the contract is signed.

(3) The director may grant authority for an agency to sign a contract before the protest process is completed due to exigent circumstances. [2012 c 224 § 19.]

39.26.180 Contract management. (1) The department must adopt uniform policies and procedures for the effective and efficient management of contracts by all state agencies. The policies and procedures must, at a minimum, include:

- (a) Precontract procedures for selecting potential contractors based on their qualifications and ability to perform;
- (b) Model complaint and protest procedures;
- (c) Alternative dispute resolution processes;
- (d) Incorporation of performance measures and measurable benchmarks in contracts;
- (e) Model contract terms to ensure contract performance and compliance with state and federal standards;
- (f) Executing contracts using electronic signatures;
- (g) Criteria for contract amendments;
- (h) Postcontract procedures;
- (i) Procedures and criteria for terminating contracts for cause or otherwise; and
- (j) Any other subject related to effective and efficient contract management.

(2) An agency may not enter into a contract under which the contractor could charge additional costs to the agency, the department, the joint legislative audit and review committee, or the state auditor for access to data generated under the contract. A contractor under such a contract must provide access to data generated under the contract to the contracting agency, the joint legislative audit and review committee, and the state auditor.

(3) To the extent practicable, agencies should enter into performance-based contracts. Performance-based contracts identify expected deliverables and performance measures or outcomes. Performance-based contracts also use appropriate techniques, which may include but are not limited to, either consequences or incentives or both to ensure that agreed upon value to the state is received. Payment for goods and services under performance-based contracts should be contingent on the contractor achieving performance outcomes.

(4) An agency and contractor may execute a contract using electronic signatures.

(5) As used in subsection (2) of this section, "data" includes all information that supports the findings, conclusions, and recommendations of the contractor's reports, including computer models and the methodology for those models. [2012 c 224 § 20.]

39.26.190 Bonds. When any bid has been accepted, the agency may require of the successful bidder a bond payable to the state in such amount with such surety or sureties as determined by the agency, conditioned that he or she will fully, faithfully, and accurately perform the terms of the contract into which he or she has entered. Bidders who regularly do business with the state shall be permitted to file with the agency an annual performance bond in an amount established by the agency and such annual bond shall be acceptable as surety in lieu of furnishing individual bonds. The agency may also require bidders to provide bid bonds conditioned that if a bidder is awarded the contract the bidder will enter into and execute the contract, protest bonds, or other bonds the agency deems necessary. Agencies must adhere to the policies developed by the department regarding the use of protest bonds. All bonds must be filed with the agency on a form acceptable to the agency. Any surety issuing a bond must meet the qual-

ification requirements established by the agency. [2012 c 224 § 21.]

39.26.200 Authority to debar. (1)(a) The director shall provide notice to the contractor of the director's intent to debar with the specific reason for the debarment. The department must establish the debarment process by rule.

(b) After reasonable notice to the contractor and reasonable opportunity for that contractor to be heard, the director has the authority to debar a contractor for cause from consideration for award of contracts. The debarment must be for a period of not more than three years.

(2) The director may debar a contractor based on a finding of one or more of the following causes:

(a) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(b) Conviction or a final determination in a civil action under state or federal statutes of fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, violation of the federal false claims act, 31 U.S.C. Sec. 3729 et seq., or the state medicaid fraud false claims act, chapter 74.66 RCW, or any other offense indicating a lack of business integrity or business honesty that currently, seriously, and directly affects responsibility as a state contractor;

(c) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(d) Two or more violations within the previous five years of the federal labor relations act as determined by the national labor relations board or court of competent jurisdiction;

(e) Violation of contract provisions, as set forth in this subsection, of a character that is regarded by the director to be so serious as to justify debarment action:

(i) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(ii) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, however the failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for debarment;

(f) Violation of ethical standards set forth in RCW 39.26.020; and

(g) Any other cause the director determines to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity for any cause listed in regulations.

(3) The director must issue a written decision to debar. The decision must:

(a) State the reasons for the action taken; and

(b) Inform the debarred contractor of the contractor's rights to judicial or administrative review. [2013 2nd sp.s. c 34 § 1; 2012 c 224 § 22.]

39.26.210 List of agency contracts—Contract audits.

(1) Agencies must annually submit to the department a list of all contracts that the agency has entered into or renewed. "Contracts," for the purposes of this section, does not include purchase orders. The department must maintain a publicly

available list of all contracts entered into by agencies during each fiscal year, except that contracts for the employment of expert witnesses for the purposes of litigation shall not be made publicly available to the extent that information is exempt from disclosure under state law. Except as otherwise exempt, the data must identify the contracting agency, the contractor, the purpose of the contract, effective dates and periods of performance, the cost of the contract and funding source, any substantive modifications to the contract, and whether the contract was competitively procured or awarded on a sole source basis.

(2) The department may conduct audits of its master contracts and convenience contracts to ensure that the contractor is in compliance with the contract terms and conditions, including but not limited to providing only the goods and services specified in the contract at the contract price. [2012 c 224 § 23.]

39.26.220 Contract audit and investigative findings, enforcement actions, and status of agency resolution—Report. The state auditor and the attorney general must annually by November 30th of each year, provide a collaborative report of contract audit and investigative findings, enforcement actions, and the status of agency resolution to the governor and the policy and fiscal committees of the legislature. [2012 c 224 § 24.]

39.26.230 Purchases from entities serving or providing opportunities through community rehabilitation programs. The state agencies and departments are hereby authorized to purchase products and/or services manufactured or provided by community rehabilitation programs of the department of social and health services.

Such purchases shall be at the fair market price of such products and services as determined by the department of enterprise services. To determine the fair market price the department shall use the last comparable bid on the products and/or services or in the alternative the last price paid for the products and/or services. The increased cost of labor, materials, and other documented costs since the last comparable bid or the last price paid are additional cost factors which shall be considered in determining fair market price. Upon the establishment of the fair market price as provided for in this section the department is hereby empowered to negotiate directly for the purchase of products or services with officials in charge of the community rehabilitation programs of the department of social and health services. [2011 1st sp.s. c 43 § 226; 2005 c 204 § 2; 2003 c 136 § 3; 1977 ex.s. c 10 § 2; 1974 ex.s. c 40 § 3. Formerly RCW 43.19.530.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

39.26.235 Purchase of wireless devices or services. (1) State agencies that are purchasing wireless devices or services must make such purchases through the state master contract, unless the state agency provides to the office of the chief information officer evidence that the state agency is securing its wireless devices or services from another source for a lower cost than through participation in the state master contract.

(2014 Ed.)

(2) For the purposes of this section, "state agency" means any office, department, board, commission, or other unit of state government, but does not include a unit of state government headed by a statewide elected official, an institution of higher education as defined in RCW 28B.10.016, the student achievement council, the state board for community and technical colleges, or agencies of the legislative or judicial branches of state government. [2012 c 229 § 584; 2011 1st sp.s. c 43 § 734; 2010 c 282 § 2. Formerly RCW 43.19.797, 43.105.410.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

39.26.240 Awards of procurement contracts to veteran-owned businesses. All procurement contracts entered into under this chapter on or after June 10, 2010, are subject to the requirements established under RCW 43.60A.200. [2010 c 5 § 9. Formerly RCW 39.29.052.]

Purpose—Construction—2010 c 5: See notes following RCW 43.60A.010.

39.26.245 Awards of procurement contracts to office of minority and women's business enterprises. (1) All contracts entered into and purchases made, including leasing or renting, under this chapter on or after September 1, 1983, are subject to the requirements established under chapter 39.19 RCW.

(2) All procurement contracts entered into under this chapter on or after June 10, 2010, are subject to the requirements established under RCW 43.60A.200. [2010 c 5 § 6; 1983 c 120 § 13. Formerly RCW 43.19.536.]

Purpose—Construction—2010 c 5: See notes following RCW 43.60A.010.

Additional notes found at www.leg.wa.gov

39.26.250 Preferences—Purchase of goods and services from inmate work programs. Any person, firm, or organization which makes any bid to provide any goods or any services to any state agency shall be granted a preference over other bidders if (1) the goods or services have been or will be produced or provided in whole or in part by an inmate work program of the department of corrections and (2) an amount equal to at least fifteen percent of the total bid amount has been paid or will be paid by the person, firm, or organization to inmates as wages. The preference provided under this section shall be equal to ten percent of the total bid amount. [1981 c 136 § 15. Formerly RCW 43.19.535.]

Additional notes found at www.leg.wa.gov

39.26.251 Purchase of articles or products from inmate work programs—Replacement of goods and services obtained from outside the state—Rules. (1) State agencies, the legislature, and departments shall purchase for their use all goods and services required by the legislature, agencies, or departments that are produced or provided in whole or in part from class II inmate work programs operated by the department of corrections through state contract. These goods and services shall not be purchased from any

other source unless, upon application by the department or agency: (a) The department finds that the articles or products do not meet the reasonable requirements of the agency or department, (b) are not of equal or better quality, or (c) the price of the product or service is higher than that produced by the private sector. However, the criteria contained in (a), (b), and (c) of this subsection for purchasing goods and services from sources other than correctional industries do not apply to goods and services produced by correctional industries that primarily replace goods manufactured or services obtained from outside the state. The department of corrections and department shall adopt administrative rules that implement this section.

(2) During the 2009-2011 and 2011-2013 fiscal biennia, and in conformance with section 223(11), chapter 470, Laws of 2009 and section 221(2), chapter 367, Laws of 2011, this section does not apply to the purchase of uniforms by the Washington state ferries.

(3) Effective July 1, 2012, this section does not apply to the purchase of uniforms for correctional officers employed with the Washington state department of corrections. [2012 c 220 § 1. Prior: 2011 1st sp.s. c 43 § 227; 2011 c 367 § 707; 2009 c 470 § 717; 1993 sp.s. c 20 § 1; 1986 c 94 § 2. Formerly RCW 43.19.534.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2011 c 367: See note following RCW 47.29.170.

Effective date—2009 c 470: See note following RCW 46.68.170.

39.26.255 Preferences—Purchase of products containing recycled material—Directory of suppliers—Rules. (1) The director shall develop specifications and adopt rules for the purchase of products which will provide for preferential purchase of products containing recycled material by:

(a) The use of a weighting factor determined by the amount of recycled material in a product, where appropriate and known in advance to potential bidders, to determine the lowest responsible bidder. The actual dollars bid shall be the contracted amount. If the department determines, according to criteria established by rule that the use of this weighting factor does not encourage the use of more recycled material, the department shall consider and award bids without regard to the weighting factor. In making this determination, the department shall consider but not be limited to such factors as adequate competition, economics or environmental constraints, quality, and availability.

(b) Requiring a written statement of the percentage range of recycled content from the bidder providing products containing recycled [material]. The range may be stated in five percent increments.

(2) The director shall develop a directory of businesses that supply products containing significant quantities of recycled materials. This directory may be combined with and made accessible through the database of recycled content products to be developed under RCW 43.19A.060.

(3) The director shall encourage all parties using the state purchasing office to purchase products containing recycled materials.

(4) The rules, specifications, and bid evaluation shall be consistent with recycled content standards adopted under

RCW 43.19A.020. [2011 1st sp.s. c 43 § 228; 1991 c 297 § 5; 1988 c 175 § 2; 1987 c 505 § 26; 1982 c 61 § 2. Formerly RCW 43.19.538.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Recycled product procurement: Chapter 43.19A RCW.

Additional notes found at www.leg.wa.gov

39.26.260 Preferences—In-state procurement. The legislature finds that in-state preference clauses used by other states in procuring goods and services have a discriminatory effect against Washington vendors with resulting harm to this state's revenues and the welfare of this state's citizens. Chapter 183, Laws of 1983 is intended to promote fairness in state government procurement by requiring that, when appropriate, Washington exercise reciprocity with those states having in-state preferences, and it shall be liberally construed to that effect. [1983 c 183 § 1. Formerly RCW 43.19.700.]

39.26.265 Preferences—Purchase of electronic products meeting environmental performance standards—Requirements for surplus electronic products. (1) The department shall establish purchasing and procurement policies that establish a preference for electronic products that meet environmental performance standards relating to the reduction or elimination of hazardous materials.

(2) The department shall ensure that their surplus electronic products, other than those sold individually to private citizens, are managed only by registered transporters and by processors meeting the requirements of RCW 70.95N.250.

(3) The department shall ensure that their surplus electronic products are directed to legal secondary materials markets by requiring a chain of custody record that documents to whom the products were initially delivered through to the end use manufacturer. [2011 1st sp.s. c 43 § 229; 2006 c 183 § 36. Formerly RCW 43.19.539.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Construction—Severability—Effective date—2006 c 183: See RCW 70.95N.900 through 70.95N.902.

39.26.270 List of statutes and regulations of each state that grants preference to in-state vendors. The director shall compile a list of the statutes and regulations, relating to state purchasing, of each state, which statutes and regulations the director believes grant a preference to vendors located within the state or goods manufactured within the state. At least once every twelve months the director shall update the list. [2011 1st sp.s. c 43 § 240; 1983 c 183 § 2. Formerly RCW 43.19.702.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

39.26.271 Rules for reciprocity in bidding. The director shall adopt and apply rules designed to provide for some reciprocity in bidding between Washington and those states having statutes or regulations on the list under *RCW 43.19.702. The director shall have broad discretionary power in developing these rules and the rules shall provide for reciprocity only to the extent and in those instances where the director considers it appropriate. For the purpose of determin-

ing the lowest responsible bidder pursuant to **RCW 43.19.1911, such rules shall (1) require the director to impose a reciprocity increase on bids when appropriate under the rules and (2) establish methods for determining the amount of the increase. In no instance shall such increase, if any, be paid to a vendor whose bid is accepted. [2011 1st sp.s. c 43 § 241; 1983 c 183 § 3. Formerly RCW 43.19.704.]

Reviser's note: *(1) RCW 43.19.702 was recodified as RCW 39.26.270 pursuant to 2012 c 224 § 28, effective January 1, 2013.

** (2) RCW 43.19.1911 was repealed by 2012 c 224 § 29, effective January 1, 2013.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

39.26.280 Preference—Products and products in packaging that does not contain polychlorinated biphenyls—Limitations—Products and products in packaging containing polychlorinated biphenyls. (1) The department shall establish purchasing and procurement policies that provide a preference for products and products in packaging that does not contain polychlorinated biphenyls.

(2) No agency may knowingly purchase products or products in packaging containing polychlorinated biphenyls above the practical quantification limit except when it is not cost-effective or technically feasible to do so.

(3) Nothing in this section requires the department or any other state agency to breach an existing contract or dispose of stock that has been ordered or is in the possession of the department or other state agency as of June 12, 2014. [2014 c 135 § 3.]

Findings—2014 c 135: "Polychlorinated biphenyls, commonly known as PCBs, are a family of human-made organic chemicals that were used in many industrial and commercial products such as insulating fluids for electric transformers and capacitors, hydraulic fluids, plasticizers, paint additives, lubricants, inks, caulk, and carbonless copy paper. PCBs were used because of their fire resistance, chemical stability, and electrical insulating properties. PCBs are also found in products as an unintentional by-product of manufacturing processes. PCBs are ubiquitous in the environment because of their stability, extensive previous use, by-production in manufacturing, inadvertent release, and the inability to control and eliminate them through current waste management practices. PCBs are persistent, bioaccumulative, and toxic, and they cycle between the air, soil, and water. PCBs have been shown to cause cancer and affect the human immune, reproductive, nervous, and endocrine systems. The United States toxic substances control act prohibited the commercial production of PCBs in 1979. However, the United States environmental protection agency rules implementing the ban provides exemptions for certain products containing PCBs at concentrations of fifty parts per million or less as a result of manufacturing processes and therefore the continued manufacture, processing, distribution, and use of products containing PCBs remains permitted." [2014 c 135 § 1.]

39.26.290 Tests and data of products procured. (1) This chapter does not require the department to test every product procured. However, the department may accept from businesses, manufacturers, organizations, and individuals results obtained from an accredited laboratory or testing facility documenting product or product packaging polychlorinated biphenyl levels.

(2) The department may request suppliers of products to provide testing data from an accredited laboratory or testing facility documenting product or product packaging polychlorinated biphenyl levels. [2014 c 135 § 4.]

Findings—2014 c 135: See note following RCW 39.26.280.

(2014 Ed.)

39.26.900 Effective date—2012 c 224. This act takes effect January 1, 2013. [2012 c 224 § 31.]

Chapter 39.28 RCW EMERGENCY PUBLIC WORKS

Sections

39.28.010	Definitions.
39.28.020	Powers conferred.
39.28.030	Construction of act.
39.28.040	Loans and grants to finance preliminary public works expenditures.

39.28.010 Definitions. The following terms wherever used or referred to in RCW 39.28.010 through 39.28.030 shall have the following meaning unless a different meaning appears from the context.

(1) The term "municipality" shall mean the state, a county, city, town, district or other municipal corporation or political subdivision;

(2) The term "governing body" shall mean the body, a board charged with the governing of the municipality;

(3) The term "law" shall mean any act or statute, general, special or local, of this state, including, without being limited to, the charter of any municipality;

(4) The term "bonds" shall mean bonds, interim receipts, certificates, or other obligations of a municipality issued or to be issued by its governing body for the purpose of financing or aiding in the financing of any work, undertaking or project for which a loan or grant, or both, has heretofore been made or may hereafter be made by any federal agency;

(5) The term "Recovery Act" shall mean any acts of the congress of the United States of America to reduce and relieve unemployment or to provide for the construction of public works;

(6) The term "federal agency" shall include the United States of America, the president of the United States of America, and any agency or instrumentality of the United States of America, which has heretofore been or hereafter may be designated, created or authorized to make loans or grants;

(7) The term "public works project" shall mean any work, project, or undertaking which any municipality, is authorized or required by law to undertake or any lawful purpose for which any municipality is authorized or required by law to make an appropriation;

(8) The term "contract" or "agreement" between a federal agency and a municipality shall include contracts and agreements in the customary form and shall also be deemed to include an allotment of funds, resolution, unilateral promise, or commitment by a federal agency by which it shall undertake to make a loan or grant, or both, upon the performance of specified conditions or compliance with rules and regulations theretofore or thereafter promulgated, prescribed or published by a federal agency. In the case of such an allotment of funds, resolution, unilateral promise, or commitment by a federal agency, the terms, conditions and restrictions therein set forth and the rules and regulations theretofore or thereafter promulgated, prescribed or published shall, for the purpose of RCW 39.28.010 through 39.28.030, be deemed to constitute covenants of such a contract which shall be performed by the municipality, if the municipality accepts any

money from such federal agency. [1971 c 76 § 4; 1937 c 107 § 2; RRS § 10322A-8. Prior: 1935 c 107 § 2; RRS § 10322A-2.]

Short title: "This act may be cited as 'The Municipal Emergency Procedure Act (Revision of 1937)'" [1937 c 107 § 1; RRS § 10322A-7. Prior: 1935 c 107 § 1; RRS § 10322A-1.]

Additional notes found at www.leg.wa.gov

39.28.020 Powers conferred. Every municipality shall have power and is hereby authorized:

(1) To accept from any federal agency grants for or in aid of the construction of any public works project;

(2) To make contracts and execute instruments containing such terms, provisions, and conditions as in the discretion of the governing body of the municipality may be necessary, proper or advisable for the purpose of obtaining grants or loans, or both, from any federal agency pursuant to or by virtue of the Recovery Act; to make all other contracts and execute all other instruments necessary, proper or advisable in or for the furtherance of any public works project and to carry out and perform the terms and conditions of all such contracts or instruments;

(3) To subscribe to and comply with the Recovery Act and any rules and regulations made by any federal agency with regard to any grants or loans, or both, from any federal agency;

(4) To perform any acts authorized under RCW 39.28.010 through 39.28.030 through or by means of its own officers, agents and employees, or by contracts with corporations, firms or individuals;

(5) To award any contract for the construction of any public works project or part thereof upon any day at least fifteen days after one publication of a notice requesting bids upon such contract in a newspaper of general circulation in the municipality: PROVIDED, That in any case where publication of notice may be made in a shorter period of time under the provisions of existing statute or charter, such statute or charter shall govern;

(6) To sell bonds at private sale to any federal agency without any public advertisement;

(7) To issue interim receipts, certificates or other temporary obligations, in such form and containing such terms, conditions and provisions as the governing body of the municipality issuing the same may determine, pending the preparation or execution of definite bonds for the purpose of financing the construction of a public works project;

(8) To issue bonds bearing the signatures of officers in office on the date of signing such bonds, notwithstanding that before delivery thereof any or all the persons whose signatures appear thereon shall have ceased to be the officers of the municipality issuing the same;

(9) To include in the cost of a public works project which may be financed by the issuance of bonds: (a) Engineering, inspection, accounting, fiscal and legal expenses; (b) the cost of issuance of the bonds, including engraving, printing, advertising, and other similar expenses; (c) any interest costs during the period of construction of such public works project and for six months thereafter on money borrowed or estimated to be borrowed;

(10) To stipulate in any contract for the construction of any public works project or part thereof the maximum hours

that any laborer, worker, or mechanic should be permitted or required to work in any one calendar day or calendar week or calendar month, and the minimum wages to be paid to laborers, workers, or mechanics in connection with any public works project: PROVIDED, That no such stipulation shall provide for hours in excess of or for wages less than may now or hereafter be required by any other law;

(11) To exercise any power conferred by RCW 39.28.010 through 39.28.030 for the purpose of obtaining grants or loans, or both, from any federal agency pursuant to or by virtue of the Recovery Act, independently or in conjunction with any other power or powers conferred by RCW 39.28.010 through 39.28.030 or heretofore or hereafter conferred by any other law;

(12) To do all acts and things necessary or convenient to carry out the powers expressly given in RCW 39.28.010 through 39.28.030. [1989 c 12 § 12; 1937 c 107 § 3; RRS § 10322A-9. Prior: 1935 c 107 § 3; RRS § 10322A-3.]

Additional notes found at www.leg.wa.gov

39.28.030 Construction of act. The powers conferred by RCW 39.28.010 through 39.28.030 shall be in addition and supplemental to and not in substitution for the powers now or hereafter conferred upon any municipality by any other law. RCW 39.28.010 through 39.28.030 is intended to aid in relieving the existing emergency by simplifying the procedure for the construction and financing of public works projects. RCW 39.28.010 through 39.28.030 is remedial in nature and the powers hereby granted shall be liberally construed. Nothing in RCW 39.28.010 through 39.28.030 shall be construed to authorize the issuance of bonds for any purpose by any municipality not authorized to issue bonds for such purpose under any other law heretofore or hereafter enacted, nor to dispense with the approval by a state department, board, officer or commission of a public works project where such approval is necessary under provisions of existing law: PROVIDED, That any port district which is now indebted in an amount equal to or in excess of the indebtedness which may be contracted without a vote of the electors of the district is hereby authorized, for the purposes of RCW 39.28.010 through 39.28.030, through its governing body, to contract a further indebtedness and borrow money for port purposes and issue general bonds therefor, as in RCW 39.28.010 through 39.28.030 provided, in an additional amount not exceeding three-sixteenths of one percent of the value of the taxable property in the district, as the term "value of the taxable property" is defined in RCW 39.36.015, without the assent of the voters of the district: PROVIDED, FURTHER, That such additional indebtedness together with the existing indebtedness of such port district shall not exceed the total indebtedness permitted to be incurred by such port district under existing laws. [1970 ex.s. c 42 § 25; 1937 c 107 § 4; RRS § 10322A-10. Prior: 1935 c 107 § 4; RRS § 10322A-4.]

Additional notes found at www.leg.wa.gov

39.28.040 Loans and grants to finance preliminary public works expenditures. The state of Washington, its various counties, municipal corporations, quasi municipal corporations, cities, towns, villages and all other political subdivisions of the state are hereby authorized to accept from

the federal government all loans, advances, grants in aid, or donations that may be made available by any federal agency for the purpose of financing the cost of architectural, engineering, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other acts preliminary to the construction of public works. [1971 c 76 § 5; 1945 c 106 § 1; Rem. Supp. 1945 § 10322-45.]

Chapter 39.30 RCW

**CONTRACTS—INDEBTEDNESS LIMITATIONS—
COMPETITIVE BIDDING VIOLATIONS**

Sections

- 39.30.010 Executory conditional sales contracts for purchase of property—Limit on indebtedness—Election, when.
- 39.30.020 Contracts requiring competitive bidding or procurement of services—Violations by municipal officer—Penalties.
- 39.30.040 Purchases—Competitive bidding—Consideration of tax revenues—Purchase of recycled or reused materials or products—Definitions.
- 39.30.045 Purchase at auctions.
- 39.30.050 Contracts to require use of paper products meeting certain specifications.
- 39.30.060 Bids on public works—Identification, substitution of subcontractors.
- 39.30.070 Exceptions—Contracts or development agreements related to stadium and exhibition center.

39.30.010 Executory conditional sales contracts for purchase of property—Limit on indebtedness—Election, when. Any city or town or metropolitan park district or county or library district may execute an executory conditional sales contract with a county or counties, the state or any of its political subdivisions, the government of the United States, or any private party for the purchase of any real or personal property, or property rights in connection with the exercise of any powers or duties which they now or hereafter are authorized to exercise, if the entire amount of the purchase price specified in such contract does not result in a total indebtedness in excess of three-fourths of one percent of the value of the taxable property in such library district or the maximum amount of nonvoter-approved indebtedness authorized in such county, city, town, or metropolitan park district. If such a proposed contract would result in a total indebtedness in excess of this amount, a proposition in regard to whether or not such a contract may be executed shall be submitted to the voters for approval or rejection in the same manner that bond issues for capital purposes are submitted to the voters. Any city or town or metropolitan park district or county or library district may jointly execute contracts authorized by this section, if the entire amount of the purchase price does not result in a joint total indebtedness in excess of the nonvoter-approved indebtedness limitation of any city, town, metropolitan park district, county, or library district that participates in the jointly executed contract. The term "value of the taxable property" shall have the meaning set forth in RCW 39.36.015. [1997 c 361 § 2; 1970 ex.s. c 42 § 26; 1963 c 92 § 1; 1961 c 158 § 1.]

Additional notes found at www.leg.wa.gov

39.30.020 Contracts requiring competitive bidding or procurement of services—Violations by municipal officer—Penalties. In addition to any other remedies or penal-

ties contained in any law, municipal charter, ordinance, resolution or other enactment, any municipal officer by or through whom or under whose supervision, in whole or in part, any contract is made in willful and intentional violation of any law, municipal charter, ordinance, resolution or other enactment requiring competitive bidding or procurement procedures for consulting, architectural, engineering, or other services, upon such contract shall be held liable to a civil penalty of not less than three hundred dollars and may be held liable, jointly and severally with any other such municipal officer, for all consequential damages to the municipal corporation. If, as a result of a criminal action, the violation is found to have been intentional, the municipal officer shall immediately forfeit his or her office. For purposes of this section, "municipal officer" means an "officer" or "municipal officer" as those terms are defined in RCW 42.23.020(2). [2008 c 130 § 2; 1974 ex.s. c 74 § 1.]

Contracts by cities or towns, bidding requirements: RCW 35.23.352.

39.30.040 Purchases—Competitive bidding—Consideration of tax revenues—Purchase of recycled or reused materials or products—Definitions. (1) Whenever a unit of local government is required to make purchases from the lowest bidder or from the supplier offering the lowest price for the items desired to be purchased, the unit of local government may, at its option when awarding a purchase contract, take into consideration tax revenue it would receive from purchasing the supplies, materials, or equipment from a supplier located within its boundaries. The unit of local government must award the purchase contract to the lowest bidder after such tax revenue has been considered. However, any local government may allow for preferential purchase of products made from recycled materials or products that may be recycled or reused. Any unit of local government which considers tax revenue it would receive from the imposition of taxes upon a supplier located within its boundaries must also consider tax revenue it would receive from taxes it imposes upon a supplier located outside its boundaries.

(2) A unit of local government may award a contract to a bidder submitting the lowest bid before taxes are applied. The unit of local government must provide notice of its intent to award a contract based on this method prior to bids being submitted. For the purposes of this subsection (2), "taxes" means only those taxes that are included in "tax revenue" as defined in this section.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Tax revenue" means sales taxes that units of local government impose upon the sale of supplies, materials, or equipment from the supplier to units of local government, and business and occupation taxes that units of local government impose upon the supplier that are measured by the gross receipts of the supplier from the sale.

(b) "Unit of local government" means any county, city, town, metropolitan municipal corporation, public transit benefit area, county transportation authority, or other municipal or quasi-municipal corporation authorized to impose sales and use taxes or business and occupation taxes. [2013 c 24 § 1; 1989 c 431 § 58; 1985 c 72 § 1.]

Additional notes found at www.leg.wa.gov

39.30.045 Purchase at auctions. Any municipality, as defined in RCW 39.04.010, may purchase any supplies, equipment, or materials at auctions conducted by the government of the United States or any agency thereof, any agency of the state of Washington, any municipality or other government agency, or any private party without being subject to public bidding requirements if the items can be obtained at a competitive price. [1993 c 198 § 4; 1991 c 363 § 112.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

39.30.050 Contracts to require use of paper products meeting certain specifications. Any contract by a governmental unit shall require the use of paper products to the maximum extent economically feasible that meet the specifications established by the *department of general administration under **RCW 43.19.538. [1982 c 61 § 4.]

Reviser's note: *(1) The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

** (2) RCW 43.19.538 was recodified as RCW 39.26.255 pursuant to 2012 c 224 § 28, effective January 1, 2013.

39.30.060 Bids on public works—Identification, substitution of subcontractors. (1) Every invitation to bid on a prime contract that is expected to cost one million dollars or more for the construction, alteration, or repair of any public building or public work of the state or a state agency or municipality as defined under RCW 39.04.010 or an institution of higher education as defined under RCW 28B.10.016 shall require each prime contract bidder to submit as part of the bid, or within one hour after the published bid submittal time, the names of the subcontractors with whom the bidder, if awarded the contract, will subcontract for performance of the work of: HVAC (heating, ventilation, and air conditioning); plumbing as described in chapter 18.106 RCW; and electrical as described in chapter 19.28 RCW, or to name itself for the work. The prime contract bidder shall not list more than one subcontractor for each category of work identified, unless subcontractors vary with bid alternates, in which case the prime contract bidder must indicate which subcontractor will be used for which alternate. Failure of the prime contract bidder to submit as part of the bid the names of such subcontractors or to name itself to perform such work or the naming of two or more subcontractors to perform the same work shall render the prime contract bidder's bid nonresponsive and, therefore, void.

(2) Substitution of a listed subcontractor in furtherance of bid shopping or bid peddling before or after the award of the prime contract is prohibited and the originally listed subcontractor is entitled to recover monetary damages from the prime contract bidder who executed a contract with the public entity and the substituted subcontractor but not from the public entity inviting the bid. It is the original subcontractor's burden to prove by a preponderance of the evidence that bid shopping or bid peddling occurred. Substitution of a listed subcontractor may be made by the prime contractor for the following reasons:

- (a) Refusal of the listed subcontractor to sign a contract with the prime contractor;
- (b) Bankruptcy or insolvency of the listed subcontractor;
- (c) Inability of the listed subcontractor to perform the requirements of the proposed contract or the project;

(d) Inability of the listed subcontractor to obtain the necessary license, bonding, insurance, or other statutory requirements to perform the work detailed in the contract; or

(e) The listed subcontractor is barred from participating in the project as a result of a court order or summary judgment.

(3) The requirement of this section to name the prime contract bidder's proposed HVAC, plumbing, and electrical subcontractors applies only to proposed HVAC, plumbing, and electrical subcontractors who will contract directly with the prime contract bidder submitting the bid to the public entity.

(4) This section does not apply to job order contract requests for proposals under *RCW 39.10.130. [2003 c 301 § 5; 2002 c 163 § 2; 1999 c 109 § 1; 1995 c 94 § 1; 1994 c 91 § 1; 1993 c 378 § 1.]

***Reviser's note:** RCW 39.10.130 was recodified as RCW 39.10.420 pursuant to 2007 c 494 § 511, effective July 1, 2007.

Intent—2002 c 163: "This act is intended to discourage bid shopping and bid peddling on Washington state public building and works projects." [2002 c 163 § 1.]

Additional notes found at www.leg.wa.gov

39.30.070 Exceptions—Contracts or development agreements related to stadium and exhibition center. This chapter does not apply to contracts entered into under RCW 36.102.060(4) or development agreements entered into under RCW 36.102.060(7). [1997 c 220 § 403 (Referendum Bill No. 48, approved June 17, 1997).]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Chapter 39.32 RCW

ACQUISITION OF GOVERNMENTAL PROPERTY

(Formerly: Purchase of federal property)

Sections

39.32.010	Definitions.
39.32.020	Acquisition of surplus property authorized.
39.32.035	Administration and use of enterprise services account—Director's authority to lease and acquire surplus property.
39.32.040	Procedure to purchase—Requisitions—Price at which sold—Disposition of proceeds—Duties of governor.
39.32.060	Rules and regulations.
39.32.070	Purchase of property from federal government authorized—Authority to contract—Bidding—Payment.
39.32.080	Purchase of property from federal government authorized—Inconsistent provisions suspended.
39.32.090	Purchases by political subdivisions from or through United States authorized.

Authority of counties to receive and distribute federal surplus commodities to needy: RCW 36.39.040.

Disposal of surplus property: RCW 39.33.020.

Public assistance recipients, certification of to receive federal surplus commodities: RCW 74.04.340 through 74.04.360.

39.32.010 Definitions. For the purposes of RCW 39.32.010 through 39.32.060:

The term "eligible donee" means any public agency carrying out or promoting for the residents of a given political area one or more public purposes, such as conservation, economic development, education, parks and recreation, public health, and public safety; or nonprofit educational or public health institutions or organizations, such as medical institu-

tions, hospitals, clinics, health centers, schools, colleges, universities, schools for persons with intellectual disabilities, schools for persons with physical disabilities, child care centers, radio and television stations licensed by the federal communications commission as educational radio or educational television stations, museums attended by the public, and public libraries serving all residents of a community, district, state, or region, and which are exempt from taxation under Section 501 of the Internal Revenue Code of 1954, for purposes of education or public health, including research for any such purpose.

The term "public agency" means the state or any subdivision thereof, including any unit of local government, economic development district, emergency services organization, or any instrumentality created by compact or other agreement between the state and a political subdivision, or any Indian tribe, band, group, or community located on a state reservation.

The term "surplus property" means any property, title to which is in the federal, state, or local government or any department or agency thereof, and which property is to be disposed of as surplus under any act of congress or the legislature or local statute, heretofore or hereafter enacted providing for such disposition. [2010 c 94 § 10; 1995 c 137 § 2; 1977 ex.s. c 135 § 1; 1967 ex.s. c 70 § 1; 1945 c 205 § 1; Rem. Supp. 1945 § 10322-60.]

Purpose—2010 c 94: See note following RCW 44.04.280.

39.32.020 Acquisition of surplus property authorized. The *director of general administration is hereby authorized to purchase, lease or otherwise acquire from federal, state, or local government or any surplus property disposal agency thereof surplus property to be used in accordance with the provisions of this chapter. [1995 c 137 § 3; 1977 ex.s. c 135 § 2; 1967 ex.s. c 70 § 2; 1945 c 205 § 2; Rem. Supp. 1945 § 10322-61.]

***Reviser's note:** The "director of general administration" was renamed the "director of enterprise services" by 2011 1st sp.s. c 43 § 108.

Authority of superintendent of public instruction to acquire federal surplus or donated food commodities for school district hot lunch program: Chapter 28A.235 RCW.

39.32.035 Administration and use of enterprise services account—Director's authority to lease and acquire surplus property. The enterprise services account shall be administered by the director of enterprise services and be used for the purchase, lease or other acquisition from time to time of surplus property from any federal, state, or local government surplus property disposal agency. The director may purchase, lease or acquire such surplus property on the requisition of an eligible donee and without such requisition at such time or times as he or she deems it advantageous to do so; and in either case he or she shall be responsible for the care and custody of the property purchased so long as it remains in his or her possession. [2011 1st sp.s. c 43 § 252; 1998 c 105 § 3; 1995 c 137 § 4; 1977 ex.s. c 135 § 3; 1967 ex.s. c 70 § 4; 1945 c 205 § 4; Rem. Supp. 1945 § 10322-63. Formerly RCW 39.32.030, part.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

(2014 Ed.)

39.32.040 Procedure to purchase—Requisitions—Price at which sold—Disposition of proceeds—Duties of governor. In purchasing federal surplus property on requisition for any eligible donee the director may advance the purchase price thereof from the *general administration services account, and he or she shall then in due course bill the proper eligible donee for the amount paid by him or her for the property plus a reasonable amount to cover the expense incurred by him or her in connection with the transaction. In purchasing surplus property without requisition, the director shall be deemed to take title outright and he or she shall then be authorized to resell from time to time any or all of such property to such eligible donees as desire to avail themselves of the privilege of purchasing. All moneys received in payment for surplus property from eligible donees shall be deposited by the director in the *general administration services account. The director shall sell federal surplus property to eligible donees at a price sufficient only to reimburse the *general administration services account for the cost of the property to the account, plus a reasonable amount to cover expenses incurred in connection with the transaction. Where surplus property is transferred to an eligible donee without cost to the transferee, the director may impose a reasonable charge to cover expenses incurred in connection with the transaction. The governor, through the **director of general administration, shall administer the surplus property program in the state and shall perform or supervise all those functions with respect to the program, its agencies and instrumentalities. [1998 c 105 § 4; 1995 c 137 § 5; 1977 ex.s. c 135 § 4; 1967 ex.s. c 70 § 5; 1945 c 205 § 5; Rem. Supp. 1945 § 10322-64.]

Reviser's note: *(1) The "general administration services account" was renamed the "enterprise services account" by 2011 1st sp.s. c 43 § 202.

***(2) The "director of general administration" was renamed the "director of enterprise services" by 2011 1st sp.s. c 43 § 108.

Additional notes found at www.leg.wa.gov

39.32.060 Rules and regulations. The *director of general administration shall have power to promulgate such rules and regulations as may be necessary to effectuate the purposes of RCW 39.32.010 through 39.32.060 and to carry out the provisions of the Federal Property and Administrative Services Act of 1949, as amended. [1977 ex.s. c 135 § 5; 1967 ex.s. c 70 § 6; 1945 c 205 § 7; Rem. Supp. 1945 § 10322-66.]

***Reviser's note:** The "director of general administration" was renamed the "director of enterprise services" by 2011 1st sp.s. c 43 § 108.

39.32.070 Purchase of property from federal government authorized—Authority to contract—Bidding—Payment. The state of Washington, through any department, division, bureau, board, commission, authority, or agency thereof, and all counties, cities, towns, and other political subdivisions thereof, is hereby authorized to enter into any contract with the United States of America, or with any agency thereof, for the purchase of any equipment, supplies, materials, or other property, without regard to the provisions of any law requiring the advertising, giving of notices, inviting or receiving bids, or which may require the delivery of purchases before payment, and to this end the executive head of any such department, division, bureau, board, commission, authority, or agency of the state, the county commissioners and the executive authority of any city or town, may design-

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nate by appropriate resolution or order any officeholder or employee of its own to enter a bid or bids in its behalf at any sale of any equipment, supplies, material or other property real or personal owned by the United States of America or any agency thereof, and may authorize said person to make any down payment, or payment in full, required in connection with such bidding. [1945 c 180 § 1; Rem. Supp. 1945 § 10322-50. FORMER PART OF SECTION: 1945 c 88 § 1 now codified as RCW 39.32.090.]

39.32.080 Purchase of property from federal government authorized—Inconsistent provisions suspended. Any provisions of any law, charter, ordinance, resolution, bylaw, rule or regulation which are inconsistent with the provisions of RCW 39.32.070 and 39.32.080 are suspended to the extent such provisions are inconsistent herewith. [1945 c 180 § 2; Rem. Supp. 1945 § 10322-51.]

39.32.090 Purchases by political subdivisions from or through United States authorized. Whenever authorized by ordinance or resolution of its legislative authority any political subdivision of the state shall have power to purchase supplies, materials, electronic data processing and telecommunication equipment, software, services, and/or equipment from or through the United States government without calling for bids, notwithstanding any law or charter provision to the contrary. [2013 c 132 § 1; 1945 c 88 § 1; Rem. Supp. 1945 § 10322-40. Formerly RCW 39.32.070, part.]

Chapter 39.33 RCW

INTERGOVERNMENTAL DISPOSITION OF PROPERTY

Sections

39.33.010	Sale, exchange, transfer, lease of public property authorized—Section deemed alternative.
39.33.020	Disposal of surplus property—Hearing—Notice.
39.33.050	Public mass transportation systems—Contracts for services or use.
39.33.060	Transfer of property or contract for use for park and recreational purposes.
39.33.070	School districts and libraries—Disposal of obsolete or surplus reading materials—Procedures.
39.33.090	Chapter not applicable to certain transfers of property.

Acquisition of surplus governmental property: RCW 39.32.020 through 39.32.040.

39.33.010 Sale, exchange, transfer, lease of public property authorized—Section deemed alternative. (1) The state or any municipality or any political subdivision thereof, may sell, transfer, exchange, lease or otherwise dispose of any property, real or personal, or property rights, including but not limited to the title to real property, to the state or any municipality or any political subdivision thereof, or the federal government, or a federally recognized Indian tribe, on such terms and conditions as may be mutually agreed upon by the proper authorities of the state and/or the subdivisions concerned. In addition, the state, or any municipality or any political subdivision thereof, may sell, transfer, exchange, lease, or otherwise dispose of personal property, except weapons, to a foreign entity.

(2) This section shall be deemed to provide an alternative method for the doing of the things authorized herein, and

shall not be construed as imposing any additional condition upon the exercise of any other powers vested in the state, municipalities or political subdivisions.

(3) No intergovernmental transfer, lease, or other disposition of property made pursuant to any other provision of law prior to May 23, 1972, shall be construed to be invalid solely because the parties thereto did not comply with the procedures of this section. [2011 c 259 § 1; 2003 c 303 § 1; 1981 c 96 § 1; 1973 c 109 § 1; 1972 ex.s. c 95 § 1; 1953 c 133 § 1.]

Exchange of county tax title lands with other governmental agencies: Chapter 36.35 RCW.

Additional notes found at www.leg.wa.gov

39.33.020 Disposal of surplus property—Hearing—Notice. Before disposing of surplus property with an estimated value of more than fifty thousand dollars, the state or a political subdivision shall hold a public hearing in the county where the property or the greatest portion thereof is located. At least ten days but not more than twenty-five days prior to the hearing, there shall be published a public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing at least once in a newspaper of general circulation in the area where the property is located. A news release pertaining to the hearing shall be disseminated among printed and electronic media in the area where the property is located. If real property is involved, the public notice and news release shall identify the property using a description which can easily be understood by the public. If the surplus is real property, the public notice and news release shall also describe the proposed use of the lands involved. If there is a failure to substantially comply with the procedures set forth in this section, then the sale, transfer, exchange, lease, or other disposal shall be subject to being declared invalid by a court. Any such suit must be brought within one year from the date of the disposal agreement. [1995 c 123 § 1; 1981 c 96 § 2.]

39.33.050 Public mass transportation systems—Contracts for services or use. The legislative body of any municipal corporation, quasi municipal corporation or political subdivision of the state of Washington authorized to develop and operate a public mass transportation system shall have power to contract with the legislative body of any other municipal corporation, quasi municipal corporation or political subdivision of the state of Washington, or with any person, firm or corporation for public transportation services or for the use of all or any part of any publicly owned transportation facilities for such period and under such terms and conditions and upon such rentals, fees and charges as the legislative body operating such public transportation system may determine, and may pledge all or any portion of such rentals, fees and charges and all other revenue derived from the ownership or operation of publicly owned transportation facilities to pay and to secure the payment of general obligation bonds and/or revenue bonds of such municipality issued for the purpose of acquiring or constructing a public mass transportation system. [1969 ex.s. c 255 § 16.]

Public transportation systems: RCW 35.58.272 and 35.58.2721.

Additional notes found at www.leg.wa.gov

39.33.060 Transfer of property or contract for use for park and recreational purposes. Any governmental unit, as defined in RCW 36.93.020(1) as it now exists or is hereafter amended, may convey its real or personal property or any interest or right therein to, or contract for the use of such property by, the county or park and recreation district wherein such property is located for park or recreational purposes, by private negotiation and upon such terms and with such consideration as might be mutually agreed to by such governmental unit and the board of county commissioners or the park and recreation district board of commissioners. [1971 ex.s. c 243 § 7.]

Additional notes found at www.leg.wa.gov

39.33.070 School districts and libraries—Disposal of obsolete or surplus reading materials—Procedures. Any school district or educational service district, after complying with the requirements of RCW 28A.335.180, and any library, as defined in RCW 27.12.010, may dispose of surplus or obsolete books, periodicals, newspapers, and other reading materials as follows:

(1) If the reading materials are estimated to have value as reading materials in excess of one thousand dollars, they shall be sold at public auction to the person submitting the highest reasonable bid following publication of notice of the auction in a newspaper with a general circulation in the library or school district.

(2) If no reasonable bids are submitted under subsection (1) of this section or if the reading materials are estimated to have value as reading materials of one thousand dollars or less, the library or school district may directly negotiate the sale of the reading materials to a public or private entity.

(3) If the reading materials are determined to have no value as reading materials or if no purchaser is found under subsection (2) of this section the reading materials may be recycled or destroyed.

These methods for disposing of surplus or obsolete reading materials shall be in addition to any other method available to libraries and school districts for disposal of the property. [1990 c 33 § 567; 1979 ex.s. c 134 § 1.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

39.33.090 Chapter not applicable to certain transfers of property. This chapter does not apply to transfers of property under *sections 1 and 2 of this act. [2006 c 35 § 7.]

***Reviser's note:** The reference to "sections 1 and 2 of this act" appears to be erroneous. Reference to "sections 2 and 3 of this act" codified as RCW 43.99C.070 and 43.83D.120 was apparently intended.

Findings—2006 c 35: See note following RCW 43.99C.070.

Chapter 39.34 RCW

INTERLOCAL COOPERATION ACT

Sections

39.34.010	Declaration of purpose.
39.34.020	Definitions.
39.34.030	Joint powers—Agreements for joint or cooperative action, requisites, effect on responsibilities of component agencies—Financing of joint projects.
39.34.040	Methods of filing agreements—Status of interstate agreements—Real party in interest—Actions.
39.34.050	Duty to submit agreement to jurisdictional state officer or agency.

39.34.055	Public purchase agreements with public benefit nonprofit corporations.
39.34.060	Participating agencies may appropriate funds and provide personnel, property, and services.
39.34.070	Authority of joint boards to receive loans or grants.
39.34.080	Contracts to perform governmental activities which each contracting agency is authorized to perform.
39.34.085	Agreements for operation of bus services.
39.34.090	Agencies' contracting authority regarding electricity, utilities' powers, preserved.
39.34.100	Powers conferred by chapter are supplemental.
39.34.110	Powers otherwise prohibited by Constitutions or federal laws.
39.34.130	Transactions between state agencies—Charging of costs—Regulation by director of financial management.
39.34.140	Transactions between state agencies—Procedures for payments through transfers upon accounts.
39.34.150	Transactions between state agencies—Advancements.
39.34.160	Transactions between state agencies—Time limitation for expenditure of advance—Unexpended balance.
39.34.170	Transactions between state agencies—Powers and authority cumulative.
39.34.180	Criminal justice responsibilities—Interlocal agreements—Termination.
39.34.190	Watershed management plan projects—Use of water-related revenues.
39.34.200	Watershed management partnerships—Formation.
39.34.210	Watershed management partnerships—Indebtedness—Bonds.
39.34.215	Watershed management partnerships—Eminent domain authority.
39.34.220	Watershed management plans—Additional authority for implementation—Existing agreements not affected.
39.34.230	Covered emergencies—Interlocal agreements for mutual aid and cooperation—Liability of state—Existing rights.
39.34.900	Short title.
39.34.910	Severability—1967 c 239.
39.34.920	Effective date—1967 c 239.

Hydroelectric resources, creation of separate legal authority by irrigation districts and cities, towns, or public utility districts: RCW 87.03.828.

Irrigation districts, creation of legal authority to carry out powers: RCW 87.03.018.

School district associations' right to mortgage or convey money security interest in association property—Limitations: RCW 28A.335.100.

School districts agreements with other governmental entities for transportation of students, the public or other noncommon school purposes—Limitations: RCW 28A.160.120.

39.34.010 Declaration of purpose. It is the purpose of this chapter to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities. [1967 c 239 § 1.]

Joint operations by municipal corporations and political subdivisions, deposit and control of funds: RCW 43.09.285.

39.34.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state.

(2) "State" means a state of the United States.

(3) "Watershed management partnership" means an interlocal cooperation agreement formed under the authority of RCW 39.34.200.

(4) "WRIA" has the definition in RCW 90.82.020. [2003 c 327 § 3; 1985 c 33 § 1; 1979 c 36 § 1; 1977 ex.s. c 283 § 13; 1975 1st ex.s. c 115 § 1; 1973 c 34 § 1; 1971 c 33 § 1; 1969 c 88 § 1; 1969 c 40 § 1; 1967 c 239 § 3.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

Additional notes found at www.leg.wa.gov

39.34.030 Joint powers—Agreements for joint or cooperative action, requisites, effect on responsibilities of component agencies—Financing of joint projects. (1) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privilege or authority, and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this chapter upon a public agency.

(2) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of this chapter, except that any such joint or cooperative action by public agencies which are educational service districts and/or school districts shall comply with the provisions of RCW 28A.320.080. Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(3) Any such agreement shall specify the following:

(a) Its duration;

(b) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created. Such entity may include a non-profit corporation organized pursuant to chapter 24.03 or 24.06 RCW whose membership is limited solely to the participating public agencies or a partnership organized pursuant to chapter 25.04 or 25.05 RCW whose partners are limited solely to participating public agencies, or a limited liability company organized under chapter 25.15 RCW whose membership is limited solely to participating public agencies, and the funds of any such corporation, partnership, or limited liability company shall be subject to audit in the manner provided by law for the auditing of public funds;

(c) Its purpose or purposes;

(d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;

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

(f) Any other necessary and proper matters.

(4) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative

undertaking, the agreement shall contain, in addition to provisions specified in subsection (3)(a), (c), (d), (e), and (f) of this section, the following:

(a) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies that are party to the agreement shall be represented; and

(b) The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking. Any joint board is authorized to establish a special fund with a state, county, city, or district treasurer servicing an involved public agency designated "Operating fund of joint board".

(5) No agreement made pursuant to this chapter relieves any public agency of any obligation or responsibility imposed upon it by law except that:

(a) To the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made pursuant to this chapter, the performance may be offered in satisfaction of the obligation or responsibility; and

(b) With respect to one or more public agencies purchasing or otherwise contracting through a bid, proposal, or contract awarded by another public agency or by a group of public agencies, any statutory obligation to provide notice for bids or proposals that applies to the public agencies involved is satisfied if the public agency or group of public agencies that awarded the bid, proposal, or contract complied with its own statutory requirements and either (i) posted the bid or solicitation notice on a web site established and maintained by a public agency, purchasing cooperative, or similar service provider, for purposes of posting public notice of bid or proposal solicitations, or (ii) provided an access link on the state's web portal to the notice.

(6) Financing of joint projects by agreement shall be as provided by law. [2009 c 202 § 6. Prior: 2008 c 198 § 2; 2004 c 190 § 1; 1992 c 161 § 4; 1990 c 33 § 568; 1981 c 308 § 2; 1972 ex.s. c 81 § 1; 1967 c 239 § 4.]

Finding—2008 c 198: "The legislature finds that it is in the public interest for public utility districts to develop renewable energy projects to meet requirements enacted by the people in Initiative Measure No. 937 and goals of diversifying energy resource portfolios. By developing more efficient and cost-effective renewable energy projects, public utility districts will keep power costs as low as possible for their customers. Consolidating and clarifying statutory provisions governing various aspects of public utility district renewable energy project development will reduce planning time and expense to meet these objectives." [2008 c 198 § 1.]

Intent—1992 c 161: See note following RCW 70.44.450.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Joint operations by municipal corporations or political subdivisions, deposit and control of funds: RCW 43.09.285.

Additional notes found at www.leg.wa.gov

39.34.040 Methods of filing agreements—Status of interstate agreements—Real party in interest—Actions. Prior to its entry into force, an agreement made pursuant to this chapter shall be filed with the county auditor or, alternatively, listed by subject on a public agency's web site or other electronically retrievable public source. In the event that an agreement entered into pursuant to this chapter is between or among one or more public agencies of this state and one or

more public agencies of another state or of the United States the agreement shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein. Such action shall be maintainable against any public agency or agencies whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state. [2006 c 32 § 1; 1995 c 22 § 1; 1992 c 161 § 5; 1967 c 239 § 5.]

Intent—1992 c 161: See note following RCW 70.44.450.

39.34.050 Duty to submit agreement to jurisdictional state officer or agency. In the event that an agreement made pursuant to this chapter shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control. The agreement shall be approved or disapproved by the state officer or agency with regard to matters within his, her, or its jurisdiction within ninety days after receipt of the agreement. If a state officer or agency fails to act within the ninety-day time limit, the agreement shall be deemed approved by that state officer or agency. [1992 c 161 § 6; 1967 c 239 § 6.]

Intent—1992 c 161: See note following RCW 70.44.450.

39.34.055 Public purchase agreements with public benefit nonprofit corporations. The department of enterprise services may enter into an agreement with a public benefit nonprofit corporation to allow the public benefit nonprofit corporation to participate in state contracts for purchases administered by the department. Such agreement must comply with the requirements of RCW 39.34.030 through 39.34.050. For the purposes of this section "public benefit nonprofit corporation" means a public benefit nonprofit corporation as defined in RCW 24.03.005 that is receiving local, state, or federal funds either directly or through a public agency other than an Indian tribe or a political subdivision of another state. [2011 1st sp.s. c 43 § 246; 1994 c 98 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

39.34.060 Participating agencies may appropriate funds and provide personnel, property, and services. Any public agency entering into an agreement pursuant to this chapter may appropriate funds and may sell, lease, give, or otherwise supply property, personnel, and services to the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking. [1992 c 161 § 7; 1967 c 239 § 7.]

Intent—1992 c 161: See note following RCW 70.44.450.

39.34.070 Authority of joint boards to receive loans or grants. Any joint board created pursuant to the provisions of this chapter is hereby authorized to accept loans or grants of federal, state or private funds in order to accomplish the

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purposes of this chapter provided each of the participating public agencies is authorized by law to receive such funds. [1967 c 239 § 8.]

39.34.080 Contracts to perform governmental activities which each contracting agency is authorized to perform. Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform: PROVIDED, That such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties. [1967 c 239 § 9.]

39.34.085 Agreements for operation of bus services. In addition to the other powers granted by chapter 39.34 RCW, one or more cities or towns or a county, or any combination thereof, may enter into agreements with each other or with a public transportation agency of a contiguous state, or contiguous Canadian province, to allow a city or such other transportation agency to operate bus service for the transportation of the general public within the territorial boundaries of such city and/or county or to allow such city and/or county to operate such bus service within the jurisdiction of such other public agency when no such existing bus certificate of public convenience and necessity has been authorized by the Washington utilities and transportation commission: PROVIDED, HOWEVER, That such transportation may extend beyond the territorial boundaries of either party to the agreement if the agreement so provides, and if such service is not in conflict with existing bus service authorized by the Washington utilities and transportation commission. The provisions of this section shall be cumulative and nonexclusive and shall not affect any other right granted by this chapter or any other provision of law. [1977 c 46 § 1; 1969 ex.s. c 139 § 1.]

39.34.090 Agencies' contracting authority regarding electricity, utilities' powers, preserved. Nothing in this chapter shall be construed to increase or decrease existing authority of any public agency of this state to enter into agreements or contracts with any other public agency of this state or of any other state or the United States with regard to the generation, transmission, or distribution of electricity or the existing powers of any private or public utilities. [1967 c 239 § 10.]

39.34.100 Powers conferred by chapter are supplemental. The powers and authority conferred by this chapter shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other powers or authority of any public agency. [1967 c 239 § 11.]

39.34.110 Powers otherwise prohibited by Constitutions or federal laws. No power, privilege, or other authority shall be exercised under this chapter where prohibited by the state Constitution or the Constitution or laws of the federal government. [1967 c 239 § 12.]

39.34.130 Transactions between state agencies—Charging of costs—Regulation by director of financial management. Except as otherwise provided by law, the full costs of a state agency incurred in providing services or furnishing materials to or for another agency under chapter 39.34 RCW or any other statute shall be charged to the agency contracting for such services or materials and shall be repaid and credited to the fund or appropriation against which the expenditure originally was charged. Amounts representing a return of expenditures from an appropriation shall be considered as returned loans of services or of goods, supplies or other materials furnished, and may be expended as part of the original appropriation to which they belong without further or additional appropriation. Such interagency transactions shall be subject to regulation by the director of financial management, including but not limited to provisions for the determination of costs, prevention of interagency contract costs beyond those which are fully reimbursable, disclosure of reimbursements in the governor's budget and such other requirements and restrictions as will promote more economical and efficient operations of state agencies.

Except as otherwise provided by law, this section shall not apply to the furnishing of materials or services by one agency to another when other funds have been provided specifically for that purpose pursuant to law. [1979 c 151 § 45; 1969 ex.s. c 61 § 1.]

Duty to submit agreement of jurisdictional state officer or agency: RCW 39.34.050.

39.34.140 Transactions between state agencies—Procedures for payments through transfers upon accounts. The director of financial management may establish procedures whereby some or all payments between state agencies may be made by transfers upon the accounts of the state treasurer in lieu of making such payments by warrant or check. Such procedures, when established, shall include provision for corresponding entries to be made in the accounts of the affected agencies. [1979 c 151 § 46; 1969 ex.s. c 61 § 2.]

39.34.150 Transactions between state agencies—Advancements. State agencies are authorized to advance funds to defray charges for materials to be furnished or services to be rendered by other state agencies. Such advances shall be made only upon the approval of the director of financial management, or his or her order made pursuant to an appropriate regulation requiring advances in certain cases. An advance shall be made from the fund or appropriation available for the procuring of such services or materials, to the state agency which is to perform the services or furnish the materials, in an amount no greater than the estimated charges therefor. [2011 c 336 § 805; 1979 c 151 § 47; 1969 ex.s. c 61 § 3.]

39.34.160 Transactions between state agencies—Time limitation for expenditure of advance—Unexpended balance. An advance made under RCW 39.34.130 through 39.34.150 from appropriated funds shall be available for expenditure for no longer than the period of the appropriation from which it was made. When the actual costs of materials and services have been finally determined, and in no event later than the lapsing of the appropriation, any unex-

pendent balance of the advance shall be returned to the agency for credit to the fund or account from which it was made. [1969 ex.s. c 61 § 4.]

39.34.170 Transactions between state agencies—Powers and authority cumulative. The powers and authority conferred by RCW 39.34.130 through 39.34.160 shall be construed as in addition and supplemental to powers or authority conferred by any other law, and not to limit any other powers or authority of any public agency expressly granted by any other statute. [1969 ex.s. c 61 § 5.]

39.34.180 Criminal justice responsibilities—Interlocal agreements—Termination. (1) Each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services. Nothing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of felony offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense.

(2) The following principles must be followed in negotiating interlocal agreements or contracts: Cities and counties must consider (a) anticipated costs of services; and (b) anticipated and potential revenues to fund the services, including fines and fees, criminal justice funding, and state-authorized sales tax funding levied for criminal justice purposes.

(3) If an agreement as to the levels of compensation within an interlocal agreement or contract for gross misdemeanor and misdemeanor services cannot be reached between a city and county, then either party may invoke binding arbitration on the compensation issued by notice to the other party. In the case of establishing initial compensation, the notice shall request arbitration within thirty days. In the case of nonrenewal of an existing contract or interlocal agreement, the notice must be given one hundred twenty days prior to the expiration of the existing contract or agreement and the existing contract or agreement remains in effect until a new agreement is reached or until an arbitration award on the matter of fees is made. The city and county each select one arbitrator, and the initial two arbitrators pick a third arbitrator.

(4) A city or county that wishes to terminate an agreement for the provision of court services must provide written notice of the intent to terminate the agreement in accordance with RCW 3.50.810 and 35.20.010.

(5) For cities or towns that have not adopted, in whole or in part, criminal code or ordinance provisions related to misdemeanor and gross misdemeanor crimes as defined by state law, this section shall have no application until July 1, 1998. [2001 c 68 § 4; 1996 c 308 § 1.]

Additional notes found at www.leg.wa.gov

39.34.190 Watershed management plan projects—Use of water-related revenues. (1) The legislative authority

of a city or county and the governing body of any special purpose district enumerated in subsection (2) of this section may authorize up to ten percent of its water-related revenues to be expended in the implementation of watershed management plan projects or activities that are in addition to the county's, city's, or district's existing water-related services or activities. Such limitation on expenditures shall not apply to water-related revenues of a public utility district organized according to Title 54 RCW. Water-related revenues include rates, charges, and fees for the provision of services relating to water supply, treatment, distribution, and management generally, and those general revenues of the local government that are expended for water management purposes. A local government may not expend for this purpose any revenues that were authorized by voter approval for other specified purposes or that are specifically dedicated to the repayment of municipal bonds or other debt instruments.

(2) The following special purpose districts may exercise the authority provided by this section:

- (a) Water districts, sewer districts, and water-sewer districts organized under Title 57 RCW;
- (b) Public utility districts organized under Title 54 RCW;
- (c) Irrigation, reclamation, conservation, and similar districts organized under Titles 87 and 89 RCW;
- (d) Port districts organized under Title 53 RCW;
- (e) Diking, drainage, and similar districts organized under Title 85 RCW;
- (f) Flood control and similar districts organized under Title 86 RCW;
- (g) Lake or beach management districts organized under chapter 36.61 RCW;
- (h) Aquifer protection areas organized under chapter 36.36 RCW; and
- (i) Shellfish protection districts organized under chapter 90.72 RCW.

(3) The authority for expenditure of local government revenues provided by this section shall be applicable broadly to the implementation of watershed management plans addressing water supply, water transmission, water quality treatment or protection, or any other water-related purposes. Such plans include but are not limited to plans developed under the following authorities:

- (a) Watershed plans developed under chapter 90.82 RCW;
- (b) Salmon recovery plans developed under chapter 77.85 RCW;
- (c) Watershed management elements of comprehensive land use plans developed under the growth management act, chapter 36.70A RCW;
- (d) Watershed management elements of shoreline master programs developed under the shoreline management act, chapter 90.58 RCW;
- (e) Nonpoint pollution action plans developed under the Puget Sound water quality management planning authorities of chapter 90.71 RCW and chapter 400-12 WAC;
- (f) Other comprehensive management plans addressing watershed health at a WRIA level or sub-WRIA basin drainage level;
- (g) Coordinated water system plans under chapter 70.116 RCW and similar regional plans for water supply; and

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(h) Any combination of the foregoing plans in an integrated watershed management plan.

(4) The authority provided by this section to expend revenues for watershed management plan implementation shall be construed broadly to include, but not be limited to:

- (a) The coordination and oversight of plan implementation, including funding a watershed management partnership for this purpose;
- (b) Technical support, monitoring, and data collection and analysis;
- (c) The design, development, construction, and operation of projects included in the plan; and
- (d) Conducting activities and programs included as elements in the plan. [2008 c 301 § 26; 2003 c 327 § 2.]

Finding—Intent—2003 c 327: "The legislature finds that throughout Washington state there are many active efforts to protect, manage, and restore watersheds. The state's river systems provide a variety of benefits for society's many needs, so efforts to protect these watersheds should reflect the diversity of social, environmental, and economic factors that make the state unique.

Yet, there is a conflict between the natural flow of river systems and the way watersheds are governed. From a hydrological standpoint, a watershed is a single, integrated system. But these systems usually flow through a number of cities, counties, and other municipalities as they move from their source to the sea. As a result, many are subject to the full range of management interests, including multiple government entities with jurisdiction over water. In many cases, the political boundaries of government do not align with the hydrological boundaries of watersheds and may actually hinder the implementation of coordinated, cooperative plans. Cooperative watershed management actions by local governments, special districts, and utilities can help maintain healthy watershed function and support the beneficial use of water by these entities and protect the quality of the resource that they use or affect. By participating in cooperative watershed management actions, local governments, special districts, and utilities are acting in the public interest and in a manner that is intended to sustain maximum beneficial use and high quality of water over time and to maintain the services that these entities provide.

Therefore, it is the intent of this act to remove statutory barriers that may prevent local governments from working together in the creation and implementation of cooperative, coordinated watershed plans. In addition, it is the further intent of this act to provide additional authorities to assist in such implementation." [2003 c 327 § 1.]

39.34.200 Watershed management partnerships—Formation. Any two or more public agencies may enter into agreements with one another to form a watershed management partnership for the purpose of implementing any portion or all elements of a watershed management plan, including the coordination and oversight of plan implementation. The plan may be any plan or plan element described in RCW 39.34.190(3). The watershed partnership agreement shall include the provisions required of all interlocal agreements under RCW 39.34.030(3). The agreement shall be filed pursuant to RCW 39.34.040 with the county auditor of each county lying within the geographical watershed area to be addressed by the partnership. The public agencies forming the partnership shall designate a treasurer for the deposit, accounting, and handling of the funds of the partnership. The treasurer shall be either a county treasurer or a city treasurer of a county or city participating in the agreement to form the partnership. [2003 c 327 § 4.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

39.34.210 Watershed management partnerships—Indebtedness—Bonds. Where a watershed management partnership formed under the authority of RCW 39.34.200

establishes a separate legal entity to conduct the cooperating undertaking of the partnership, such legal entity is authorized for the purpose of carrying out such undertaking to contract indebtedness and to issue and sell general obligation bonds pursuant to and in the manner provided for general county bonds in chapters 36.67 and 39.46 RCW and other applicable statutes, and to issue revenue bonds pursuant to and in the manner provided for revenue bonds in chapter 36.67 RCW and other applicable statutes. The joint board established by the partnership agreement shall perform the functions referenced in chapter 36.67 RCW to be performed by the county legislative authority in the case of county bonds. [2003 c 327 § 6.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

39.34.215 Watershed management partnerships—Eminent domain authority. (1) As limited in subsection (3) of this section, a watershed management partnership formed or qualified under the authority of RCW 39.34.200 and 39.34.210, including the separate legal entity established by such a partnership under RCW 39.34.030(3)(b) to conduct the cooperative undertaking of the partnership under the same statutory authority, may exercise the power of eminent domain as provided in chapter 8.12 RCW.

(2) The eminent domain authority granted under subsection (1) of this section may be exercised only for those utility purposes for which the watershed partnership was formed and is limited solely to providing water services to its customers.

(3) Subsection (1) of this section applies only to a watershed management partnership that:

(a) Was formed or qualified before July 1, 2006, under the authority of RCW 39.34.200 and 39.34.210;

(b) Is not engaged in planning or in implementing a plan for a water resource inventory area under the terms of chapter 90.82 RCW;

(c) Is composed entirely of cities and water-sewer districts authorized to exercise the power of eminent domain in the manner provided by chapter 8.12 RCW; and

(d) Is governed by a board of directors consisting entirely of elected officials from the cities and water-sewer districts that constitute the watershed management partnership.

(4) A watershed management partnership exercising authority under this section shall:

(a) Comply with the notice requirements of RCW 8.25.290; and

(b) Provide notice to the city, town, or county with jurisdiction over the subject property by certified mail thirty days prior to the partnership board authorizing condemnation. [2011 c 97 § 1; 2009 c 504 § 1.]

39.34.220 Watershed management plans—Additional authority for implementation—Existing agreements not affected. The amendments by chapter 327, Laws of 2003 to the interlocal cooperation act authorities are intended to provide additional authority to public agencies for the purposes of implementing watershed management plans, and do not affect any agreements among public agencies existing on July 27, 2003. [2003 c 327 § 7.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

39.34.230 Covered emergencies—Interlocal agreements for mutual aid and cooperation—Liability of state—Existing rights. (1) During a covered emergency, the *department of community, trade, and economic development may enter into interlocal agreements under this chapter with one or more public agencies for the purposes of providing mutual aid and cooperation to any public agency affected by the cause of the emergency.

(2) All legal liability by a public agency and its employees for damage to property or injury or death to persons caused by acts done or attempted during, or while traveling to or from, a covered emergency, or in preparation for a covered emergency, pursuant to an interlocal agreement entered into under this section, or under the color of this section in a bona fide attempt to comply therewith, shall be the obligation of the state of Washington. Suits may be instituted and maintained against the state for the enforcement of such liability, or for the indemnification of any public agency or its employees for damage done to their private property, or for any judgment against them for acts done in good faith in compliance with this chapter: PROVIDED, That the foregoing shall not be construed to result in indemnification in any case of willful misconduct, gross negligence, or bad faith on the part of any public agency or any of a public agency's employees: PROVIDED, That should the United States or any agency thereof, in accordance with any federal statute, rule, or regulation, provide for the payment of damages to property and/or for death or injury as provided for in this section, then and in that event there shall be no liability or obligation whatsoever upon the part of the state of Washington for any such damage, death, or injury for which the United States government assumes liability.

(3) For purposes of this section, "covered emergency" means an emergency for which the governor has proclaimed a state of emergency under RCW 43.06.010, and for which the governor has authorized the *department of community, trade, and economic development to enter into interlocal agreements under this section.

(4) This section shall not affect the right of any person to receive benefits to which he or she would otherwise be entitled under the workers' compensation law, or under any pension or retirement law, nor the right of any such person to receive any benefits or compensation under any act of congress. [2008 c 181 § 101.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Part headings not law—2008 c 181: See note following RCW 43.06.220.

39.34.900 Short title. This chapter may be cited as the "Interlocal Cooperation Act." [1967 c 239 § 2.]

39.34.910 Severability—1967 c 239. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 c 239 § 14.]

39.34.920 Effective date—1967 c 239. The effective date of this chapter is July 1, 1967. [1967 c 239 § 15.]

Chapter 39.35 RCW
ENERGY CONSERVATION IN DESIGN OF
PUBLIC FACILITIES

Sections

39.35.010	Legislative finding.
39.35.020	Legislative declaration.
39.35.030	Definitions.
39.35.040	Facility design to include life-cycle cost analysis.
39.35.050	Life-cycle cost analysis—Guidelines.
39.35.060	Life-cycle cost analysis—Review fees.
39.35.900	Severability—1975 1st ex.s. c 177.

39.35.010 Legislative finding. The legislature hereby finds:

(1) That major publicly owned or leased facilities have a significant impact on our state's consumption of energy;

(2) That energy conservation practices including energy management systems and renewable energy systems adopted for the design, construction, and utilization of such facilities will have a beneficial effect on our overall supply of energy;

(3) That the cost of the energy consumed by such facilities over the life of the facilities shall be considered in addition to the initial cost of constructing such facilities;

(4) That the cost of energy is significant and major facility designs shall be based on the total life-cycle cost, including the initial construction cost, and the cost, over the economic life of a major facility, of the energy consumed, and of the operation and maintenance of a major facility as they affect energy consumption; and

(5) That the use of energy systems in these facilities which utilize renewable resources such as solar energy, wood or wood waste, or other nonconventional fuels, and which incorporate energy management systems, shall be considered in the design of all publicly owned or leased facilities. [2001 c 214 § 15; 1982 c 159 § 1; 1975 1st ex.s. c 177 § 1.]

Findings—2001 c 214: "(1) The legislature hereby finds that:

(a) The economy of the state and the health, safety, and welfare of its citizens are threatened by the current energy supply and price instabilities;

(b) Many energy efficiency programs for public buildings launched during the 1970s and 1980s were not maintained during the subsequent sustained period of low energy costs and abundant supply; and

(c) Conservation programs originally established in the 1970s and 1980s can be improved or updated. New programs drawing on recently developed technologies, including demand-side energy management systems, can materially increase the efficiency of energy use by the public sector.

(2) It is the policy of the state of Washington that:

(a) State government is committed to achieving significant gains in energy efficiency. Conventional conservation programs will be reviewed and updated in light of experience gained since their commencement;

(b) State government must play a leading role in demonstrating updated and new energy efficiency technologies. New programs or measures made possible by technological advances, such as demand-side response measures and energy management systems, shall be treated in the same manner as conventional conservation programs and will be integrated into the state's energy efficiency programs." [2001 c 214 § 14.]

Additional notes found at www.leg.wa.gov

39.35.020 Legislative declaration. The legislature declares that it is the public policy of this state to insure that energy conservation practices and renewable energy systems are employed in the design of major publicly owned or leased facilities and that the use of at least one renewable energy system is considered. To this end the legislature authorizes and directs that public agencies analyze the cost of energy consumption of each major facility to be planned and con-

structed or renovated after September 8, 1975. [1982 c 159 § 2; 1975 1st ex.s. c 177 § 2.]

Additional notes found at www.leg.wa.gov

39.35.030 Definitions. For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source. Where these forms are electricity and thermal energy, then the operating and efficiency standards established by 18 C.F.R. Sec. 292.205 and the definitions established by 18 C.F.R. 292.202 (c) through (m) as of July 28, 1991, shall apply.

(2) "Department" means the state department of enterprise services.

(3) "Design standards" means the heating, air-conditioning, ventilating, and renewable resource systems identified, analyzed, and recommended by the department as providing an efficient energy system or systems based on the economic life of the selected buildings.

(4) "Economic life" means the projected or anticipated useful life of a major facility as expressed by a term of years.

(5) "Energy management system" means a program, energy efficiency equipment, technology, device, or other measure including, but not limited to, a management, educational, or promotional program, smart appliance, meter reading system that provides energy information capability, computer software or hardware, communications equipment or hardware, thermostat or other control equipment, together with related administrative or operational programs, that allows identification and management of opportunities for improvement in the efficiency of energy use, including but not limited to a measure that allows:

(a) Energy consumers to obtain information about their energy usage and the cost of energy in connection with their usage;

(b) Interactive communication between energy consumers and their energy suppliers;

(c) Energy consumers to respond to energy price signals and to manage their purchase and use of energy; or

(d) For other kinds of dynamic, demand-side energy management.

(6) "Energy systems" means all utilities, including, but not limited to, heating, air-conditioning, ventilating, lighting, and the supplying of domestic hot water.

(7) "Energy-consumption analysis" means the evaluation of all energy systems and components by demand and type of energy including the internal energy load imposed on a major facility by its occupants, equipment, and components, and the external energy load imposed on a major facility by the climatic conditions of its location. An energy-consumption analysis of the operation of energy systems of a major facility shall include, but not be limited to, the following elements:

(a) The comparison of three or more system alternatives, at least one of which shall include renewable energy systems, and one of which shall comply at a minimum with the sustainable design guidelines of the United States green building council leadership in energy and environmental design silver standard or similar design standard as may be adopted by rule by the department;

(b) The simulation of each system over the entire range of operation of such facility for a year's operating period; and

(c) The evaluation of the energy consumption of component equipment in each system considering the operation of such components at other than full or rated outputs.

The energy-consumption analysis shall be prepared by a professional engineer or licensed architect who may use computers or such other methods as are capable of producing predictable results.

(8) "Initial cost" means the moneys required for the capital construction or renovation of a major facility.

(9) "Life-cycle cost" means the initial cost and cost of operation of a major facility over its economic life. This shall be calculated as the initial cost plus the operation, maintenance, and energy costs over its economic life, reflecting anticipated increases in these costs discounted to present value at the current rate for borrowing public funds, as determined by the office of financial management. The energy cost projections used shall be those provided by the department. The department shall update these projections at least every two years.

(10) "Life-cycle cost analysis" includes, but is not limited to, the following elements:

(a) The coordination and positioning of a major facility on its physical site;

(b) The amount and type of fenestration employed in a major facility;

(c) The amount of insulation incorporated into the design of a major facility;

(d) The variable occupancy and operating conditions of a major facility; and

(e) An energy-consumption analysis of a major facility.

(11) "Major facility" means any publicly owned or leased building having twenty-five thousand square feet or more of usable floor space.

(12) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and all political subdivisions of the state.

(13) "Renewable energy systems" means methods of facility design and construction and types of equipment for the utilization of renewable energy sources including, but not limited to, hydroelectric power, active or passive solar space heating or cooling, domestic solar water heating, windmills, waste heat, biomass and/or refuse-derived fuels, photovoltaic devices, and geothermal energy.

(14) "Renovation" means additions, alterations, or repairs within any twelve-month period which exceed fifty percent of the value of a major facility and which will affect any energy system.

(15) "Selected buildings" means educational, office, residential care, and correctional facilities that are designed to comply with the design standards analyzed and recommended by the department. [2011 1st sp.s. c 43 § 247; 2001 c 214 § 16; 1996 c 186 § 402; 1994 c 242 § 1; 1991 c 201 § 14; 1982 c 159 § 3; 1975 1st ex.s. c 177 § 3.]

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

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—2001 c 214: See note following RCW 39.35.010.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Additional notes found at www.leg.wa.gov

39.35.040 Facility design to include life-cycle cost analysis. Whenever a public agency determines that any major facility is to be constructed or renovated, such agency shall cause to be included in the design phase of such construction or renovation a provision that requires a life-cycle cost analysis conforming with the guidelines developed in RCW 39.35.050 to be prepared for such facility. Such analysis shall be approved by the agency prior to the commencement of actual construction or renovation. A public agency may accept the facility design if the agency is satisfied that the life-cycle cost analysis provides for an efficient energy system or systems based on the economic life of the major facility.

Nothing in this section prohibits the construction or renovation of major facilities which utilize renewable energy systems. [1994 c 242 § 2; 1982 c 159 § 4; 1975 1st ex.s. c 177 § 4.]

Additional notes found at www.leg.wa.gov

39.35.050 Life-cycle cost analysis—Guidelines. The department, in consultation with affected public agencies, shall develop and issue guidelines for administering this chapter. The purpose of the guidelines is to define a procedure and method for performance of life-cycle cost analysis to promote the selection of low-life-cycle cost alternatives. At a minimum, the guidelines must contain provisions that:

(1) Address energy considerations during the planning phase of the project;

(2) Identify energy components and system alternatives including energy management systems, renewable energy systems, and cogeneration applications prior to commencing the energy consumption analysis;

(3) Identify simplified methods to assure the lowest life-cycle cost alternatives for selected buildings with between twenty-five thousand and one hundred thousand square feet of usable floor area;

(4) Establish times during the design process for preparation, review, and approval or disapproval of the life-cycle cost analysis;

(5) Specify the assumptions to be used for escalation and inflation rates, equipment service lives, economic building lives, and maintenance costs;

(6) Determine life-cycle cost analysis format and submittal requirements to meet the provisions of chapter 201, Laws of 1991;

(7) Provide for review and approval of life-cycle cost analysis. [2001 c 214 § 17; 1996 c 186 § 403; 1994 c 242 § 3; 1991 c 201 § 15.]

Findings—2001 c 214: See note following RCW 39.35.010.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Additional notes found at www.leg.wa.gov

39.35.060 Life-cycle cost analysis—Review fees. The department may impose fees upon affected public agencies for the review of life-cycle cost analyses. The fees shall be deposited in the *general administration services account.

Performance-Based Contracts for Water Conservation, Solid Waste Reduction, and Energy Equipment

The purpose of the fees is to recover the costs by the department for review of the analyses. The department shall set fees at a level necessary to recover all of its costs related to increasing the energy efficiency of state-supported new construction. The fees shall not exceed one-tenth of one percent of the total cost of any project or exceed two thousand dollars for any project unless mutually agreed to. The department shall provide detailed calculation ensuring that the energy savings resulting from its review of life-cycle cost analysis justify the costs of performing that review. [2001 c 292 § 1; 1996 c 186 § 404; 1991 c 201 § 16.]

***Reviser's note:** The "general administration services account" was renamed the "enterprise services account" by 2011 1st sp.s. c 43 § 202.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Additional notes found at www.leg.wa.gov

39.35.900 Severability—1975 1st ex.s. c 177. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 177 § 5.]

Chapter 39.35A RCW

PERFORMANCE-BASED CONTRACTS FOR WATER CONSERVATION, SOLID WASTE REDUCTION, AND ENERGY EQUIPMENT

Sections

- 39.35A.010 Findings.
- 39.35A.020 Definitions.
- 39.35A.030 Performance-based contracts for water conservation services, solid waste reduction services, and energy equipment and services.
- 39.35A.040 Application of other procurement requirements.
- 39.35A.050 Energy service contractor registry—Identification of performance-based contracting services.

39.35A.010 Findings. The legislature finds that:

(1) Conserving energy and water in publicly owned buildings will have a beneficial effect on our overall supply of energy and water;

(2) Conserving energy and water in publicly owned buildings can result in cost savings for taxpayers; and

(3) Performance-based energy contracts are a means by which municipalities can achieve energy and water conservation without capital outlay.

Therefore, the legislature declares that it is the policy that a municipality may, after a competitive selection process, negotiate a performance-based energy contract with a firm that offers the best proposal. [2007 c 39 § 1; 1985 c 169 § 1.]

39.35A.020 Definitions. Unless the context clearly indicates otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Energy equipment and services" means energy management systems and any equipment, materials, or supplies that are expected, upon installation, to reduce the energy use or energy cost of an existing building or facility, and the services associated with the equipment, materials, or supplies, including but not limited to design, engineering, financing, installation, project management, guarantees, operations, and

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maintenance. Reduction in energy use or energy cost may also include reductions in the use or cost of water, wastewater, or solid waste.

(2) "Energy management system" has the definition provided in RCW 39.35.030.

(3) "Municipality" has the definition provided in RCW 39.04.010.

(4) "Performance-based contract" means one or more contracts for water conservation services, solid waste reduction services, or energy equipment and services between a municipality and any other persons or entities, if the payment obligation for each year under the contract, including the year of installation, is either: (a) Set as a percentage of the annual energy cost savings, water cost savings, or solid waste cost savings attributable under the contract; or (b) guaranteed by the other persons or entities to be less than the annual energy cost savings, water cost savings, or solid waste cost savings attributable under the contract. Such guarantee shall be, at the option of the municipality, a bond or insurance policy, or some other guarantee determined sufficient by the municipality to provide a level of assurance similar to the level provided by a bond or insurance policy.

(5) "Water conservation" means reductions in the use of water or wastewater. [2007 c 39 § 2; 2001 c 214 § 18; 1985 c 169 § 2.]

Findings—2001 c 214: See note following RCW 39.35.010.

Additional notes found at www.leg.wa.gov

39.35A.030 Performance-based contracts for water conservation services, solid waste reduction services, and energy equipment and services. (1) Each municipality shall publish in advance its requirements to procure water conservation services, solid waste reduction services, or energy equipment and services under a performance-based contract.

The announcement shall state concisely the scope and nature of the equipment and services for which a performance-based contract is required, and shall encourage firms to submit proposals to meet these requirements.

(2) The municipality may negotiate a fair and reasonable performance-based contract with the firm that is identified, based on the criteria that is established by the municipality, to be the firm that submits the best proposal.

(3) If the municipality is unable to negotiate a satisfactory contract with the firm that submits the best proposal, negotiations with that firm shall be formally terminated and the municipality may select another firm in accordance with this section and continue negotiation until a performance-based contract is reached or the selection process is terminated. [2007 c 39 § 3; 1985 c 169 § 3.]

39.35A.040 Application of other procurement requirements. If a municipality chooses, by resolution or other appropriate mechanism, to negotiate a performance-based contract under this chapter, no otherwise applicable statutory procurement requirement applies. [1985 c 169 § 4.]

39.35A.050 Energy service contractor registry—Identification of performance-based contracting services. The state *department of general administration shall maintain a registry of energy service contractors and provide assis-

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tance to municipalities in identifying available performance-based contracting services. [2001 c 214 § 19.]

*Reviser's note: The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

Findings—2001 c 214: See note following RCW 39.35.010.

Additional notes found at www.leg.wa.gov

Chapter 39.35B RCW LIFE-CYCLE COST ANALYSIS OF PUBLIC FACILITIES

Sections

39.35B.010	Legislative findings.
39.35B.020	Legislative declaration.
39.35B.030	Intent.
39.35B.040	Implementation.
39.35B.050	Life-cycle cost model and analysis—Duties of the office of financial management.

39.35B.010 Legislative findings. The legislature finds that:

- (1) Operating costs of a facility over its lifetime may greatly exceed the initial cost of the facility;
- (2) In the planning, design, and funding for new construction or major renovation of state-owned facilities it is desirable to consider not only the initial costs relating to design and construction or acquisition, but the anticipated operating costs relating to the building throughout its life;
- (3) The consideration of both initial and operating costs is known as life-cycle cost or life-cycle cost analysis;
- (4) Operating costs of a facility for purposes of this chapter include, but are not limited to, energy costs, maintenance and repair costs, and costs of the work or activity performed within the facility, including wages and salaries;
- (5) Current law, chapter 39.35 RCW, speaks to life-cycle cost analysis only in relation to energy conservation; and
- (6) Life-cycle cost may not be suitable or cost-effective for all capital projects or all components of a facility, and is not an exclusive criteria for decision-making, but is nonetheless a useful framework for evaluating design and capital investment alternatives. [1986 c 127 § 1.]

39.35B.020 Legislative declaration. The legislature declares that:

- (1) It is the policy of the state to consider life-cycle costs in the selection of facility design alternatives, to the full extent practical, reasonable, and cost-effective;
- (2) Life-cycle cost should be considered by the state government, school districts, and state universities and community colleges in the planning, design, and funding for new construction or major renovations; and
- (3) Use of life-cycle cost should be encouraged for cities, counties, and other governmental districts including special purpose districts. [1986 c 127 § 2.]

39.35B.030 Intent. It is the intent of the legislature to:

- (1) Expand the definition and use of "life-cycle cost" and "life-cycle cost analysis" to include consideration of all operating costs, as opposed to only energy-related costs as addressed by chapter 39.35 RCW;
- (2) Encourage the recognition, development, and use of life-cycle cost concepts and procedures by both the executive

and legislative branches in the state's design development and capital budgeting processes;

(3) Ensure the dissemination and use of a common and realistic discount rate by all state agencies in the calculation of the present value of future costs;

(4) Allow and encourage the executive branch to develop specific techniques and procedures for the state government and its agencies, and state universities and community colleges to implement this policy; and

(5) Encourage cities, counties, and other governmental districts including special purpose districts to adopt programs and procedures to implement this policy. [1986 c 127 § 3.]

39.35B.040 Implementation. The principal executives of all state agencies are responsible for implementing the policy set forth in this chapter. The office of financial management in conjunction with the *department of general administration may establish guidelines for compliance by the state government and its agencies, and state universities and community colleges. The office of financial management shall include within its biennial capital budget instructions:

(1) A discount rate for the use of all agencies in calculating the present value of future costs, and several examples of resultant trade-offs between annual operating costs eliminated and additional capital costs thereby justified; and

(2) Types of projects and building components that are particularly appropriate for life-cycle cost analysis. [1986 c 127 § 4.]

*Reviser's note: The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

39.35B.050 Life-cycle cost model and analysis—Duties of the office of financial management. The office of financial management shall:

(1) Design and implement a cost-effective life-cycle cost model by October 1, 2008, based on the work completed by the joint legislative audit and review committee in January 2007 and in consultation with legislative fiscal committees;

(2) Deploy the life-cycle cost model for use by state agencies once completed and tested;

(3) Update the life-cycle cost model periodically in consultation with legislative fiscal committees;

(4) Establish clear policies, standards, and procedures regarding the use of life-cycle cost analysis by state agencies including:

(a) When state agencies must use the life-cycle cost analysis, including the types of proposed capital projects and leased facilities to which it must be applied;

(b) Procedures state agencies must use to document the results of required life-cycle cost analyses;

(c) Standards regarding the discount rate and other key model assumptions; and

(d) A process to document and justify any deviation from the standard assumptions. [2007 c 506 § 3; (2011 1st sp.s. c 48 § 7005 expired June 30, 2013).]

Expiration date—2011 1st sp.s. c 48 § 7005: "Section 7005 of this act expires June 30, 2013." [2011 1st sp.s. c 48 § 7038.]

Effective dates—2011 1st sp.s. c 48: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 15, 2011], except for sections 7022 through 7025 and 7027 of this act which take effect July 1, 2011." [2011 1st sp.s. c 48 § 7039.]

Findings—Intent—2007 c 506: See note following RCW 43.82.035.

Chapter 39.35C RCW ENERGY CONSERVATION PROJECTS

Sections

39.35C.010	Definitions.
39.35C.020	State agency and school district conservation projects—Implementation—Department assistance.
39.35C.025	Energy audit of school district facilities—Completion dates—Identification, implementation of cost-effective energy conservation measures.
39.35C.030	Department coordination of conservation development with utilities.
39.35C.040	Sale of conserved energy.
39.35C.050	Authority of state agencies and school districts to implement conservation.
39.35C.060	Authority to finance conservation in school districts and state agencies.
39.35C.070	Development of cogeneration projects.
39.35C.080	Sale of cogenerated electricity and thermal energy.
39.35C.090	Additional authority of state agencies.
39.35C.130	Adoption of rules.
39.35C.900	Captions not law—1991 c 201.
39.35C.901	Severability—1991 c 201.

39.35C.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source. If these forms are electricity and thermal energy, then the operating and efficiency standards established by 18 C.F.R. Sec. 292.205 and the definitions established by 18 C.F.R. Sec. 292.202 (c) through (m) apply.

(2) "Conservation" means reduced energy consumption or energy cost, or increased efficiency in the use of energy, and activities, measures, or equipment designed to achieve such results, but does not include thermal or electric energy production from cogeneration. "Conservation" also means reductions in the use or cost of water, wastewater, or solid waste.

(3) "Cost-effective" means that the present value to a state agency or school district of the energy reasonably expected to be saved or produced by a facility, activity, measure, or piece of equipment over its useful life, including any compensation received from a utility or the Bonneville power administration, is greater than the net present value of the costs of implementing, maintaining, and operating such facility, activity, measure, or piece of equipment over its useful life, when discounted at the cost of public borrowing.

(4) "Department" means the state department of enterprise services.

(5) "Energy" means energy as defined in RCW 43.21F.025(5).

(6) "Energy audit" has the definition provided in RCW 43.19.670, and may include a determination of the water or solid waste consumption characteristics of a facility.

(7) "Energy efficiency project" means a conservation or cogeneration project.

(8) "Energy efficiency services" means assistance furnished by the department to state agencies and school districts in identifying, evaluating, and implementing energy efficiency projects.

(9) "Local utility" means the utility or utilities in whose service territory a public facility is located.

(10) "Performance-based contracting" means contracts for which payment is conditional on achieving contractually specified energy savings.

(11) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and all political subdivisions of the state.

(12) "Public facility" means a building or structure, or a group of buildings or structures at a single site, owned by a state agency or school district.

(13) "State agency" means every state office or department, whether elective or appointive, state institutions of higher education, and all boards, commissions, or divisions of state government, however designated.

(14) "State facility" means a building or structure, or a group of buildings or structures at a single site, owned by a state agency.

(15) "Utility" means privately or publicly owned electric and gas utilities, electric cooperatives and mutuals, whether located within or without Washington state. [2011 1st sp.s. c 43 § 248; 2007 c 39 § 4; 2001 c 214 § 20; 1996 c 186 § 405; 1991 c 201 § 2.]

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

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—2001 c 214: See note following RCW 39.35.010.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Additional notes found at www.leg.wa.gov

39.35C.020 State agency and school district conservation projects—Implementation—Department assistance. (1) Each state agency and school district shall implement cost-effective conservation improvements and maintain efficient operation of its facilities in order to minimize energy consumption and related environmental impacts and reduce operating costs. Each state agency shall undertake an energy audit and implement cost-effective conservation measures pursuant to the time schedules and requirements set forth in chapter 43.19 RCW, except that any state agency that, after December 31, 1997, has completed energy audits and implemented cost-effective conservation measures, or has contracted with an energy service company for energy audits and conservation measures, is deemed to have met the requirements of this subsection for those facilities included in the audits and conservation measures. Each school district shall undertake an energy audit and implement cost-effective conservation measures pursuant to the time schedules and requirements set forth in RCW 39.35C.025. Performance-based contracting shall be the preferred method for completing energy audits and implementing cost-effective conservation measures.

(2) The department shall assist state agencies and school districts in identifying, evaluating, and implementing cost-effective conservation projects at their facilities. The assistance shall include the following:

(a) Notifying state agencies and school districts of their responsibilities under this chapter;

(b) Apprising state agencies and school districts of opportunities to develop and finance such projects;

(c) Providing technical and analytical support, including procurement of performance-based contracting services;

(d) Reviewing verification procedures for energy savings; and

(e) Assisting in the structuring and arranging of financing for cost-effective conservation projects.

(3) Conservation projects implemented under this chapter shall have appropriate levels of monitoring to verify the performance and measure the energy savings over the life of the project. The department shall solicit involvement in program planning and implementation from utilities and other energy conservation suppliers, especially those that have demonstrated experience in performance-based energy programs.

(4) The department shall comply with the requirements of chapter 39.80 RCW when contracting for architectural or engineering services.

(5) The department shall recover any costs and expenses it incurs in providing assistance pursuant to this section, including reimbursement from third parties participating in conservation projects. The department shall enter into a written agreement with the public agency for the recovery of costs. [2001 c 214 § 21; 1996 c 186 § 406; 1991 c 201 § 3.]

Findings—2001 c 214: See note following RCW 39.35.010.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Additional notes found at www.leg.wa.gov

39.35C.025 Energy audit of school district facilities—Completion dates—Identification, implementation of cost-effective energy conservation measures. (1) Except as provided in subsections (2) and (3) of this section, each school district shall conduct an energy audit of its facilities. This energy audit may be conducted by contract or by other arrangement, including appropriate district staff. Performance-based contracting shall be the preferred method for implementing and completing energy audits.

(a) For each district facility, the energy consumption surveys shall be completed no later than December 31, 2001, and the walk-through surveys shall be completed no later than October 1, 2002. Upon completion of each walk-through survey, the district shall implement energy conservation maintenance and operation procedures that may be identified for any district facility. These procedures shall be implemented as soon as possible, but not later than twelve months after the walk-through survey.

(b) Except as provided in subsection (3) of this section, if a walk-through survey has identified potentially cost-effective energy conservation measures, the district shall undertake an investment grade audit of the facility. Investment grade audits shall be completed no later than June 30, 2003, and installation of cost-effective conservation measures recommended in the investment grade audit shall be completed no later than December 31, 2004.

(2) A school district that, after December 31, 1997, has completed energy audits and implemented cost-effective conservation measures, or has contracted with an energy service company for energy audits and conservation measures, is deemed to have met the requirements of this section for those facilities included in the audits and conservation measures.

(3) A school district that after reasonable efforts and consultation with the department is unable to obtain a contract with an energy service company to conduct an investment grade audit or install cost-effective conservation measures recommended in an investment grade audit, is exempt from the requirements of subsection (1)(b) of this section. [2001 c 214 § 22.]

Findings—2001 c 214: See note following RCW 39.35.010.

Additional notes found at www.leg.wa.gov

39.35C.030 Department coordination of conservation development with utilities. (1) The department shall consult with the local utilities to develop priorities for energy conservation projects pursuant to this chapter, cooperate where possible with existing utility programs, and consult with the local utilities prior to implementing projects in their service territory.

(2) A local utility shall be offered the initial opportunity to participate in the development of conservation projects in the following manner:

(a) Before initiating projects in a local utility service territory, the department shall notify the local utility in writing, on an annual basis, of public facilities in the local utility's service territory at which the department anticipates cost-effective conservation projects will be developed.

(b) Within sixty days of receipt of this notification, the local utility may express interest in these projects by submitting to the department a written description of the role the local utility is willing to perform in developing and acquiring the conservation at these facilities. This role may include any local utility conservation programs which would be available to the public facility, any competitive bidding or solicitation process which the local utility will be undertaking in accordance with the rules of the utilities and transportation commission or the public utility district, municipal utility, cooperative, or mutual governing body for which the public facility would be eligible, or any other role the local utility may be willing to perform.

(c) Upon receipt of the written description from the local utility, the department shall, through discussions with the local utility, and with involvement from state agencies and school districts responsible for the public facilities, develop a plan for coordinated delivery of conservation services and financing or make a determination of whether to participate in the local utility's competitive bidding or solicitation process. The plan shall identify the local utility in roles that the local utility is willing to perform and that are consistent with the provisions of RCW 39.35C.040(2) (d) and (e). [1996 c 186 § 407; 1991 c 201 § 4.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

39.35C.040 Sale of conserved energy. (1) It is the intent of this chapter that the state, state agencies, and school districts are compensated fairly for the energy savings provided to utilities and be allowed to participate on an equal basis in any utility conservation program, bidding, or solicitation process. State agencies and school districts shall not receive preferential treatment. For the purposes of this section, any type of compensation from a utility or the Bonneville power administration intended to achieve reductions or

efficiencies in energy use which are cost-effective to the utility or the Bonneville power administration shall be regarded as a sale of energy savings. Such compensation may include credits to the energy bill, low or no interest loans, rebates, or payment per unit of energy saved. The department shall, in coordination with utilities, the Bonneville power administration, state agencies, and school districts, facilitate the sale of energy savings at public facilities including participation in any competitive bidding or solicitation which has been agreed to by the state agency or school district. Energy savings may only be sold to local utilities or, under conditions specified in this section, to the Bonneville power administration. The department shall not attempt to sell energy savings occurring in one utility service territory to a different utility. Nothing in this chapter mandates that utilities purchase the energy savings.

(2) To ensure an equitable allocation of benefits to the state, state agencies, and school districts, the following conditions shall apply to transactions between utilities or the Bonneville power administration and state agencies or school districts for sales of energy savings:

(a) A transaction shall be approved by both the state agency or school district and the department.

(b) The state agency or school district and the department shall work together throughout the planning and negotiation process for such transactions unless the department determines that its participation will not further the purposes of this section.

(c) Before making a decision under (d) of this subsection, the department shall review the proposed transaction for its technical and economic feasibility, the adequacy and reasonableness of procedures proposed for verification of project or program performance, the degree of certainty of benefits to the state, state agency, or school district, the degree of risk assumed by the state or school district, the benefits offered to the state, state agency, or school district and such other factors as the department determines to be prudent.

(d) The department shall approve a transaction unless it finds, pursuant to the review in (c) of this subsection, that the transaction would not result in an equitable allocation of costs and benefits to the state, state agency, or school district, in which case the transaction shall be disapproved.

(e) In addition to the requirements of (c) and (d) of this subsection, in areas in which the Bonneville power administration has a program for the purchase of energy savings at public facilities, the department shall approve the transaction unless the local utility cannot offer a benefit substantially equivalent to that offered by the Bonneville power administration, in which case the transaction shall be disapproved. In determining whether the local utility can offer a substantially equivalent benefit, the department shall consider the net present value of the payment for energy savings; any goods, services, or financial assistance provided by the local utility; and any risks borne by the local utility. Any direct negative financial impact on a nongrowing, local utility shall be considered.

(3) Any party to a potential transaction may, within thirty days of any decision to disapprove a transaction made pursuant to subsection (2)(c), (d), or (e) of this section, request an independent reviewer who is mutually agreeable to all parties to the transaction to review the decision. The parties shall within thirty days of selection submit to the independent

reviewer documentation supporting their positions. The independent reviewer shall render advice regarding the validity of the disapproval within an additional thirty days. [1996 c 186 § 408; 1991 c 201 § 5.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

39.35C.050 Authority of state agencies and school districts to implement conservation. In addition to any other authorities conferred by law:

(1) The department, with the consent of the state agency or school district responsible for a facility, a state or regional university acting independently, and any other state agency acting through the *department of general administration or as otherwise authorized by law, may:

(a) Develop and finance conservation at public facilities in accordance with express provisions of this chapter;

(b) Contract for energy services, including performance-based contracts;

(c) Contract to sell energy savings from a conservation project at public facilities to local utilities or the Bonneville power administration.

(2) A state or regional university acting independently, and any other state agency acting through the *department of general administration or as otherwise authorized by law, may undertake procurements for third-party development of conservation at its facilities.

(3) A school district may:

(a) Develop and finance conservation at school district facilities;

(b) Contract for energy services, including performance-based contracts at school district facilities; and

(c) Contract to sell energy savings from energy conservation projects at school district facilities to local utilities or the Bonneville power administration directly or to local utilities or the Bonneville power administration through third parties.

(4) In exercising the authority granted by subsections (1), (2), and (3) of this section, a school district or state agency must comply with the provisions of RCW 39.35C.040. [1996 c 186 § 409; 1991 c 201 § 6.]

***Reviser's note:** The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

39.35C.060 Authority to finance conservation in school districts and state agencies. State agencies may use financing contracts under chapter 39.94 RCW to provide all or part of the funding for conservation projects. The department shall determine the eligibility of such projects for financing contracts. The repayments of the financing contracts shall be sufficient to pay, when due, the principal and interest on the contracts. [1996 c 186 § 410; 1991 c 201 § 7.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

39.35C.070 Development of cogeneration projects.

(1) Consistent with the region's need to develop cost-effective, high efficiency electric energy resources, the state shall investigate and, if appropriate, pursue development of cost-

effective opportunities for cogeneration in existing or new state facilities.

(2) To assist state agencies in identifying, evaluating, and developing potential cogeneration projects at their facilities, the department shall notify state agencies of their responsibilities under this chapter; apprise them of opportunities to develop and finance such projects; and provide technical and analytical support. The department shall recover costs for such assistance through written agreements, including reimbursement from third parties participating in such projects, for any costs and expenses incurred in providing such assistance.

(3)(a) The department shall identify priorities for cogeneration projects at state facilities, and, where such projects are initially deemed desirable by the department and the appropriate state agency, the department shall notify the local utility serving the state facility of its intent to conduct a feasibility study at such facility. The department shall consult with the local utility and provide the local utility an opportunity to participate in the development of the feasibility study for the state facility it serves.

(b) If the local utility has an interest in participating in the feasibility study, it shall notify the department and the state agency whose facility or facilities it serves within sixty days of receipt of notification pursuant to (a) of this subsection as to the nature and scope of its desired participation. The department, state agency, and local utility shall negotiate the responsibilities, if any, of each in conducting the feasibility study, and these responsibilities shall be specified in a written agreement.

(c) If a local utility identifies a potential cogeneration project at a state facility for which it intends to conduct a feasibility study, it shall notify the department and the appropriate state agency. The department, state agency, and local utility shall negotiate the responsibilities, if any, of each in conducting the feasibility study, and these responsibilities shall be specified in a written agreement. Nothing in this section shall preclude a local utility from conducting an independent assessment of a potential cogeneration project at a state facility.

(d) Agreements written pursuant to (a) and (b) of this subsection shall include a provision for the recovery of costs incurred by a local utility in performing a feasibility study in the event such utility does not participate in the development of the cogeneration project. If the local utility does participate in the cogeneration project through energy purchase, project development or ownership, recovery of the utility's costs may be deferred or provided for through negotiation on agreements for energy purchase, project development or ownership.

(e) If the local utility declines participation in the feasibility study, the department and the state agency may receive and solicit proposals to conduct the feasibility study from other parties. Participation of these other parties shall also be secured and defined by a written agreement which may include the provision for reimbursement of costs incurred in the formulation of the feasibility study.

(4) The feasibility study shall include consideration of regional and local utility needs for power, the consistency of the proposed cogeneration project with the state energy strategy, the cost and certainty of fuel supplies, the value of elec-

tricity produced, the capability of the state agency to own and/or operate such facilities, the capability of utilities or third parties to own and/or operate such facilities, requirements for and costs of standby sources of power, costs associated with interconnection with the local electric utility's transmission system, the capability of the local electric utility to wheel electricity generated by the facility, costs associated with obtaining wheeling services, potential financial risks and losses to the state and/or state agency, measures to mitigate the financial risk to the state and/or state agency, and benefits to the state and to the state agency from a range of design configurations, ownership, and operation options.

(5) Based upon the findings of the feasibility study, the department and the state agency shall determine whether a cogeneration project will be cost-effective and whether development of a cogeneration project should be pursued. This determination shall be made in consultation with the local utility or, if the local utility had not participated in the development of the feasibility study, with any third party that may have participated in the development of the feasibility study.

(a) Recognizing the local utility's expertise, knowledge, and ownership and operation of the local utility systems, the department and the state agency shall have the authority to negotiate directly with the local utility for the purpose of entering into a sole source contract to develop, own, and/or operate the cogeneration facility. The contract may also include provisions for the purchase of electricity or thermal energy from the cogeneration facility, the acquisition of a fuel source, and any financial considerations which may accrue to the state from ownership and/or operation of the cogeneration facility by the local utility.

(b) The department may enter into contracts through competitive negotiation under this subsection for the development, ownership, and/or operation of a cogeneration facility. In determining an acceptable bid, the department and the state agency may consider such factors as technical knowledge, experience, management, staff, or schedule, as may be necessary to achieve economical construction or operation of the project. The selection of a developer or operator of a cogeneration facility shall be made in accordance with procedures for competitive bidding under chapter 43.19 RCW.

(c) The department shall comply with the requirements of chapter 39.80 RCW when contracting for architectural or engineering services.

(6)(a) The state may own and/or operate a cogeneration project at a state facility. However, unless the cogeneration project is determined to be cost-effective, based on the findings of the feasibility study, the department and state agency shall not pursue development of the project as a state-owned facility. If the project is found to be cost-effective, and the department and the state agency agree development of the cogeneration project should be pursued as a state-owned and/or operated facility, the department shall assist the state agency in the preparation of a finance and development plan for the cogeneration project. Any such plan shall fully account for and specify all costs to the state for developing and/or operating the cogeneration facility.

(b) It is the general intent of this chapter that cogeneration projects developed and owned by the state will be sized to the projected thermal energy load of the state facility over

the useful life of the project. The principal purpose and use of such projects is to supply thermal energy to a state facility and not primarily to develop generating capacity for the sale of electricity. For state-owned projects with electricity production in excess of projected thermal requirements, the department shall seek and obtain legislative appropriation and approval for development. Nothing in chapter 201, Laws of 1991 shall be construed to authorize any state agency to sell electricity or thermal energy on a retail basis.

(7) When a cogeneration facility will be developed, owned, and/or operated by a state agency or third party other than the local serving utility, the department and the state agency shall negotiate a written agreement with the local utility. Elements of such an agreement shall include provisions to ensure system safety, provisions to ensure reliability of any interconnected operations equipment necessary for parallel operation and switching equipment capable of isolating the generation facility, the provision of and reimbursement for standby services, if required, and the provision of and reimbursement for wheeling electricity, if the provision of such has been agreed to by the local utility.

(8) The state may develop and own a thermal energy distribution system associated with a cogeneration project for the principal purpose of distributing thermal energy at the state facility. If thermal energy is to be sold outside the state facility, the state may only sell the thermal energy to a utility. [1996 c 186 § 411; 1991 c 201 § 8.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

39.35C.080 Sale of cogenerated electricity and thermal energy. It is the intention of chapter 201, Laws of 1991 that the state and its agencies are compensated fairly for the energy provided to utilities from cogeneration at state facilities. Such compensation may include revenues from sales of electricity or thermal energy to utilities, lease of state properties, and value of thermal energy provided to the facility. It is also the intent of chapter 201, Laws of 1991 that the state and its agencies be accorded the opportunity to compete on a fair and reasonable basis to fulfill a utility's new resource acquisition needs when selling the energy produced from cogeneration projects at state facilities through energy purchase agreements.

(1)(a) The department and state agencies may participate in any utility request for resource proposal process, as either established under the rules and regulations of the utilities and transportation commission, or by the governing board of a public utility district, municipal utility, cooperative, or mutual.

(b) If a local utility does not have a request for resource proposal pending, the energy office [department] or a state agency may negotiate an equitable and mutually beneficial energy purchase agreement with that utility.

(2) To ensure an equitable allocation of benefits to the state and its agencies, the following conditions shall apply to energy purchase agreements negotiated between utilities and state agencies:

(a) An energy purchase agreement shall be approved by both the department and the affected state agency.

(b) The department and the state agency shall work together throughout the planning and negotiation process for

energy purchase agreements, unless the department determines that its participation will not further the purposes of this section.

(c) Before approving an energy purchase agreement, the department shall review the proposed agreement for its technical and economic feasibility, the degree of certainty of benefits, the degree of financial risk assumed by the state and/or the state agency, the benefits offered to the state and/or state agency, and other such factors as the department deems prudent. The department shall approve an energy purchase agreement unless it finds that such an agreement would not result in an equitable allocation of costs and benefits, in which case the transaction shall be disapproved.

(3)(a) The state or state agency shall comply with and shall be bound by applicable avoided cost schedules, electric power wheeling charges, interconnection requirements, utility tariffs, and regulatory provisions to the same extent it would be required to comply and would be bound if it were a private citizen. The state shall neither seek regulatory advantage, nor change regulations, regulatory policy, process, or decisions to its advantage as a seller of cogenerated energy. Nothing contained in chapter 201, Laws of 1991 shall be construed to mandate or require public or private utilities to wheel electric energy resources within or beyond their service territories. Nothing in chapter 201, Laws of 1991 authorizes any state agency or school district to make any sale of energy or waste heat beyond the explicit provisions of chapter 201, Laws of 1991. Nothing contained in chapter 201, Laws of 1991 requires a utility to purchase energy from the state or a state agency or enter into any agreement in connection with a cogeneration facility.

(b) The state shall neither construct, nor be party to an agreement for developing a cogeneration project at a state facility for the purpose of supplying its own electrical needs, unless it can show that such an arrangement would be in the economic interest of the state taking into account the cost of (i) interconnection requirements, as specified by the local electric utility, (ii) standby charges, as may be required by the local electric utility, and (iii) the current price of electricity offered by the local electric utility. If the local electric utility can demonstrate that the cogeneration project may place an undue burden on the electric utility, the department or the state agency shall attempt to negotiate a mutually beneficial agreement that would minimize the burden upon the ratepayers of the local electric utility.

(4) Any party to an energy purchase agreement may, within thirty days of any decision made pursuant to subsection (2)(c) of this section to disapprove the agreement made pursuant to this section, request an independent reviewer who is mutually agreeable to all parties to review the decision. The parties shall within thirty days of selection submit to the independent reviewer documentation supporting their positions. The independent reviewer shall render advice regarding the validity of the disapproval within an additional thirty days.

(5) For the purposes of this section, "waste heat" means the thermal energy that otherwise would be released to the environment from an industrial process, electric generation, or other process. [1996 c 186 § 412; 1996 c 33 § 4; 1991 c 201 § 9.]

Reviser's note: This section was amended by 1996 c 33 § 4 and by 1996 c 186 § 412, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Findings—1996 c 33: See note following RCW 80.04.550.

39.35C.090 Additional authority of state agencies. In addition to any other authorities conferred by law:

(1) The department, with the consent of the state agency responsible for a facility, a state or regional university acting independently, and any other state agency acting through the *department of general administration or as otherwise authorized by law, may:

(a) Contract to sell electric energy generated at state facilities to a utility; and

(b) Contract to sell thermal energy produced at state facilities to a utility.

(2) A state or regional university acting independently, and any other state agency acting through the *department of general administration or as otherwise authorized by law, may:

(a) Acquire, install, permit, construct, own, operate, and maintain cogeneration and facility heating and cooling measures or equipment, or both, at its facilities;

(b) Lease state property for the installation and operation of cogeneration and facility heating and cooling equipment at its facilities;

(c) Contract to purchase all or part of the electric or thermal output of cogeneration plants at its facilities;

(d) Contract to purchase or otherwise acquire fuel or other energy sources needed to operate cogeneration plants at its facilities; and

(e) Undertake procurements for third-party development of cogeneration projects at its facilities, with successful bidders to be selected based on the responsible bid, including nonprice elements listed in **RCW 43.19.1911, that offers the greatest net achievable benefits to the state and its agencies.

(3) After July 28, 1991, a state agency shall consult with the department prior to exercising any authority granted by this section.

(4) In exercising the authority granted by subsections (1) and (2) of this section, a state agency must comply with the provisions of RCW 39.35C.080. [1996 c 186 § 413; 1991 c 201 § 10.]

Reviser's note: *(1) The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

** (2) RCW 43.19.1911 was repealed by 2012 c 224 § 29, effective January 1, 2013.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

39.35C.130 Adoption of rules. The department may adopt rules to implement RCW 39.35C.020 through 39.35C.040, 39.35C.070, 39.35C.080, and 39.35.050. [1996 c 186 § 416; 1991 c 201 § 17.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

39.35C.900 Captions not law—1991 c 201. Captions as used in chapter 201, Laws of 1991 constitute no part of the law. [1991 c 201 § 22.]

39.35C.901 Severability—1991 c 201. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 201 § 24.]

Chapter 39.35D RCW

HIGH-PERFORMANCE PUBLIC BUILDINGS

Sections

39.35D.010 Finding—Intent.

39.35D.020 Definitions.

39.35D.030 Standards for major facility projects—Annual reports.

39.35D.040 Public school district major facility projects—Standards—Annual reports—Advisory committee.

39.35D.050 Annual reports—Submission to legislature.

39.35D.060 Guidelines for administration of chapter—Amendment of fee schedules—Architecture and engineering services—Building commissioning—Preproposal conferences—Advisory committee.

39.35D.070 Liability for failure to meet standards.

39.35D.080 Affordable housing projects—Exemption.

39.35D.090 Use of local building materials and products—Intent.

39.35D.800 Performance review—Report.

39.35D.010 Finding—Intent. (1) The legislature finds that public buildings can be built and renovated using high-performance methods that save money, improve school performance, and make workers more productive. High-performance public buildings are proven to increase student test scores, reduce worker absenteeism, and cut energy and utility costs.

(2) It is the intent of the legislature that state-owned buildings and schools be improved by adopting recognized standards for high-performance public buildings, reducing energy consumption, and allowing flexible methods and choices in how to achieve those standards and reductions. The legislature also intends that public agencies and public school districts shall document costs and savings to monitor this program and ensure that economic, community, and environmental goals are achieved each year, and that an independent performance review be conducted to evaluate this program and determine the extent to which the results intended by this chapter are being met.

(3) The legislature further finds that state agency leadership is needed in the development of preparation and adaptation actions for climate change to ensure the economic health, safety, and environmental well-being of the state and its citizens. [2009 c 519 § 8; 2005 c 12 § 1.]

Findings—2009 c 519: See RCW 43.21M.900.

39.35D.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of enterprise services.

(2) "High-performance public buildings" means high-performance public buildings designed, constructed, and certified to a standard as identified in this chapter.

(3) "Institutions of higher education" means the state universities, the regional universities, The Evergreen State College, the community colleges, and the technical colleges.

(4) "LEED silver standard" means the United States green building council leadership in energy and environmental design green building rating standard, referred to as silver standard.

(5)(a) "Major facility project" means: (i) A construction project larger than five thousand gross square feet of occupied or conditioned space as defined in the Washington state energy code; or (ii) a building renovation project when the cost is greater than fifty percent of the assessed value and the project is larger than five thousand gross square feet of occupied or conditioned space as defined in the Washington state energy code.

(b) "Major facility project" does not include: (i) Projects for which the department, public school district, or other applicable agency and the design team determine the LEED silver standard or the Washington sustainable school design protocol to be not practicable; or (ii) transmitter buildings, pumping stations, hospitals, research facilities primarily used for sponsored laboratory experimentation, laboratory research, or laboratory training in research methods, or other similar building types as determined by the department. When the LEED silver standard is determined to be not practicable for a project, then it must be determined if any LEED standard is practicable for the project. If LEED standards or the Washington sustainable school design protocol are not followed for the project, the public school district or public agency shall report these reasons to the department.

(6) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and public higher education institution.

(7) "Public school district" means a school district eligible to receive state basic education moneys pursuant to RCW 28A.150.250 and 28A.150.260.

(8) "Washington sustainable school design protocol" means the school design protocol and related information developed by the office of the superintendent of public instruction, in conjunction with school districts and the school facilities advisory board. [2011 1st sp.s. c 43 § 249; 2006 c 263 § 330; 2005 c 12 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

39.35D.030 Standards for major facility projects—Annual reports.

(1) All major facility projects of public agencies receiving any funding in a state capital budget, or projects financed through a financing contract as defined in RCW 39.94.020, must be designed, constructed, and certified to at least the LEED silver standard. This subsection applies to major facility projects that have not entered the design phase prior to July 24, 2005, and to the extent appropriate LEED silver standards exist for that type of building or facility.

(2) All major facility projects of any entity other than a public agency or public school district receiving any funding in a state capital budget must be designed, constructed, and certified to at least the LEED silver standard. This subsection

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applies to major facility projects that have not entered the grant application process prior to July 24, 2005, and to the extent appropriate LEED silver standards exist for that type of building or facility.

(3)(a) Public agencies, under this section, shall monitor and document ongoing operating savings resulting from major facility projects designed, constructed, and certified as required under this section.

(b) Public agencies, under this section, shall report annually to the department on major facility projects and operating savings.

(4) The department shall consolidate the reports required in subsection (3) of this section into one report and report to the governor and legislature by September 1st of each even-numbered year beginning in 2006 and ending in 2016. In its report, the department shall also report on the implementation of this chapter, including reasons why the LEED standard was not used as required by RCW 39.35D.020(5)(b). The department shall make recommendations regarding the ongoing implementation of this chapter, including a discussion of incentives and disincentives related to implementing this chapter.

(5) For the purposes of determining compliance with the requirement for a project to be designed, constructed, and certified to at least the LEED silver standard, the department must credit one additional point for a project that uses wood products with a credible third-party sustainable forest certification or from forests regulated under chapter 76.09 RCW, the Washington forest practices act. For projects that qualify for this additional point, and for which an additional point would have resulted in formal certification under the LEED silver standard, the project must be deemed to meet the standard under this section. [2011 c 99 § 1; 2005 c 12 § 3.]

39.35D.040 Public school district major facility projects—Standards—Annual reports—Advisory committee.

(1) All major facility projects of public school districts receiving any funding in a state capital budget must be designed and constructed to at least the LEED silver standard or the Washington sustainable school design protocol. To the extent appropriate LEED silver or Washington sustainable school design protocol standards exist for the type of building or facility, this subsection applies to major facility projects that have not received project approval from the superintendent of public instruction prior to: (a) July 1, 2006, for volunteering school districts; (b) July 1, 2007, for class one school districts; and (c) July 1, 2008, for class two school districts.

(2) Public school districts under this section shall: (a) Monitor and document appropriate operating benefits and savings resulting from major facility projects designed and constructed as required under this section for a minimum of five years following local board acceptance of a project receiving state funding; and (b) report annually to the superintendent of public instruction. The form and content of each report must be mutually developed by the office of the superintendent of public instruction in consultation with school districts.

(3) The superintendent of public instruction shall consolidate the reports required in subsection (2) of this section into one report and report to the governor and legislature by September 1st of each even-numbered year beginning in 2006

and ending in 2016. In its report, the superintendent of public instruction shall also report on the implementation of this chapter, including reasons why the LEED standard or Washington sustainable school design protocol was not used as required by RCW 39.35D.020(5)(b). The superintendent of public instruction shall make recommendations regarding the ongoing implementation of this chapter, including a discussion of incentives and disincentives related to implementing this chapter.

(4) The superintendent of public instruction shall develop and issue guidelines for administering this chapter for public school districts. The purpose of the guidelines is to define a procedure and method for employing and verifying compliance with the LEED silver standard or the Washington sustainable school design protocol.

(5) The superintendent of public instruction shall utilize the school facilities advisory board as a high-performance buildings advisory committee comprised of affected public schools, the superintendent of public instruction, the department, and others at the superintendent of public instruction's discretion to provide advice on implementing this chapter. Among other duties, the advisory committee shall make recommendations regarding an education and training process and an ongoing evaluation or feedback process to help the superintendent of public instruction implement this chapter.

(6) For projects that comply with this section by meeting the LEED silver standard, the superintendent of public instruction must credit one additional point for a project that uses wood products with a credible third-party sustainable forest certification or from forests regulated under chapter 76.09 RCW, the Washington forest practices act. For projects that qualify for this additional point, and for which an additional point would have resulted in formal certification under the LEED silver standard, the project must be deemed to meet the requirements of subsection (1) of this section. [2011 c 99 § 2; 2006 c 263 § 331; 2005 c 12 § 4.]

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

39.35D.050 Annual reports—Submission to legislature. On or before January 1, 2009, the department and the superintendent of public instruction shall summarize the reports submitted under RCW 39.35D.030(4) and 39.35D.040(3) and submit the individual reports to the legislative committees on capital budget and ways and means for review of the program's performance and consideration of any changes that may be needed to adapt the program to any new or modified standards for high-performance buildings that meet the intent of this chapter. [2005 c 12 § 5.]

39.35D.060 Guidelines for administration of chapter—Amendment of fee schedules—Architecture and engineering services—Building commissioning—Preproposal conferences—Advisory committee. (1)(a) The department, in consultation with affected public agencies, shall develop and issue guidelines for administering this chapter for public agencies. The purpose of the guidelines is to define a procedure and method for employing and verifying activities necessary for certification to at least the LEED silver standard for major facility projects.

(b) The department and the office of the superintendent of public instruction shall amend their fee schedules for architectural and engineering services to accommodate the requirements in the design of major facility projects under this chapter.

(c) The department and the office of the superintendent of public instruction shall procure architecture and engineering services consistent with chapter 39.80 RCW.

(d) Major facility projects designed to meet standards identified in this chapter must include building commissioning as a critical cost-saving part of the construction process. This process includes input from the project design and construction teams and the project ownership representatives.

(e) As provided in the request for proposals for construction services, the operating agency shall hold a preproposal conference for prospective bidders to discuss compliance with and achievement of standards identified in this chapter for prospective respondents.

(2) The department shall create a high-performance buildings advisory committee comprised of representatives from the design and construction industry involved in public works contracting, personnel from the affected public agencies responsible for overseeing public works projects, the office of the superintendent of public instruction, and others at the department's discretion to provide advice on implementing this chapter. Among other duties, the advisory committee shall make recommendations regarding an education and training process and an ongoing evaluation or feedback process to help the department implement this chapter.

(3) The department and the office of the superintendent of public instruction shall adopt rules to implement this section. [2006 c 263 § 332; 2005 c 12 § 6.]

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

39.35D.070 Liability for failure to meet standards. A member of the design or construction teams may not be held liable for the failure of a major facility project to meet the LEED silver standard or other LEED standard established for the project as long as a good faith attempt was made to achieve the LEED standard set for the project. [2005 c 12 § 10.]

39.35D.080 Affordable housing projects—Exemption. Except as provided in this section, affordable housing projects funded out of the state capital budget are exempt from the provisions of this chapter. On or before July 1, 2008, the *department of community, trade, and economic development shall identify, implement, and apply a sustainable building program for affordable housing projects that receive housing trust fund (under chapter 43.185 RCW) funding in a state capital budget. The *department of community, trade, and economic development shall not develop its own sustainable building standard, but shall work with stakeholders to adopt an existing sustainable building standard or criteria appropriate for affordable housing. Any application of the program to affordable housing, including any monitoring to track the performance of either sustainable features or energy standards or both, is the responsibility of the *department of community, trade, and economic development. Beginning in 2009 and ending in 2016, the *department of community,

trade, and economic development shall report to the department as required under RCW 39.35D.030(3)(b). [2005 c 12 § 12.]

*Reviser's note: The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

39.35D.090 Use of local building materials and products—Intent. It is the intent and an established goal of the LEED program as authored by the United States green building council to increase demand for building materials and products that are extracted and manufactured locally, thereby reducing the environmental impacts and to support the local economy. Therefore, it is the intent of the legislature to emphasize this defined goal and establish a priority to use Washington state based resources, building materials, products, industries, manufacturers, and other businesses to provide economic development to Washington state and to meet the objectives of this chapter. [2005 c 12 § 13.]

39.35D.800 Performance review—Report. The joint legislative audit and review committee, or its successor legislative agency, shall conduct a performance review of the high-performance buildings program established under this chapter.

(1) The performance audit shall include, but not be limited to:

(a) The identification of the costs of implementation of high-performance building[s] standards in the design and construction of major facility projects subject to this chapter;

(b) The identification of operating savings attributable to the implementation of high-performance building[s] standards, including but not limited to savings in energy, utility, and maintenance costs;

(c) The identification of any impacts of high-performance buildings standards on worker productivity and student performance; and

(d) An evaluation of the effectiveness of the high-performance building[s] standards established under this chapter, and recommendations for any changes in those standards that may be supported by the committee's findings.

(2) The committee shall make a preliminary report of its findings and recommendations on or before December 1, 2010, and a final report on or before July 1, 2011. [2005 c 12 § 14.]

Chapter 39.36 RCW

LIMITATION OF INDEBTEDNESS OF TAXING DISTRICTS

Sections

39.36.010	Definitions.
39.36.015	"Value of the taxable property" defined.
39.36.020	Limitation of indebtedness prescribed.
39.36.030	Computation of indebtedness.
39.36.040	Authorizations in violation of chapter void.
39.36.050	Ballot proposition authorizing indebtedness—Excess property tax levies.
39.36.060	Chapter not applicable to loan agreements under chapter 39.69 RCW.
39.36.900	Validation—1969 c 142.

Limitation of state debt: State Constitution Art. 8 § 1.

Limitation on levies: State Constitution Art. 7 § 2.

Limitations on municipal indebtedness: State Constitution Art. 8 § 6.

39.36.010 Definitions. The term "taxing district" as herein used shall be held to mean and embrace all counties, cities, towns, townships, port districts, school districts, metropolitan park districts or other municipal corporations which now, or may hereafter exist.

The term "the last assessed valuation of the taxable property in such taxing district" as used herein shall be held to mean and embrace the aggregate assessed valuation for such taxing district as placed on the last completed and balanced tax rolls of the county next preceding the date of contracting the debt or incurring the liability. [1917 c 143 § 4; RRS § 5608.]

39.36.015 "Value of the taxable property" defined. Whenever used in chapter 42, Laws of 1970 ex. sess., the term "value of the taxable property" shall mean the actual value of the taxable property in a taxing district incurring indebtedness, as the term "taxing district" is defined in RCW 39.36.010, to be ascertained by the last assessment for state and county purposes previous to the incurring of such indebtedness except that in incorporated cities the assessment shall be taken from the last assessment for city purposes, plus the timber assessed value for the district as defined in RCW 84.33.035. [1984 c 204 § 15; 1970 ex.s. c 42 § 1.]

Additional notes found at www.leg.wa.gov

39.36.020 Limitation of indebtedness prescribed. (1) Except as otherwise expressly provided by law or in subsections (2), (3) and (4) of this section, no taxing district shall for any purpose become indebted in any manner to an amount exceeding three-eighths of one percent of the value of the taxable property in such taxing district without the assent of three-fifths of the voters therein voting at an election to be held for that purpose, nor in cases requiring such assent shall the total indebtedness incurred at any time exceed one and one-fourth percent on the value of the taxable property therein.

(2)(a)(i) Public hospital districts are limited to an indebtedness amount not exceeding three-fourths of one percent of the value of the taxable property in such public hospital districts without the assent of three-fifths of the voters therein voting at an election held for that purpose.

(ii) Counties, cities, and towns are limited to an indebtedness amount not exceeding one and one-half percent of the value of the taxable property in such counties, cities, or towns without the assent of three-fifths of the voters therein voting at an election held for that purpose.

(b) In cases requiring such assent counties, cities, towns, and public hospital districts are limited to a total indebtedness of two and one-half percent of the value of the taxable property therein. However, any county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW may become indebted to a larger amount for its authorized metropolitan functions, as provided under chapter 35.58 RCW, but not exceeding an additional three-fourths of one percent of the value of the taxable property in the county without the assent of three-fifths of the voters therein voting at an election held for that purpose, and in cases requiring such assent not exceeding an additional two and one-half percent of the value of the taxable property in the county.

(3) School districts are limited to an indebtedness amount not exceeding three-eighths of one percent of the value of the taxable property in such district without the assent of three-fifths of the voters therein voting at an election held for that purpose. In cases requiring such assent school districts are limited to a total indebtedness of two and one-half percent of the value of the taxable property therein.

(4) No part of the indebtedness allowed in this chapter shall be incurred for any purpose other than strictly county, city, town, school district, township, port district, metropolitan park district, or other municipal purposes: PROVIDED, That a city or town, with such assent, may become indebted to a larger amount, but not exceeding two and one-half percent additional, determined as herein provided, for supplying such city or town with water, artificial light, and sewers, when the works for supplying such water, light, and sewers shall be owned and controlled by the city or town; and a city or town, with such assent, may become indebted to a larger amount, but not exceeding two and one-half percent additional for acquiring or developing open space, park facilities, and capital facilities associated with economic development: PROVIDED FURTHER, That any school district may become indebted to a larger amount but not exceeding two and one-half percent additional for capital outlays.

(5) Such indebtedness may be authorized in any total amount in one or more propositions and the amount of such authorization may exceed the amount of indebtedness which could then lawfully be incurred. Such indebtedness may be incurred in one or more series of bonds from time to time out of such authorization but at no time shall the total general indebtedness of any taxing district exceed the above limitation.

The term "value of the taxable property" as used in this section shall have the meaning set forth in RCW 39.36.015. [2000 c 156 § 1; 1994 c 277 § 1; 1993 c 240 § 12; 1971 ex.s. c 218 § 1; 1971 c 38 § 1; 1970 ex.s. c 42 § 27; 1969 c 142 § 3; 1967 c 107 § 4; 1959 c 227 § 1; 1953 c 163 § 2; 1917 c 143 § 1; RRS § 5605.]

Cemetery districts, limitation upon indebtedness: RCW 68.52.310.

Cities other than first class, limitations upon indebtedness: RCW 35.37.040, 35.37.050.

Conditional sales contract debt, not counted as part of debt limit: RCW 28A.335.200, 39.30.010.

Counties, limitations upon indebtedness: Chapter 36.67 RCW.

Executory conditional sales contracts, limitations on indebtedness: RCW 28A.335.200, 39.30.010.

Leases by cities and towns, limitations on indebtedness: RCW 35.42.200.

Metropolitan municipal corporations, limitations on indebtedness: RCW 35.58.450.

Metropolitan park districts, incurring indebtedness: RCW 35.61.100, 35.61.110.

Municipal corporations, limitations upon indebtedness: State Constitution Art. 8 § 6 (Amendment 27).

Port districts, limitations upon indebtedness: RCW 39.28.030, 53.36.030.

Public utility districts, limitations upon indebtedness: RCW 54.24.018.

School districts, limitations upon indebtedness: Chapters 28A.530, 28A.535 RCW.

Validation requirement: RCW 39.40.010.

Water-sewer districts, limitations upon indebtedness: RCW 57.20.110, 57.20.120.

Additional notes found at www.leg.wa.gov

39.36.030 Computation of indebtedness. (1) Whenever it shall be necessary to compute the indebtedness of a taxing district for bonding or any other indebtedness purposes, taxes levied for the current year and cash on hand received for the purpose of carrying on the business of such taxing district for such current year shall be considered as an asset only as against indebtedness incurred during such current year which is payable from such taxes or cash on hand: PROVIDED, HOWEVER, That all taxes levied for the payment of bonds, warrants or other public debts of such taxing district, shall be deemed a competent and sufficient asset of the taxing district to be considered in calculating the constitutional debt limit or the debt limit prescribed by this chapter for any taxing district: PROVIDED, That the provisions of this section shall not apply in computing the debt limit of a taxing district in connection with bonds authorized pursuant to a vote of the electors at an election called prior to March 1, 1917.

(2) If reductions in assessed valuation of property within a taxing district result in the outstanding indebtedness of the taxing district exceeding its statutory indebtedness limitations, the amount of such excess indebtedness shall not be included in the statutory indebtedness ceiling. Additional indebtedness that is subject to indebtedness limitations, other than refinancing indebtedness that does not increase the total amount of indebtedness, may not be issued by such a taxing district until its total outstanding indebtedness, including that which this subsection removes from the statutory indebtedness limitations, is below these limitations.

(3) Nothing in this section authorizes taxing districts to incur indebtedness beyond constitutional indebtedness limitations. [1986 c 50 § 1; 1921 c 123 § 1; 1917 c 143 § 2; RRS § 5606.]

39.36.040 Authorizations in violation of chapter void.

All orders, authorizations, allowances, contracts, payments or liabilities to pay, made or attempted to be made in violation of this chapter, shall be absolutely void and shall never be the foundation of a claim against a taxing district. [1994 c 81 § 75; 1923 c 45 § 1; 1917 c 143 § 3; RRS § 5607.]

39.36.050 Ballot proposition authorizing indebtedness—Excess property tax levies. The governing body of a taxing district desiring to place a ballot proposition authorizing indebtedness before the voters may submit the proposition at any special election held on the dates authorized in *chapter 29.13 RCW. The ballot proposition shall include the maximum amount of the indebtedness to be authorized, the maximum term any bonds may have, a description of the purpose or purposes of the bond issue, and whether excess property tax levies authorized under RCW 84.52.056 will be authorized.

When it is required that such bonds be retired by excess property tax levies, or when the governing body desires such bonds be retired by excess property tax levies, the ballot proposition shall also include authorization for such excess bond retirement property tax levies provided under RCW 84.52.056.

Notice of the proposed election shall be published as required by **RCW 29.27.080. [1984 c 186 § 3.]

Reviser's note: *(1) District election dates are set by RCW 29A.04.330.

** (2) RCW 29.27.080 was recodified as RCW 29A.52.350 pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.52.350 was subsequently repealed by 2004 c 271 § 193. Later enactment of RCW 29A.52.350, see RCW 29A.52.351. RCW 29A.52.351 was subsequently repealed by 2011 c 10 § 86.

Purpose—1984 c 186: See note following RCW 39.46.110.

39.36.060 Chapter not applicable to loan agreements under chapter 39.69 RCW. This chapter does not apply to a loan made pursuant to a loan agreement under chapter 39.69 RCW, and any computation of indebtedness under this chapter shall exclude the amount of any loan under such a loan agreement. [1987 c 19 § 5.]

39.36.900 Validation—1969 c 142. All bonds heretofore issued, or heretofore voted and which may have been or may hereafter be issued, by any taxing district pursuant to any of the foregoing sections as amended or for any of the purposes authorized by any of said sections are hereby validated. [1969 c 142 § 6.]

Chapter 39.40 RCW

VOTE REQUIRED AT BOND ELECTIONS

Sections

39.40.010	Forty percent poll of voters required.
39.40.020	Existing election laws to apply.
39.40.030	Certification of votes—Canvass.
39.40.040	Prior bonds not affected.
39.40.900	Severability—1925 c 13.

County acquisition of land for military purposes, bond election for: Chapter 37.16 RCW.

County roads and bridges, bond elections: Chapter 36.76 RCW.

Irrigation districts, bond elections: Chapter 87.03 RCW.

Port districts, vote required for certain bond issues: RCW 53.36.030.

Public utility districts, bond elections, vote required: RCW 54.24.018.

39.40.010 Forty percent poll of voters required. No general obligation bonds of any county, port district, or metropolitan park district upon which a vote of the people is required under existing laws shall be issued, nor shall they become a lien upon the taxable property within such county or district unless, in addition to all other requirements provided by law in the matter of the issuance of general obligation bonds by such county or district, the total vote cast upon such proposition shall exceed forty percent of the total number of voters voting in such county or district at the general county or state election next preceding such bond election. [1961 ex.s. c 15 § 1; 1959 c 290 § 3; 1925 c 13 § 1; RRS § 5646-1.]

Exceeding debt limitation by municipalities: State Constitution Art. 8 § 6 (Amendment 27).

Vote required for excess levy to retire bonds issued for capital purposes: RCW 84.52.056.

39.40.020 Existing election laws to apply. In all such elections the provisions of existing law with respect to registration, opening and closing of registration books and the duties of officers and the appointment and selection of election officials shall apply. [1925 c 13 § 2; RRS § 5646-2.]

Election laws in general: Title 29A RCW.

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39.40.030 Certification of votes—Canvass. The election officials in each of the precincts included within any such district shall, as soon as possible and in no case later than five days after the closing of the polls of any election involving the issuance of bonds, certify to the county auditor of the county within which such district is located the total number of votes cast for and against each separate proposal and the vote shall be canvassed and certified by a canvassing board consisting of the chair of the board of county commissioners, the county auditor, and the prosecuting attorney who shall declare the result thereof. [2011 c 336 § 806; 1959 c 290 § 4; 1925 c 13 § 3; RRS § 5646-3.]

39.40.040 Prior bonds not affected. This chapter shall not affect the validity or the issuance of any such bonds voted at any lawful election held prior to the taking effect of this chapter. [1925 c 13 § 4; RRS § 5646-4.]

39.40.900 Severability—1925 c 13. If any section or provision of this chapter be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision or part thereof not adjudged invalid or unconstitutional. [1925 c 13 § 5; RRS § 5646-5.]

Chapter 39.42 RCW

STATE BONDS, NOTES, AND OTHER EVIDENCES OF INDEBTEDNESS

Sections

39.42.010	Scope of application.
39.42.020	Evidences of indebtedness—Issuance—Signature.
39.42.030	Evidences of indebtedness—Issuance—State finance committee, duties and powers.
39.42.040	Disposition of proceeds from sale of bonds.
39.42.050	Anticipation notes—Issued, when—Payment of principal and interest.
39.42.070	Computation of general state revenues—Filing of certificate—Estimate of debt capacity.
39.42.080	Obligations allowable under debt limitation.
39.42.090	Certificates of indebtedness—Issued, when—Retirement.
39.42.100	Evidences of indebtedness—Defects not to affect validity—Copy of resolution authorizing issuance filed—Action to contest before delivery.
39.42.110	Evidences of indebtedness—As negotiable instruments, legal investments, and security for deposits.
39.42.120	Excess earnings account—Payments to United States treasury.
39.42.130	Aggregate state debt not to exceed debt limitation—State finance committee duties.
39.42.140	Working debt limit.
39.42.150	Liquefied natural gas used as marine vessel transportation fuel—Excluded from general state revenues.
39.42.900	Effective date—1971 ex.s. c 184.

39.42.010 Scope of application. This chapter shall apply to all bonds, notes and other evidences of indebtedness of the state authorized by the legislature after *the effective date of this chapter, unless otherwise provided in the authorizing acts. [1971 ex.s. c 184 § 1.]

*Reviser's note: For "the effective date of this chapter," see RCW 39.42.900.

39.42.020 Evidences of indebtedness—Issuance—Signature. Bonds, notes or other evidences of indebtedness shall be issued by the state finance committee. They may be issued at one time or in a series from time to time. The maturity date of each series shall be determined by the state finance committee, but in no case shall any bonds mature

later than thirty years from the date of issue. All evidences of indebtedness shall be signed in the name of the state by the governor and the treasurer. The facsimile signature of said officials is authorized and said evidences of indebtedness may be issued notwithstanding that any of the officials signing them or whose facsimile signatures appear on such evidences of indebtedness has ceased to hold office at the time of issue or at the time of delivery to the purchaser. [1971 ex.s. c 184 § 2.]

39.42.030 Evidences of indebtedness—Issuance—State finance committee, duties and powers. (1) The state finance committee shall meet not less than twice per calendar year and shall determine by resolution the amount, date or dates, terms, conditions, covenants, denominations, interest rate or rates (which may be fixed or variable), maturity or maturities, redemption rights, manner of execution and authentication, manner and price of sale and form of all bonds, notes, or other evidences of indebtedness.

(2) The state finance committee may authorize the state treasurer, by resolution[,] to:

(a) Accept offers to purchase the bonds, notes, or other evidences of indebtedness and to sell and deliver the bonds, notes, or other evidences of indebtedness to the purchasers thereof;

(b) Determine the date or dates, price or prices, principal amounts per maturity, delivery dates, interest rate or rates (or mechanisms for determining the interest rate or rates); and

(c) Set other terms and conditions as the state finance committee may deem necessary and appropriate. Each delegation is limited to bonds, notes, or other indebtedness that the state finance committee has authorized to be issued. Bonds, notes, or other evidences of indebtedness shall be payable either to the bearer or to the registered owner as provided in RCW 39.46.030. The resolution may provide for the deposit in trust with any qualified public depository of all or any part of the proceeds of the bonds, notes, or other evidences of indebtedness or money set aside for the payment thereof.

(3) The state finance committee shall also determine by resolution whether interest on all or any part of the bonds is to be payable periodically during the term of such bonds or only at the maturity of the bonds. For purposes of the limitations on the amount of bonds authorized to be issued contained in the acts authorizing their issuance, the amount of bonds which pay interest only at maturity must be equal to the price, exclusive of accrued interest, at which the bonds are initially offered to the public.

(4) The state finance committee may issue, under chapter 39.53 RCW and this chapter, bonds, notes, or other evidences of indebtedness to refund at or prior to maturity any outstanding state bonds, notes, or other evidences of indebtedness.

(5) The state finance committee may obtain or provide for obtaining bond insurance, letters of credit or other credit support instruments for the purpose of guaranteeing the payment or enhancing the marketability, or both, of any state bonds, notes, or other evidences of indebtedness, and may authorize the execution and delivery of agreements, promissory notes, and other related instruments. [2010 1st sp.s. c 18 § 1; 1989 1st ex.s. c 14 § 16; 1983 c 167 § 104; 1971 ex.s. c 184 § 3.]

Additional notes found at www.leg.wa.gov

39.42.040 Disposition of proceeds from sale of bonds. The proceeds of the sale of any bonds shall be used solely for the purposes, including any expense incurred in connection with the issuance and sale of such bonds, specified in the general statute or special act authorizing the issuance of such bonds. [1971 ex.s. c 184 § 4.]

39.42.050 Anticipation notes—Issued, when—Payment of principal and interest. When the state finance committee has decided to issue such bonds or a portion thereof, it may, pending the issuing of such bonds, issue, in the name of the state, temporary notes in anticipation of the money to be derived from the sale of such bonds, which notes shall be designated as "anticipation notes". If, prior to the issuance of the bonds, it becomes necessary to redeem outstanding notes, additional bond anticipation notes may be issued to redeem the outstanding notes. Such portion of the proceeds of the sale of such bonds as may be required for such purpose shall be applied to the payment of the principal of such anticipation notes which have been issued. The interest on anticipation notes shall be paid from the revenue source and with the same priority of payment specified in the respective bond acts for payment of principal of and interest on the bonds against which anticipation notes are sold. The procedure for paying the interest on the notes, including the transfer of necessary funds for that purpose, shall be the same as prescribed for the bonds.

If the bonds shall constitute general obligations of the state and pledge the full faith and credit of the state to the payment thereof, then the notes issued in anticipation thereof shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due. The owner and holder of any of the notes or the trustee for the owner and holder of any of the notes may, by a mandamus or other appropriate proceeding, require the transfer and payment of funds as directed in this section. [1981 c 29 § 1; 1971 ex.s. c 184 § 5.]

Additional notes found at www.leg.wa.gov

39.42.070 Computation of general state revenues—Filing of certificate—Estimate of debt capacity. On or after *the effective date of this act, the treasurer shall compute general state revenues for the three fiscal years immediately preceding such date and shall determine the arithmetic mean thereof. As soon as is practicable after the close of each fiscal year thereafter, he or she shall do likewise. In determining the amount of general state revenues, the treasurer shall include all state money received in the treasury from each and every source whatsoever except: (1) Fees and revenues derived from the ownership or operation of any undertaking, facility or project; (2) moneys received as gifts, grants, donations, aid or assistance or otherwise from the United States or any department, bureau or corporation thereof, or any person, firm or corporation, public or private, when the terms and conditions of such gift, grant, donation, aid or assistance require the application and disbursement of such moneys oth-

erwise than for the general purposes of the state of Washington; (3) moneys to be paid into and received from retirement system funds, and performance bonds and deposits; (4) moneys to be paid into and received from trust funds including but not limited to moneys received from taxes levied for specific purposes and the several permanent funds of the state and the moneys derived therefrom but excluding bond redemption funds; (5) proceeds received from the sale of bonds or other evidences of indebtedness. Upon computing general state revenues, the treasurer shall make and file in the office of the secretary of state, a certificate containing the results of such computations. Copies of said certificate shall be sent to each elected official of the state and each member of the legislature. The treasurer shall, at the same time, advise each elected official and each member of the legislature of the current available debt capacity of the state, and may make estimated projections for one or more years concerning debt capacity. [2009 c 500 § 1; 2009 c 479 § 24; 2007 c 215 § 2; 2003 1st sp.s. c 9 § 1; 2002 c 240 § 8; 1971 ex.s. c 184 § 7.]

Reviser's note: *(1) For "the effective date of this act," see RCW 39.42.900.

(2) This section was amended by 2009 c 479 § 24 and by 2009 c 500 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2009 c 500: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009." [2009 c 500 § 14.]

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

Finding—Intent—2007 c 215: "The legislature finds that after passage of a constitutional amendment (*House Joint Resolution No. 4215 or Senate Joint Resolution No. 8220), the state investment board will be permitted in accordance with RCW 43.33A.140 to invest a portion of the higher education permanent funds in equities. The legislature further recognizes that by investing in equities, the value of the higher education permanent funds may fluctuate over time due to market changes even if no disposition of the fund principal is made. The removal of the word "irreducible" in this act, describing the higher education permanent funds, is needed to clarify that the mere reduction in market value of a permanent fund due to such fluctuations would not violate the mandate of the statute. It is the intent of the legislature to clarify state law to permit equity investment of higher education permanent funds even if there is a decline in the value of a permanent fund due to market changes. It is not the intent of the legislature to change the requirement that unless otherwise allowed by law the principal amounts in the higher education permanent funds are to be held in perpetuity for the benefit of the designated institutions and future generations, and that only the earnings from a higher education permanent fund may be appropriated to support the benefited institution." [2007 c 215 § 1.]

***Reviser's note:** House Joint Resolution No. 4215 passed the legislature on April 11, 2007.

Contingent effective date—2007 c 215: "This act takes effect if the proposed amendment to Article XVI of the state Constitution regarding investment of certain state moneys is validly submitted to and is approved and ratified by the voters at the next general election. If the proposed amendment is not approved and ratified, this act is void in its entirety." [2007 c 215 § 10.] The proposed amendment to Article XVI of the state Constitution (Substitute House Joint Resolution No. 4215) was approved by the people at the November 6, 2007, general election.

Additional notes found at www.leg.wa.gov

39.42.080 Obligations allowable under debt limitation. The foregoing limitation on the aggregate amount of indebtedness of the state shall not prevent:

(1) The issuance of obligations to refund or replace any such indebtedness existing at any time in an amount not exceeding 1.05 times the amount which, taking into account earnings from the investment of the proceeds of the issue, is

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required to pay the principal thereof, interest thereon, and any premium payable with respect thereto, and the costs incurred in accomplishing such refunding, as provided in chapter 39.53 RCW, as now or hereafter amended: PROVIDED, That any proceeds of the refunding, bonds in excess of those acquired to accomplish such refunding or any obligations acquired with such excess proceeds, shall be applied exclusively for the payment of principal, interest, or call premiums with respect to such refunding obligations;

(2) The issuance of obligations in anticipation of revenues to be received by the state during a period of twelve calendar months next following their issuance;

(3) The issuance of obligations payable solely from revenues of particular public improvements;

(4) A pledge of the full faith, credit, and taxing power of the state to guarantee the payment of any obligation payable from any of revenues received from any of the following sources:

(a) the fees collected by the state as license fees for motor vehicles;

(b) excise taxes collected by the state on the sale, distribution, or use of motor vehicle fuel; and

(c) interest on the permanent common school fund:

PROVIDED, That the legislature shall, at all times, provide sufficient revenues from such sources to pay the principal and interest due on all obligations for which said source of revenue is pledged. [1974 ex.s. c 111 § 1; 1971 ex.s. c 184 § 8.]

Additional notes found at www.leg.wa.gov

39.42.090 Certificates of indebtedness—Issued, when—Retirement. The state finance committee may issue certificates of indebtedness in such sum or sums that may be necessary to meet temporary deficiencies of the treasury. Such certificates may be issued only to provide for the appropriations already made by the legislature and such certificates must be retired and the debt discharged other than by refunding within twelve months after the date of issuance.

For the purposes of this section, the state treasury shall include all statutorily established funds and accounts except for any of the permanent funds of the state treasury. [2007 c 215 § 3; 1985 c 57 § 21; 1971 ex.s. c 184 § 9.]

Finding—Intent—Contingent effective date—2007 c 215: See notes following RCW 39.42.070.

Additional notes found at www.leg.wa.gov

39.42.100 Evidences of indebtedness—Defects not to affect validity—Copy of resolution authorizing issuance filed—Action to contest before delivery. Bonds, notes, or other obligations issued and sold by the state of Washington pursuant to and in conformity with this chapter shall not be invalid for any irregularity or defect in the proceedings of the issuance or sale thereof, except as provided in this paragraph, and shall be incontestable in the hands of a bona fide purchaser or holder thereof. Whenever the state finance committee determines to issue bonds, notes or other evidences of indebtedness, it shall file with the treasurer a certified copy of the resolution authorizing their issuance at least thirty days prior to delivery to the purchaser of such bonds, notes, or other evidences of indebtedness. At any time prior to delivery, any person in interest shall have the right to institute an

appropriate action or proceeding to contest the validity of the authorized indebtedness, the pledge of revenues for the payment of principal and interest on such indebtedness, the validity of the collection and disposition of revenue necessary to pay the principal and interest on such indebtedness, the expenditure of the proceeds derived from the sale of the evidences of indebtedness for the purposes specified by law, and the validity of all other provisions and proceedings in connection with the authorization and issuance of the evidences of indebtedness. If such action or proceeding shall not have been instituted prior to delivery, then the validity of the evidences of indebtedness shall be conclusively presumed and no court shall have authority to inquire into such matters. [1971 ex.s. c 184 § 10.]

39.42.110 Evidences of indebtedness—As negotiable instruments, legal investments, and security for deposits. All evidences of indebtedness issued under the provisions of this chapter shall be fully negotiable instruments and shall be legal investment for all state funds or for funds under state control and all funds of municipal corporations, and shall be legal security for all state, county and municipal deposits. [1971 ex.s. c 184 § 11.]

39.42.120 Excess earnings account—Payments to United States treasury. The excess earnings account is created in the state treasury. From the revenue funds from which principal and interest payments on bonds are provided, the state treasurer shall periodically transfer to the excess earnings account such amounts as are owed to the federal government under section 148 of the federal internal revenue code. Pursuant to legislative appropriation from the excess earnings account, the state treasurer shall periodically remit to the United States treasury any amounts owed to the federal government under section 148 of the federal internal revenue code. [1988 c 92 § 1.]

39.42.130 Aggregate state debt not to exceed debt limitation—State finance committee duties. (1) The state shall not contract any bonds, notes, or other evidences of indebtedness for borrowed money that would cause the aggregate state debt to exceed the debt limitation, as specified in Article VIII, section 1(b) of the state Constitution.

(2) It shall be the duty of the state finance committee to compute annually the amount required to pay principal of and interest on outstanding debt.

(3) To the extent necessary because of the state constitutional debt limitation, priorities with respect to the issuance or guaranteeing of bonds, notes, or other evidences of indebtedness by the state shall be determined by the state finance committee. [2009 c 500 § 2.]

Effective date—2009 c 500: See note following RCW 39.42.070.

39.42.140 Working debt limit. The state finance committee must recommend a working debt limit for purposes of budget development for various purpose capital bond appropriations. Nothing in this section shall in any manner affect the validity of indebtedness incurred in compliance with the provisions of Article VIII, section 1 of the state Constitution. The working debt limit must be updated periodically following forecasts of the economic and revenue forecast council.

The governor and legislature must develop capital bond budgets within the most recent recommended working debt limit. The working debt limit must be lower than the state constitutional debt limit in order to reserve capacity under the constitutional limit for emergencies and economic uncertainties. In order to begin to accomplish the objectives of stabilizing debt capacity and reducing the debt service burden on the operating budget, the state finance committee must recommend working debt limits of eight and one-half percent from July 1, 2015, to and including June 30, 2017; eight and one-quarter percent from July 1, 2017, to and including June 30, 2019; eight percent from July 1, 2019, to and including June 30, 2021; seven and three-quarters percent from July 1, 2021, and thereafter. The state finance committee may recommend modified working debt limits in response to extraordinary economic conditions. The state finance committee is authorized to reduce or delay the issuance of bonds if an issuance would result in exceeding the recommended working debt limit. [2011 1st sp.s. c 46 § 3.]

Intent—2011 1st sp.s. c 46: "The legislature intends to examine the various kinds of debt incurred by Washington state and the limitations that control the amount and use of debt. To assist in this examination, the legislature seeks the assistance and recommendations of a commission on state debt." [2011 1st sp.s. c 46 § 1.]

39.42.150 Liquefied natural gas used as marine vessel transportation fuel—Excluded from general state revenues. (Effective July 1, 2015, until July 1, 2028.) (1) The purpose of eliminating a portion of the sales tax exemption under RCW 82.08.0261 for liquefied natural gas sold for use as a marine vessel transportation fuel is to support the Washington state ferries and other state highway system needs. For this reason, general state revenues transferred under RCW 82.32.860 to the motor vehicle fund are excluded from the calculation of general state revenues for purposes of Article VIII, section 1 of the state Constitution and RCW 39.42.130 and 39.42.140.

(2) This section expires July 1, 2028. [2014 c 216 § 408.]

Effective date—Findings—Tax preference performance statement—2014 c 216: See notes following RCW 82.38.030.

39.42.900 Effective date—1971 ex.s. c 184. This act shall become effective coincident with the effective date of the constitutional amendment to Article VIII, section 1 and to Article VIII, section 3 of the Washington state Constitution as presented for a vote of the people by HJR 52, 1971 regular session. Unless such constitutional amendment shall be approved by the people at the next general election, this chapter shall be null and void. [1971 ex.s. c 184 § 12.]

Reviser's note: House Joint Resolution No. 52 was approved by the voters at the November 1972 general election.

Chapter 39.44 RCW BONDS—MISCELLANEOUS PROVISIONS, BOND INFORMATION REPORTING

Sections

39.44.070	Life of bonds.
39.44.100	Facsimile signatures on bonds and coupons.
39.44.101	Facsimile signatures on bonds and coupons—Fraud—Destruction of plates—Penalty.

- 39.44.102 Facsimile signatures on bonds and coupons—Statements and signatures required on registered bonds.
- 39.44.110 Registration—Payment—Assignment.
- 39.44.120 Payment of coupon interest.
- 39.44.130 Treasurers as registration officers—Fiscal agent.
- 39.44.140 Revenue bonds—Funds for reserve purposes may be included in issue amount.
- 39.44.200 State and local government bond information—Definitions.
- 39.44.210 State and local government bond information—Submittal—Contents—Annual report.
- 39.44.230 State and local government bond information—Rules.
- 39.44.240 State and local government bond information—Validity of bonds not affected.
- 39.44.900 Validation—Savings—1982 c 216.

Cities and towns, local improvement bonds: Chapter 35.45 RCW.

Counties, bonds

form, interest, etc.: Chapter 36.67 RCW.

to acquire land for military purposes, form, interest, etc.: Chapter 37.08 RCW.

County road bonds, form, interest, etc.: Chapter 36.76 RCW.

Funding bonds, interest rate, form, sale, payment, etc.: Chapter 39.52 RCW.

Industrial development revenue bonds: Chapter 39.84 RCW.

Irrigation district bonds, form, interest, maturity, etc.: RCW 87.03.200.

Municipal revenue bond act: Chapter 35.41 RCW.

Port district bonds, form, terms, etc.: Chapters 53.40 and 53.44 RCW.

Public utility district bonds, form, terms, etc.: RCW 54.24.018.

School district bonds, form, terms of sale, etc.: Chapter 28A.530 RCW.

Validation: Chapter 39.90 RCW.

Water-sewer district bonds, form, terms, etc.: RCW 57.20.010.

39.44.070 Life of bonds. Notwithstanding the provisions of any charter to the contrary, bonds issued under *RCW 39.44.010 through 39.44.080 may be issued to run for a period up to forty years from the date of the issue and shall, as near as practicable, be issued for a period which shall not exceed the life of the improvement to be acquired by the use of the bonds. [1967 c 107 § 5; 1923 c 151 § 5; RRS § 5583-5.]

*Reviser's note: RCW 39.44.010, 39.44.011, 39.44.020, 39.44.030, 39.44.060, and 39.44.080 were repealed by 1984 c 186 § 70.

39.44.100 Facsimile signatures on bonds and coupons. On all bonds hereafter issued by the state or any agency thereof or by any county, city, town, municipal corporation, quasi municipal corporation, junior taxing district, school district or other political subdivision of the state, the printed, engraved or lithographed facsimile signatures of the officers required by law to sign the bonds or any interest coupons thereon shall be sufficient signature on such bonds or coupons: PROVIDED, That such facsimile signatures shall not be used on the bonds of issues of less than one hundred thousand dollars par value and may always be used on interest coupons.

Whenever such facsimile signature reproduction of the signature of any officer is used in place of the personal signature of such officer, the issuing authority shall specify in a written order or requisition to the printer, engraver, or lithographer, the number of bonds or coupons upon which such facsimile signature is to be printed, engraved, or lithographed, and the manner of numbering the bonds or coupons upon which such signature shall be placed. Within ninety days after the completion of the printing, engraving, or lithographing of such bonds or coupons, the plate or plates used for the purpose of affixing the facsimile signature shall be destroyed and it shall be the duty of the issuing authority, within ninety

days after receipt of the completed bonds or coupons, to ascertain that such plate or plates have been destroyed. [1983 c 167 § 107; 1961 c 141 § 3; 1955 c 375 § 1; 1941 c 52 § 1; Rem. Supp. 1941 § 5583-1a.]

Uniform facsimile signature of public officials act: Chapter 39.62 RCW.

Additional notes found at www.leg.wa.gov

39.44.101 Facsimile signatures on bonds and coupons—Fraud—Destruction of plates—Penalty. Every printer, engraver, or lithographer, who with the intent to defraud, prints, engraves, or lithographs a facsimile signature upon any bond or coupon without written order of the issuing authority, or fails to destroy such plate or plates containing the facsimile signature upon direction of such issuing authority, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 212; 1955 c 375 § 2.]

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

Fraud, forgery: Chapter 9A.60 RCW.

39.44.102 Facsimile signatures on bonds and coupons—Statements and signatures required on registered bonds. Where any bond so issued requires registration by the county treasurer, that bond shall bear a statement on the back thereof showing the name of the person to whom sold, date of issue, the number and series of the bond, and shall be signed by the county treasurer in his or her own name or by a deputy county treasurer in his or her own name. [2011 c 336 § 807; 1955 c 375 § 3.]

39.44.110 Registration—Payment—Assignment. Upon the presentation at the office of the officer or agent hereinafter provided for, any bond which is bearer in form that has heretofore been or may hereafter be issued by any county, city, town, port, school district, or other municipal or quasi municipal corporation in this state, may, if so provided in the proceedings authorizing the issuance of the same, be registered as to principal in the name of the owner upon the books of such municipality to be kept in said office, such registration to be noted on the reverse of the bond by such officer or agent. The principal of any bond so registered shall be payable only to the payee, his or her legal representative, successors or assigns, and such bond shall be transferable to another registered holder or back to bearer only upon presentation to such officer or agent, with a written assignment duly acknowledged or proved. The name of the assignee shall be written upon any bond so transferred and in the books so kept in the office of such officer or agent. [2011 c 336 § 808; 1983 c 167 § 108; 1961 c 141 § 4; 1915 c 91 § 1; RRS § 5494.]

Additional notes found at www.leg.wa.gov

39.44.120 Payment of coupon interest. If so provided in the proceedings authorizing the issuance of any such bonds, upon the registration thereof as to principal, or at any time thereafter, the coupons thereto attached, evidencing all interest to be paid thereon to the date of maturity, may be surrendered to the officer or agent hereinafter provided and the bonds shall also become registered as to interest. Such coupons shall be canceled by such officer or agent, who shall sign a statement endorsed upon such bond of the cancellation of all unmatured coupons and the registration of such bond.

Thereafter the interest evidenced by such canceled coupons shall be paid at the times provided therein to the registered owner of such bond in lawful money of the United States of America mailed to his or her address. [2011 c 336 § 809; 1983 c 167 § 109; 1961 c 141 § 5; 1915 c 91 § 2; RRS § 5495.]

Additional notes found at www.leg.wa.gov

39.44.130 Treasurers as registration officers—Fiscal agent. (1) The duties prescribed in this chapter as to the registration of bonds of any city or town shall be performed by the treasurer thereof, and as to those of any county, port or school district by the county treasurer of the county in which such port or school district lies; but any treasurer as defined in RCW 39.46.020 may designate its legally designated fiscal agency or agencies for the performance of such duties, after making arrangements with such fiscal agency therefor, which arrangements may include provision for the payment by the bond owner of a fee for each registration.

(2) The county treasurer as ex officio treasurer of a special district shall act as fiscal agent or may appoint the fiscal agent to be used by the county. [1995 c 38 § 5; 1994 c 301 § 9; 1985 c 84 § 2; 1983 c 167 § 110; 1971 ex.s. c 79 § 1; 1915 c 91 § 3; RRS § 5496.]

Fiscal agencies: Chapter 43.80 RCW.

Additional notes found at www.leg.wa.gov

39.44.140 Revenue bonds—Funds for reserve purposes may be included in issue amount. Any county, city, town, political subdivision, or other municipal or quasi municipal corporation authorized to issue revenue bonds may include in the amount of any such issue funds for the purpose of establishing, maintaining or increasing reserves to:

(1) Secure the payment of the principal of and interest on such revenue bonds; or

(2) Provide for replacements or renewals of or repairs or betterments to revenue producing facilities; or

(3) Provide for contingencies, including, but not limited to, loss of revenue caused by such contingencies.

The authority granted pursuant to this section is additional and supplemental to any existing authority to issue revenue bonds and nothing in this section shall prevent the issuance of such bonds pursuant to any other law: PROVIDED, That no such bond issue may include an amount in excess of fifteen percent thereof for the purpose of establishing, maintaining or increasing reserves as enumerated above. [1983 c 167 § 111; 1977 ex.s. c 229 § 1.]

Additional notes found at www.leg.wa.gov

39.44.200 State and local government bond information—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 39.44.200 through 39.44.240.

(1) "Bond" means "bond" as defined in RCW 39.46.020, but also includes any other indebtedness that may be issued by any local government to fund private activities or purposes where the indebtedness is of a nonrecourse nature payable from private sources, including debt issued under chapter 39.50 RCW.

(2) "Local government" means "local government" as defined in RCW 39.46.020.

(3) "Type of bond" includes: (a) General obligation bonds, including councilmanic and voter-approved bonds; (b) revenue bonds; (c) local improvement district bonds; (d) special assessment bonds such as those issued by irrigation districts and diking districts; and (e) other classes of bonds.

(4) "State" means "state" as defined in RCW 39.46.020 but also includes any commissions or other entities of the state. [2001 c 299 § 14; 1990 c 220 § 1; 1989 c 225 § 1; 1987 c 297 § 12; 1985 c 130 § 5.]

Additional notes found at www.leg.wa.gov

39.44.210 State and local government bond information—Submittal—Contents—Annual report. For each state or local government bond issued, the underwriter of the issue shall supply the *department of community, trade, and economic development with information on the bond issue within twenty days of its issuance. In cases where the issuer of the bond makes a direct or private sale to a purchaser without benefit of an underwriter, the issuer shall supply the required information. The bond issue information shall be provided on a form prescribed by the *department of community, trade, and economic development and shall include but is not limited to: (1) The par value of the bond issue; (2) the effective interest rates; (3) a schedule of maturities; (4) the purposes of the bond issue; (5) cost of issuance information; and (6) the type of bonds that are issued. A copy of the bond covenants shall be supplied with this information.

For each state or local government bond issued, the issuer's bond counsel promptly shall provide to the underwriter or to the *department of community, trade, and economic development information on the amount of any fees charged for services rendered with regard to the bond issue.

Each local government that issues any type of bond shall make a report annually to the *department of community, trade, and economic development that includes a summary of all the outstanding bonds of the local government as of the first day of January in that year. Such report shall distinguish the outstanding bond issues on the basis of the type of bond, as defined in RCW 39.44.200, and shall report the local government's outstanding indebtedness compared to any applicable limitations on indebtedness, including RCW 35.42.200, 39.30.010, and 39.36.020. [1995 c 399 § 54; 1990 c 220 § 2; 1989 c 225 § 2; 1985 c 130 § 1.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Fiscal agencies: Chapter 43.80 RCW.

Publication of local government bond information by department of community, trade, and economic development—Adoption of rules: RCW 43.63A.155.

39.44.230 State and local government bond information—Rules. The *department of community, trade, and economic development may adopt rules and regulations pursuant to the administrative procedure act to require (1) the submission of bond issuance information by underwriters and bond counsel to the *department of community, trade, and economic development in a timely manner and (2) the submission of additional information on bond issues by state and local governments, including summaries of outstanding bond issues. [1995 c 399 § 55; 1989 c 225 § 3; 1985 c 130 § 3.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

39.44.240 State and local government bond information—Validity of bonds not affected. Failure to file the information required by RCW 39.44.210 and 39.44.230 shall not affect the validity of the bonds that are issued. [1989 c 225 § 4; 1985 c 130 § 4.]

39.44.900 Validation—Savings—1982 c 216. All bonds, the issuance of which was authorized or ratified at a general or special election held within the issuing jurisdiction prior to April 3, 1982, or the proposition for the issuance of which will be submitted at such an election pursuant to action of the legislative authority of the issuer taken prior to April 3, 1982, may be sold and issued with an interest rate or rates greater than any interest rate restriction contained in the ballot proposition or ordinance or resolution relating to such authorization or ratification if such bonds are or were sold and issued in accordance with the sale provisions and with an interest rate or rates not greater than those permitted by the applicable provision of *this amendatory act, and any such bonds heretofore sold are declared valid obligations of the issuer. This section shall not apply to bonds having a total value exceeding fifteen million dollars. [1982 c 216 § 12.]

*Reviser's note: For codification of "this amendatory act" [1982 c 216], see Codification Tables.

Chapter 39.46 RCW

BONDS—OTHER MISCELLANEOUS PROVISIONS—REGISTRATION

Sections

39.46.010	Purposes—Liberal construction.
39.46.020	Definitions.
39.46.030	Registration system authorized—Requirements—Fiscal agencies, agents.
39.46.040	Bonds—Issuer to determine amount, terms, conditions, interest, etc.—Designated representative.
39.46.050	Bonds—Issuer authorized to establish lines of credit.
39.46.060	Bonds—Reproduction of physical instrument.
39.46.070	Bonds—Payment of costs of issuance and sale.
39.46.100	RCW 39.46.010 through 39.46.070 constitutes alternative method.
39.46.110	Local government general obligation bonds—Indebtedness—Payment—Notice by special district.
39.46.120	Notice of intent to sell general obligation bonds.
39.46.150	Revenue bonds—Alternative method of issuance—Limitations.
39.46.160	Revenue bonds—Alternative method of issuance—Bonds may include reserve funds.
39.46.170	Out-of-state issuers—Issuance of bonds for projects within the state.

39.46.010 Purposes—Liberal construction. The purposes of this chapter are to permit the state and local governments to conform with registration requirements of federal law which are necessary to exempt interest payments from federal income taxes when the state or local governments issue bonds or incur other obligations and to authorize the establishment and maintenance of differing systems of registering bonds and other obligations as these systems are developed and recognized, which may be instituted, discontinued, and reinstated from time to time. It is further the purpose of this chapter to grant local governments an alternative flexible authority to structure and sell their bond issues and to include a variety of features on their bonds.

This act shall be liberally construed to effect its purposes. [1983 c 167 § 1.]

Additional notes found at www.leg.wa.gov

39.46.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Bond" means any agreement which may or may not be represented by a physical instrument, including notes, warrants, or certificates of indebtedness, that evidences an indebtedness of the state or a local government or a fund thereof, where the state or local government agrees to pay a specified amount of money, with or without interest, at a designated time or times to either registered owners or bearers, including debt issued under chapter 39.50 RCW.

(2) "Host approval" means an approval of an issue of bonds by an applicable elected representative of the state or local government, having jurisdiction, for purposes of section 147(f)(2)(A)(ii) of the internal revenue code, over the area in which a facility is located that is to be financed with bonds issued by an issuer that is not the state or a local government.

(3) "Local government" means any county, city, town, special purpose district, political subdivision, municipal corporation, or quasi-municipal corporation, including any public corporation created by such an entity.

(4) "Obligation" means an agreement that evidences an indebtedness of the state or a local government, other than a bond, and includes, but is not limited to, conditional sales contracts, lease obligations, and promissory notes.

(5) "State" includes the state, agencies of the state, and public corporations created by the state or agencies of the state.

(6) "Treasurer" means the state treasurer, county treasurer, city treasurer, or treasurer of any other municipal corporation. [2011 c 211 § 1; 2001 c 299 § 15; 1995 c 38 § 6; 1994 c 301 § 10; 1983 c 167 § 2.]

Additional notes found at www.leg.wa.gov

39.46.030 Registration system authorized—Requirements—Fiscal agencies, agents. (1) The state and local governments are authorized to establish a system of registering the ownership of their bonds or other obligations as to principal and interest, or principal only. Registration may include, without limitation: (a) A book entry system of recording the ownership of a bond or other obligation whether or not a physical instrument is issued; or (b) recording the ownership of a bond or other obligation together with the requirement that the transfer of ownership may only be effected by the surrender of the old bond or other obligation and either the reissuance of the old bond or other obligation or the issuance of a new bond or other obligation to the new owner.

(2) The system of registration shall define the method or methods by which transfer of the registered bonds or other obligations shall be effective, and by which payment of principal and any interest shall be made. The system of registration may permit the issuance of bonds or other obligations in any denomination to represent several registered bonds or other obligations of smaller denominations. The system of registration may also provide for any writing relating to a bond or other obligation that is not issued as a physical instrument, for identifying numbers or other designations, for a sufficient supply of certificates for subsequent transfers, for record and payment dates, for varying denominations, for communications to the owners of bonds or other obligations,

for accounting, canceled certificate destruction, registration and release of securing interests, and for such other incidental matters pertaining to the registration of bonds or other obligations as the issuer may deem to be necessary or appropriate.

(3)(a) The state treasurer or a local treasurer may appoint (i) one or more of the fiscal agencies appointed from time to time by the state finance committee in accordance with chapter 43.80 RCW or (ii) other fiscal agents to act with respect to an issue of its bonds or other obligations as authenticating trustee, transfer agent, registrar, and paying or other agent and specify the rights and duties and means of compensation of any such fiscal agency so acting. The state treasurer or local treasurers may also enter into agreements with the fiscal agency or agencies in connection with the establishment and maintenance by such fiscal agency or agencies of a central depository system for the transfer or pledge of bonds or other obligations.

(b) The county treasurer as ex officio treasurer of a special district shall act as fiscal agent for such special district, unless the county treasurer appoints either one or more of the fiscal agencies appointed from time to time by the state finance committee in accordance with chapter 43.80 RCW or other fiscal agents selected in a manner consistent with RCW 43.80.120 to act with respect to an issue of its bonds or other obligations as authenticating trustee, transfer agent, registrar, and paying or other agent and specify the rights and duties and means of compensation of any such fiscal agency.

(4) Nothing in this section precludes the issuer, or a trustee appointed by the issuer pursuant to any other provision of law, from itself performing, either alone or jointly with other issuers, fiscal agencies, or trustees, any transfer, registration, authentication, payment, or other function described in this section. [1995 c 38 § 7; 1994 c 301 § 11; 1985 c 84 § 1; 1983 c 167 § 3.]

Additional notes found at www.leg.wa.gov

39.46.040 Bonds—Issuer to determine amount, terms, conditions, interest, etc.—Designated representative. (1) A local government authorized to issue bonds must determine for the bond issue its amount, date or dates, terms not in excess of the maximum term otherwise provided in law, conditions, bond denominations, interest rate or rates, which may be fixed or variable, interest payment dates, maturity or maturities, redemption rights, registration privileges, manner of execution, price, manner of sale, covenants, and form, including registration as to principal and interest, registration as to principal only, or bearer. Registration may be as provided in RCW 39.46.030.

(2) If an ordinance or resolution approving the issuance of bonds authorizes an officer or employee of the local government to serve as its designated representative and to accept, on behalf of the local government, an offer to purchase those bonds, the acceptance of the offer by the designated representative must be consistent with terms established by the ordinance or resolution, and with additional parameters set by the governing body of the local government in the ordinance or resolution. That ordinance or resolution must establish the following terms for the bonds or set forth parameters with respect thereto: The amount, date or dates, denominations, interest rate or rates (or mechanism for determining interest rate or rates), payment dates, final matu-

ry, redemption rights, price, minimum savings for refunding bonds (if the refunding bonds are issued for savings purposes), and any other terms and conditions deemed appropriate by the legislative body of the local government. A county designating a representative in accordance with this subsection must act in a manner that is consistent with the approved county debt policy adopted in accordance with RCW 36.48.070. [2011 c 210 § 1; 1983 c 167 § 4.]

Application to previously issued bonds—2011 c 210: "All bonds previously issued and any reimbursements previously made with bond proceeds by any local government and consistent with the provisions of this act are hereby validated, ratified, and confirmed." [2011 c 210 § 6.]

Additional notes found at www.leg.wa.gov

39.46.050 Bonds—Issuer authorized to establish lines of credit. Each local government authorized to issue bonds is authorized to establish lines of credit with any qualified public depository to be drawn upon in exchange for its bonds or other obligations, to delegate to its treasurer authority to determine the amount of credit extended, and to pay interest and other finance or service charges. The interest rates on such bonds or other obligations may be a fixed rate or rates set periodically or a variable rate or rates determined by agreement of the parties. [2003 c 23 § 1; 1983 c 167 § 5.]

Additional notes found at www.leg.wa.gov

39.46.060 Bonds—Reproduction of physical instrument. Where bonds are issued by the state or a local government as physical instruments, the bonds shall be printed, engraved, lithographed, typed, or reproduced and the manual or facsimile signatures of both a designated officer and chairperson of the governing body or chief executive shall be included on each bond. [1983 c 167 § 6.]

Additional notes found at www.leg.wa.gov

39.46.070 Bonds—Payment of costs of issuance and sale. (1) Except as provided in subsection (2) of this section, the proceeds of any bonds issued by the state or a local government may be used to pay incidental costs and costs related to the sale and issuance of the bonds. Such costs include payments for fiscal and legal expenses, obtaining bond ratings, printing, engraving, advertising, establishing and funding reserve accounts and other accounts, an amount for working capital, capitalized interest for up to six months after completion of construction, necessary and related engineering, architectural, planning, and inspection costs, and other similar activities or purposes.

(2) In addition to the costs enumerated in subsection (1) of this section, costs authorized under this section include capitalized interest for up to seventy-two months from the date of issuance for bonds issued by the state for the construction of a public toll bridge under chapter 47.46 RCW. [2002 c 114 § 22; 1983 c 167 § 7.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Additional notes found at www.leg.wa.gov

39.46.100 RCW 39.46.010 through 39.46.070 constitutes alternative method. RCW 39.46.010 through 39.46.070 shall be deemed to provide a complete, additional, and alternative method for the performance of those subjects authorized by these sections and shall be regarded as supple-

mental and additional to powers conferred by other state laws. Whenever bonds and other obligations are issued and sold in conformance with RCW 39.46.010 through 39.46.070, such issuance and sale need not comply with contrary requirements of other state laws applicable to the issuance and sale of bonds or other obligations. [1983 c 167 § 8.]

Additional notes found at www.leg.wa.gov

39.46.110 Local government general obligation bonds—Indebtedness—Payment—Notice by special district. (1) General obligation bonds of local governments shall be subject to this section. Unless otherwise stated in law, the maximum term of any general obligation bond issue shall be forty years.

(2) General obligation bonds constitute an indebtedness of the local government issuing the bonds that are subject to the indebtedness limitations provided in Article VIII, section 6 of the state Constitution and are payable from tax revenues of the local government and such other money lawfully available and pledged or provided by the governing body of the local government for that purpose. Such governing body may pledge the full faith, credit and resources of the local government for the payment of general obligation bonds. The payment of such bonds shall be enforceable in mandamus against the local government and its officials. The officials now or hereafter charged by law with the duty of levying taxes pledged for the payment of general obligation bonds and interest thereon shall, in the manner provided by law, make an annual levy of such taxes sufficient together with other moneys lawfully available and pledge [pledged] therefor to meet the payments of principal and interest on the bonds as they come due.

(3) General obligation bonds, whether or not issued as physical instruments, shall be executed in the manner determined by the governing body or legislative body of the issuer. If the issuer is the county or a special district for which the county treasurer is the treasurer, the issuer shall notify the county treasurer at least thirty days in advance of authorizing the issuance of bonds or the incurrence of other certificates of indebtedness.

(4) Unless another statute specifically provides otherwise, the owner of a general obligation bond, or the owner of an interest coupon, issued by a local government shall not have any claim against the state arising from the general obligation bond or interest coupon.

(5) As used in this section, the term "local government" means every unit of local government, including municipal corporations, quasi municipal corporations, and political subdivisions, where property ownership is not a prerequisite to vote in the local government's elections. [1998 c 106 § 7; 1995 c 38 § 8; 1994 c 301 § 12; 1984 c 186 § 2.]

Purpose—1984 c 186: "The purpose of this 1984 act is to provide simplified and uniform authorities for various local governments to issue and sell general obligation bonds. It is not the purpose of this 1984 act to alter the indebtedness limitation of local governments." [1984 c 186 § 1.]

Additional notes found at www.leg.wa.gov

39.46.120 Notice of intent to sell general obligation bonds. Notice of intent to sell general obligation bonds at a public sale shall be provided in a reasonable manner as deter-

mined by the legislative authority or governing body of the issuer. [1984 c 186 § 4.]

Purpose—1984 c 186: See note following RCW 39.46.110.

39.46.150 Revenue bonds—Alternative method of issuance—Limitations. (1) Any local government authorized to issue revenue bonds may issue revenue bonds under this section and RCW 39.46.160. If a local government chooses to issue revenue bonds under this section and RCW 39.46.160, the issue shall be subject to the limitations and restrictions of these sections. The authority to issue revenue bonds under this section and RCW 39.46.160 is supplementary and in addition to any authority otherwise existing. The maximum term of any revenue bonds shall be forty years unless another statute authorizing the local government to issue revenue bonds provides for a different maximum term, in which event the local government may issue revenue bonds only with terms not in excess of such different maximum term.

(2) The governing body of a local government issuing revenue bonds shall create a special fund or funds, or use an existing special fund or funds, exclusively from which, along with reserve funds which may be created by the governing body, the principal and interest on such revenue bonds shall be payable. These reserve funds include those authorized to be created by RCW 39.46.160.

Subject to the limitations contained in this section, the governing body of a local government may provide such covenants as it may deem necessary to secure the payment of the principal of and interest on revenue bonds, and premium on revenue bonds, if any. Such covenants may include, but are not limited to, depositing certain revenues into a special fund or funds as provided in subsection (3) of this section; establishing, maintaining, and collecting fees, rates, charges, tariffs, or rentals, on facilities and services, the income of which is pledged for the payment of such bonds; operating, maintaining, managing, accounting, and auditing the local government; appointing trustees, depositories, and paying agents; and any and all matters of like or different character, which affect the security or protection of the revenue bonds.

(3) The governing body may obligate the local government to set aside and pay into a special fund or funds created under subsection (2) of this section a proportion or a fixed amount of the revenues from the following: (a) The public improvements, projects, or facilities that are financed by the revenue bonds; or (b) the public utility or system, or an addition or extension to the public utility or system, where the improvements, projects, or facilities financed by the revenue bonds are a portion of the public utility or system; or (c) all the revenues of the local government; or (d) any other money legally available for such purposes. As used in this subsection, the term "revenues" includes the operating revenues of a local government that result from fees, rates, charges, tariffs, or rentals imposed upon the use or availability or benefit from projects, facilities, or utilities owned or operated by the local government and from related services provided by the local government and other revenues legally available to be pledged to secure the revenue bonds.

The proportion or fixed amount of revenue so obligated shall be a lien and charge against these revenues, subject only to maintenance and operating expenses. The governing body

shall have due regard for the cost of maintenance and operation of the public utility, system, improvement, project, facility, addition, or extension that generates revenues obligated to be placed into the special fund or funds from which the revenue bonds are payable, and shall not set aside into the special fund or funds a greater amount or proportion of the revenues than in its judgment will be available over and above such cost of maintenance and operation and the proportion or fixed amount, if any, of the revenue so previously pledged. Other revenues, including tax revenues, lawfully available for maintenance or operation of revenue generating facilities may be used for maintenance and operation purposes even though the facilities are acquired, constructed, expanded, replaced, or repaired with moneys arising from the sale of revenue bonds. However, the use of these other revenues for maintenance and operation purposes shall not be deemed to directly or indirectly guarantee the revenue bonds or create a general obligation. The obligation to maintain and impose fees, rates, charges, tariffs, or rentals at levels sufficient to finance maintenance and operations shall remain if the other revenues available for such purposes diminish or cease.

The governing body may also provide that revenue bonds payable out of the same source or sources of revenue may later be issued on a parity with any revenue bonds being issued and sold.

(4) A revenue bond issued by a local government shall not constitute an obligation of the state, either general or special, nor a general obligation of the local government issuing the bond, but is a special obligation of the local government issuing the bond, and the interest and principal on the bond shall only be payable from the special fund or funds established pursuant to subsection (2) of this section, the revenues lawfully pledged to the special fund or funds, and any lawfully created reserve funds. The owner of a revenue bond shall not have any claim for the payment thereof against the local government arising from the revenue bond except for payment from the special fund or funds, the revenues lawfully pledged to the special fund or funds, and any lawfully created reserve funds. The owner of a revenue bond issued by a local government shall not have any claim against the state arising from the revenue bond. Tax revenues shall not be used directly or indirectly to secure or guarantee the payment of the principal of or interest on revenue bonds.

[(5)] The substance of the limitations included in this subsection shall be plainly printed, written, engraved, or reproduced on: (a) Each revenue bond that is a physical instrument; (b) the official notice of sale; and (c) each official statement associated with the bonds.

(6) The authority to create a fund shall include the authority to create accounts within a fund.

(7) Local governments issuing revenue bonds, payable from revenues derived from projects, facilities, or utilities, shall covenant to maintain and keep these projects, facilities, or utilities in proper operating condition for their useful life. [1986 c 168 § 1.]

Funds for reserve purposes may be included in issue amount: RCW 39.44.140.

39.46.160 Revenue bonds—Alternative method of issuance—Bonds may include reserve funds. Any local government issuing revenue bonds under this section and

RCW 39.46.150 may include in the amount of any such issue money for the purpose of establishing, maintaining, or increasing reserve funds to:

(1) Secure the payment of the principal of and interest on such revenue bonds; or

(2) Provide for replacements or renewals of or repairs or betterments to revenue producing facilities; or

(3) Provide for contingencies, including, but not limited to, loss of revenue caused by such contingencies. [1986 c 168 § 2.]

39.46.170 Out-of-state issuers—Issuance of bonds for projects within the state. (1) It is the policy of this state that in order to maintain an effective system of monitoring

the use of federal subsidies within the state, facilities within the state proposed to be financed with bonds issued by an issuer formed or organized under the laws of another state must receive prior approval from the statewide issuer authorized by the laws of Washington to issue bonds for the proposed project in accordance with this section.

(2)(a) At least one hundred twenty days prior to the public hearing for the proposed issuance of bonds for a project located in this state by an issuer formed or organized under the laws of another state, the issuer must notify the statewide issuer authorized under the laws of Washington to issue bonds for the proposed project and provide the information required under (b) of this subsection.

(b) The following items and information must be received by the statewide issuer authorized under the laws of Washington to issue bonds for the proposed project:

(i) A copy of the proposed notice of public hearing pertaining to the facilities, providing the date and location of the proposed hearing;

(ii) The maximum stated principal amount of the bonds;

(iii) A description of the facility, including its location;

(iv) A description of the plan of finance;

(v) The name of the issuer of the bonds;

(vi) The name of the initial owner or principal user of the facility;

(vii) A description of how the project will meet the public policy requirements and objectives of this state including the policies of the statewide issuer under Washington law; and

(viii) A check in the amount established by the statewide issuer under Washington law to perform the review.

(c) If the statewide issuer authorized to issue the bonds under Washington law determines that the facility and the items and information submitted under (b) of this subsection are consistent with the laws and public policy of the state and are in the best interest of the state, then the statewide issuer shall issue a written approval under this section authorizing the governmental unit to grant its host approval of the public hearing in its discretion.

(d) If the statewide issuer authorized to issue the bonds under Washington law determines that the facility and the items and information submitted under (b) of this subsection are not consistent with the laws and public policy of the state and are not in the best interest of the state, then the public hearing may not proceed and the bonds may not be issued by an issuer formed or organized under the laws of another state.

(3)(a) By December 1, 2011, annually each December 1st until December 1, 2014, and December 1st every five years thereafter, each statewide issuer receiving the notice required by subsection (2) of this section from an issuer formed or organized under the laws of another state shall, within existing funds, submit a report to the appropriate committees of the legislature.

(b) Each report under (a) of this subsection must provide, for annual reports the following information from the previous fiscal year, and for other reports the following information from each of the previous fiscal years:

(i) The number of proposed projects for which the statewide issuer received notice and the information described under subsection (2) of this section;

(ii) A description of the projects for which notice was submitted;

(iii) The dollar amount of each proposed project;

(iv) The location of each proposed project;

(v) Whether the proposed project was approved by the statewide issuer; and

(vi) For any project that was not approved by the statewide issuer, the reasons for the statewide issuer's decision. [2011 c 211 § 2.]

Chapter 39.48 RCW

BONDS SOLD TO GOVERNMENT AT PRIVATE SALE

Sections

39.48.010	Authority conferred.
39.48.020	Amortization—Requirements relaxed.
39.48.030	"Issuer" defined.
39.48.040	Chapter optional.

39.48.010 Authority conferred. Bonds and securities of all kinds heretofore or hereafter authorized, issued by any issuing corporation or district (hereinafter called the "issuer" and as hereinafter specified), whether such bonds and securities be issued for such issuer itself or for any other taxing or assessment district within its limits, and whether payable in whole or in part out of and from general taxes or payable in whole or in part out of and from the earnings to be derived from any utility, system, construction, work, or works, belonging to or operated by any such issuer, or payable in whole or in part out of and from "local" or "benefit" assessments upon lands within any assessment district or assessment subdivision within any such issuer, may be sold to the United States government or to any department, corporation or agency thereof by private sale without giving any prior notice thereof by publication or otherwise and in such manner as the governing authority of such issuer may provide: PROVIDED, Only that bonds or other securities sold at private sale under the authority of this chapter shall bear interest at a rate or rates as authorized by the issuer and that all bonds and securities sold and issued under the authority of this chapter shall be sold, if now required by existing law, at not less than par and accrued interest. [1970 ex.s. c 56 § 59; 1969 ex.s. c 232 § 76; 1933 ex.s. c 30 § 1; RRS § 5583-11.]

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Additional notes found at www.leg.wa.gov

39.48.020 Amortization—Requirements relaxed. It shall be proper to provide with respect to any bonds now required to be amortized as provided by *RCW 39.44.010 through 39.44.080, that such amortized annual maturities shall commence to be payable at any time on or before five years from the date of said bonds, and that any bonds, or any part thereof, issued under the authority of this chapter, shall be redeemable prior to their fixed maturities, as provided by the governing board or authority of any such issuer. [1933 ex.s. c 30 § 2; RRS § 5583-12.]

*Reviser's note: RCW 39.44.010, 39.44.011, 39.44.020, 39.44.030, 39.44.060, and 39.44.080 were repealed by 1984 c 186 § 70.

39.48.030 "Issuer" defined. The issuing corporations, districts, and subdivisions hereinbefore referred to and described as "issuer", shall include any county, city, town, school district, port district, metropolitan park district, taxing district, assessment district or any public corporation or municipal corporation authorized by existing law to issue bonds, securities or other evidences of indebtedness for itself or for any other taxing or assessment district therein or department thereof. [1933 ex.s. c 30 § 3; RRS § 5583-13.]

39.48.040 Chapter optional. It shall be optional with any such issuer, at its discretion, to exercise all or any of the powers conferred by this chapter in connection with the adoption and exercise by any such issuer of the provisions and powers granted by existing law. [1933 ex.s. c 30 § 4; RRS § 5583-14.]

Chapter 39.50 RCW

SHORT-TERM OBLIGATIONS—MUNICIPAL CORPORATIONS

Sections

39.50.010	Definitions.
39.50.020	Short-term obligations authorized.
39.50.030	Issuance of short-term obligations—Procedure—Interest rate—Contracts for future sale.
39.50.040	Refunding and renewal of short-term obligations.
39.50.050	Short-term obligations—Security.
39.50.060	Nonvoted general indebtedness.
39.50.070	Funds for payment of principal and interest.
39.50.900	Chapter cumulative—Applicability to joint operating agencies.

39.50.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Governing body" means the legislative authority of a municipal corporation by whatever name designated;

(2) "Local improvement district" includes local improvement districts, utility local improvement districts, road improvement districts, and other improvement districts that a municipal corporation is authorized by law to establish;

(3) "Municipal corporation" means any city, town, county, water-sewer district, school district, port district, public utility district, metropolitan municipal corporation, public transportation benefit area, park and recreation district, irrigation district, fire protection district or any other municipal or quasi municipal corporation described as such by statute, or regional transit authority, except joint operating agencies under chapter 43.52 RCW;

(4) "Ordinance" means an ordinance of a city or town or resolution or other instrument by which the governing body of the municipal corporation exercising any power under this chapter takes formal action and adopts legislative provisions and matters of some permanency; and

(5) "Short-term obligations" are warrants, notes, capital leases, or other evidences of indebtedness, except bonds. [2001 c 299 § 16; 1999 c 153 § 54; 1998 c 106 § 8; 1985 c 332 § 8; 1982 c 216 § 2.]

Additional notes found at www.leg.wa.gov

39.50.020 Short-term obligations authorized. Subject to any applicable budget requirements, any municipal corporation may borrow money and issue short-term obligations as provided in this chapter, the proceeds of which may be used for any lawful purpose of the municipal corporation. Short-term obligations may be issued in anticipation of the receipt of revenues, taxes, or grants or the sale of (1) general obligation bonds if the bonds may be issued without the assent of the voters or if previously ratified by the voters; (2) revenue bonds if the bonds have been authorized by ordinance; (3) local improvement district bonds if the bonds have been authorized by ordinance. These short-term obligations shall be repaid out of money derived from the source or sources in anticipation of which they were issued or from any money otherwise legally available for this purpose. [1982 c 216 § 3.]

39.50.030 Issuance of short-term obligations—Procedure—Interest rate—Contracts for future sale. (1) The issuance of short-term obligations shall be authorized by ordinance of the governing body which ordinance shall fix the maximum amount of the obligations to be issued or, if applicable, the maximum amount which may be outstanding at any time, the maximum term and interest rate or rates to be borne thereby, the manner of sale, maximum price, form including bearer or registered as provided in RCW 39.46.030, terms, conditions, and the covenants thereof. For those municipalities and taxing and assessment districts for which the county treasurer is not the designated treasurer by law, the ordinance may provide for designation and employment of a paying agent for the short-term obligations and may authorize a designated representative of the municipal corporation, subject to the terms of the ordinance in selling and delivering short-term obligations authorized and fixing the dates, price, interest rates, and other details as may be specified in the ordinance. For the county and those taxing and assessment districts for which the county treasurer is the designated treasurer by law or other appointment, the county treasurer shall be notified thirty days in advance of borrowing under this chapter and will be the designated paying agent to act on its behalf for all payments of principal, interest, and penalties for that obligation, subject to the terms of the ordinance in selling and delivering short-term obligations authorized and fixing the dates, price, interest rates, and other details as may be specified in the ordinance. Short-term obligations issued under this section shall bear such fixed or variable rate or rates of interest as the governing body considers to be in the best interests of the municipal corporation. Variable rates of interest may be fixed in relationship to such standard or index as the governing body designates.

The governing body may make contracts for the future sale of short-term obligations pursuant to which the purchasers are committed to purchase the short-term obligations from time to time on the terms and conditions stated in the contract, and may pay such consideration as it considers proper for the commitments. Short-term obligations issued in anticipation of the receipt of taxes shall be paid within six months from the end of the fiscal year in which they are issued. For the purpose of this subsection, short-term obligations issued in anticipation of the sale of general obligation bonds shall not be considered to be obligations issued in anticipation of the receipt of taxes.

(2) Notwithstanding subsection (1) of this section, such short-term obligations may be issued and sold in accordance with chapter 39.46 RCW. [2001 c 299 § 17; 1995 c 38 § 9; 1994 c 301 § 13; 1985 c 71 § 1; 1983 c 167 § 112; 1982 c 216 § 4.]

Additional notes found at www.leg.wa.gov

39.50.040 Refunding and renewal of short-term obligations. Short-term obligations may, from time to time, be renewed or refunded by the issuance of short-term obligations and may be funded by the issuance of revenue, local improvement district, special assessment, or general obligation bonds. Short-term obligations payable from taxes shall not be renewed or refunded to a date later than six months from the end of the fiscal year in which the original short-term obligation was issued. For the purpose of this section, short-term obligations issued in anticipation of the sale of general obligation bonds shall not be considered to be short-term obligations payable from taxes. [1985 c 332 § 9; 1985 c 71 § 2; 1982 c 216 § 5.]

39.50.050 Short-term obligations—Security. Short-term obligations issued in anticipation of the receipt of taxes or the sale of general obligation bonds and the interest thereon shall be secured by the full faith, credit, taxing power, and resources of the municipal corporation. Short-term obligations issued in anticipation of the sale of revenue or local improvement district bonds and the interest thereon may be secured in the same manner as the revenue and local improvement district bonds in anticipation of which the obligations are issued and by an undertaking to issue the bonds. Short-term obligations issued in anticipation of grants, loans, or other sources of money shall be secured in the manner set forth in the ordinance authorizing their issuance. [1982 c 216 § 6.]

39.50.060 Nonvoted general indebtedness. A municipal corporation may incur nonvoted general indebtedness under this chapter up to an amount which, when added to all other authorized and outstanding nonvoted indebtedness of the municipal corporation, is equal to the maximum amount of indebtedness the municipal corporation is otherwise permitted to incur without a vote of the electors. [1982 c 216 § 7.]

39.50.070 Funds for payment of principal and interest. For the purpose of providing funds for the payment of principal of and interest on short-term obligations, the governing body may authorize the creation of a special fund or

funds and provide for the payment from authorized sources to such funds of amounts sufficient to meet principal and interest requirements. [1982 c 216 § 8.]

39.50.900 Chapter cumulative—Applicability to joint operating agencies. The authority granted by this chapter shall be in addition and supplemental to any authority previously granted and shall not limit any other powers or authority previously granted to any municipal corporation. The authority granted by this chapter to public utility districts organized under Title 54 RCW shall not extend to joint operating agencies organized under chapter 43.52 RCW. [1982 c 216 § 9.]

Chapter 39.52 RCW FUNDING INDEBTEDNESS IN COUNTIES, CITIES, AND TOWNS

Sections

39.52.010	Issuance of funding bonds authorized.
39.52.015	Validation of prior bond issues.
39.52.020	Limitations on issuance of bonds.
39.52.035	Tax levy—Purpose.
39.52.050	"Corporate authorities" defined.

Cities and towns, ratification and funding of indebtedness: Chapter 35.40 RCW.

Metropolitan municipal corporations, funding and refunding bonds: RCW 35.58.470.

Port districts, funding and refunding indebtedness: Chapter 53.44 RCW.

Public utility districts, funding and refunding bonds: RCW 54.24.090.

School districts, refunding bonds: RCW 28A.530.040.

39.52.010 Issuance of funding bonds authorized. Any county, city, or town in the state of Washington which now has or may hereafter have an outstanding indebtedness evidenced by warrants or bonds, including warrants or bonds of any county, city, or town which are special fund obligations of and constitute a lien upon the waterworks or other public utilities of such county, city, or town, and are payable only from the income or funds derived or to be derived therefrom, whether issued originally within the limitations of the Constitution of this state, or of any law thereof, or whether such outstanding indebtedness has been or may hereafter be validated or legalized in the manner prescribed by law, may, by its corporate authorities, provide by ordinance or resolution for the issuance of funding bonds with which to take up and cancel such outstanding indebtedness in the manner hereinafter described, said bonds to constitute general obligations of such county, city, or town: PROVIDED, That special fund obligations payable only from the income funds of the public utility, shall not be refunded by the issuance of general municipal bonds where voter approval is required before general municipal bonds may be issued for such public utility purposes, unless such general municipal bonds shall have been previously authorized. Nothing in this chapter shall be so construed as to prevent any such county, city, or town from funding its indebtedness as now provided by law. [1995 2nd sp.s. c 17 § 6; 1984 c 186 § 36; 1917 c 145 § 1; 1895 c 170 § 1; RRS § 5617.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Additional notes found at www.leg.wa.gov

(2014 Ed.)

39.52.015 Validation of prior bond issues. That all bonds heretofore voted or issued, and which may have been or may hereafter be issued by any county, city or town, for any of the purposes authorized by the preceding section as hereby amended, including general fund bonds issued for the purpose of refunding special utility fund bonds or warrants, shall be validated and have the same force and effect as though said section had been in full force and effect at the time said bonds were either authorized or issued. [1917 c 145 § 2; RRS § 5618.]

39.52.020 Limitations on issuance of bonds. No bonds issued under this chapter shall be issued for a longer period than twenty years. Nothing in this chapter shall be deemed to authorize the issuing of any funding bonds which exceeds any constitutional or statutory limitations of indebtedness. Such bonds shall be issued and sold in accordance with chapters 39.46 and 39.53 RCW, exclusive of RCW 39.53.120. [1995 2nd sp.s. c 17 § 7; 1984 c 186 § 37; 1983 c 167 § 113; 1970 ex.s. c 56 § 60; 1969 ex.s. c 232 § 31; 1895 c 170 § 2; RRS § 5619.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Purpose—1970 ex.s. c 56: "Because market conditions are such that the state, state agencies, state colleges and universities, and the political subdivisions, municipal corporations and quasi municipal corporations of this state are finding it increasingly difficult and, in some cases, impossible to market bond issues and all other obligations, at the maximum permissible rate of interest payable on such bonds and obligations, it is the purpose of this 1970 amendatory act to remove all maximum rates of interest payable on such bonds and obligations." [1970 ex.s. c 56 § 1; 1969 ex.s. c 232 § 1.]

Bonds, form, terms of sale, payment, etc.: Chapter 39.44 RCW.

Additional notes found at www.leg.wa.gov

39.52.035 Tax levy—Purpose. The corporate authorities of any such county, city or town shall provide annually by ordinance or resolution for the levy and extension on the tax rolls of such county, city or town, and for the collection thereof, of a direct annual tax in addition to all other county, city or town taxes to be levied according to law, which shall be sufficient to meet the interest on all of said bonds promptly as the same matures, and also sufficient to fully pay each series of bonds as the same matures: PROVIDED, That such ordinance or resolution shall not be repealed until the levy therein provided for shall be fully paid, or the bonds both principal and interest shall be paid or canceled. [1895 c 170 § 4; RRS § 5621. Formerly RCW 39.52.030, part.]

39.52.050 "Corporate authorities" defined. The words "corporate authorities", used in this chapter, shall be held to mean the county legislative authority, or the council or commission of the city or town. [1984 c 186 § 38; 1895 c 170 § 6; RRS § 5623.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Chapter 39.53 RCW REFUNDING BOND ACT

Sections

39.53.010	Definitions.
39.53.020	Issuance authorized—Purposes—Saving to public body, criteria.
39.53.030	Refunding bonds may be exchanged for bonds to be refunded or sold.

[Title 39 RCW—page 89]

39.53.040	What bonds may be refunded—Refunding plans—Redemption of refunding bonds.
39.53.045	Bonds payable from special assessments—Not subject to refunding.
39.53.050	Refunding bonds, principal amount—Disposition of reserves held to secure the bonds to be refunded.
39.53.060	Application of proceeds of sale of refunding bonds and other funds—Investment in government obligations—Incidental expenses.
39.53.070	Application of proceeds of sale of refunding bonds and other funds—Contracts for safekeeping and application—Use to pay and secure refunding bonds—Pledge of revenues—Duty to provide sufficient money to accomplish refunding.
39.53.080	Pledge of revenues to payment of refunding bonds when amounts sufficient to pay revenue bonds to be refunded are irrevocably set aside.
39.53.090	Annual maturities of general obligation refunding bonds issued to refund voted general obligation bonds.
39.53.100	Use of deposit moneys and investments in computing indebtedness.
39.53.110	Refunding and other bonds may be issued in combination.
39.53.120	Refunding bonds to be issued in accordance with laws applicable to type of bonds to be refunded—Transfer of funds to applicable bond retirement account.
39.53.130	Amendment of power contracts pursuant to refunding of certain bond issues.
39.53.140	Issuance of general obligation refunding bonds to refund general obligation or revenue bonds.
39.53.900	Short title.
39.53.910	Additional authority—Effect as to other laws.
39.53.920	Severability—1965 ex.s. c 138.
39.53.921	Severability—1977 ex.s. c 262.

39.53.010 Definitions. Except where the context otherwise requires, the definitions in this section apply throughout this chapter:

(1) "Bond" means any revenue bond or general obligation bond.

(2) "General obligation bond" means any bond, note, warrant, certificate of indebtedness, or other obligation of a public body which constitutes an indebtedness within the meaning of the constitutional debt limitation.

(3) "Governing body" means the council, commission, board of commissioners, board of directors, board of trustees, board of regents, or other legislative body of the public body designated herein in which the legislative powers of the public body are vested. With respect to the state, "governing body" means the state finance committee.

(4) "Government obligations" means any of the following: (a) Direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America and bank certificates of deposit secured by such obligations; (b) bonds, debentures, notes, participation certificates, or other obligations issued by the banks for cooperatives, the federal intermediate credit bank, the federal home loan bank system, the export-import bank of the United States, federal land banks, or the federal national mortgage association; (c) public housing bonds and project notes fully secured by contracts with the United States; and (d) obligations of financial institutions insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation, to the extent insured or to the extent guaranteed as permitted under any other provision of state law.

(5) "Issuer" means the public body issuing any bond or bonds.

(6) "Ordinance" means an ordinance of a city or town, or ordinance, resolution or other instrument by which the governing body of the public body exercising any power under

this chapter takes formal action and adopts legislative provisions and matters of some permanency.

(7) "Public body" means the state of Washington, its agencies, institutions, political subdivisions, and municipal and quasi-municipal corporations now or hereafter existing under the laws of the state of Washington.

(8) "Refunding bonds" means bonds issued for the purpose of paying the principal of or redemption premiums or interest on any outstanding bonds of the issuer, its predecessor, or a related public body.

(9) "Refunding plan" means the plan adopted by an ordinance of a public body to issue refunding bonds and redeem the bonds to be refunded.

(10) "Revenue bond" means any bond, note, warrant, certificate of indebtedness, or other obligation for the payment of money that is payable from designated revenues, special assessments, or a special fund but excluding any obligation constituting an indebtedness within the meaning of the constitutional debt limitation. [1999 c 230 § 1; 1984 c 186 § 68; 1973 1st ex.s. c 25 § 1; 1965 ex.s. c 138 § 2.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Additional notes found at www.leg.wa.gov

39.53.020 Issuance authorized—Purposes—Saving to public body, criteria. The governing body of any public body may by ordinance provide for the issuance of refunding bonds without an election (1) in order to pay or discharge all or any part of an outstanding series or issue of bonds, including any redemption premiums or interest thereon, in arrears or about to become due, and for which sufficient funds are not available, (2) when necessary or in the best interest of the public body to modify debt service or reserve requirements, sources of payment, covenants, or other terms of the bonds to be refunded, or (3) in order to effect a saving to the public body. To determine whether or not a saving will be effected, consideration shall be given to the interest to fixed maturities of the refunding bonds and the bonds to be refunded, the costs of issuance of the refunding bonds, including any sale discount, the redemption premiums, if any, to be paid, and the known earned income from the investment of the refunding bond proceeds pending redemption of the bonds to be refunded. [1999 c 230 § 2; 1977 ex.s. c 262 § 1; 1974 ex.s. c 111 § 2; 1965 ex.s. c 138 § 3.]

Additional notes found at www.leg.wa.gov

39.53.030 Refunding bonds may be exchanged for bonds to be refunded or sold. Any refunding bonds issued may be delivered in exchange for the bonds to be refunded or may be sold in such manner and at such price as the governing body may in its discretion determine advisable. [1999 c 230 § 3; 1973 1st ex.s. c 25 § 2; 1965 ex.s. c 138 § 4.]

Additional notes found at www.leg.wa.gov

39.53.040 What bonds may be refunded—Refunding plans—Redemption of refunding bonds. Bonds may be refunded under this chapter or under any other law of this state which authorizes the issuance of refunding bonds. In any refunding plan under this chapter the governing body shall provide irrevocably in the ordinance authorizing the issuance of the advance refunding bonds for the redemption or payment of the bonds to be refunded.

The ordinance authorizing the issuance of refunding bonds under this chapter may contain such provisions for the redemption of the refunding bonds prior to maturity and for payment of a premium upon such redemption as the governing body in its discretion may determine advisable. [1999 c 230 § 4; 1977 ex.s. c 262 § 2; 1973 1st ex.s. c 25 § 3; 1965 ex.s. c 138 § 5.]

Additional notes found at www.leg.wa.gov

39.53.045 Bonds payable from special assessments—Not subject to refunding. Bonds payable solely from special assessments or special assessments and a guaranty fund issued on or prior to June 7, 1984, shall not be subject to refunding under this chapter. [1984 c 186 § 69.]

Purpose—1984 c 186: See note following RCW 39.46.110.

39.53.050 Refunding bonds, principal amount—Disposition of reserves held to secure the bonds to be refunded. The principal amount of refunding bonds may exceed the principal amount of the bonds to be refunded by an amount deemed reasonably required to effect such refunding. The principal amount of the refunding bonds may be less than or the same as the principal amount of the bonds to be refunded so long as provision is duly and sufficiently made for the retirement or redemption of such bonds to be refunded. Any reserves held to secure the bonds to be refunded, or other available money, may be used to accomplish the refunding in accordance with the refunding plan. Reserves not so used shall be pledged as security for the refunding bonds to the extent the reserves, if any, are required. The balance of any such reserves may be used for any lawful purpose. [1999 c 230 § 5; 1983 1st ex.s. c 69 § 1; 1977 ex.s. c 262 § 3; 1974 ex.s. c 111 § 3; 1965 ex.s. c 138 § 6.]

Additional notes found at www.leg.wa.gov

39.53.060 Application of proceeds of sale of refunding bonds and other funds—Investment in government obligations—Incidental expenses. Prior to the application of the proceeds derived from the sale of refunding bonds to the purposes for which such bonds have been issued, such proceeds, together with any other funds the governing body may set aside for the payment of the bonds to be refunded, may be invested and reinvested only in government obligations maturing or having guaranteed redemption prices at the option of the holder at such time or times as may be required to provide funds sufficient to pay principal, interest and redemption premiums, if any, in accordance with the refunding plan. To the extent incidental expenses have been capitalized, such bond proceeds may be used to defray such expenses. [1999 c 230 § 6; 1973 1st ex.s. c 25 § 4; 1965 ex.s. c 138 § 7.]

Additional notes found at www.leg.wa.gov

39.53.070 Application of proceeds of sale of refunding bonds and other funds—Contracts for safekeeping and application—Use to pay and secure refunding bonds—Pledge of revenues—Duty to provide sufficient money to accomplish refunding. The governing body may contract with respect to the safekeeping and application of the refunding bond proceeds and other funds included there-

with and the income therefrom including the right to appoint a trustee which may be any trust company or state or national bank having powers of a trust company within or without the state of Washington. The governing body may provide in the refunding plan that until such moneys are required to redeem or retire the bonds to be refunded, the refunding bond proceeds and other funds, and the income therefrom shall be used to pay and secure the payment of the principal of and interest on the refunding bonds. The governing body may additionally pledge for the payment of revenue refunding bonds any revenues which might legally be pledged for the payment of revenue bonds of the issuer of the type to be refunded. Provisions must be made by the governing body for moneys sufficient in amount to accomplish the refunding as scheduled. [1999 c 230 § 7; 1973 1st ex.s. c 25 § 5; 1965 ex.s. c 138 § 8.]

Additional notes found at www.leg.wa.gov

39.53.080 Pledge of revenues to payment of refunding bonds when amounts sufficient to pay revenue bonds to be refunded are irrevocably set aside. When a public body has irrevocably set aside for and pledged to the payment of revenue bonds to be refunded refunding bond proceeds and other moneys in amounts which together with known earned income from the investment thereof are sufficient in amount to pay the principal of and interest and any redemption premiums on such revenue bonds as the same become due and to accomplish the refunding as scheduled, the governing body may provide that the refunding revenue bonds shall be payable from any source which, either at the time of the issuance of the refunding bonds or the revenue bonds to be refunded, might legally be or have been pledged for the payment of the revenue bonds to be refunded to the extent it may legally do so, notwithstanding the pledge of such revenues for the payment of the revenue bonds to be refunded. [1999 c 230 § 8; 1965 ex.s. c 138 § 9.]

Additional notes found at www.leg.wa.gov

39.53.090 Annual maturities of general obligation refunding bonds issued to refund voted general obligation bonds. The various annual maturities of general obligation refunding bonds issued to refund voted general obligation bonds shall not extend over a longer period of time than the bonds to be refunded. Such maturities may be changed in amount or shortened in term if the estimated respective annual principal and interest requirements of the refunding bonds, computed upon the anticipated effective interest rate the governing body shall in its discretion determine will be borne by such bonds, will not exceed the respective annual principal and interest requirements of the bonds to be refunded, except the issuer may increase the principal amount of annual maturities for the purpose of rounding out maturities to the nearest five thousand dollars. [1999 c 230 § 9; 1965 ex.s. c 138 § 10.]

Additional notes found at www.leg.wa.gov

39.53.100 Use of deposit moneys and investments in computing indebtedness. In computing indebtedness for the purpose of any constitutional or statutory debt limitation there shall be deducted from the amount of outstanding indebtedness the amounts of money and investments credited

to or on deposit for general obligation bond retirement. [1973 1st ex.s. c 25 § 6; 1965 ex.s. c 138 § 11.]

39.53.110 Refunding and other bonds may be issued in combination. Refunding bonds and bonds for any other purpose or purposes authorized may be issued separately or issued in combination in one or more series or issues by the same issuer. [1999 c 230 § 10; 1965 ex.s. c 138 § 12.]

Additional notes found at www.leg.wa.gov

39.53.120 Refunding bonds to be issued in accordance with laws applicable to type of bonds to be refunded—Transfer of funds to applicable bond retirement account. (1) Except as specifically provided in this chapter, refunding bonds issued under this chapter shall be issued in accordance with the provisions of law applicable to the type of bonds of the issuer to be refunded, at the time of the issuance of either the refunding bonds or the bonds to be refunded.

(2) For all refunding bonds previously or hereafter issued by the state of Washington under this chapter, the state treasurer shall transfer from the designated funds or accounts the amount necessary for the payment of principal of and interest on the refunding bonds to the applicable bond retirement account for such refunding bonds on each date on which the interest or principal and interest payment is due on such refunding bonds unless an earlier transfer date, as determined by the state finance committee, is necessary or appropriate to the financial framework of the refunding bonds. [2005 c 487 § 7; 1999 c 230 § 11; 1965 ex.s. c 138 § 13.]

Severability—Effective date—2005 c 487: See RCW 43.99S.900 and 43.99S.901.

Additional notes found at www.leg.wa.gov

39.53.130 Amendment of power contracts pursuant to refunding of certain bond issues. If bonds are to be issued under this chapter for refunding of any bonds issued specifically to finance any electric power and energy project or facility and there are contracts in existence for the sale of electric power and energy generated by such project or facility wherein the cost of power to a purchaser specifically includes a portion of the debt service on the bonds to be refunded, such power contracts shall be amended to reflect in each year during the remaining terms of such contracts that portion of the savings to be realized from such refunding during each such year equal to the percentage of power output from such project or facility purchased by the purchaser under such power contracts. Nothing in this chapter shall be construed to alter, modify or change any such power contracts without the mutual agreement of the parties thereto. [1965 ex.s. c 138 § 15.]

39.53.140 Issuance of general obligation refunding bonds to refund general obligation or revenue bonds. Any public body may issue general obligation refunding bonds to refund any general obligation or revenue bonds of such issuer or its agencies or instrumentalities. The payment of general obligation refunding bonds may be additionally secured by a pledge of the revenues pledged to the payment of the revenue bonds to be refunded.

If the payment of revenue bonds to be refunded by general obligation bonds of the state is secured by (1) fees collected by the state as license fees for motor vehicles, or (2) excise taxes collected by the state on the sale, distribution or use of motor vehicle fuel, or (3) interest on the permanent school fund, then the state shall also pledge to the payment of such refunding bonds the same fees, excise taxes, or interest that were pledged to the payment of the revenue bonds to be refunded.

Any public body may issue revenue refunding bonds to refund any general obligation of such issuer or its agencies or instrumentalities if the bonds to be refunded were issued for purposes for which those revenue refunding bonds could be issued. [1999 c 230 § 12; 1974 ex.s. c 111 § 4; 1973 1st ex.s. c 25 § 7.]

Additional notes found at www.leg.wa.gov

39.53.900 Short title. This chapter shall be known as the "Refunding Bond Act." [1965 ex.s. c 138 § 1.]

39.53.910 Additional authority—Effect as to other laws. The authority of a public body to issue refunding bonds pursuant to this chapter is additional to any existing authority to issue such bonds and nothing in this chapter shall prevent the issuance of such bonds pursuant to any other law, and this chapter shall not be construed to amend any existing law authorizing the issuance of refunding bonds by a public body. [1965 ex.s. c 138 § 14.]

39.53.920 Severability—1965 ex.s. c 138. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1965 ex.s. c 138 § 16.]

39.53.921 Severability—1977 ex.s. c 262. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 262 § 4.]

Chapter 39.56 RCW WARRANTS

Sections

- 39.56.020 Rate on municipal warrants.
- 39.56.030 Issuing officer to fix rate.
- 39.56.040 Cancellation of municipal warrants.

Interest on judgments: RCW 4.56.110.

Usurious rates of interest: Chapter 19.52 RCW.

39.56.020 Rate on municipal warrants. All county, city, town and school warrants, and all warrants or other evidences of indebtedness, drawn upon or payable from any public funds, shall bear interest at a rate or rates as authorized by the issuing authority. [1970 ex.s. c 56 § 106; 1899 c 80 § 4; RRS § 7302. Prior: 1895 c 136 § 3.]

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Cities and towns, local improvement district warrants, interest rate: RCW 35.45.130.

39.56.030 Issuing officer to fix rate. It shall be the duty of every public officer issuing public warrants to make monthly investigation to ascertain the market value of the current warrants issued by him or her, and he or she shall, so far as practicable, fix the rate of interest on the warrants issued by him or her during the ensuing month so that the par value shall be the market value thereof. [2011 c 336 § 810; 1981 c 156 § 16; 1981 c 10 § 4; 1899 c 80 § 5; RRS § 7303.]

39.56.040 Cancellation of municipal warrants. Registered or interest bearing warrants of any municipal corporation not presented within one year of the date of their call, or other warrants not presented within one year of their issue, shall be canceled by passage of a resolution of the governing body of the municipal corporation, and upon notice of the passage of such resolution the auditor of the municipal corporation and the treasurer of the municipal corporation shall transfer all records of such warrants so as to leave the funds as if such warrants had never been drawn. [1975 1st ex.s. c 131 § 1.]

Chapter 39.58 RCW

PUBLIC FUNDS—DEPOSITS AND INVESTMENTS— PUBLIC DEPOSITARIES

Sections

39.58.010	Definitions.
39.58.020	Public funds—Protection against loss.
39.58.030	Public deposit protection commission—State finance committee constitutes—Proceedings.
39.58.040	General powers of commission.
39.58.045	Financial institutions claiming exemption from sales, use or ad valorem taxes—Notification of commission.
39.58.050	Collateral for deposits—Segregation—Eligible securities.
39.58.060	Loss in a public depository—Procedure for payment.
39.58.070	Subrogation of commission to depositor's rights—Sums received from distribution of assets, payment.
39.58.080	Deposit of public funds in public depository required—Deposits in institutions located outside the state.
39.58.085	Demand accounts in out-of-state and alien banks—Limitations.
39.58.090	Authority to secure deposits in accordance with chapter—Bonds and securities for deposits dispensed with.
39.58.100	Reports of public depositories—Certification by director of financial institutions.
39.58.103	Notice to commission of reduced net worth.
39.58.105	Investigation of financial institution applying to become public depository—Report.
39.58.108	Requirements to become depository.
39.58.120	Interest rates.
39.58.130	Investment deposits—Net worth of public depository.
39.58.135	Limitations on deposits.
39.58.140	Liability of treasurers and state treasurer.
39.58.155	Statewide custodian—Exemption from chapter.
39.58.200	Public depository pool—Uniform treatment by commission.
39.58.210	Failure to furnish information—Failure to comply with chapter—Revocation of authority—Costs for noncompliance.
39.58.220	Commission—Delegation of authority—Exception.
39.58.230	Liability after merger, takeover, or acquisition.
39.58.240	Credit union as public depository—Conditions.
39.58.750	Receipt, disbursement, or transfer of public funds by wire or other electronic communication means authorized.

Department of financial institutions: Chapter 43.320 RCW.

State investment board: Chapter 43.33A RCW.

Surplus funds in state treasury, investment program: Chapter 43.86A RCW.

39.58.010 Definitions. In this chapter, unless the context otherwise requires:

(1) "Capitalization" means the measure or measures of capitalization, other than net worth, of a depository applying for designation as or operating as a public depository pursu-

ant to this chapter, based upon regulatory standards of financial institution capitalization adopted by rule or resolution of the commission after consultation with the director of the department of financial institutions;

(2) "Collateral" means the particular assets pledged as security to insure payment or performance of the obligations under this chapter as enumerated in RCW 39.58.050;

(3) "Commission" means the Washington public deposit protection commission created under RCW 39.58.030;

(4) "Commission report" means a formal accounting rendered by all public depositories to the commission in response to a demand for specific information made by the commission detailing pertinent affairs of each public depository as of the close of business on a specified date, which is the "commission report date." "Commission report due date" is the last day for the timely filing of a commission report;

(5) "Depository pledge agreement" means a tripartite agreement executed by the commission with a financial institution and its designated trustee. Such agreement shall be approved by the directors or the loan committee of the financial institution and shall continuously be a record of the financial institution. New securities may be pledged under this agreement in substitution of or in addition to securities originally pledged without executing a new agreement;

(6) "Director of the department of financial institutions" means the Washington state director of the department of financial institutions;

(7) "Eligible collateral" means securities which are enumerated in RCW 39.58.050 (5) and (6) as eligible collateral for public deposits;

(8) "Financial institution" means any national or state chartered commercial bank or trust company, savings bank, or savings association, or branch or branches thereof, located in this state and lawfully engaged in business;

(9) "Investment deposits" means time deposits, money market deposit accounts, and savings deposits of public funds available for investment;

(10) "Liquidity" means the measure or measures of liquidity of a depository applying for designation as or operating as a public depository pursuant to this chapter, based upon regulatory standards of financial institution liquidity adopted by rule or resolution of the commission after consultation with the director of the department of financial institutions;

(11) "Loss" means the issuance of an order by a regulatory or supervisory authority or a court of competent jurisdiction (a) restraining a public depository from making payments of deposit liabilities or (b) appointing a receiver for a public depository;

(12) "Maximum liability," with reference to a public depository's liability under this chapter for loss per occurrence by another public depository, on any given date means:

(a) A sum equal to ten percent of:

(i) All uninsured public deposits held by a public depository that has not incurred a loss by the then most recent commission report date; or

(ii) The average of the balances of said uninsured public deposits on the last four immediately preceding reports required pursuant to RCW 39.58.100, whichever amount is greater; or

(b) Such other sum or measure as the commission may from time to time set by resolution according to criteria established by rule, consistent with the commission's broad administrative discretion to achieve the objective of RCW 39.58.020.

As long as the uninsured public deposits of a public depository are one hundred percent collateralized by eligible collateral as provided for in RCW 39.58.050, the "maximum liability" of a public depository that has not incurred a loss may not exceed the amount set forth in (a) of this subsection.

This definition of "maximum liability" does not limit the authority of the commission to adjust the collateral requirements of public depositories pursuant to RCW 39.58.040;

(13) "Net worth" of a public depository means (a) the equity capital as reported to its primary regulatory authority on the quarterly report of condition or statement of condition, or other required report required by its primary regulatory authority or federal deposit insurer, and may include capital notes and debentures which are subordinate to the interests of depositors, or (b) equity capital adjusted by rule or resolution of the commission after consultation with the director of the department of financial institutions;

(14) "Public deposit" means public funds on deposit with a public depository;

(15) "Public depository" means a financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state, which has been approved by the commission to hold public deposits, and which has segregated for the benefit of the commission eligible collateral having a value of not less than its maximum liability;

(16) "Public funds" means moneys under the control of a treasurer, the state treasurer, or custodian belonging to, or held for the benefit of, the state or any of its political subdivisions, public corporations, municipal corporations, agencies, courts, boards, commissions, or committees, including moneys held as trustee, agent, or bailee belonging to, or held for the benefit of, the state or any of its political subdivisions, public corporations, municipal corporations, agencies, courts, boards, commissions, or committees;

(17) "Public funds available for investment" means such public funds as are in excess of the anticipated cash needs throughout the duration of the contemplated investment period;

(18) "State public depository" means a Washington state-chartered financial institution that is authorized as a public depository under this chapter;

(19) "State treasurer" means the treasurer of the state of Washington;

(20) "Treasurer" means a county treasurer, a city treasurer, a treasurer of any other municipal corporation, and any other custodian of public funds, except the state treasurer;

(21) "Trustee" means a third-party safekeeping agent which has completed a depository pledge agreement with a public depository and the commission. Such third-party safekeeping agent may be the federal reserve bank of San Francisco, the federal home loan bank of Seattle, or such other third-party safekeeping agent approved by the commission. [2009 c 9 § 1; 1996 c 256 § 1; 1994 c 92 § 494; 1984 c 177 § 10; 1983 c 66 § 3; 1977 ex.s. c 95 § 1; 1975 1st ex.s. c 77 § 1; 1973 c 126 § 9; 1969 ex.s. c 193 § 1.]

Alphabetization—2009 c 9: "The code reviser shall alphabetize and renumber the definitions in RCW 39.58.010." [2009 c 9 § 19.]

Effective date—2009 c 9: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 6, 2009]." [2009 c 9 § 20.]

City depositories: Chapter 35.38 RCW.

County depositories: Chapter 36.48 RCW.

State depositories: Chapter 43.85 RCW.

Additional notes found at www.leg.wa.gov

39.58.020 Public funds—Protection against loss. All public funds deposited in public depositories, including investment deposits and accrued interest thereon, shall be protected against loss, as provided in this chapter. [1996 c 256 § 2; 1984 c 177 § 11; 1983 c 66 § 5; 1973 c 126 § 10; 1969 ex.s. c 193 § 2.]

Additional notes found at www.leg.wa.gov

39.58.030 Public deposit protection commission—State finance committee constitutes—Proceedings. The Washington public deposit protection commission shall be the state finance committee. The record of the proceedings of the public deposit protection commission shall be kept in the office of the commission and a duly certified copy thereof, or any part thereof, shall be admissible in evidence in any action or proceedings in any court of this state. [1983 c 66 § 6; 1969 ex.s. c 193 § 3.]

Additional notes found at www.leg.wa.gov

39.58.040 General powers of commission. The commission shall have the power and broad administrative discretion:

(1) To make and enforce regulations necessary and proper to the full and complete performance of its functions under this chapter;

(2) To require any public depository to furnish such information dealing with public deposits and the exact status of its capitalization, collateral, liquidity, and net worth as the commission shall request;

(3) To take such action as it deems best for the protection, collection, compromise or settlement of any claim arising in case of loss;

(4) To fix by rule or resolution, consistent with this chapter, the requirements for initial and continued qualification of financial institutions as public depositories on the basis of a depository's financial condition, including its capitalization, collateral, liquidity, and net worth, and fixing other terms and conditions consistent with this chapter, under which public deposits may be received and held;

(5) To make and enforce rules setting forth criteria for the establishment by policy of standards governing matters that are subject to the commission's powers to fix requirements, terms, and conditions under subsection (4) of this section for a public depository, and, if these standards are not met, providing for additional collateral or other conditional or unconditional requirements or restrictions applicable to the public depository's right to receive or hold public deposits;

(6) To require additional or different types and amounts of collateral, or to restrict a public depository's right to

receive or hold public deposits if the standards for the financial condition of public depositories are not met;

(7) To fix the official date on which any loss shall be deemed to have occurred taking into consideration the orders, rules, and regulations of the supervisory authority of a public depository's primary regulatory authority and federal deposit insurer as they affect the failure or inability of a public depository to repay public deposits in full;

(8) In case loss occurs in more than one public depository, to determine the allocation and time of payment of any sums due to public depositors under this chapter; and

(9) To make and enforce sanctions against a public depository for noncompliance with the provisions of this chapter and rules or policies of the commission. [2009 c 9 § 2; 1996 c 256 § 3; 1986 c 25 § 2; 1984 c 177 § 12; 1983 c 66 § 7; 1975 1st ex.s. c 77 § 2; 1969 ex.s. c 193 § 4.]

Effective date—2009 c 9: See note following RCW 39.58.010.

Additional notes found at www.leg.wa.gov

39.58.045 Financial institutions claiming exemption from sales, use or ad valorem taxes—Notification of commission. The director of the department of revenue shall notify the public deposit protection commission quarterly on the first day of October, January, April, and July of the names and addresses of any financial institutions which have claimed exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state. [1983 c 66 § 4.]

Additional notes found at www.leg.wa.gov

39.58.050 Collateral for deposits—Segregation—Eligible securities. (1) Every public depository shall complete a depository pledge agreement with the commission and a trustee, and shall at all times maintain, segregated from its other assets, eligible collateral in the form of securities enumerated in this section having a value at least equal to its maximum liability and as otherwise prescribed in this chapter. Such collateral shall be segregated by deposit with the depository's trustee and shall be clearly designated as security for the benefit of public depositors under this chapter.

(2) Securities eligible as collateral shall be valued at market value, and the total market value of securities pledged in accordance with this chapter shall not be reduced by withdrawal or substitution of securities except by prior authorization, in writing, by the commission.

(3) The public depository shall have the right to make substitutions of an equal or greater amount of such collateral at any time.

(4) The income from the securities which have been segregated as collateral shall belong to the public depository without restriction.

(5) Each of the following enumerated classes of securities, providing there has been no default in the payment of principal or interest thereon, shall be eligible to qualify as collateral:

(a) Certificates, notes or bonds of the United States, or other obligations of the United States or its agencies, or of any corporation wholly owned by the government of the United States;

(b) State, county, municipal, or school district bonds or warrants of taxing districts of the state of Washington or any

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other state of the United States, provided that such bonds and warrants shall be only those found to be within the limit of indebtedness prescribed by law for the taxing district issuing them and to be general obligations;

(c) The obligations of any United States government-sponsored corporation whose obligations are or may become eligible as collateral for advances to member banks as determined by the board of governors of the federal reserve system;

(d) Bonds, notes, letters of credit, or other securities or evidence of indebtedness constituting the direct and general obligation of a federal home loan bank or federal reserve bank;

(e) Revenue bonds of this state or any authority, board, commission, committee, or similar agency thereof, and any municipality or taxing district of this state;

(f) Direct and general obligation bonds and warrants of any city, town, county, school district, port district, or other political subdivision of any state, having the power to levy general taxes, which are payable from general ad valorem taxes;

(g) Bonds issued by public utility districts as authorized under the provisions of Title 54 RCW, as now or hereafter amended;

(h) Bonds of any city of the state of Washington for the payment of which the entire revenues of the city's water system, power and light system, or both, less maintenance and operating costs, are irrevocably pledged, even though such bonds are not general obligations of such city.

(6) In addition to the securities enumerated in this section, every public depository may also segregate such bonds, securities, and other obligations as are designated to be authorized security for public deposits under the laws of this state.

(7) The commission may determine by rule or resolution whether any security, whether or not enumerated in this section, is or shall remain eligible as collateral when in the commission's judgment it is desirable or necessary to do so. [2009 c 9 § 4; 1996 c 256 § 4; 1989 c 97 § 4; 1984 c 177 § 13; 1983 c 66 § 8; 1975 1st ex.s. c 77 § 3; 1973 c 126 § 11; 1969 ex.s. c 193 § 5.]

Effective date—2009 c 9: See note following RCW 39.58.010.

Additional notes found at www.leg.wa.gov

39.58.060 Loss in a public depository—Procedure for payment. When the commission determines that a loss has occurred in a public depository, it shall as soon as possible make payment to the proper public officers of all funds subject to such loss, pursuant to the following procedures:

(1) For the purposes of determining the sums to be paid, the director of the department of financial institutions or the receiver shall, within twenty days after issuance of a restraining order or taking possession of any public depository, ascertain the amount of public funds on deposit therein as disclosed by its records and the amount thereof covered by deposit insurance and provide written verification of the amounts thereof to the commission and each public depositor;

(2) Within ten days after receipt of written verification, each public depositor shall furnish to the commission verified statements of its deposits in the public depository, including

the uninsured and uncollateralized status of the public deposits, as disclosed by its records;

(3) Upon receipt of written verification and statements, the commission shall ascertain and fix the amount of the public deposits, net after deduction of any amount received from deposit insurance and held collateral, and, after determining and declaring the apparent net loss, assess the same against all public depositaries, as follows: First, against the public depositary in which the loss occurred, to the extent of the full value of collateral segregated pursuant to this chapter; second, against all other public depositaries pro rata in proportion to the maximum liability of each depositary as it existed on the date of loss;

(4) Assessments made by the commission shall be payable on the second business day following demand, and in case of the failure of any public depositary so to pay, the commission shall take possession of the securities segregated as collateral by the depositary pursuant to this chapter and liquidate the same for the purpose of paying such assessment;

(5) Upon receipt of the assessment payments, the commission shall reimburse the public depositors of the public depositary in which the loss occurred to the extent of the depositary's net deposit liability to them;

(6) Any owner of public deposits receiving assessment proceeds shall provide a receivership certificate to the commission. [2009 c 9 § 5; 1996 c 256 § 5; 1983 c 66 § 9; 1973 c 126 § 12; 1969 ex.s. c 193 § 6.]

Effective date—2009 c 9: See note following RCW 39.58.010.

Additional notes found at www.leg.wa.gov

39.58.070 Subrogation of commission to depositor's rights—Sums received from distribution of assets, payment. Upon payment to any public depositor, the commission shall be subrogated to all of such depositor's right, title and interest against the public depositary in which the loss occurred and shall share in any distribution of its assets ratably with other depositors. Any sums received from any distribution shall be paid to the public depositors to the extent of any unpaid net deposit liability and the balance remaining shall be paid to the public depositaries against which assessments were made, pro rata in proportion to the assessments actually paid by each such depositary: PROVIDED, That the public depositary in which the loss occurred shall not share in any such distribution of the balance remaining. If the commission incurs expense in enforcing any such claim, the amount thereof shall be paid as a liquidation expense of the public depositary in which the loss occurred. [1996 c 256 § 7; 1973 c 126 § 13; 1969 ex.s. c 193 § 7.]

39.58.080 Deposit of public funds in public depositary required—Deposits in institutions located outside the state. (1) Except for funds deposited pursuant to a fiscal agency contract with the state fiscal agent or its correspondent bank, funds deposited pursuant to a custodial bank contract with the state's custodial bank, and funds deposited pursuant to a local government multistate joint self-insurance program as provided in RCW 48.62.081, no public funds shall be deposited in demand or investment deposits except in a public depositary located in this state or as otherwise expressly permitted by statute: PROVIDED, That the commission, or the chair upon delegation by the commission,

upon good cause shown, may authorize, for such time and upon such terms and conditions as the commission or chair deem appropriate, a treasurer to maintain a demand deposit account with a banking institution located outside the state of Washington solely for the purpose of transmitting money received to public depositaries in the state of Washington for deposit.

(2) Notwithstanding subsection (1) of this section, the commission, or the chair upon delegation by the commission, upon good cause shown, may authorize, for that time and upon the terms and conditions as the commission or chair deems appropriate, a treasurer to maintain a demand deposit account with a banking institution located outside the state of Washington for deposit of certain higher education endowment funds, for a specified instructional program or research project being performed outside the state of Washington. [2005 c 203 § 1; 1996 c 256 § 8; 1991 sp.s. c 30 § 27; 1986 c 160 § 1; 1984 c 177 § 14; 1983 c 66 § 11; 1969 ex.s. c 193 § 8.]

Additional notes found at www.leg.wa.gov

39.58.085 Demand accounts in out-of-state and alien banks—Limitations. (1)(a) The commission, or the chair upon delegation by the commission, may authorize state and local governmental entities to establish demand accounts in out-of-state and alien banks in an aggregate amount not to exceed one million dollars. No single governmental entity shall be authorized to hold more than fifty thousand dollars in one demand account.

(b) The governmental entities establishing such demand accounts shall be solely responsible for their proper and prudent management and shall bear total responsibility for any losses incurred by such accounts. Accounts established under the provisions of this section shall not be considered insured by the commission.

(c) The state auditor shall annually monitor compliance with this section and the financial status of such demand accounts.

(2) Subsection (1)(a) of this section does not apply to RCW 39.58.080(2). [2005 c 203 § 2; 1996 c 256 § 9; 1987 c 505 § 21; 1986 c 160 § 2.]

39.58.090 Authority to secure deposits in accordance with chapter—Bonds and securities for deposits dispensed with. All institutions located in this state which are permitted by the statutes of this state to hold and receive public funds shall have power to secure such deposits in accordance with this chapter. Except as provided in this chapter, no bond or other security shall be required of or given by any public depositary for any public funds on deposit. [1996 c 256 § 10; 1984 c 177 § 15; 1969 ex.s. c 193 § 9.]

39.58.100 Reports of public depositaries—Certification by director of financial institutions. (1) On or before each commission report due date, each public depositary shall render to the commission a written report, certified under oath, indicating the total amount of public funds on deposit held by it, the uninsured amount of those funds, the net worth of the depositary, and the amount and nature of eligible collateral then segregated for the benefit of the commission.

(2) The commission may instruct the director of the department of financial institutions to examine and thereafter certify as to the accuracy of any statement to the commission by any state public depository, or to provide such other examination report information or data as may be required by the commission. The type, content, and frequency of the reports may be determined by the director of the department of financial institutions, consistent with the requirements of the commission as defined by rule. [2009 c 9 § 7; 1996 c 256 § 11; 1984 c 177 § 16; 1983 c 66 § 12; 1969 ex.s. c 193 § 10.]

Effective date—2009 c 9: See note following RCW 39.58.010.

Additional notes found at www.leg.wa.gov

39.58.103 Notice to commission of reduced net worth. Each public depository shall notify the commission in writing within forty-eight hours, or by close of business of the next business day thereafter, of the happening of an event which causes its net worth to be reduced by an amount greater than ten percent of the amount shown as its net worth on the most recent report submitted pursuant to RCW 39.58.100. [2009 c 9 § 8; 1983 c 66 § 13; 1975 1st ex.s. c 77 § 4.]

Effective date—2009 c 9: See note following RCW 39.58.010.

Additional notes found at www.leg.wa.gov

39.58.105 Investigation of financial institution applying to become public depository—Report. (1) The commission may require the state auditor or the director of the department of financial institutions, to the extent of their respective authority under applicable federal and Washington state law, to thoroughly investigate and report to it concerning the condition of any financial institution which makes application to become a public depository, and may also as often as it deems necessary require the state auditor or the director of the department of financial institutions, to the extent of their respective authority under applicable federal and Washington state law, to make such investigation and report concerning the condition of any financial institution which has been designated as a public depository. The expense of all such investigations or reports shall be borne by the financial institution examined.

(2) In lieu of any such investigation or report, the commission may rely upon information made available to it or the director of the department of financial institutions by the office of the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, the federal reserve board, any state financial institutions regulatory agency, or any successor state or federal financial institutions regulatory agency, and any such information or data received by the commission shall be kept and maintained in the same manner and have the same protections as examination reports received by the commission from the director of the department of financial institutions pursuant to RCW *30.04.075(2)(h) and 32.04.220(2)(h).

(3) The director of the department of financial institutions shall in addition advise the commission of any action he or she has directed any state public depository to take which will result in a reduction of greater than ten percent of the net worth of such depository as shown on the most recent report it submitted pursuant to RCW 39.58.100. [2009 c 9 § 9; 1996 c 256 § 12; 1983 c 66 § 14; 1975 1st ex.s. c 77 § 5.]

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***Reviser's note:** RCW 30.04.075 was recodified as RCW 30A.04.075 pursuant to 2014 c 37 § 4, effective January 5, 2015.

Effective date—2009 c 9: See note following RCW 39.58.010.

Additional notes found at www.leg.wa.gov

39.58.108 Requirements to become depository. Any financial institution may become, and thereafter operate as, a public depository upon approval by the commission and segregation of collateral in the manner as set forth in this chapter, and subject to compliance with all rules and policies adopted by the commission. A public depository shall at all times pledge and segregate eligible securities in an amount established by the commission by rule or noticed resolution. [2009 c 9 § 10; 1996 c 256 § 13; 1984 c 177 § 17; 1983 c 66 § 15; 1975 1st ex.s. c 77 § 6.]

Effective date—2009 c 9: See note following RCW 39.58.010.

Additional notes found at www.leg.wa.gov

39.58.120 Interest rates. Time deposits issued pursuant to this chapter shall bear interest at a rate not in excess of the maximum rate permitted by any applicable governmental regulation. [1974 ex.s. c 50 § 1; 1969 ex.s. c 193 § 12.]

39.58.130 Investment deposits—Net worth of public depository. A treasurer and the state treasurer are authorized to deposit in a public depository any public funds available for investment and secured by collateral in accordance with the provisions of this chapter, and receive interest thereon. The authority provided by this section is additional to any authority now or hereafter provided by law for the investment or deposit of public funds by any such treasurer: PROVIDED, That in no case shall the aggregate of demand and investment deposits of public funds by any such treasurer in any one public depository exceed at any time the net worth of that depository. If a public depository's net worth is reduced, a treasurer and the state treasurer may allow public funds on deposit in excess of the reduced net worth to remain until maturity upon pledging by the depository of eligible securities valued at market value in an amount at least equal to the amount of the excess deposits. The collateral shall be segregated as provided in RCW 39.58.050. If the additional securities required by this section are not pledged by the depository, the depository shall permit withdrawal prior to maturity by the treasurer of deposits, including accrued interest, in accordance with applicable statutes and governmental regulations. [2009 c 9 § 11; 1996 c 256 § 14; 1984 c 177 § 18; 1983 c 66 § 16; 1969 ex.s. c 193 § 13.]

Effective date—2009 c 9: See note following RCW 39.58.010.

Additional notes found at www.leg.wa.gov

39.58.135 Limitations on deposits. Notwithstanding RCW 39.58.130, (1) aggregate deposits received by a public depository from all treasurers and the state treasurer shall not exceed at any time one hundred fifty percent of the value of the depository's net worth, nor (2) shall the aggregate deposits received by any public depository exceed thirty percent of the total aggregate deposits of all public treasurers in all depositories as determined by the public deposit protection commission. However, a public depository may receive deposits in excess of the limits provided in this section if eligible securities, as prescribed in RCW 39.58.050, are pledged as collat-

eral in an amount equal to one hundred percent of the value of deposits received in excess of the limitations prescribed in this section. [2009 c 9 § 12; 1996 c 256 § 15; 1986 c 25 § 1; 1984 c 177 § 19.]

Effective date—2009 c 9: See note following RCW 39.58.010.

39.58.140 Liability of treasurers and state treasurer. When deposits are made in accordance with this chapter, a treasurer and the state treasurer shall not be liable for any loss thereof resulting from the failure or default of any public depository without fault or neglect on his or her part or on the part of his or her assistants or clerks. [2009 c 9 § 13; 1996 c 256 § 16; 1969 ex.s. c 193 § 29.]

Effective date—2009 c 9: See note following RCW 39.58.010.

Liability of state treasurer: RCW 43.85.070.

39.58.155 Statewide custodian—Exemption from chapter. A statewide custodian under RCW 43.08.280 may be exempted from the requirements of this chapter, based on rules adopted by the public deposit protection commission. [1999 c 293 § 3.]

Purpose—Effective date—1999 c 293: See notes following RCW 43.08.280.

39.58.200 Public depository pool—Uniform treatment by commission. For the purposes of this chapter, the commission shall include all public depositories in a single public depository pool. All public depositories, as defined in RCW 39.58.010, shall be treated uniformly by the commission without regard to distinctions in the nature of its financial institution charter. [2009 c 9 § 3.]

Effective date—2009 c 9: See note following RCW 39.58.010.

39.58.210 Failure to furnish information—Failure to comply with chapter—Revocation of authority—Costs for noncompliance. If a depository neglects or refuses to promptly and accurately furnish, or to allow verification of, any required information requested by the commission or by the director of the department of financial institutions when acting on behalf of the commission pursuant to this chapter, or if a public depository otherwise fails to comply with this chapter or any rules or policies of the commission, the commission may at its option deny or revoke the authority of such depository to act as a public depository pursuant to this chapter, or otherwise suspend such depository from receiving or holding public deposits until such time as the depository receives the information or complies with the commission's rules and policies. The commission shall have the authority to assess by rule costs for a depository's noncompliance with this chapter and rules and resolutions adopted pursuant to this chapter. [2009 c 9 § 15.]

Effective date—2009 c 9: See note following RCW 39.58.010.

39.58.220 Commission—Delegation of authority—Exception. The commission may by resolution delegate all of its authority to the state treasurer except rule making. [2009 c 9 § 16.]

Effective date—2009 c 9: See note following RCW 39.58.010.

39.58.230 Liability after merger, takeover, or acquisition. The liability of a public depository under this chapter

shall not be altered by any merger, takeover, or acquisition, except to the extent that such liability is assumed by agreement or operation of law by the successor entity or resulting financial institution. [2009 c 9 § 17.]

Effective date—2009 c 9: See note following RCW 39.58.010.

39.58.240 Credit union as public depository—Conditions. (1) Solely for the purpose of receiving public deposits that may total no more than the maximum deposit insured by the national credit union share insurance fund, a credit union is a public depository subject to RCW 39.58.040 and 39.58.100. The maximum deposit applies to all funds attributable to any one depositor of public funds in any one credit union. A credit union is not a public depository for any other purpose under this chapter, including but not limited to inclusion in the single public depository pool under RCW 39.58.200.

(2) For the purposes of this section, a credit union includes a state-chartered credit union chartered under chapter 31.12 RCW, or a credit union chartered under federal law. [2012 c 26 § 1; 2010 c 36 § 1.]

Effective date—2010 c 36: "This act takes effect July 1, 2011." [2010 c 36 § 2.]

39.58.750 Receipt, disbursement, or transfer of public funds by wire or other electronic communication means authorized. Notwithstanding any provision of law to the contrary, the state treasurer or any treasurer or other custodian of public funds may receive, disburse, or transfer public funds under his or her jurisdiction by means of wire or other electronic communication in accordance with accounting standards established by the state auditor under RCW 43.09.200 with regard to treasurers of municipalities or other custodians or by the office of financial management under RCW 43.88.160 in the case of the state treasurer and other state custodians to safeguard and insure accountability for the funds involved. [2009 c 9 § 14; 1996 c 256 § 17; 1981 c 101 § 1; 1979 c 151 § 48; 1977 ex.s. c 15 § 1. Formerly RCW 39.58.150.]

Effective date—2009 c 9: See note following RCW 39.58.010.

Additional notes found at www.leg.wa.gov

Chapter 39.59 RCW

PUBLIC FUNDS—AUTHORIZED INVESTMENTS

Sections

39.59.010	Definitions.
39.59.020	Authorized investments—Bonds, warrants, and other investments.
39.59.030	Authorized investments—Mutual funds and money market funds.
39.59.900	Severability—1988 c 281.

39.59.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Bond" means any agreement which may or may not be represented by a physical instrument, including but not limited to bonds, notes, warrants, or certificates of indebtedness, that evidences an obligation under which the issuer agrees to pay a specified amount of money, with or without

interest, at a designated time or times either to registered owners or bearers.

(2) "Local government" means any county, city, town, special purpose district, political subdivision, municipal corporation, or quasi-municipal corporation, including any public corporation, authority, or other instrumentality created by such an entity.

(3) "Money market fund" means a mutual fund the portfolio which consists of only bonds having maturities or demand or tender provisions of not more than one year, managed by an investment advisor who has posted with the risk management division of the office of financial management a bond or other similar instrument in the amount of at least five percent of the amount invested in the fund pursuant to RCW 39.59.030 (2) or (3).

(4) "Mutual fund" means a diversified mutual fund registered with the federal securities and exchange commission and which is managed by an investment advisor with assets under management of at least five hundred million dollars and with at least five years' experience in investing in bonds authorized for investment by this chapter and who has posted with the risk management division of the office of financial management a bond or other similar instrument in the amount of at least five percent of the amount invested in the fund pursuant to RCW 39.59.030(1).

(5) "State" includes a state, agencies, authorities, and instrumentalities of a state, and public corporations created by a state or agencies, authorities, or instrumentalities of a state. [2002 c 332 § 22; 1988 c 281 § 1.]

Intent—Effective date—2002 c 332: See notes following RCW 43.19.760.

Enforcement of bonds under RCW 39.59.010 (3) and (4): RCW 43.19.775.

39.59.020 Authorized investments—Bonds, warrants, and other investments. In addition to any other investment authority granted by law and notwithstanding any provision of law to the contrary, the state of Washington and local governments in the state of Washington are authorized to invest their funds and money in their custody or possession, eligible for investment, in:

(1) Bonds of the state of Washington and any local government in the state of Washington, which bonds have at the time of investment one of the three highest credit ratings of a nationally recognized rating agency;

(2) General obligation bonds of a state other than the state of Washington and general obligation bonds of a local government of a state other than the state of Washington, which bonds have at the time of investment one of the three highest credit ratings of a nationally recognized rating agency;

(3) Subject to compliance with RCW 39.56.030, registered warrants of a local government in the same county as the government making the investment; or

(4) Any investments authorized by law for the treasurer of the state of Washington or any local government of the state of Washington other than a metropolitan municipal corporation but, except as provided in chapter 39.58 RCW, such investments shall not include certificates of deposit of banks or bank branches not located in the state of Washington. [1988 c 281 § 2.]

(2014 Ed.)

39.59.030 Authorized investments—Mutual funds and money market funds. In addition to any other investment authority granted by law, the state of Washington and local governments in the state of Washington are authorized to invest their funds and money in their custody or possession, eligible for investment and subject to the arbitrage provisions of section 148 of the federal internal revenue code or similar provision concerning the investment of state and local money and funds, in:

(1) Shares of mutual funds with portfolios consisting of only United States government bonds or United States government guaranteed bonds issued by federal agencies with average maturities less than four years, or bonds described in RCW 39.59.020 (1) or (2), except that bonds otherwise described in RCW 39.59.020 (1) or (2) shall have one of the four highest credit ratings of a nationally recognized rating agency;

(2) Shares of money market funds with portfolios consisting of only bonds of states and local governments or other issuers authorized by law for investment by local governments, which bonds have at the time of investment one of the two highest credit ratings of a nationally recognized rating agency; or

(3) Shares of money market funds with portfolios consisting of securities otherwise authorized by law for investment by local governments. [1988 c 281 § 3.]

39.59.900 Severability—1988 c 281. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 281 § 10.]

Chapter 39.60 RCW

INVESTMENT OF PUBLIC FUNDS IN BONDS, NOTES, ETC.—COLLATERAL

Sections

39.60.010	Investment of public and trust funds authorized.
39.60.020	Exchange of securities for federal agency bonds.
39.60.030	Obligations eligible as collateral security.
39.60.040	Insured shares, deposits or accounts as collateral—Partially guaranteed obligations.
39.60.050	Investment of public and trust funds in notes, bonds or debentures authorized—Requirements.

Bonds and warrants of state and municipal corporations as investment and collateral for public funds:

ferry system bonds: RCW 47.60.100.

highway construction bonds: RCW 47.10.050, 47.10.190, 47.10.320, 47.10.450, 47.10.710.

metropolitan municipal corporation bonds: RCW 35.58.510.

public utility district bonds and warrants: RCW 54.24.120.

state warrants: RCW 43.84.120.

toll bridge bonds: RCW 47.56.150, 47.58.070, 47.60.100.

Investments in bonds and warrants of state and municipal corporations authorized for:

cities of first class, employees' retirement fund: RCW 41.28.080.

city and town pension funds: RCW 35.39.060.

current state funds: RCW 43.84.080.

metropolitan municipal corporation funds: RCW 35.58.520.

mutual savings banks: RCW 32.20.050, 32.20.070, 32.20.110, 32.20.120, 32.20.130.

permanent school fund: State Constitution Art. 16 § 5 (Amendment 44).

savings and loan associations: RCW 33.24.030, 33.24.050, 33.24.080.

statewide city employees' retirement fund: RCW 41.44.100.

volunteer firefighters' and reserve officers' relief and pension principal fund: RCW 41.24.030.
workers' compensation funds: RCW 51.44.100.

Investments in federal bonds and securities authorized for:
cities and towns: RCW 35.39.030.
current state funds: RCW 43.84.080.
mutual savings banks: RCW 32.20.030.
savings and loan associations: RCW 33.24.020.
school district capital projects fund: RCW 28A.320.330.
school districts, first class, insurance reserve funds: RCW 28A.330.110.
statewide city employees' retirement fund: RCW 41.44.100.
workers' compensation funds: RCW 51.44.100.

39.60.010 Investment of public and trust funds authorized. Notwithstanding the provisions of any other statute of the state of Washington to the contrary, it shall be lawful for the state of Washington and any of its departments, institutions and agencies, municipalities, districts, and any other political subdivision of the state, or any political or public corporation of the state, or for any insurance company, savings and loan association, or for any bank, trust company or other financial institution, operating under the laws of the state of Washington, or for any executor, administrator, guardian or conservator, trustee or other fiduciary to invest its funds or the moneys in its custody or possession, eligible for investment, in notes or bonds secured by mortgage which the Federal Housing Administrator has insured or has made a commitment to insure in obligations of national mortgage associations, in debentures issued by the Federal Housing Administrator, and in the bonds of the Home Owner's Loan Corporation, a corporation organized under and by virtue of the authority granted in H.R. 5240, designated as the Home Owner's Loan Act of 1933, passed by the congress of the United States and approved June 13, 1933, and in bonds of any other corporation which is or hereafter may be created by the United States, as a governmental agency or instrumentality. [1939 c 32 § 1; 1935 c 11 § 1; 1933 ex.s. c 37 § 1; RRS § 5545-1.]

Additional notes found at www.leg.wa.gov

39.60.020 Exchange of securities for federal agency bonds. Notwithstanding the provisions of any other statute of the state of Washington to the contrary, it shall be also lawful for the state of Washington and any of its departments, institutions and agencies, municipalities, districts, and any other political subdivisions of the state, or any political or public corporation of the state, or for any insurance company, savings and loan association, building and loan association, or for any bank, trust company or other financial institution, operating under the laws of the state of Washington, or for any executor, administrator, guardian or conservator, trustee or other fiduciary, to exchange any mortgages, contracts, judgments or liens owned or held by it, for the bonds of the Home Owners' Loan Corporation, a corporation organized under and by virtue of the authority granted in H.R. 5240, designated as The Home Owners' Loan Act of 1933, passed by the congress of the United States and approved June 13, 1933, or for the bonds of any other corporation which is or hereafter may be created by the United States as a governmental agency or instrumentality; and to accept said bonds at their par value in any such exchange. [1933 ex.s. c 37 § 2; RRS § 5545-2.]

Additional notes found at www.leg.wa.gov

39.60.030 Obligations eligible as collateral security. Wherever, by statute of this state, collateral is required as security for the deposit of public or other funds; or deposits are required to be made with any public official or department; or an investment of capital or surplus, or a reserve or other fund is required to be maintained consisting of designated securities, the bonds and other securities herein made eligible for investment shall also be eligible for such purpose. [1939 c 32 § 2; 1935 c 11 § 2; 1933 ex.s. c 37 § 3; RRS § 5545-3.]

Additional notes found at www.leg.wa.gov

39.60.040 Insured shares, deposits or accounts as collateral—Partially guaranteed obligations. The obligations issued pursuant to said Federal Home Loan Bank Act and to said Title IV of the National Housing Act as such acts are now or hereafter amended, and the shares, deposits or accounts of any institution which has the insurance protection provided by Title IV of the National Housing Act, as now or hereafter amended, may be used at face value or withdrawal value, and bonds or other interest bearing obligations as to which the payment of some but less than the full principal and interest is guaranteed by the United States of America or any agency thereof may be used to the extent of the portion so guaranteed, wherever, by statute of this state or otherwise, collateral is required as security for the deposit of public or other funds, or deposits are required to be made with any public official or department, or an investment of capital or surplus, or a reserve or other fund, is required to be maintained consisting of designated security, or wherever by statute of this state or otherwise, any surety, whether personal, corporate, or otherwise, or any collateral or security, is required or permitted for any purpose, including without limitation on the generality of the foregoing, any bond, recognizance, or undertaking. [1967 ex.s. c 48 § 1; 1941 c 249 § 2; Rem. Supp. 1941 § 3791-2.]

39.60.050 Investment of public and trust funds in notes, bonds or debentures authorized—Requirements. Notwithstanding the provisions of any other statute of the state of Washington to the contrary, it shall be lawful for the state of Washington and any of its departments, institutions and agencies, municipalities, districts, and any other political subdivision, or any political or public corporation of the state, or for any executor, administrator, guardian, or conservator, trustee or other fiduciary, to invest its funds or the moneys in its custody or possession, eligible for investment, in notes, bonds, or debentures of savings and loan associations, banks, mutual savings banks, savings and loan service corporations operating with approval of the federal home loan bank, and corporate mortgage companies: PROVIDED, That the notes, bonds or debentures are rated not less than "A" by a nationally recognized rating agency, or are insured or guaranteed by an agency of the federal government or by private insurer authorized to do business in the state: PROVIDED FURTHER, That the notes, bonds and debentures insured or guaranteed by a private insurer shall also be backed by a pool of mortgages equal to the amount of the notes, bonds or debentures. [1970 ex.s. c 93 § 1.]

Investment in local improvement district notes: RCW 35.45.150.

Additional notes found at www.leg.wa.gov

Chapter 39.62 RCW
UNIFORM FACSIMILE SIGNATURE OF
PUBLIC OFFICIALS ACT

Sections

39.62.010	Definitions.
39.62.020	Facsimile signature—Authorized—Legal effect.
39.62.030	Facsimile seal—Authorized—Legal effect.
39.62.040	Unauthorized use—Penalty.
39.62.900	Construction—Uniformity.
39.62.910	Short title.
39.62.920	Severability—1969 c 86.

Facsimile signatures on bonds and coupons: RCW 39.44.100 through 39.44.102.

39.62.010 Definitions. As used in this chapter:

(1) "Public security" means a bond, note, certificate of indebtedness, or other obligation for the payment of money, issued by this state or by any of its departments, agencies, counties, cities, towns, municipal corporations, junior taxing districts, school districts, or other instrumentalities or by any of its political subdivisions.

(2) "Instrument of payment" means a check, draft, warrant, or order for the payment, delivery, or transfer of funds.

(3) "Authorized officer" means any official of this state or any of its departments, agencies, counties, cities, towns, municipal corporations, junior taxing districts, school districts, or other instrumentalities or any of its political subdivisions whose signature to a public security or instrument of payment is required or permitted.

(4) "Facsimile signature" means a reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer. [1969 c 86 § 1.]

39.62.020 Facsimile signature—Authorized—Legal effect. Any authorized officer, after filing with the secretary of state his or her manual signature certified by him or her under oath, may execute or cause to be executed with a facsimile signature in lieu of his or her manual signature:

(1) Any public security: PROVIDED, That at least one signature required or permitted to be placed thereon shall be manually subscribed, and

(2) Any instrument of payment.

Upon compliance with this chapter by the authorized officer, his or her facsimile signature has the same legal effect as his or her manual signature. [2011 c 336 § 811; 1969 c 86 § 2.]

39.62.030 Facsimile seal—Authorized—Legal effect. When the seal of this state or any of its departments, agencies, counties, cities, towns, municipal corporations, junior taxing districts, school districts, or other instrumentalities or of any of its political subdivisions is required in the execution of a public security or instrument of payment, the authorized officer may cause the seal to be printed, engraved, stamped or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal. [1969 c 86 § 3.]

39.62.040 Unauthorized use—Penalty. Any person who with intent to defraud uses on a public security or an instrument of payment:

(1) A facsimile signature, or any reproduction of it, of any authorized officer, or

(2014 Ed.)

(2) Any facsimile seal, or any reproduction of it, of this state or any of its departments, agencies, counties, cities, towns, municipal corporations, junior taxing districts, school districts, or other instrumentalities or of any of its political subdivisions is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 213; 1969 c 86 § 4.]

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

39.62.900 Construction—Uniformity. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1969 c 86 § 5.]

39.62.910 Short title. This act may be cited as the uniform facsimile signature of public officials act. [1969 c 86 § 6.]

39.62.920 Severability—1969 c 86. If any provision of this 1969 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1969 c 86 § 7.]

Chapter 39.64 RCW
TAXING DISTRICT RELIEF

Sections

39.64.005	Short title.
39.64.010	Purpose of chapter.
39.64.020	Definitions.
39.64.030	Exercise of powers granted.
39.64.040	Petition in bankruptcy.
39.64.050	Resolution of authorization.
39.64.060	Resolution consenting to readjustment.
39.64.070	Plan of readjustment.
39.64.080	Powers under plan of readjustment.
39.64.085	Authority of operating agencies to levy taxes.
39.64.090	Validation of prior bankruptcy proceedings.
39.64.900	Construction—Severability—1935 c 143.

39.64.005 Short title. This chapter may be cited as the taxing district relief act. [1935 c 143 § 1; RRS § 5608-1.]

39.64.010 Purpose of chapter. The purpose of this chapter is to facilitate and permit taxing districts which are unable to meet their debts either in their present amount and/or at the time they fall due, to obtain relief by the readjustment of such debts as provided for by the act of congress hereinafter referred to, by supplementing the powers of those taxing districts for which refunding of debts is provided for by existing statutes, and by providing a method of refunding of debts for those taxing districts for which no method of refunding such debts has heretofore been provided, and by other provisions appropriate to such purposes.

This chapter shall not be construed as in anywise limiting the powers of the federal courts to grant relief as provided for in said act of congress. [1935 c 143 § 2; RRS § 5608-2.]

39.64.020 Definitions. For the purposes of this chapter a "taxing district" is defined to be a "taxing district" as described in section 80 of chapter IX of the act of congress entitled "An act to establish a uniform system of bankruptcy

throughout the United States," approved July 1, 1898, as amended, to wit:

"Any municipality or other political subdivision of any state, including (but not hereby limiting the generality of the foregoing) any county, city, borough, village, parish, town, or township, unincorporated tax or special assessment district, and any school, drainage, irrigation, reclamation, levee, sewer, or paving, sanitary, port, improvement or other district (hereinafter referred to as a 'taxing district')."

Said act of congress and acts amendatory thereof and supplementary thereto, as the same may be amended from time to time, are herein referred to as the "federal bankruptcy act." [1935 c 143 § 3; RRS § 5608-3.]

39.64.030 Exercise of powers granted. All powers herein granted to taxing districts in state of Washington may be exercised by such districts. If a taxing district has no officers of its own, such powers may be exercised in its behalf by the officer or officers, board, council or commission having the power to contract in behalf of such district or to levy special assessments or special taxes within such district. [1935 c 143 § 4; RRS § 5608-4.]

39.64.040 Petition in bankruptcy. Subject to the requirement in RCW 28A.315.225(2), any taxing district in the state of Washington is hereby authorized to file the petition mentioned in section 80 of chapter IX of the federal bankruptcy act. [2012 c 186 § 19; 1935 c 143 § 5; RRS § 5608-5.]

Effective date—2012 c 186: See note following RCW 28A.315.025.

Rule-making authority—2012 c 186: See RCW 28A.315.902.

39.64.050 Resolution of authorization. Before the filing of any petition referred to in RCW 39.64.040, such taxing district shall adopt a resolution authorizing the filing thereof and authorizing its duly and regularly elected or appointed attorney or special counsel duly appointed for such purpose to file the same and to represent it in the proceedings with respect thereto in the competent United States district court. [1935 c 143 § 6; RRS § 5608-6.]

39.64.060 Resolution consenting to readjustment. No final decree or order of such United States district court confirming a plan of readjustment shall be effective for the purpose of binding such taxing district unless and until such taxing district files with such court a certified copy of a resolution of such taxing district, adopted by it or by the officer or officers, board, council or commission referred to in RCW 39.64.030, consenting to the plan of readjustment set forth or referred to in such final decree or order. [1935 c 143 § 7; RRS § 5608-7.]

39.64.070 Plan of readjustment. Such taxing district is hereby authorized and empowered to take any and all action necessary to carry out any plan of readjustment contemplated in said petition, or as the same may be modified from time to time, notwithstanding any other provisions of law. In case of the refunding of debts of irrigation districts, diking or drainage improvement districts, general debts of cities, or debts of other taxing districts for the refunding of which provision is already made under existing statutes, such refunding shall be

had and done as provided for in such existing statutes, except that the tenor and character of the refunding bonds and the assessments levied to meet such bonds may be modified to conform to the capacity of the taxing district, or the individual lots, tracts, or parcels of real property therein, to meet and carry the charges, both direct and contingent, against them, as found and set forth in the plan of readjustment and decree of court; and except also as such existing provisions of law may be otherwise supplemented by such plan of readjustment or the provisions of this chapter. [1935 c 143 § 8; RRS § 5608-8.]

39.64.080 Powers under plan of readjustment. Such taxing district shall have power to consummate the plan of readjustment, as adopted by the court's decree and approved by it as aforesaid, and if such plan, as approved by such decree, so requires, may, for such purpose, exercise any of the following powers:

(1) Cancel in whole or in part any assessments or any interest or penalties assessed thereon which may be outstanding and a lien upon any property in such taxing district, as and when such assessments are replaced by the readjusted or revised assessments provided for in the plan of readjustment approved by such decree.

(2) Issue refunding bonds to refund bonds theretofore issued by such taxing district. Such refunding bonds shall have such denominations, rates of interest, and maturities as shall be provided in such plan of readjustment and shall be payable by special assessments or by general taxes, according to the nature of the taxing district, in the manner provided in such plan of readjustment and decree.

(3) Apportion and levy new assessments or taxes appropriate in time or times of payment to provide funds for the payment of principal and interest of such refunding bonds, and of all expenses incurred by such taxing district in filing the petition mentioned in RCW 39.64.040, and any and all other expenses necessary or incidental to the consummation of the plan of readjustment.

In the case of special assessment districts for the refunding of whose debts no procedure is provided by existing laws, such assessments shall be equitably apportioned and levied upon each lot, tract, or parcel of real property within such taxing district, due consideration being given to the relative extent to which the original apportionments upon the various lots, tracts, or parcels of real property within such taxing district have already been paid and due consideration also being given to the capacity of the respective lots, tracts, or parcels of real property to carry such charges against them. Before levying or apportioning such assessment such taxing district or the officer or officers, board, council, or commission mentioned in RCW 39.64.030 shall hold a hearing with reference thereto, notice of which hearing shall be published once a week for four consecutive weeks in the newspaper designated for the publication of legal notices by the legislative body of the city or town, or by the board of county commissioners of the county within which such taxing district or any part thereof is located, or in any newspaper published in the city, town, or county within which such taxing district or any part thereof is located and of general circulation within such taxing district. At such hearing every owner of real property within such taxing district shall be given an opportunity to be

heard with respect to the apportionment and levy of such assessment.

(4) In the case of special assessment districts, of cities or towns, provide that if any of the real property within such taxing district shall not, on foreclosure of the lien of such new assessment for delinquent assessments and penalties and interest thereon, be sold for a sufficient amount to pay such delinquent assessments, penalties, and interest, or if any real property assessed was not subject to assessment, or if any assessment or installment or installments thereof shall have been eliminated by foreclosure of a tax lien or made void in any other manner, such taxing district shall cause a supplemental assessment sufficient in amount to make up such deficiency to be made on the real property within such taxing district, including real property upon which any such assessment or any installment or installments thereof shall have been so eliminated or made void. Such supplemental assessment shall be apportioned to the various lots, tracts, and parcels of real property within such taxing district in proportion to the amounts apportioned thereto in the assessment originally made under such plan of readjustment.

(5) Provide that refunding bonds may, at the option of the holders thereof, be converted into warrants of such denominations and bearing such rate of interest as may be provided in the plan of readjustment, and that the new assessments mentioned in subsection (3) of this section and the supplemental assessments mentioned in subsection (4) of this section may be paid in refunding bonds or warrants of such taxing district without regard to the serial numbers thereof, or in money, at the option of the person paying such assessments, such refunding bonds and warrants to be received at their par value in payment of such assessments. In such case such refunding bonds and warrants shall bear the following legend: "This bond (or warrant) shall be accepted at its face value in payment of assessments (including interest and penalties thereon) levied to pay the principal and interest of the series of bonds and warrants of which this bond (or warrant) is one without regard to the serial number appearing upon the face hereof."

(6) Provide that all sums of money already paid to the treasurer of such taxing district or other authorized officer in payment, in whole or in part, of any assessment levied by or for such taxing district or of interest or penalties thereon, shall be transferred by such treasurer or other authorized officer to a new account and made applicable to the payment of refunding bonds and warrants to be issued under such plan of readjustment.

(7) Provide that such treasurer or other authorized officer shall have authority to use funds in his or her possession not required for payment of current interest of such bonds and warrants, to buy such bonds and warrants in the open market through tenders or by call at the lowest prices obtainable at or below par and accrued interest, without preference of one bond or warrant over another because of its serial number, or for any other cause other than the date and hour of such tender or other offer and the amount which the owner of such bond or warrant agrees to accept for it. In such case such refunding bonds and warrants shall bear the following legend: "This bond (or warrant) may be retired by tender or by call without regard to the serial number appearing upon the face hereof."

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(8) Provide that if, after the payment of all interest on refunding bonds and warrants issued under any plan of readjustment adopted pursuant to this chapter and chapter IX of the federal bankruptcy act and the retirement of such bonds and warrants, there shall be remaining in the hands of the treasurer or other authorized officer of the taxing district which issued such bonds and warrants money applicable under the provisions of this chapter to the payment of such interest, bonds, and warrants, such money shall be applied by such treasurer or other authorized officer to the maintenance, repair, and replacement of the improvements originally financed by the bonds readjusted under this chapter and the federal bankruptcy act.

(9) The above enumeration of powers shall not be deemed to exclude powers not herein mentioned that may be necessary for or incidental to the accomplishment of the purposes hereof. [2011 c 336 § 812; 1935 c 143 § 9; RRS § 5608-9.]

39.64.085 Authority of operating agencies to levy taxes. Nothing in this chapter may be deemed to grant to any operating agency organized under chapter 43.52 RCW, or a project of any such operating agency, the authority to levy any tax or assessment not otherwise authorized by law. [1983 2nd ex.s. c 3 § 54.]

Additional notes found at www.leg.wa.gov

39.64.090 Validation of prior bankruptcy proceedings. In the event that any taxing district in the state of Washington, before this chapter takes effect, shall have filed or purported or attempted to file a petition under the provisions of chapter IX of the federal bankruptcy act, or shall have taken or purported or attempted to take any other proceedings under or in contemplation of proceedings under the provisions of said chapter IX, then and in every such case all acts and proceedings of such taxing district, in connection with such petition or proceedings, are hereby, to all intents and purposes, declared as legal and valid as though taken after the *effective date of this chapter. [1935 c 143 § 10; RRS § 5608-10.]

*Reviser's note: The "effective date of this chapter" was March 21, 1935.

39.64.900 Construction—Severability—1935 c 143. This chapter and all its provisions shall be liberally construed to the end that the purposes hereof may be made effective. If any section, part or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or of any section, provision or part thereof not adjudged invalid or unconstitutional. [1935 c 143 § 11; RRS § 5608-11.]

Chapter 39.67 RCW

AGREEMENTS BETWEEN TAXING DISTRICTS

Sections

- 39.67.010 Agreements contingent on property tax levy—Authorized.
- 39.67.020 Transfer of funds between taxing districts.

39.67.010 Agreements contingent on property tax levy—Authorized. Any agreement or contract between two

taxing districts other than the state which is otherwise authorized by law may be made contingent upon a particular property tax levy rate of an identified taxing district other than the state where such rate affects the regular property tax rate of one of the parties to the contract and therefore affects the party's resources with which to perform under the contract. The governing body of every taxing district that could have its tax levy adversely affected by such a contract shall be notified about the contract. [1988 c 274 § 2; 1986 c 107 § 1.]

Purpose—Severability—1988 c 274: See notes following RCW 84.52.010.

Additional notes found at www.leg.wa.gov

39.67.020 Transfer of funds between taxing districts.

Any taxing district other than the state may transfer funds to another taxing district other than the state where the regular property tax levy rate of the second district may affect the regular property tax levy rate of the first district and where such transfer is part of an agreement whereby proration or reduction of property taxes is lessened or avoided. The governing body of every taxing district that could have its tax levy adversely affected by such an agreement shall be notified about the agreement. [1988 c 274 § 3; 1986 c 107 § 2.]

Purpose—Severability—1988 c 274: See notes following RCW 84.52.010.

Additional notes found at www.leg.wa.gov

Chapter 39.69 RCW

PUBLIC LOANS TO MUNICIPAL CORPORATIONS

Sections

39.69.010	"Municipal corporation" defined.
39.69.020	Loan agreements.
39.69.030	Application of constitutional debt limitations.
39.69.040	Chapter supplemental.

39.69.010 "Municipal corporation" defined. As used in this chapter, "municipal corporation" includes counties, cities, towns, port districts, water-sewer districts, school districts, metropolitan park districts, or such other units of local government which are authorized to issue obligations. [1999 c 153 § 53; 1987 c 19 § 1.]

Additional notes found at www.leg.wa.gov

39.69.020 Loan agreements. Any municipal corporation may enter into a loan agreement containing the terms and conditions of a loan from an agency of the state of Washington or the United States of America and evidencing the obligation of the municipal corporation to repay that loan under the terms and conditions set forth in the loan agreement. A loan agreement may provide that the municipal corporation will repay the loan solely from revenues set aside into a special fund for repayment of that loan. In the case of a municipal corporation authorized to borrow money payable from taxes, and authorized to levy such taxes, the loan agreement may provide that repayment of the loan is a general obligation of the municipal corporation, or both a general obligation and an obligation payable from revenues set aside into a special fund.

The state or federal agency making the loan shall have such rights of recovery in the event of default in payment or

other breach of the loan agreement as may be provided in the loan agreement or otherwise by law. [1987 c 19 § 2.]

39.69.030 Application of constitutional debt limitations. Nothing in this chapter authorizes municipal corporations to incur indebtedness beyond constitutional indebtedness limitations. [1987 c 19 § 3.]

39.69.040 Chapter supplemental. The authority under this chapter is supplemental and in addition to the authority to issue obligations under any other provision of law. [1987 c 19 § 4.]

Chapter 39.72 RCW

LOST OR DESTROYED EVIDENCE OF INDEBTEDNESS

Sections

39.72.010	Local government indebtedness—Issuance of duplicate instrument.
39.72.020	Local government indebtedness—Records to be kept—Cancellation of originals.

39.72.010 Local government indebtedness—Issuance of duplicate instrument. In case of the loss or destruction of a warrant for the payment of money, or any bond or other instrument or evidence of indebtedness, issued by any county, city or town, district or other political subdivision or municipal corporation of the state of Washington, hereinafter referred to as a municipal corporation, or by any department or agency of such municipal corporation, such municipal corporation may cause a duplicate to be issued in lieu thereof, subject to the same requirements and conditions, and according to the same procedure, as prescribed for the issuance of duplicate state instruments in RCW 43.08.064 and 43.08.066 as now or hereafter amended: PROVIDED, That the requirements of *RCW 43.08.066(2) shall not be applicable to instruments received by employees of the above issuers for the payment of salary or wages or as other compensation for work performed nor shall those requirements be applicable to instruments received by former employees or their beneficiaries for the payment of pension benefits. [1975-'76 2nd ex.s. c 77 § 1; 1965 ex.s. c 61 § 4.]

***Reviser's note:** Subsection (2) of RCW 43.08.066 was removed by chapter 71, Laws of 1979 ex. sess.

Lost or destroyed evidence of indebtedness issued by state: RCW 43.08.064 through 43.08.068.

39.72.020 Local government indebtedness—Records to be kept—Cancellation of originals. When a municipal corporation issues a duplicate instrument, as authorized in this chapter, the issuing officer of such municipal corporation shall keep a full and complete record of all warrants, bonds, or other instruments alleged to have been lost or destroyed, which were issued by such municipal corporation, and of the issue of any duplicate therefor; and upon the issuance of any duplicate such officer shall enter upon his or her books the cancellation of the original instrument and immediately notify the treasurer of the county, city or other municipal corporation, the state auditor, and all trustees and paying agencies authorized to redeem such instruments on behalf of the municipal corporation, of such cancellation. The treasurer

shall keep a similar list of all warrants, bonds, or other instruments so canceled. [2011 c 336 § 813; 1965 ex.s. c 61 § 5.]

Chapter 39.76 RCW

INTEREST ON UNPAID PUBLIC CONTRACTS

Sections

39.76.011	Interest on unpaid public contracts—When payment is considered to be made.
39.76.020	Interest on unpaid public contracts—Exceptions.
39.76.030	Penalties by state agencies to be paid from administrative funds.
39.76.040	Interest on unpaid public contracts—Attorney fees.

39.76.011 Interest on unpaid public contracts—When payment is considered to be made. (1) Except as provided in RCW 39.76.020, every state agency, county, city, town, school district, board, commission, or any other public body shall pay interest at a rate of one percent per month, but at least one dollar per month, on amounts due on written contracts for public works, personal services, goods and services, equipment, and travel, whenever the public body fails to make timely payment.

(2) For purposes of this section, payment shall be timely if:

(a) Except as provided otherwise in this subsection, a check or warrant is mailed or is available on the date specified for the amount specified in the applicable contract documents but not later than thirty days of receipt of a properly completed invoice or receipt of goods or services, whichever is later. If a contract is funded by grant or federal money, the public body shall pay the prime contractor for satisfactory performance within thirty calendar days of the date the public body receives a payment request that complies with the contract or within thirty calendar days of the date the public body actually receives the grant or federal money, whichever is later.

(b) On written contracts for public works, when part or all of a payment is going to be withheld for unsatisfactory performance or if the payment request made does not comply with the requirements of the contract, the public body shall notify the prime contractor in writing within eight working days after receipt of the payment request stating specifically why part or all of the payment is being withheld and what remedial actions must be taken by the prime contractor to receive the withheld amount.

(c) If the notification by the public body required by (b) of this subsection does not comply with the notice contents required under (b) of this subsection, the public body shall pay the interest under subsection (1) of this section from the ninth working day after receipt of the initial payment request until the contractor receives notice that does comply with the notice contents required under (b) of this subsection.

(d) If part or all of a payment is withheld under (b) of this subsection, the public body shall pay the withheld amount within thirty calendar days after the prime contractor satisfactorily completes the remedial actions identified in the notice. If the withheld amount is not paid within the thirty calendar days, the public body shall pay interest under subsection (1) of this section from the thirty-first calendar day until the date paid.

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(e)(i) If the prime contractor on a public works contract, after making a request for payment to the public body but before paying a subcontractor for the subcontractor's performance covered by the payment request, discovers that part or all of the payment otherwise due to the subcontractor is subject to withholding from the subcontractor under the subcontract for unsatisfactory performance, the prime contractor may withhold the amount as allowed under the subcontract. If the prime contractor withholds an amount under this subsection, the prime contractor shall:

(A) Give the subcontractor notice of the remedial actions that must be taken as soon as practicable after determining the cause for the withholding but before the due date for the subcontractor payment;

(B) Give the contracting officer of the public body a copy of the notice furnished to the subcontractor under (e)(i)(A) of this subsection; and

(C) Pay the subcontractor within eight working days after the subcontractor satisfactorily completes the remedial action identified in the notice.

(ii) If the prime contractor does not comply with the notice and payment requirements of (e)(i) of this subsection, the contractor shall pay the subcontractor interest on the withheld amount from the eighth working day at an interest rate that is equal to the amount set forth in subsection (1) of this section.

(3) For the purposes of this section:

(a) A payment is considered to be made when mailed or personally delivered to the party being paid.

(b) An invoice is considered to be received when it is date-stamped or otherwise marked as delivered. If the invoice is not date-stamped or otherwise marked as delivered, the date of the invoice is considered to be the date when the invoice is received. [1992 c 223 § 1.]

Additional notes found at www.leg.wa.gov

39.76.020 Interest on unpaid public contracts—Exceptions. RCW 39.76.011 does not apply to the following:

(1) Interagency or intergovernmental transactions;

(2) Amounts payable to employees or prospective employees of state agencies or local governmental units as reimbursement for expenses;

(3) Belated claims for any time of delinquency after July 31 following the second year of the fiscal biennium;

(4) Claims subject to a good faith dispute, when before the date of timely payment, notice of the dispute is:

(a) Sent by certified mail;

(b) Personally delivered; or

(c) Sent in accordance with procedures in the contract;

(5) Delinquencies due to natural disasters, disruptions in postal or delivery service, work stoppages due to labor disputes, power failures, or any other cause resulting from circumstances clearly beyond the control of the unit of local government or state agency;

(6) Contracts entered before July 26, 1981; and

(7) Payment from any retirement system listed in RCW 41.50.030 and chapter 41.24 RCW. [2009 c 219 § 5; 1981 c 68 § 2.]

39.76.030 Penalties by state agencies to be paid from administrative funds. Any state agency required to pay late payment penalties under this chapter shall pay the penalties from funds designated for administrative costs of the agency receiving the public works, personal services, goods and services, equipment, or travel and shall not be paid from funds appropriated for client services. [1981 c 68 § 3.]

39.76.040 Interest on unpaid public contracts—Attorney fees. In any action brought to collect interest due under this chapter, the prevailing party is entitled to an award of reasonable attorney fees. [1981 c 68 § 4.]

Chapter 39.80 RCW

CONTRACTS FOR ARCHITECTURAL AND ENGINEERING SERVICES

Sections

39.80.010	Legislative declaration.
39.80.020	Definitions.
39.80.030	Agency's requirement for professional services—Advance publication.
39.80.040	Procurement of architectural and engineering services—Submission of statement of qualifications and performance data—Participation by minority and women-owned firms and veteran-owned firms.
39.80.050	Procurement of architectural and engineering services—Contract negotiations.
39.80.060	Procurement of architectural and engineering services—Exception for emergency work.
39.80.070	Contracts, modifications reported to the office of financial management.
39.80.900	Savings.
39.80.910	Severability—1981 c 61.

39.80.010 Legislative declaration. The legislature hereby establishes a state policy, to the extent provided in this chapter, that governmental agencies publicly announce requirements for architectural and engineering services, and negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices. [1981 c 61 § 1.]

Additional notes found at www.leg.wa.gov

39.80.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "State agency" means any department, agency, commission, bureau, office, or any other entity or authority of the state government.

(2) "Local agency" means any city and any town, county, special district, municipal corporation, agency, port district or authority, or political subdivision of any type, or any other entity or authority of local government in corporate form or otherwise.

(3) "Special district" means a local unit of government, other than a city, town, or county, authorized by law to perform a single function or a limited number of functions, and including but not limited to, water-sewer districts, irrigation districts, fire districts, school districts, community college districts, hospital districts, transportation districts, and metropolitan municipal corporations organized under chapter 35.58 RCW.

(4) "Agency" means both state and local agencies and special districts as defined in subsections (1), (2), and (3) of this section.

(5) "Architectural and engineering services" or "professional services" means professional services rendered by any person, other than as an employee of the agency, contracting to perform activities within the scope of the general definition of professional practice in chapters 18.08, 18.43, or 18.96 RCW.

(6) "Person" means any individual, organization, group, association, partnership, firm, joint venture, corporation, or any combination thereof.

(7) "Consultant" means any person providing professional services who is not an employee of the agency for which the services are provided.

(8) "Application" means a completed statement of qualifications together with a request to be considered for the award of one or more contracts for professional services. [1999 c 153 § 55; 1981 c 61 § 2.]

Additional notes found at www.leg.wa.gov

39.80.030 Agency's requirement for professional services—Advance publication. Each agency shall publish in advance that agency's requirement for professional services. The announcement shall state concisely the general scope and nature of the project or work for which the services are required and the address of a representative of the agency who can provide further details. An agency may comply with this section by: (1) Publishing an announcement on each occasion when professional services provided by a consultant are required by the agency; or (2) announcing generally to the public its projected requirements for any category or type of professional services. [1981 c 61 § 3.]

Additional notes found at www.leg.wa.gov

39.80.040 Procurement of architectural and engineering services—Submission of statement of qualifications and performance data—Participation by minority and women-owned firms and veteran-owned firms. In the procurement of architectural and engineering services, the agency shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, based upon criteria established by the agency, the firm deemed to be the most highly qualified to provide the services required for the proposed project. Such agency procedures and guidelines shall include a plan to insure that minority and women-owned firms and veteran-owned firms are afforded the maximum practicable opportunity to compete for and obtain public contracts for services. The level of participation by minority and women-owned firms and veteran-owned firms shall be consistent with their general availability within the professional communities involved. [2010 c 5 § 10; 1981 c 61 § 4.]

Purpose—Construction—2010 c 5: See notes following RCW 43.60A.010.

Additional notes found at www.leg.wa.gov

39.80.050 Procurement of architectural and engineering services—Contract negotiations. (1) The agency shall negotiate a contract with the most qualified firm for architectural and engineering services at a price which the agency determines is fair and reasonable to the agency. In making its determination, the agency shall take into account the estimated value of the services to be rendered as well as the scope, complexity, and professional nature thereof.

(2) If the agency is unable to negotiate a satisfactory contract with the firm selected at a price the agency determines to be fair and reasonable, negotiations with that firm shall be formally terminated and the agency shall select other firms in accordance with RCW 39.80.040 and continue in accordance with this section until an agreement is reached or the process is terminated. [1981 c 61 § 5.]

Additional notes found at www.leg.wa.gov

39.80.060 Procurement of architectural and engineering services—Exception for emergency work. (1) This chapter need not be complied with by any agency when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved.

(2) Nothing in this chapter shall relieve the contracting authority from complying with applicable law limiting emergency expenditures. [1981 c 61 § 6.]

Additional notes found at www.leg.wa.gov

39.80.070 Contracts, modifications reported to the office of financial management. Contracts entered into by any state agency for architectural and engineering services, and modifications thereto, shall be reported to the office of financial management on a quarterly basis, in such form as the office of financial management prescribes. [1993 c 433 § 9.]

39.80.900 Savings. Nothing in this chapter shall affect the validity or effect of any contract in existence on January 1, 1982. [1981 c 61 § 7.]

Additional notes found at www.leg.wa.gov

39.80.910 Severability—1981 c 61. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 61 § 8.]

Additional notes found at www.leg.wa.gov

Chapter 39.84 RCW

INDUSTRIAL DEVELOPMENT REVENUE BONDS

Sections

39.84.010	Finding and declaration of necessity.
39.84.020	Definitions.
39.84.030	Public corporations—Creation, dissolution.
39.84.040	Board of directors of public corporation.
39.84.050	Public corporations—Directors—Conflicts of interest.
39.84.060	Public corporations—Limitations.

39.84.070	Public corporations—Audit by state.
39.84.080	Public corporations—Powers.
39.84.090	Reporting to the department of community, trade, and economic development.
39.84.100	Revenue bonds—Provisions.
39.84.110	Revenue bonds—Refunding.
39.84.120	Trust agreements.
39.84.130	Commingling of bond proceeds or revenues with municipal funds prohibited—Exception.
39.84.140	Subleases and assignments.
39.84.150	Determination of rent.
39.84.160	Proceedings in the event of default.
39.84.170	Implementation of economic development programs by port district—Use of nonprofit corporations—Transfer of funds.
39.84.200	Authority of community economic revitalization board under this chapter.
39.84.900	Construction—Supplemental nature of chapter.
39.84.910	Captions not part of law.
39.84.920	Severability—1981 c 300.

Special revenue financing: State Constitution Art. 33 § 1.

39.84.010 Finding and declaration of necessity. The legislature hereby finds and declares that this state urgently needs to do the following: Promote higher employment; encourage the development of new jobs; maintain and supplement the capital investments in industry that currently exist in this state; encourage future employment by ensuring future capital investment; attract environmentally sound industry to the state; protect and enhance the quality of natural resources and the environment; and promote the production and conservation of energy. [1981 c 300 § 1.]

39.84.020 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Board of directors" means the board of directors of a public corporation.

(2) "Construction" or "construct" means construction and acquisition, whether by devise, purchase, gift, lease, or otherwise.

(3) "Facilities" means land, rights in land, buildings, structures, docks, wharves, machinery, transmission equipment, public broadcast equipment, landscaping, utilities, approaches, roadways and parking, handling and storage areas, and similar ancillary facilities.

(4) "Financing document" means a lease, sublease, installment sale agreement, conditional sale agreement, loan agreement, mortgage, deed of trust guaranty agreement, or other agreement for the purpose of providing funds to pay or secure debt service on revenue bonds.

(5) "Improvement" means reconstruction, remodeling, rehabilitation, extension, and enlargement; and "to improve" means to reconstruct, to remodel, to rehabilitate, to extend, and to enlarge.

(6) "Industrial development facilities" means manufacturing, processing, research, production, assembly, warehousing, transportation, public broadcasting, pollution control, solid waste disposal, energy facilities, sports facilities, parking facilities associated with industrial development facilities as defined in this section or with historic properties as defined in RCW 84.26.020 and industrial parks. For the purposes of this section, the term "sports facilities" shall not include facilities which are constructed for use by members of a private club or as integral or subordinate parts of a hotel or motel, or which are not available on a regular basis for general public use.

(7) "Industrial park" means acquisition and development of land as the site for an industrial park. For the purposes of this chapter, "development of land" includes the provision of water, sewage, drainage, or similar facilities, or of transportation, energy, or communication facilities, which are incidental to the use of the site as an industrial park, but does not include the provision of structures or buildings.

(8) "Municipality" means a city, town, county, or port district of this state.

(9) "Ordinance" means any appropriate method of taking official action or adopting a legislative decision by any municipality, whether known as a resolution, ordinance, or otherwise.

(10) "Project costs" means costs of (a) acquisition, construction, and improvement of any facilities included in an industrial development facility; (b) architectural, engineering, consulting, accounting, and legal costs related directly to the development, financing, and construction of an industrial development facility, including costs of studies assessing the feasibility of an industrial development facility; (c) finance costs, including discounts, if any, the costs of issuing revenue bonds, and costs incurred in carrying out any trust agreement; (d) interest during construction and during the six months after estimated completion of construction, and capitalized debt service or repair and replacement or other appropriate reserves; (e) the refunding of any outstanding obligations incurred for any of the costs outlined in this subsection; and (f) other costs incidental to any of the costs listed in this section.

(11) "Revenue bond" means a nonrecourse revenue bond, nonrecourse revenue note, or other nonrecourse revenue obligation issued for the purpose of financing an industrial development facility on an interim or permanent basis.

(12) "User" means one or more persons acting as lessee, purchaser, mortgagor, or borrower under a financing document and may include a party who transfers the right of use and occupancy to another party by lease, sublease, or otherwise. [1986 c 309 § 1; 1986 c 308 § 2; 1985 c 439 § 1; 1983 1st ex.s. c 51 § 1; 1981 c 300 § 2.]

Reviser's note: This section was amended by 1986 c 308 § 2 and by 1986 c 309 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at www.leg.wa.gov

39.84.030 Public corporations—Creation, dissolution. (1) For the purpose of facilitating economic development and employment opportunities in the state of Washington through the financing of the project costs of industrial development facilities, a municipality may enact an ordinance creating a public corporation for the purposes authorized in this chapter. The ordinance creating the public corporation shall approve a charter for the public corporation containing such provisions as are authorized by and not in conflict with this chapter. Any charter issued under this chapter shall contain in substance the limitations set forth in RCW 39.84.060. In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the public corporation, the public corporation is conclusively presumed to be established and authorized to transact business and exercise its powers under this chapter upon proof of

the adoption of the ordinance creating the public corporation by the governing body. A copy of the ordinance duly certified by the clerk of the governing body of the municipality shall be admissible in evidence in any suit, action, or proceeding.

(2) A public corporation created by a municipality pursuant to this chapter may be dissolved by the municipality if the public corporation: (a) Has no property to administer, other than funds or property, if any, to be paid or transferred to the municipality by which it was established; and (b) all its outstanding obligations have been satisfied. Such a dissolution shall be accomplished by the governing body of the municipality adopting an ordinance providing for the dissolution.

(3) The creating municipality may, at its discretion and at any time, alter or change the structure, organizational programs, or activities of a public corporation, including termination of the public corporation if contracts entered into by the public corporation are not impaired. Any net earnings of a public corporation, beyond those necessary for retirement of indebtedness incurred by it, shall not inure to the benefit of any person other than the creating municipality. Upon dissolution of a public corporation, title to all property owned by the public corporation shall vest in the municipality. [1981 c 300 § 3.]

39.84.040 Board of directors of public corporation.

The ordinance creating a public corporation shall include provisions establishing a board of directors to govern the affairs of the public corporation, what constitutes a quorum of the board of directors, and how the public corporation shall conduct its affairs. [1981 c 300 § 4.]

39.84.050 Public corporations—Directors—Conflicts of interest. It shall be illegal for a director, officer, agent, or employee of a public corporation to have, directly or indirectly, any financial interest in any property to be included in or any contract for property, services, or materials to be furnished or used in connection with any industrial development facility financed through the public corporation. Violation of any provision of this section is a gross misdemeanor. [1981 c 300 § 5.]

39.84.060 Public corporations—Limitations. No municipality may give or lend any money or property in aid of a public corporation. The municipality that creates a public corporation shall annually review any financial statements of the public corporation and at all times shall have access to the books and records of the public corporation. No public corporation may issue revenue obligations under this chapter except upon the approval of both the municipality under the auspices of which it was created and the county, city, or town within whose planning jurisdiction the proposed industrial development facility lies. No revenue bonds may be issued pursuant to this chapter unless the board of directors of the public corporation proposing to issue revenue bonds makes a finding that in its opinion the interest paid on the bonds will be exempt from income taxation by the federal government. Revenue bonds issued by a public corporation under this chapter shall not be considered to constitute a debt of the state, of the municipality, or of any other municipal corporation, quasi municipal corporation, subdivision, or agency of this state or to pledge any or all of the faith and credit of any

of these entities. The revenue bonds shall be payable solely from both the revenues derived as a result of the industrial development facilities funded by the revenue bonds, including, without limitation, amounts received under the terms of any financing document or by reason of any additional security furnished by the user of the industrial development facility in connection with the financing thereof, and money and other property received from private sources. Each revenue bond shall contain on its face statements to the effect that: (1) Neither the state, the municipality, or any other municipal corporation, quasi municipal corporation, subdivision, or agency of the state is obligated to pay the principal or the interest thereon; (2) no tax funds or governmental revenue may be used to pay the principal or interest thereon; and (3) neither any or all of the faith and credit nor the taxing power of the state, the municipality, or any other municipal corporation, quasi municipal corporation, subdivision, or agency thereof is pledged to the payment of the principal of or the interest on the revenue bond. A public corporation may incur only those financial obligations which will be paid from revenues received pursuant to financing documents, from fees or charges paid by users or prospective users of the industrial development facilities funded by the revenue bonds, or from the proceeds of revenue bonds. A public corporation established under the terms of this chapter constitutes an authority and an instrumentality (within the meaning of those terms in the regulations of the United States treasury and the rulings of the Internal Revenue Service prescribed pursuant to section 103 of the Internal Revenue Code of 1954, as amended) and may act on behalf of the municipality under whose auspices it is created for the specific public purposes authorized by this chapter. The public corporation is not a municipal corporation within the meaning of the state Constitution and the laws of the state, or a political subdivision within the meaning of the state Constitution and the laws of the state, including without limitation, Article VIII, section 7, of the Washington state Constitution. A municipality shall not delegate to a public corporation any of the municipality's attributes of sovereignty, including, without limitation, the power to tax, the power of eminent domain, and the police power. [1981 c 300 § 6.]

39.84.070 Public corporations—Audit by state. The finances of any public corporation are subject to examination by the state auditor's office pursuant to RCW 43.09.260. [1981 c 300 § 7.]

39.84.080 Public corporations—Powers. (1) A public corporation created under this chapter has the following powers with respect to industrial development facilities together with all powers incidental thereto or necessary for the performance thereof:

- (a) To construct and maintain one or more industrial development facilities;
- (b) To lease to a lessee all or any part of any industrial development facility for such rentals and upon such terms and conditions, including options to purchase, as its board of directors considers advisable and not in conflict with this chapter;
- (c) To sell by installment contract or otherwise and convey all or any part of any industrial development facility for

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such purchase price and upon such terms and conditions as its board of directors considers advisable which are not in conflict with this chapter;

(d) To make secured loans for the purpose of providing temporary or permanent financing or refinancing of all or part of the project cost of any industrial development facility, including the refunding of any outstanding obligations, mortgages, or advances issued, made, or given by any person for the project costs; and to charge and collect interest on the loans for the loan payments upon such terms and conditions as its board of directors considers advisable which are not in conflict with this chapter;

(e) To issue revenue bonds for the purpose of financing all or part of the project cost of any industrial development facility and to secure the payment of the revenue bonds as provided in this chapter;

(f) As security for the payment of the principal of and interest on any revenue bonds issued and any agreements made in connection therewith, to mortgage, pledge, or otherwise encumber any or all of its industrial development facilities or any part or parts thereof, whether then owned or thereafter acquired, and to assign any mortgage and repledge any security conveyed to the public corporation, to secure any loan made by the public corporation and to pledge the revenues and receipts therefrom;

(g) To sue and be sued, complain, and defend in its corporate name;

(h) To make contracts and to execute all instruments necessary or convenient for the carrying out of its business;

(i) To have a corporate seal and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;

(j) Subject to the limitations of RCW 39.84.060, to borrow money, accept grants from, or contract with any local, state, or federal governmental agency or with any financial, public, or private corporation;

(k) To make and alter bylaws not inconsistent with its charter for the administration and regulation of the affairs of the corporation;

(l) To collect fees or charges from users or prospective users of industrial development facilities to recover actual or anticipated administrative costs;

(m) To execute financing documents incidental to the powers enumerated in this subsection.

(2) No public corporation created under this chapter may operate any industrial development facility as a business other than as lessor, seller, or lender. The purchase and holding of mortgages, deeds of trust, or other security interests and contracting for any servicing thereof is not considered the operation of an industrial development facility.

(3) No public corporation may exercise any of the powers authorized in this section or issue any revenue bonds with respect to any industrial development facility unless the industrial development facility is located wholly within the boundaries of the municipality under whose auspices the public corporation is created or unless the industrial development facility comprises energy facilities or solid waste disposal facilities which provide energy for or dispose of solid waste from the municipality or the residents thereof. [1981 c 300 § 8.]

39.84.090 Reporting to the department of community, trade, and economic development. (1) Prior to issuance of any revenue bonds, each public corporation shall submit a copy of its enabling ordinance and charter, a description of any industrial development facility proposed to be undertaken, and the basis for its qualification as an industrial development facility to the *department of community, trade, and economic development.

(2) If the industrial development facility is not eligible under this chapter, the *department of community, trade, and economic development shall give notice to the public corporation, in writing and by certified mail, within twelve working days of receipt of the description.

(3) The *department of community, trade, and economic development shall provide such advice and assistance to public corporations and municipalities which have created or may wish to create public corporations as the public corporations or municipalities request and the *department of community, trade, and economic development considers appropriate. [1998 c 245 § 34; 1995 c 399 § 56; 1987 c 505 § 22; 1985 c 466 § 46; 1981 c 300 § 9.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Department of commerce: Chapter 43.330 RCW.

Additional notes found at www.leg.wa.gov

39.84.100 Revenue bonds—Provisions. (1) The principal of and the interest on any revenue bonds issued by a public corporation shall be payable solely from the funds provided for this payment from the revenues of the industrial development facilities funded by the revenue bonds. Each issue of revenue bonds shall be dated, shall bear interest at such rate or rates, and shall mature at such time or times as may be determined by the board of directors, and may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the board of directors prior to the issuance of the revenue bonds or other revenue obligations.

(2) The board of directors shall determine the form and the manner of execution of the revenue bonds and shall fix the denomination or denominations of the revenue bonds and the place or places of payment of principal and interest. If any officer whose signature or a facsimile of whose signature appears on any revenue bonds or any coupons ceases to be an officer before the delivery of the revenue bonds, the signature shall for all purposes have the same effect as if he or she had remained in office until delivery. The revenue bonds may be issued in coupon or in registered form, as provided in RCW 39.46.030, or both as the board of directors may determine, and provisions may be made for the registration of any coupon revenue bonds as to the principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. A public corporation may sell revenue bonds at public or private sale for such price and bearing interest at such fixed or variable rate as may be determined by the board of directors.

(3) The proceeds of the revenue bonds of each issue shall be used solely for the payment of all or part of the project cost of or for the making of a loan in the amount of all or part of the project cost of the industrial development facility for

which authorized and shall be disbursed in such manner and under such restrictions, if any, provided in the resolution authorizing the issuance of the revenue bonds or in the trust agreement securing the bonds. If the proceeds of the revenue bonds of any series issued with respect to the cost of any industrial development facility exceeds the cost of the industrial development facility for which issued, the surplus shall be deposited to the credit of the debt service fund for the revenue bonds or used to purchase revenue bonds in the open market.

(4) A public corporation may issue interim notes in the manner provided for the issuance of revenue bonds to fund industrial development facilities prior to issuing other revenue bonds to fund such facilities. A public corporation may issue revenue bonds to fund industrial development facilities that are exchangeable for other revenue bonds when these other revenue bonds are executed and available for delivery.

(5) The principal of and interest on any revenue bonds issued by a public corporation shall be secured by a pledge of unexpended bond proceeds and the revenues and receipts received by the public corporation from the industrial development facilities funded by the revenue bonds pursuant to financing documents. The resolution under which the revenue bonds are authorized to be issued and any financing document may contain agreements and provisions respecting the maintenance or use of the industrial development facility covered thereby, the fixing and collection of rents, purchase price payments or loan payments, the creation and maintenance of special funds from such revenues or from revenue bond proceeds, the rights and remedies available in the event of default, and other provisions relating to the security for the bonds, all as the board of directors consider advisable which are not in conflict with this chapter.

(6) The governing body of the municipality under whose auspices the public corporation is created shall approve by resolution any agreement to issue revenue bonds adopted by a public corporation, which agreement and resolution shall set out the amount and purpose of the revenue bonds. Additionally, no issue of revenue bonds, including refunding bonds, may be sold and delivered by a public corporation without a resolution of the governing body of the municipality under whose auspices the public corporation is created, adopted no more than sixty days before the date of sale of the revenue bonds specifically, approving the resolution of the public corporation providing for the issuance of the revenue bonds.

(7) All revenue bonds issued under this chapter and any interest coupons applicable thereto are negotiable instruments within the meaning of Article 8 of the Uniform Commercial Code, Title 62A RCW, regardless of form or character.

(8) Notwithstanding subsections (1) and (2) of this section, such bonds and interim notes may be issued and sold in accordance with chapter 39.46 RCW. [2011 c 336 § 814; 1983 c 167 § 115; 1981 c 300 § 10.]

Additional notes found at www.leg.wa.gov

39.84.110 Revenue bonds—Refunding. Each public corporation may provide by resolution for the issuance of revenue refunding bonds for the purpose of refunding any revenue bonds issued for an industrial development facility

under this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption or maturity of the revenue bonds and, if considered advisable by the public corporation, for the additional purpose of financing improvements, extensions, or enlargements to the industrial development facility for another industrial development facility. The issuance of the revenue bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties, and obligations of the public corporation in respect to the same shall be governed by this chapter insofar as applicable. [1981 c 300 § 11.]

39.84.120 Trust agreements. Any bonds issued under this chapter may be secured by a trust agreement between the public corporation and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. The trust agreement may evidence a pledge or assignment of the financing documents and lease, sale, or loan revenues to be received from a lessee or purchaser of or borrower with respect to an industrial development facility for the payment of principal of and interest and any premium on the bonds as the same shall become due and payable and may provide for creation and maintenance of reserves for these purposes. A trust agreement or resolution providing for the issuance of the revenue bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties in relation to the acquisition of property and the construction, improvement, maintenance, use, repair, operation, and insurance of the industrial development facility for which the bonds are authorized, and the custody, safeguarding, and application of all money. Any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of revenue bonds or of revenues may furnish such indemnifying bonds or pledge such securities as may be required by the corporation. A trust agreement may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures of private corporations. In addition, a trust agreement may contain such provisions as the public corporation considers reasonable and proper for the security of the bondholders which are not in conflict with this chapter. [1981 c 300 § 12.]

39.84.130 Commingling of bond proceeds or revenues with municipal funds prohibited—Exception. No part of the proceeds received from the sale of any revenue bonds under this chapter, of any revenues derived from any industrial development facility acquired or held under this chapter, or of any interest realized on moneys received under this chapter may be commingled by the public corporation with funds of the municipality creating the public corporation. However, those funds of the public corporation, other than proceeds received from the sale of revenue bonds, that are not otherwise encumbered for the payment of revenue bonds and are not reasonably anticipated by the board of directors to be necessary for administrative expenses of the public corporation may be transferred to the creating municipi-

pality and used for growth management, planning, or other economic development purposes. [1993 c 139 § 1; 1981 c 300 § 13.]

39.84.140 Subleases and assignments. A lessee or contracting party under a sale contract or loan agreement shall not be required to be the eventual user of an industrial development facility if any sublessee or assignee assumes all of the obligations of the lessee or contracting party under the lease, sale contract, or loan agreement, but the lessee or contracting party or their successors shall remain primarily liable for all of its obligations under the lease, sale contract, or loan agreement and the use of the industrial development facility shall be consistent with the purposes of this chapter. [1981 c 300 § 14.]

39.84.150 Determination of rent. Before entering into a lease, sale contract, or loan agreement with respect to any industrial development facility, the public corporation shall determine that there are sufficient revenues to pay (1) the principal of and the interest on the revenue bonds proposed to be issued to finance the industrial development facility; (2) the amount necessary to be paid each year into any reserve funds which the public corporation considers advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the industrial development facility; and (3) unless the terms of the lease, sale contract, or loan agreement provide that the lessee or contracting party shall maintain the industrial development facility and carry all proper insurance with respect thereto, the estimated cost of maintaining the industrial development facility in good repair and keeping it properly insured. [1981 c 300 § 15.]

39.84.160 Proceedings in the event of default. The proceedings authorizing any revenue bonds under this chapter or any financing document securing the revenue bonds may provide that if there is a default in the payment of the principal of or the interest on the bonds or in the performance of any agreement contained in the proceedings or financing document, the payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents, purchase price payments, and loan repayments, and to apply the revenues from the industrial development facility in accordance with the proceedings or provisions of the financing document. Any financing document entered into under this chapter to secure revenue bonds issued under this chapter may also provide that if there is a default in the payment thereof or a violation of any agreement contained in the financing document, the industrial development facility may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Any financing document may also provide that any trustee under the financing document or the holder of any revenue bonds secured thereby may become the purchaser at any foreclosure sale if it is the highest bidder. [1981 c 300 § 16.]

39.84.170 Implementation of economic development programs by port district—Use of nonprofit corporations—Transfer of funds. Funds received by a port district under RCW 39.84.130 may be transferred to a nonprofit cor-

poration created or re-created for the exclusive purpose of providing training, education, and general improvement to the public sector management skills necessary to implement the economic development programs of the port district. The nonprofit corporation selected for that purpose may be, without limitation, a corporation formed by the Washington public ports association.

Any nonprofit corporation selected for the purposes of this section must have tax exempt status under 26 U.S.C. Sec. 501(c)(3).

Transfers and expenditures of funds shall be deemed to be for industrial development and trade promotion as provided in Article VIII, section 8 of the Washington state Constitution.

Nothing in this chapter shall be construed to prohibit the receipt of additional public or private funds by a nonprofit corporation for the purposes described in this section. [2000 c 198 § 2.]

39.84.200 Authority of community economic revitalization board under this chapter. The community economic revitalization board under chapter 43.160 RCW shall have all the powers of a public corporation under this chapter. To the extent applicable, all duties of a public corporation apply to the community economic revitalization board in exercising its powers under this chapter. [1984 c 257 § 11.]

39.84.900 Construction—Supplemental nature of chapter. This chapter supplements and neither restricts nor limits any powers which a municipality or presently authorized public corporation might otherwise have under any laws of this state. [1981 c 300 § 17.]

39.84.910 Captions not part of law. As used in this chapter, captions constitute no part of the law. [1981 c 300 § 19.]

39.84.920 Severability—1981 c 300. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 300 § 20.]

Chapter 39.86 RCW

PRIVATE ACTIVITY BOND ALLOCATION

Sections

39.86.100	Legislative findings and policy.
39.86.110	Definitions.
39.86.120	Initial allocation.
39.86.130	Criteria.
39.86.140	Procedure for obtaining state ceiling allocation.
39.86.150	Reallocation process and carryforwards.
39.86.155	State bond ceiling allocation formula.
39.86.160	Executive orders.
39.86.170	Fees.
39.86.180	Code amendments.
39.86.190	Biennial reports.
39.86.905	Captions.
39.86.906	Severability—1987 c 297.

39.86.100 Legislative findings and policy. The federal internal revenue code of 1986, as amended imposes ceilings on the aggregate amount of certain types of bonds, including

tax-exempt private activity bonds and other types, that may be issued during any calendar year by or on behalf of states and their political subdivisions. The code provides a formula for allocating the annual tax-exempt private activity bond ceiling among various issuers of private activity bonds for housing, student loans, exempt facilities, and redevelopment projects within a state, but permits each state to enact a different allocation method that is appropriate to that state's needs. In addition, congress might, from time to time, amend the code by authorizing state ceilings on additional types of bonds. The purpose of this chapter is to provide a flexible and efficient method of allocating the annual state ceiling in Washington in a manner that recognizes the need of the state and its political subdivisions to finance activities or projects that satisfy a substantial public purpose. [2010 1st sp.s. c 6 § 3; 2001 c 330 § 1; 1987 c 297 § 1.]

Short title—2010 1st sp.s. c 6: See note following RCW 43.180.160.

39.86.110 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" means the department of commerce.

(2) "Bond use category" means: (a) Any of the following categories of bonds which are subject to the annual state tax-exempt private activity bond ceiling: (i) Housing, (ii) student loans, (iii) small issue, (iv) exempt facility, (v) redevelopment, and (vi) remainder; and (b) any other categories of bonds described in the code for which there is a separate ceiling, with the exception of bonds designated solely for school district purposes.

(3) "Bonds" means bonds, notes, or other obligations of an issuer.

(4) "Carryforward" is an allocation or reallocation of the state ceiling which is carried from one calendar year to a later year, in accordance with the code.

(5) "Code" means the federal internal revenue code of 1986, as amended.

(6) "Director" means the director of the agency or the director's designee.

(7) "Exempt facility" means the bond use category which includes all bonds which are exempt facility bonds as described in the code, except those for qualified residential rental projects.

(8) "Firm and convincing evidence" means documentation that satisfies the director that the issuer is committed to the prompt financing of, and will issue bonds for, the project or program for which it requests an allocation from the state ceiling.

(9) "Housing" means the bond use category which includes: (a) Mortgage revenue bonds and mortgage credit certificates as described in the code; and (b) exempt facility bonds for qualified residential rental projects as described in the code.

(10) "Initial allocation" means the portion or dollar value of the annual state tax-exempt private activity bond ceiling which initially in each calendar year is allocated to a bond use category for the issuance of private activity bonds, in accordance with RCW 39.86.120.

(11) "Issuer" means the state, any agency or instrumentality of the state, any political subdivision, or any other entity authorized to issue bonds under state law.

(12) "Original allocation" means any allocation of bond authority by a mandatory formula in the code, except for the initial allocations of the annual state ceiling on tax-exempt private activity bonds.

(13) "Private activity bonds" means obligations that are private activity bonds as defined in the code or bonds for purposes described in section 1317(25) of the federal internal revenue code of 1986, as amended.

(14) "Program" means the activities for which housing bonds may be issued.

(15) "Redevelopment" means the bond use category which includes qualified redevelopment bonds as described in the code.

(16) "Remainder" means that portion of the annual state tax-exempt private activity bond ceiling remaining after initial allocations are made under RCW 39.86.120 for any other bond use category.

(17) "Small issue" means the bond use category which includes all industrial development bonds that constitute qualified small issue bonds, as described in the code.

(18) "State" means the state of Washington.

(19) "State ceiling" means the volume limitation for each calendar year on specific bond types, including tax-exempt private activity bonds and other bonds, as imposed by the code.

(20) "Student loans" means the bond use category which includes qualified student loan bonds as described in the code. [2010 1st sp.s. c 6 § 4; 2009 c 565 § 23; 1995 c 399 § 57; 1987 c 297 § 2.]

Short title—2010 1st sp.s. c 6: See note following RCW 43.180.160.

39.86.120 Initial allocation. (1) Except as provided in subsections (2) and (4) of this section, the initial allocation of the state ceiling shall be for each year as follows:

BOND USE CATEGORY	2010 AND THEREAFTER
Housing	32.0%
Small Issue	25.0%
Exempt Facility	20.0%
Student Loans	15.0%
Public Utility	0.0%
Remainder and Redevelopment	8.0%

(2) Initial allocations may be modified by the agency only to reflect an issuer's carryforward amount. Any reduction of the initial allocation shall be added to the remainder and be available for allocation or reallocation.

(3) The remainder shall be allocated by the agency among one or more issuers from any bond use category with regard to the criteria specified in RCW 39.86.130.

(4) Should any bond use category no longer be subject to the state ceiling due to federal or state provisions of law, the agency shall divide the amount of that initial allocation among the remaining categories as necessary or appropriate with regard to the criteria specified in RCW 39.86.130.

(5)(a) Prior to July 1st of each calendar year, any available portion of an initial allocation may be allocated or reallocated only to an issuer within the same bond use category,

except that the remainder category, or portions thereof, may be allocated at any time to any bond use category.

(b) Beginning July 1st of each calendar year, the agency may allocate or reallocate any available portion of the state ceiling to any bond use category with regard to the criteria specified in RCW 39.86.130. [2010 1st sp.s. c 6 § 6; 2001 c 330 § 2; 1990 c 50 § 1; 1987 c 297 § 3.]

Short title—2010 1st sp.s. c 6: See note following RCW 43.180.160.

39.86.130 Criteria. (1) In granting an allocation, reallocation, or carryforward of the state ceiling as provided in this chapter, the agency shall consider existing state priorities and other such criteria, including but not limited to, the following criteria:

- (a) Need of issuers to issue bonds within a bond use category subject to a state ceiling;
- (b) Amount of the state ceiling available;
- (c) Public benefit and purpose to be satisfied, including economic development, educational opportunity, and public health, safety, or welfare;
- (d) Cost or availability of alternative methods of financing for the project or program; and
- (e) Certainty of using the allocation which is being requested.

(2) In determining whether to allocate an amount of the state ceiling to an issuer within any bond use category, the agency shall consider, but is not limited to, the following criteria for each of the bond use categories:

- (a) Housing: Criteria which comply with RCW 43.180.200.
- (b) Student loans: Criteria which comply with the applicable provisions of Title 28B RCW and rules adopted by the office of student financial assistance or applicable state agency dealing with student financial aid.
- (c) Small issue: Factors which may include:
 - (i) The number of employment opportunities the project is likely to create or retain in relation to the amount of the bond issuance;
 - (ii) The level of unemployment existing in the geographic area likely to be affected by the project;
 - (iii) A commitment to providing employment opportunities to low-income persons in cooperation with the employment security department;
 - (iv) Geographic distribution of projects;
 - (v) The number of persons who will benefit from the project;
 - (vi) Consistency with criteria identified in subsection (1) of this section; and
 - (vii) Order in which requests were received.
- (d) Exempt facility or redevelopment: Factors which may include:
 - (i) State issuance needs;
 - (ii) Consistency with criteria identified in subsection (1) of this section;
 - (iii) Order in which requests were received;
 - (iv) The proportionate number of persons in relationship to the size of the community who will benefit from the project; and
 - (v) The unique timing and issuance needs of large scale projects that may require allocations in more than one year.
- (e) Public utility: Factors which may include:

(i) Consistency with criteria identified in subsection (1) of this section; and

(ii) Timing needs for issuance of bonds over a multi-year period. [2011 1st sp.s. c 11 § 243; 2010 1st sp.s. c 6 § 7; 1987 c 297 § 4.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Short title—2010 1st sp.s. c 6: See note following RCW 43.180.160.

39.86.140 Procedure for obtaining state ceiling allocation. (1) No issuer may receive an allocation of the state ceiling without a certificate of approval from the agency. The agency may not make an allocation of the state ceiling to an issuer formed or organized under the laws of another state.

(2) For each state ceiling allocation request, an issuer shall submit to the agency, no sooner than ninety days prior to the beginning of a calendar year for which an allocation of the state ceiling is being requested, a form identifying:

(a) The amount of the allocation sought;

(b) The bond use category from which the allocation sought would be made;

(c) The project or program for which the allocation is requested;

(d) The financing schedule for which the allocation is needed; and

(e) Any other such information required by the agency, including information which corresponds to the allocation criteria of RCW 39.86.130.

(3) The agency may approve or deny an allocation for all or a portion of the issuer's request. Any denied request, however, shall remain on file with the agency for the remainder of the calendar year and shall be considered for receiving any allocation, reallocation, or carryforward of unused portions of the state ceiling during that period.

(4) After receiving an allocation request, the agency shall mail to the requesting issuer a written certificate of approval or notice of denial for an allocation amount, by a date no later than the latest of the following:

(a) February 1st of the calendar year for which the request is made;

(b) Fifteen days from the date the agency receives an allocation request; or

(c) Fifteen days from the date the agency receives a recommendation by the *board with regard to a small issue allocation request, should the *board choose to review individual requests.

(5)(a) For requests of the state ceiling of any calendar year, the following applies to all bond use categories except housing and student loans:

(i) Except for housing and student loans, any allocations granted prior to April 1st, for which bonds have not been issued by July 1st of the same calendar year, shall revert to the agency on July 1st of the same calendar year for reallocation unless an extension or carryforward is granted;

(ii) Except for housing and student loans, any allocations granted on or after April 1st, for which bonds have not been issued by October 15th of the same calendar year, shall revert to the agency on October 15th of the same calendar year for reallocation unless an extension or carryforward is granted.

(b) For each calendar year, any housing or student loan allocations, for which bonds have not been issued by December 15th of the same calendar year, shall revert to the agency on December 15th of the same calendar year for reallocation unless an extension or carryforward is granted.

(6) An extension of the deadlines provided by subsection (5) of this section may be granted by the agency for the approved allocation amount or a portion thereof, based on:

(a) Firm and convincing evidence that the bonds will be issued before the end of the calendar year if the extension is granted; and

(b) Any other criteria the agency deems appropriate.

(7) If an issuer determines that bonds subject to the state ceiling will not be issued for the project or program for which an allocation was granted, the issuer shall promptly notify the agency in writing so that the allocation may be canceled and the amount may be available for reallocation.

(8) Bonds subject to the state ceiling may be issued only to finance the project or program for which a certificate of approval is granted.

(9) Within three business days of the date that bonds for which an allocation of the state ceiling is granted have been delivered to the original purchasers, the issuer shall mail to the agency a written notification of the bond issuance. In accordance with chapter 39.44 RCW, the issuer shall also complete bond issuance information on the form provided by the agency.

(10) If the total amount of bonds issued under the authority of a state ceiling for a project or program is less than the amount allocated, the remaining portion of the allocation shall revert to the agency for reallocation in accordance with the criteria in RCW 39.86.130. If the amount of bonds actually issued under the authority of a state ceiling is greater than the amount allocated, the entire allocation shall be disallowed. [2011 c 211 § 3; 2010 1st sp.s. c 6 § 8; 1987 c 297 § 5.]

***Reviser's note:** RCW 39.86.110 was amended by 2010 1st sp.s. c 6 § 4, deleting the definition of "board."

Short title—2010 1st sp.s. c 6: See note following RCW 43.180.160.

39.86.150 Reallocation process and carryforwards.

(1) Beginning July 1st of each calendar year, the agency may allocate or reallocate any portions of the annual state tax-exempt private activity bond ceiling for which no certificate of approval is in effect. Reallocations may also be made from the remainder category at any time during the year.

(2) Prior to the end of each calendar year, the agency shall allocate or reallocate any unused portions of the state ceiling among one or more issuers as carryforward, to be used within three years, in accordance with the code and relevant criteria described in RCW 39.86.130.

(3) Reallocations of state bond ceilings other than the annual tax-exempt private activity bond ceiling may be made by the agency in accordance with the code or as established in agency rule when not specified in the code. [2010 1st sp.s. c 6 § 9; 1987 c 297 § 6.]

Short title—2010 1st sp.s. c 6: See note following RCW 43.180.160.

39.86.155 State bond ceiling allocation formula.

Original allocations or any reallocations of state bond ceilings other than the tax-exempt private activity bond ceiling

must be determined by formula as provided in the code, or by department rule if no formula is provided in the code. [2010 1st sp.s. c 6 § 5.]

Short title—2010 1st sp.s. c 6: See note following RCW 43.180.160.

39.86.160 Executive orders. If federal legislation is enacted or federal regulations are promulgated which affect the state ceiling, when the legislature is not in session or is less than forty-five days from the constitutional end of session, the governor may establish by executive order an alternative system for the allocation of tax-exempt bonds under the state ceiling, effective until the legislature acts. In allocating or reallocating under this section, the governor shall take into account the requirements of federal law, the policy choices expressed in state law, and the projected needs of issuers. [1987 c 297 § 7.]

39.86.170 Fees. A fee schedule shall be established by rule by the agency to assist in support of bond allocation activities. Fees shall reflect costs actually incurred or expected to be incurred by the agency in its bond allocation and bond users clearinghouse activities. [2010 1st sp.s. c 6 § 10; 1987 c 297 § 8.]

Short title—2010 1st sp.s. c 6: See note following RCW 43.180.160.

39.86.180 Code amendments. In order to permit the full use of the authorized state ceiling under federal law, the agency may adopt rules approving any amendments made to the code after May 8, 1987. [1987 c 297 § 9.]

39.86.190 Biennial reports. By February 1st of each even-numbered year, the agency shall summarize for the legislature each previous year's bond allocation requests and issuance. Beginning in February 2010 and thereafter in February of each even-numbered year, the agency shall also submit a biennial report summarizing usage of the bond allocation proceeds and any policy concerns for future bond allocations. [2010 1st sp.s. c 6 § 11; 2009 c 518 § 19; 1987 c 297 § 10.]

Short title—2010 1st sp.s. c 6: See note following RCW 43.180.160.

39.86.905 Captions. As used in this chapter, captions constitute no part of the law. [1987 c 297 § 15.]

39.86.906 Severability—1987 c 297. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 297 § 14.]

Chapter 39.88 RCW

COMMUNITY REDEVELOPMENT FINANCING ACT

Sections

39.88.010	Declaration.
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39.88.030	Authority—Limitations.
39.88.040	Procedure for adoption of public improvement.
39.88.050	Notice of public improvement.
39.88.060	Disagreements between taxing districts.
39.88.070	Apportionment of taxes.
39.88.080	Application of tax allocation revenues.
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39.88.100	Tax allocation bonds.
39.88.110	Legal investments.
39.88.120	Notice to state.
39.88.130	Conclusive presumption of validity.
39.88.900	Supplemental nature of chapter.
39.88.905	Short title.
39.88.910	Captions not part of law—1982 1st ex.s. c 42.
39.88.915	Severability—1982 1st ex.s. c 42.

Reviser's note: Senate Joint Resolution No. 143, amending the state Constitution to authorize the use of increased property tax revenues resulting from a public improvement for the purpose of paying obligations incurred for the improvement, was enacted during the 1982 first extraordinary session of the legislature and was submitted to the voters at the November 1982 state general election. It was defeated by a vote of 393,030 in favor and 882,194 against. A similar constitutional amendment, House Joint Resolution No. 23, was defeated at the November 1985 state general election.

39.88.010 Declaration. It is declared to be the public policy of the state of Washington to promote and facilitate the orderly development and economic stability of its urban areas. The provision of adequate government services and the creation of employment opportunities for the citizens within urban areas depends upon the economic growth and the strength of their tax base. The construction of necessary public improvements in accordance with local community planning will encourage investment in job-producing private development and will expand the public tax base.

It is the purpose of this chapter to allocate a portion of regular property taxes for limited periods of time to assist in the financing of public improvements which are needed to encourage private development of urban areas; to prevent or arrest the decay of urban areas due to the inability of existing financing methods to provide needed public improvements; to encourage local taxing districts to cooperate in the allocation of future tax revenues arising in urban areas in order to facilitate the long-term growth of their common tax base; and to encourage private investment within urban areas. [1982 1st ex.s. c 42 § 2.]

39.88.020 Definitions. As used in this chapter the following terms have the following meanings unless a different meaning is clearly indicated by the context:

(1) "Apportionment district" means the geographic area, within an urban area, from which regular property taxes are to be apportioned to finance a public improvement contained therein.

(2) "Assessed value of real property" means the valuation of real property as placed on the last completed assessment roll of the county.

(3) "City" means any city or town.

(4) "Ordinance" means any appropriate method of taking a legislative action by a county or city, whether known as a statute, resolution, ordinance, or otherwise.

(5) "Public improvement" means an undertaking to provide public facilities in an urban area which the sponsor has authority to provide.

(6) "Public improvement costs" means the costs of design, planning, acquisition, site preparation, construction, reconstruction, rehabilitation, improvement, and installation of the public improvement; costs of relocation, maintenance, and operation of property pending construction of the public improvement; costs of utilities relocated as a result of the public improvement; costs of financing, including interest during construction, legal and other professional services, taxes, and insurance; costs incurred by the assessor to revalue

real property for the purpose of determining the tax allocation base value that are in excess of costs incurred by the assessor in accordance with his or her revaluation plan under chapter 84.41 RCW, and the costs of apportioning the taxes and complying with this chapter and other applicable law; and administrative costs reasonably necessary and related to these costs. These costs may include costs incurred prior to the adoption of the public improvement ordinance, but subsequent to July 10, 1982.

(7) "Public improvement ordinance" means the ordinance passed under RCW 39.88.040(4).

(8) "Regular property taxes" means regular property taxes as now or hereafter defined in RCW 84.04.140, except regular property taxes levied by port districts or public utility districts specifically for the purpose of making required payments of principal and interest on general indebtedness.

(9) "Sponsor" means any county or city initiating and undertaking a public improvement.

(10) "Tax allocation base value of real property" means the true and fair value of real property within an apportionment district for the year in which the apportionment district was established.

(11) "Tax allocation bonds" means any bonds, notes, or other obligations issued by a sponsor pursuant to *section 10 of this act.

(12) "Tax allocation revenues" means those tax revenues allocated to a sponsor under RCW 39.88.070(1)(b).

(13) "Taxing districts" means any governmental entity which levies or has levied for it regular property taxes upon real property located within a proposed or approved apportionment district.

(14) "Urban area" means an area in a city or located outside of a city that is characterized by intensive use of the land for the location of structures and receiving such urban services as sewers, water, and other public utilities and services normally associated with urbanized areas. Not more than twenty-five percent of the area within the urban area proposed apportionment district may be vacant land.

(15) "Value of taxable property" means value of taxable property as defined in RCW 39.36.015. [2011 c 336 § 815; 1982 1st ex.s. c 42 § 3.]

Reviser's note: *(1) "section 10 of this act," codified as RCW 39.88.090, deals with general obligation bonds. Tax allocation bonds are the subject of section 11 (RCW 39.88.100), which was apparently intended. The error arose in the renumbering of sections in the engrossing of amendments to Second Substitute Senate Bill No. 4603 [1982 1st ex.s. c 42].

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

39.88.030 Authority—Limitations. (1) Only public improvements which are determined by the legislative authority of the sponsor to meet the following criteria are eligible to be financed under this chapter:

(a) The public improvement is located within an urban area;

(b) The public improvement will encourage private development within the apportionment district;

(c) The public improvement will increase the fair market value of the real property located within the apportionment district;

(d) The private development which is anticipated to occur within the apportionment district as a result of the pub-

lic improvement is consistent with an existing comprehensive land use plan and approved growth policies of the jurisdiction within which it is located;

(e) A public improvement located within a city has been approved by the legislative authority of such city; and

(f) A public improvement located within an urban area in an unincorporated area has been approved by the legislative authority of the county within whose boundaries the area lies.

(2) Apportionment of regular property tax revenues to finance the public improvements is subject to the following limitations:

(a) No apportionment of regular property tax revenues may take place within a previously established apportionment district where regular property taxes are still apportioned to finance public improvements without the concurrence of the sponsor which established the district;

(b) No apportionment district may be established which includes any geographic area included within a previously established apportionment district which has outstanding bonds payable in whole or in part from tax allocation revenues;

(c) The total amount of outstanding bonds payable in whole or in part from tax allocation revenues arising from property located within a city shall not exceed two percent of the value of taxable property within the city, and the total amount of outstanding bonds payable in whole or in part from tax allocation revenues arising from property located within the unincorporated areas of a county shall not exceed two percent of the value of taxable property within the entire unincorporated area of the county; and

(d) No taxes other than regular property taxes may be apportioned under this chapter.

(3) Public improvements may be undertaken and coordinated with other programs or efforts undertaken by the sponsor or others and may be funded in whole or in part from sources other than those provided by this chapter. [1982 1st ex.s. c 42 § 4.]

39.88.040 Procedure for adoption of public improvement. Public improvements funded by tax allocation revenues may only be located within an urban area. In order to secure an allocation of regular property taxes to finance a public improvement, a sponsor shall:

(1) Propose by ordinance a plan for the public improvement which includes a description of the contemplated public improvement, the estimated cost thereof, the boundaries of the apportionment district, the estimated period during which tax revenue apportionment is contemplated, and the ways in which the sponsor plans to use tax allocation revenues to finance the public improvement, and which sets at least three public hearings thereon before the legislative authority of the sponsor or a committee thereof: PROVIDED, That public hearings for the public improvement that is undertaken in combination or coordination by two or more sponsors may be held jointly; and public hearings, held before the legislative authority or a committee of a majority thereof may be combined with public hearings held for other purposes;

(2) At least fifteen days in advance of the hearing:

(a) Deliver notice of the hearing to all taxing districts, the county treasurer, and the county assessor, which notice includes a map or drawing showing the location of the con-

templated public improvement and the boundaries of the proposed apportionment district, a brief description of the public improvement, the estimated cost thereof, the anticipated increase in property values within the apportionment district, the location of the sponsor's principal business office where it will maintain information concerning the public improvement for public inspection, and the date and place of hearing; and

(b) Post notice in at least six public places located in the proposed apportionment district and publish notice in a legal newspaper of general circulation within the sponsor's jurisdiction briefly describing the public improvement, the proposed apportionment, the boundaries of the proposed apportionment district, the location where additional information concerning the public improvement may be inspected, and the date and place of hearing;

(3) At the time and place fixed for the hearing under subsection (1) of this section, and at such times to which the hearing may be adjourned, receive and consider all statements and materials as may be submitted, and objections and letters filed before or within ten days thereafter;

(4) Within one hundred twenty days after completion of the public hearings, pass an ordinance establishing the apportionment district and authorizing the proposed public improvement, including any modifications which in the sponsor's opinion the hearings indicated should be made, which includes the boundaries of the apportionment district, a description of the public improvement, the estimated cost thereof, the portion of the estimated cost thereof to be reimbursed from tax allocation revenues, the estimated time during which regular property taxes are to be apportioned, the date upon which apportionment of the regular property taxes will commence, and a finding that the public improvement meets the conditions of RCW 39.88.030. [1982 1st ex.s. c 42 § 5.]

39.88.050 Notice of public improvement. Within fifteen days after enactment of the public improvement ordinance, the sponsor shall publish notice in a legal newspaper circulated within the designated apportionment district summarizing the final public improvement, including a brief description of the public improvement, the boundaries of the apportionment district, and the location where the public improvement ordinance and any other information concerning the public improvement may be inspected.

Within fifteen days after enactment of the public improvement ordinance, the sponsor shall deliver a certified copy thereof to each taxing district, the county treasurer, and the county assessor. [1982 1st ex.s. c 42 § 6.]

39.88.060 Disagreements between taxing districts.

(1) Any taxing district that objects to the apportionment district, the duration of the apportionment, the manner of apportionment, or the propriety of cost items established by the public improvement ordinance of the sponsor may, within thirty days after mailing of the ordinance, petition for review thereof by the state board of tax appeals. The state board of tax appeals shall meet within a reasonable time, hear all the evidence presented by the parties on matters in dispute, and determine the issues upon the evidence as may be presented to it at the hearing. The board may approve or deny the public

improvement ordinance as enacted or may grant approval conditioned upon modification of the ordinance by the sponsor. The decision by the state board of tax appeals shall be final and conclusive but shall not preclude modification or discontinuation of the public improvement.

(2) If the sponsor modifies the public improvement ordinance as directed by the board, the public improvement ordinance shall be effective without further hearings or findings and shall not be subject to any further appeal. If the sponsor modifies the public improvement ordinance in a manner other than as directed by the board, the public improvement ordinance shall be subject to the procedures established pursuant to RCW 39.88.040 and 39.88.050. [1989 c 378 § 1; 1982 1st ex.s. c 42 § 7.]

39.88.070 Apportionment of taxes. (1) Upon the date established in the public improvement ordinance, but not sooner than the first day of the calendar year following the passage of the ordinance, the regular property taxes levied upon the assessed value of real property within the apportionment district shall be divided as follows:

(a) That portion of the regular property taxes produced by the rate of tax levied each year by or for each of the taxing districts upon the tax allocation base value of real property, or upon the assessed value of real property in each year, whichever is smaller, shall be allocated to and paid to the respective taxing districts; and

(b) That portion of the regular property taxes levied each year by or for each of the taxing districts upon the assessed value of real property within an apportionment district which is in excess of the tax allocation base value of real property shall be allocated and paid to the sponsor, or the sponsor's designated agent, until all public improvement costs to be paid from the tax allocation revenues have been paid, except that the sponsor may agree to receive less than the full amount of such portion as long as bond debt service, reserve, and other bond covenant requirements are satisfied, in which case the balance of the taxes shall be allocated to the respective taxing districts as the sponsor and the taxing districts may agree.

(2) The county assessor shall revalue the real property within the apportionment district for the purpose of determining the tax allocation base value for the apportionment district and shall certify to the sponsor the tax allocation base value as soon as practicable after the assessor receives notice of the public improvement ordinance and shall certify to the sponsor the total assessed value of real property within thirty days after the property values for each succeeding year have been established, except that the assessed value of state-assessed real property within the apportionment district shall be certified as soon as the values are provided to the assessor by the department of revenue. Nothing in this section authorizes revaluations of real property by the assessor for property taxation that are not made in accordance with the assessor's revaluation plan under chapter 84.41 RCW.

(3) The date upon which the apportionment district was established shall be considered the date upon which the public improvement ordinance was enacted by the sponsor.

(4) The apportionment of regular property taxes under this section shall cease when tax allocation revenues are no longer necessary or obligated to pay public improvement

costs or to pay principal of and interest on bonds issued to finance public improvement costs and payable in whole or in part from tax allocation revenues. At the time of termination of the apportionment, any excess money and any earnings thereon held by the sponsor shall be returned to the county treasurer and distributed to the taxing districts which were subject to the allocation in proportion to their regular property tax levies due for the year in which the funds are returned. [1982 1st ex.s. c 42 § 8.]

39.88.080 Application of tax allocation revenues. Tax allocation revenues may be applied as follows:

- (1) To pay public improvement costs;
- (2) To pay principal of and interest on, and to fund any necessary reserves for, tax allocation bonds;
- (3) To pay into bond funds established to pay the principal of and interest on general obligation bonds issued pursuant to law to finance public facilities that are specified in the public improvement ordinance and constructed following the establishment of and within the apportionment district; or
- (4) To pay any combination of the foregoing. [1982 1st ex.s. c 42 § 9.]

39.88.090 General obligation bonds. General obligation bonds which are issued to finance public facilities that are specified in the public improvement ordinance, and for which part or all of the principal or interest is paid by tax allocation revenues, shall be subject to the following requirements:

- (1) The intent to issue such bonds and the maximum amount which the sponsor contemplates issuing are specified in the public improvement ordinance; and
- (2) A statement of the intent of the sponsor to issue such bonds is included in all notices required by RCW 39.88.040 and 39.88.050.

In addition, the ordinance or resolution authorizing the issuance of such general obligation bonds shall be subject to potential referendum approval by the voters of the issuing entity when the bonds are part of the non-voter approved indebtedness limitation established pursuant to RCW 39.36.020. If the voters of the county or city issuing such bonds otherwise possess the general power of referendum on county or city matters, the ordinance or resolution shall be subject to that procedure. If the voters of the county or city issuing such bonds do not otherwise possess the general power of referendum on county or city matters, the referendum shall conform to the requirements and procedures for referendum petitions provided for code cities in RCW 35A.11.100. [1982 1st ex.s. c 42 § 10.]

39.88.100 Tax allocation bonds. (1) A sponsor may issue such tax allocation bonds as it may deem appropriate for the financing of public improvement costs and a reasonable bond reserve and for the refunding of any outstanding tax allocation bonds.

- (2) The principal and interest of tax allocation bonds may be made payable from:
 - (a) Tax allocation revenues;
 - (b) Project revenues which may include (i) nontax income, revenues, fees, and rents from the public improvement financed with the proceeds of the bonds, or portions

thereof, and (ii) contributions, grants, and nontax money available to the sponsor for payment of costs of the public improvement or the debt service of the bonds issued therefor;

(c) Any combination of the foregoing.

(3) Tax allocation bonds shall not be the general obligation of or guaranteed by all or any part of the full faith and credit of the sponsor or any other state or local government, or any tax revenues other than tax allocation revenues, and shall not be considered a debt of the sponsor or other state or local government for general indebtedness limitation purposes.

(4) The terms and conditions of tax allocation bonds may include provisions for the following matters, among others:

(a) The date of issuance, maturity date or dates, denominations, form, series, negotiability, registration, rank or priority, place of payment, interest rate or rates which may be fixed or may vary over the life of the tax allocation bonds, bond reserve, coverage, and such other terms related to repayment of the tax allocation bonds;

(b) The application of tax allocation bond proceeds; the use, sale, or disposition of property acquired; consideration or rents and fees to be charged in the sale or lease of property acquired; consideration or rents and fees to be charged in the sale or lease of property within a public improvement; the application of rents, fees, and revenues within a public improvement; the maintenance, insurance, and replacement of property within a public improvement; other encumbrances, if any, upon all or part of property within a public improvement, then existing or thereafter acquired; and the type of debts that may be incurred;

(c) The creation of special funds; the money to be so applied; and the use and disposition of the money;

(d) The securing of the tax allocation bonds by a pledge of property and property rights, by assignment of income generated by the public improvement, or by pledging such additional specifically described resources other than tax revenues as are available to the sponsor;

(e) The terms and conditions for redemption;

(f) The replacement of lost and destroyed bond instruments;

(g) Procedures for amendment of the terms and conditions of the tax allocation bonds;

(h) The powers of a trustee to enforce covenants and take other actions in event of default; the rights, liabilities, powers, and duties arising upon the breach of any covenant, condition, or obligation; and

(i) When consistent with the terms of this chapter, such other terms, conditions, and provisions which may make the tax allocation bonds more marketable and further the purposes of this chapter.

(5) Tax allocation bonds may be issued and sold in such manner as the legislative authority of the sponsor shall determine.

(6) The sponsor may also issue or incur obligations in anticipation of the receipt of tax allocation bond proceeds or other money available to pay public improvement costs. [1982 1st ex.s. c 42 § 11.]

39.88.110 Legal investments. Tax allocation bonds authorized in this chapter shall be legal investments for any

of the funds of the state and of municipal corporations, for trustees, and for other fiduciaries. [1982 1st ex.s. c 42 § 13.]

39.88.120 Notice to state. Whenever notice is required to be given to the state, notice shall be given to the director of revenue. [1982 1st ex.s. c 42 § 14.]

39.88.130 Conclusive presumption of validity. No direct or collateral attack on any public improvement, public improvement ordinance, or apportionment district purported to be authorized or created in conformance with applicable legal requirements, including the requirements of this chapter, may be commenced more than thirty days after publication of notice as required by RCW 39.88.050. [1982 1st ex.s. c 42 § 15.]

39.88.900 Supplemental nature of chapter. This chapter supplements and neither restricts nor limits any powers which the state or any municipal corporation might otherwise have under any laws of this state. [1982 1st ex.s. c 42 § 16.]

39.88.905 Short title. This chapter may be known and cited as the Community Redevelopment Financing Act of 1982. [1982 1st ex.s. c 42 § 1.]

39.88.910 Captions not part of law—1982 1st ex.s. c 42. As used in this act, captions constitute no part of the law. [1982 1st ex.s. c 42 § 17.]

39.88.915 Severability—1982 1st ex.s. c 42. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 1st ex.s. c 42 § 18.]

Chapter 39.89 RCW

COMMUNITY REVITALIZATION FINANCING

Sections

39.89.010	Declaration—Purpose.
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39.89.040	Coordination with other programs—Improvements by private developer must meet applicable state and local laws.
39.89.050	Procedure for creating increment area.
39.89.060	Public notice—Notice to officials.
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39.89.100	Revenue bonds.
39.89.900	Supplemental nature of chapter.
39.89.902	Severability—2001 c 212.

39.89.010 Declaration—Purpose. (1) It is declared to be the public policy of the state of Washington to promote and facilitate the orderly development and economic stability of its communities. Local governments need the ability to raise revenue to finance public improvements that are designed to encourage economic growth and development in geographic areas characterized by high levels of unemployment and stagnate employment and income growth. The construction of necessary public improvements in accordance with local economic development plans will encourage

investment in job-producing private development and expand the public tax base.

(2) It is the purpose of this chapter:

(a) To encourage taxing districts to cooperate in the allocation of future tax revenues that are used to finance public improvements designed to encourage private development in selected areas, in particular in those local governments that are located adjacent to another state or international border;

(b) To assist those local governments that have a competitive disadvantage in its ability to attract business, private investment, or commercial development due to its location near a state or international border; and

(c) To prevent or arrest the decay of selected areas due to the inability of existing financial methods to provide needed public improvements, and to encourage private investment designed to promote and facilitate the orderly redevelopment of selected areas. [2001 c 212 § 1.]

39.89.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Assessed value of real property" means the valuation of real property as placed on the last completed assessment roll.

(2) "Local government" means any city, town, county, port district, or any combination thereof.

(3) "Ordinance" means any appropriate method of taking legislative action by a local government.

(4) "Public improvements" means:

(a) Infrastructure improvements within the increment area that include:

(i) Street and road construction and maintenance;

(ii) Water and sewer system construction and improvements;

(iii) Sidewalks and streetlights;

(iv) Parking, terminal, and dock facilities;

(v) Park and ride facilities of a transit authority;

(vi) Park facilities and recreational areas; and

(vii) Storm water and drainage management systems;

and

(b) Expenditures for any of the following purposes:

(i) Providing environmental analysis, professional management, planning, and promotion within the increment area, including the management and promotion of retail trade activities in the increment area;

(ii) Providing maintenance and security for common or public areas in the increment area; or

(iii) Historic preservation activities authorized under RCW 35.21.395.

(5) "Public improvement costs" means the costs of: (a) Design, planning, acquisition, site preparation, construction, reconstruction, rehabilitation, improvement, and installation of public improvements; (b) relocating, maintaining, and operating property pending construction of public improvements; (c) relocating utilities as a result of public improvements; (d) financing public improvements, including interest during construction, legal and other professional services, taxes, insurance, principal and interest costs on general indebtedness issued to finance public improvements, and any necessary reserves for general indebtedness; (e) assessments incurred in revaluing real property for the purpose of deter-

mining the tax allocation base value that are in excess of costs incurred by the assessor in accordance with the revaluation plan under chapter 84.41 RCW, and the costs of apportioning the taxes and complying with this chapter and other applicable law; and (f) administrative expenses and feasibility studies reasonably necessary and related to these costs, including related costs that may have been incurred before adoption of the ordinance authorizing the public improvements and the use of community revitalization financing to fund the costs of the public improvements.

(6) "Regular property taxes" means regular property taxes as defined in RCW 84.04.140, except: (a) Regular property taxes levied by port districts or public utility districts specifically for the purpose of making required payments of principal and interest on general indebtedness; and (b) regular property taxes levied by the state for the support of the common schools under RCW 84.52.065. Regular property taxes do not include excess property tax levies that are exempt from the aggregate limits for junior and senior taxing districts as provided in RCW 84.52.043.

(7) "Tax allocation base value" means the true and fair value of real property located within an increment area for taxes imposed in the year in which the increment area is created, plus twenty-five percent of any increase in the true and fair value of real property located within an increment area that is placed on the assessment rolls after the increment area is created.

(8) "Tax allocation revenues" means those tax revenues derived from the imposition of regular property taxes on the increment value and distributed to finance public improvements.

(9) "Increment area" means the geographic area from which taxes are to be appropriated to finance public improvements authorized under this chapter.

(10) "Increment value" means seventy-five percent of any increase in the true and fair value of real property in an increment area that is placed on the tax rolls after the increment area is created.

(11) "Taxing districts" means a governmental entity that levies or has levied for it regular property taxes upon real property located within a proposed or approved increment area.

(12) "Value of taxable property" means the value of the taxable property as defined in RCW 39.36.015. [2001 c 212 § 2.]

39.89.030 Authority—Conditions. A local government may finance public improvements using community revitalization financing subject to the following conditions:

(1) The local government adopts an ordinance designating an increment area within its boundaries and specifying the public improvements proposed to be financed in whole or in part with the use of community revitalization financing;

(2) The public improvements proposed to be financed in whole or in part using community revitalization financing are expected to encourage private development within the increment area and to increase the fair market value of real property within the increment area;

(3) Private development that is anticipated to occur within the increment area, as a result of the public improvements, will be consistent with the countywide planning pol-

icy adopted by the county under RCW 36.70A.210 and the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW;

(4) Taxing districts, in the aggregate, that levy at least seventy-five percent of the regular property tax within which the increment area is located approves the community revitalization financing of the project under RCW 39.89.050(1); and

(5) In an increment area that includes any portion of a fire protection district as defined in Title 52 RCW, the fire protection district must agree to participate in the community revitalization financing of the project under chapter 212, Laws of 2001, for the project to proceed. Approval by the fire protection district shall be considered as part of the required participation by taxing districts under subsection (4) of this section. [2002 c 12 § 1; 2001 c 212 § 3.]

39.89.040 Coordination with other programs—Improvements by private developer must meet applicable state and local laws.

(1) Public improvements that are financed with community revitalization financing may be undertaken and coordinated with other programs or efforts undertaken by the local government and other taxing districts and may be funded in part from revenue sources other than community revitalization financing.

(2) Public improvements that are constructed by a private developer must meet all applicable state and local laws. [2002 c 12 § 2; 2001 c 212 § 4.]

39.89.050 Procedure for creating increment area.

Before adopting an ordinance creating the increment area, a local government must:

(1) Obtain written agreement for the use of community revitalization financing to finance all or a portion of the costs of the designated public improvements from taxing districts that, in the aggregate, levy at least seventy-five percent of the regular property tax on property within the increment area. A signed, written agreement from taxing districts that in the aggregate levy at least seventy-five percent of the regular property tax within the increment area, constitutes concurrence by all taxing districts in the increment area in the public improvement and participation in the public improvement to the extent of providing limited funding under community revitalization financing authorized under this chapter. The agreement must be authorized by the governing body of taxing districts that in the aggregate levy at least seventy-five percent of the regular property tax on property within the increment area;

(2) Hold a public hearing on the proposed financing of the public improvement in whole or in part with community revitalization financing. Notice of the public hearing must be published in a legal newspaper of general circulation within the proposed increment area at least ten days before the public hearing and posted in at least six conspicuous public places located in the proposed increment area. Notices must describe the contemplated public improvements, estimate the costs of the public improvements, describe the portion of the costs of the public improvements to be borne by community revitalization financing, describe any other sources of revenue to finance the public improvements, describe the boundaries of the proposed increment area, and estimate the period

during which community revitalization financing is contemplated to be used. The public hearing may be held by either the governing body of the local government, or a committee of the governing body that includes at least a majority of the whole governing body; and

(3) Adopt an ordinance establishing the increment area that describes the public improvements, describes the boundaries of the increment area, estimates the cost of the public improvements and the portion of these costs to be financed by community revitalization financing, estimates the time during which regular property taxes are to be apportioned, provides the date when the apportionment of the regular property taxes will commence, and finds that the conditions of RCW 39.89.030 are met. [2001 c 212 § 5.]

39.89.060 Public notice—Notice to officials. The local government shall:

(1) Publish notice in a legal newspaper of general circulation within the increment area that describes the public improvement, describes the boundaries of the increment area, and identifies the location and times where the ordinance and other public information concerning the public improvement may be inspected; and

(2) Deliver a certified copy of the ordinance to the county treasurer, the county assessor, and the governing body of each taxing district within which the increment area is located. [2001 c 212 § 6.]

39.89.070 Apportionment of taxes. (1) Commencing in the calendar year following the passage of the ordinance, the county treasurer shall distribute receipts from regular taxes imposed on real property located in the increment area as follows:

(a) Each taxing district shall receive that portion of its regular property taxes produced by the rate of tax levied by or for the taxing district on the tax allocation base value for that community revitalization financing project in the taxing district, or upon the total assessed value of real property in the taxing district, whichever is smaller; and

(b) The local government that created the increment area shall receive an additional portion of the regular property taxes levied by or for each taxing district upon the increment value within the increment area. However, the local government that created the increment area may agree to receive less than the full amount of this portion as long as bond debt service, reserve, and other bond covenant requirements are satisfied, in which case the balance of these tax receipts shall be allocated to the taxing districts that imposed regular property taxes, or have regular property taxes imposed for them, in the increment area for collection that year in proportion to their regular tax levy rates for collection that year. The local government may request that the treasurer transfer this additional portion of the property taxes to its designated agent. The portion of the tax receipts distributed to the local government or its agent under this subsection (1)(b) may only be expended to finance public improvement costs associated with the public improvements financed in whole or in part by community revitalization financing.

(2) The county assessor shall allocate twenty-five percent of any increased real property value occurring in the increment area to the tax allocation base value and seventy-

five percent to the increment value. This section does not authorize revaluations of real property by the assessor for property taxation that are not made in accordance with the assessor's revaluation plan under chapter 84.41 RCW or under other authorized revaluation procedures.

(3) The apportionment of increases in assessed valuation in an increment area, and the associated distribution to the local government of receipts from regular property taxes that are imposed on the increment value, must cease when tax allocation revenues are no longer necessary or obligated to pay the costs of the public improvements. Any excess tax allocation revenues and earnings on the tax allocation revenues remaining at the time the apportionment of tax receipts terminates must be returned to the county treasurer and distributed to the taxing districts that imposed regular property taxes, or had regular property taxes imposed for it, in the increment area for collection that year, in proportion to the rates of their regular property tax levies for collection that year. [2001 c 212 § 7.]

39.89.080 General indebtedness—Security. (1) A local government designating an increment area and authorizing the use of community revitalization financing may incur general indebtedness, and issue general obligation bonds, to finance the public improvements and retire the indebtedness in whole or in part from tax allocation revenues it receives, subject to the following requirements:

(a) The ordinance adopted by the local government creating the increment area and authorizing the use of community revitalization financing indicates an intent to incur this indebtedness and the maximum amount of this indebtedness that is contemplated; and

(b) The local government includes this statement of the intent in all notices required by RCW 39.89.050.

(2) The general indebtedness incurred under subsection (1) of this section may be payable from other tax revenues, the full faith and credit of the local government, and nontax income, revenues, fees, and rents from the public improvements, as well as contributions, grants, and nontax money available to the local government for payment of costs of the public improvements or associated debt service on the general indebtedness.

(3) In addition to the requirements in subsection (1) of this section, a local government designating an increment area and authorizing the use of community revitalization financing may require the nonpublic participant to provide adequate security to protect the public investment in the public improvement within the increment area. [2001 c 212 § 8.]

39.89.090 Conclusive presumption of validity. A direct or collateral attack on a public improvement, public improvement ordinance, or increment area purported to be authorized or created in conformance with applicable legal requirements, including this chapter, may not be commenced more than thirty days after publication of notice as required by RCW 39.89.060. [2001 c 212 § 9.]

39.89.100 Revenue bonds. (1) A local government may issue revenue bonds to fund revenue-generating public improvements, or portions of public improvements, that are located within an increment area and that it is authorized to

provide or operate. Whenever revenue bonds are to be issued, the legislative authority of the local government shall create or have created a special fund or funds from which, along with any reserves created pursuant to RCW 39.44.140, the principal and interest on these revenue bonds shall exclusively be payable. The legislative authority of the local government may obligate the local government to set aside and pay into the special fund or funds a fixed proportion or a fixed amount of the revenues from the public improvements that are funded by the revenue bonds. This amount or proportion is a lien and charge against these revenues, subject only to operating and maintenance expenses. The local government shall have due regard for the cost of operation and maintenance of the public improvements that are funded by the revenue bonds, and shall not set aside into the special fund or funds a greater amount or proportion of the revenues that in its judgment will be available over and above the cost of maintenance and operation and the amount or proportion, if any, of the revenue previously pledged. The local government may also provide that revenue bonds payable out of the same source or sources of revenue may later be issued on a parity with any revenue bonds being issued and sold.

(2) Revenue bonds issued pursuant to this section are not an indebtedness of the local government issuing the bonds, and the interest and principal on the bonds shall only be payable from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created pursuant to RCW 39.44.140. The owner or bearer of a revenue bond or any interest coupon issued pursuant to this section shall not have any claim against the local government arising from the bond or coupon except for payment from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created pursuant to RCW 39.44.140. The substance of the limitations included in this subsection shall be plainly printed, written, or engraved on each bond issued pursuant to this section.

(3) Revenue bonds with a maturity in excess of thirty years shall not be issued. The legislative authority of the local government shall by resolution determine for each revenue bond issue the amount, date, form, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, manner of execution, manner of sale, callable provisions, if any, and covenants including the refunding of existing revenue bonds. Facsimile signatures may be used on the bonds and any coupons. Refunding revenue bonds may be issued in the same manner as revenue bonds are issued. [2002 c 12 § 3.]

39.89.900 Supplemental nature of chapter. This chapter supplements and neither restricts nor limits any powers which the state or any local government might otherwise have under any laws of this state. [2001 c 212 § 10.]

39.89.902 Severability—2001 c 212. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2001 c 212 § 31.]

Chapter 39.90 RCW VALIDATION OF BONDS AND FINANCING PROCEEDINGS

Sections

39.90.010	Definition.
39.90.020	Validation of bonds, proceedings for issuance, sales, etc.
39.90.030	Validation of proceedings to finance or aid in financing.
39.90.050	Revenue bonds—Sale or issuance with greater interest rate than that specified authorized.
39.90.060	Validation of debts, contracts and obligations regardless of interest rates.

Cities and towns

*sewerage system bonds validated: RCW 35.67.194.
validating indebtedness: Chapter 35.40 RCW.*

City and county armory sites: Chapter 36.64 RCW.

Counties: Chapter 36.67 RCW.

County road bonds: RCW 36.76.080.

Funding bonds, validation: RCW 39.52.015.

Irrigation district bonds, validating: See note following RCW 87.19.005.

Metropolitan park districts, validating bonds: See note following RCW 35.61.010.

Municipal utilities, validating bond proceedings: See notes following RCW 35.92.010.

School districts

validating bonds proceedings: RCW 28A.530.010, 28A.530.020, and note following RCW 39.36.020.

validating indebtedness: Chapter 28A.535 RCW.

Second-class cities, validating bonds and proceedings: See note following RCW 35.23.545.

39.90.010 Definition. As used in this chapter, the term "public body" means any city, town, district or other governmental agency created by or under the laws of this state. [1947 c 242 § 1; Rem. Supp. 1947 § 5616-20.]

39.90.020 Validation of bonds, proceedings for issuance, sales, etc. All bonds heretofore issued for the purpose of financing or aiding in the financing of any work, undertaking, or project by any public body, including all proceedings for the authorization and issuance of such bonds, and the sale, execution, and delivery thereof, are hereby validated, ratified, approved, and confirmed, notwithstanding any lack of power (other than constitutional) of such public body, or the governing body or commission or officers thereof, to authorize and issue such bonds, or to sell, execute, or deliver the same, and notwithstanding any defects or irregularities (other than constitutional), including the failure to publish notices of elections, in such proceedings, or in such sale, execution or delivery, and notwithstanding that such governing body or commission or officers may not have been elected, appointed or qualified for the offices they purported to hold; and such bonds are and shall be binding, legal, valid, and enforceable obligations of such public body. [1947 c 242 § 2; Rem. Supp. 1947 § 5616-21.]

39.90.030 Validation of proceedings to finance or aid in financing. All proceedings which have been taken prior to March 19, 1947, for the purpose of financing or aiding in the financing of any work, undertaking, or project by any public body, including all proceedings for the authorization and issuance of bonds and for the sale, execution, and delivery thereof, are hereby validated, ratified, approved, and confirmed, notwithstanding any lack of power (other than consti-

tutional) of such public body, or the governing body or commission or officers thereof, to authorize and issue such bonds, or to sell, execute, or deliver the same, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings. [1947 c 242 § 3; Rem. Supp. 1947 § 5616-22.]

39.90.050 Revenue bonds—Sale or issuance with greater interest rate than that specified authorized. All revenue bonds, the issuance of which was authorized or ratified at a general or special election held within the issuing jurisdiction prior to July 1, 1970 or the proposition for the issuance of which will be submitted at such an election pursuant to action of the legislative authority of the issuer taken prior to July 1, 1970, may be sold and issued with an interest rate or rates greater than any interest rate restriction contained in the ballot proposition or ordinance or resolution relating to such authorization or ratification. [1970 ex.s. c 66 § 6.]

39.90.060 Validation of debts, contracts and obligations regardless of interest rates. All debts, contracts and obligations heretofore made or incurred by or in favor of the state, state agencies, The Evergreen State College, community colleges, and regional and state universities, and the political subdivisions, municipal corporations and quasi municipal corporations of this state, are hereby declared to be legal and valid and of full force and effect from the date thereof, regardless of the interest rate borne by any such debts, contracts and obligations. [1977 ex.s. c 169 § 93; 1970 ex.s. c 66 § 7.]

Additional notes found at www.leg.wa.gov

Chapter 39.92 RCW

LOCAL TRANSPORTATION ACT

Sections

39.92.010	Purpose.
39.92.020	Definitions.
39.92.030	Local programs authorized.
39.92.040	Transportation impact fee.
39.92.050	Interlocal cooperation—Consistency and assistance.
39.92.900	Severability—Prospective application—1988 c 179.
39.92.901	Section captions—1988 c 179.

39.92.010 Purpose. The legislature finds that there is an increasing need for local and regional transportation improvements as the result of both existing demands and the foreseeable future demands from economic growth and development within the state, including residential, commercial, and industrial development.

The legislature intends with this chapter to enable local governments to develop and adopt programs for the purpose of jointly funding, from public and private sources, transportation improvements necessitated in whole or in part by economic development and growth within their respective jurisdictions. The programs should provide a fair and predictable method for allocating the cost of necessary transportation improvements between the public and private sectors. The programs should include consideration of public transportation as a method of reducing off-site transportation impacts from development. The legislature finds that the private funds authorized to be collected pursuant to this chapter are for the purpose of mitigating the impacts of development and

are not taxes. The state shall encourage and give priority to the state funding of local and regional transportation improvements that are funded in part by local, public, and private funds.

The authority provided by this chapter, RCW 35.43.182 through 35.43.188, and 36.88.072 through 36.88.078 for local governments to create and implement local transportation programs is intended to be supplemental, except as expressly provided in RCW 39.92.030(9), 82.02.020, and 36.73.120, to the existing authorities and responsibilities of local governments to regulate development and provide public facilities. [1988 c 179 § 1.]

39.92.020 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Developer" means an individual, group of individuals, partnership, corporation, association, municipal corporation, state agency, or other person undertaking development and their successors and assigns.

(2) "Development" means the subdivision or short platting of land or the construction or reconstruction of residential, commercial, industrial, public, or any other building, building space, or land.

(3) "Direct result of the proposed development" means those quantifiable transportation impacts that are caused by vehicles or pedestrians whose trip origin or destination is the proposed development.

(4) "Local government" means all counties, cities, and towns in the state of Washington and transportation benefit districts created pursuant to chapter 36.73 RCW.

(5) "Off-site transportation improvements" means those transportation capital improvements designated in the local plan adopted under this chapter that are authorized to be undertaken by local government and that serve the transportation needs of more than one development.

(6) "Transportation impact fee" means a monetary charge imposed on new development for the purpose of mitigating off-site transportation impacts that are a direct result of the proposed development.

(7) "Fair market value" means the price in terms of money that a property will bring in a competitive and open market under all conditions of a fair sale, the buyer and seller each prudently knowledgeable, and assuming the price is not affected by undue stimulus, measured at the time of the dedication to local government of land or improved transportation facilities. [1988 c 179 § 2.]

39.92.030 Local programs authorized. Local governments may develop and adopt programs for the purpose of jointly funding, from public and private sources, transportation improvements necessitated in whole or in part by economic development and growth within their respective jurisdictions. Local governments shall adopt the programs by ordinance after notice and public hearing. Each program shall contain the elements described in this section.

(1) The program shall identify the geographic boundaries of the entire area or areas generally benefited by the proposed off-site transportation improvements and within which transportation impact fees will be imposed under this chapter.

(2) The program shall be based on an adopted comprehensive, long-term transportation plan identifying the pro-

posed off-site transportation improvements reasonable and necessary to meet the future growth needs of the designated plan area and intended to be covered by this joint funding program, including acquisition of right-of-way, construction and reconstruction of all major and minor arterials and intersection improvements, and identifying design standards, levels of service, capacities, and costs applicable to the program. The program shall also indicate how the transportation plan is coordinated with applicable transportation plans for the region and for adjacent jurisdictions. The program shall also indicate how public transportation and ride-sharing improvements and services will be used to reduce off-site transportation impacts from development.

(3) The program shall include at least a six-year capital funding program, updated annually, identifying the specific public sources and amounts of revenue necessary to pay for that portion of the cost of all off-site transportation improvements contained in the transportation plan that will not foreseeably be funded by transportation impact fees. The program shall include a proposed schedule for construction and expenditures of funds. The funding plan shall consider the additional local tax revenue estimated to be generated by new development within the plan area if all or a portion of the additional revenue is proposed to be earmarked as future appropriations for such off-site transportation improvements.

(4) The program shall authorize transportation impact fees to be imposed on new development within the plan area for the purpose of providing a portion of the funding for reasonable and necessary off-site transportation improvements to solve the cumulative impacts of planned growth and development in the plan area. Off-site transportation impacts shall be measured as a pro rata share of the capacity of the off-site transportation improvements being funded under the program. The fees shall not exceed the amount that the local government can demonstrate is reasonably necessary as a direct result of the proposed development.

(5) The program shall provide that the funds collected as a result of a particular new development shall be used in substantial part to pay for improvements mitigating the impacts of the development or be refunded to the property owners of record. Fees paid toward more than one transportation improvement may be pooled and expended on any one of the improvements mitigating the impact of the development. The funds shall be expended in all cases within six years of collection by the local government or the unexpended funds shall be refunded.

(6) The program shall also describe the formula, timing, security, credits, and other terms and conditions affecting the amount and method of payment of the transportation impact fees as further provided for in RCW 39.92.040. In calculating the amount of the fee, local government shall consider and give credit for the developer's participation in public transportation and ride-sharing improvements and services.

(7) The administrative element of the program shall include: An opportunity for administrative appeal by the developer and hearing before an independent examiner of the amount of the transportation impact fee imposed; establishment of a designated account for the public and private funds appropriated or collected for the transportation improvements identified in the plan; methods to enforce collection of the public and private funds identified in the program; desig-

nation of the administrative departments or other entities responsible for administering the program, including determination of fee amounts, transportation planning, and construction; and provisions for future amendment of the program including the addition of other off-site transportation improvements. The program shall not be amended in a manner to relieve local government of any contractual obligations made to prior developers.

(8) The program shall provide that private transportation impact fees shall not be collected for any off-site transportation improvement that is incapable of being reasonably carried out because of lack of public funds or other foreseeable impediment.

(9) The program shall provide that no transportation impact fee may be imposed on a development by local government pursuant to this program when mitigation of the same off-site transportation impacts for the development is being required by any government agency pursuant to any other local, state, or federal law. [1988 c 179 § 3.]

39.92.040 Transportation impact fee. The program shall describe the formula or method for calculating the amount of the transportation impact fees to be imposed on new development within the plan area. The program may require developers to pay a transportation impact fee for off-site transportation improvements not yet constructed and for those jointly-funded improvements constructed since the commencement of the program.

The program shall define the event in the development approval process that triggers a determination of the amount of the transportation impact fees and the event that triggers the obligation to make actual payment of the fees. However, the payment obligation shall not commence before the date the developer has obtained a building permit for the new development or, in the case of residential subdivisions or short plats, at the time of final plat approval, at the developer's option. If the developer of a residential subdivision or short plat elects to pay the fee at the date a building permit has been obtained, the option to pay the transportation impact fee by installments as authorized by this section is deemed to have been waived by the developer. The developer shall be given the option to pay the transportation impact fee in a lump sum, without interest, or by installment with reasonable interest over a period of five years or more as specified by the local government.

The local government shall require security for the obligation to pay the transportation impact fee, in the form of a recorded agreement, deed of trust, letter of credit, or other instrument determined satisfactory by the local government. The developer shall also be given credit against its obligations for the transportation impact fee, for the fair market value of off-site land and/or the cost of constructing off-site transportation improvements dedicated to the local government. If the value of the dedication exceeds the amount of transportation impact fee obligation, the developer is entitled to reimbursement from transportation impact fees attributable to the dedicated improvements and paid by subsequent developers within the plan area.

Payment of the transportation impact fee entitles the developer and its successors and assigns to credit against any other fee, local improvement district assessment, or other

monetary imposition made specifically for the designated off-site transportation improvements intended to be covered by the transportation impact fee imposed pursuant to this program. The program shall also define the criteria for establishing periodic fee increases attributable to construction and related cost increases for the improvements designated in the program. [1989 c 296 § 1; 1988 c 179 § 4.]

39.92.050 Interlocal cooperation—Consistency and assistance. Local governments are authorized and encouraged to enter into interlocal agreements to jointly develop and adopt with other local governments the transportation programs authorized by this chapter for the purpose of accomplishing regional transportation planning and development. Local governments shall also seek, to the greatest degree practicable, consistency among jurisdictions in the terms and conditions of their programs for the purpose of increasing fairness and predictability on a regional basis. Local governments shall seek comment, in the development of their programs, from other affected local governments, state agencies, and governments authorized to perform public transportation functions. Local governments are also encouraged to enter into interlocal agreements to provide technical assistance to each other, in return for reasonable reimbursement, for the purpose of developing and implementing such transportation programs. [1988 c 179 § 5.]

39.92.900 Severability—Prospective application—1988 c 179. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. This act is intended to be prospective, not retroactive, in its application. [1988 c 179 § 17.]

39.92.901 Section captions—1988 c 179. Section captions used in this act do not constitute any part of the law. [1988 c 179 § 18.]

**Chapter 39.94 RCW
FINANCING CONTRACTS**

Sections

39.94.010	Purposes—Construction.
39.94.020	Definitions.
39.94.030	Authority to enter into financing contracts—Terms—Intent—Obligation of state revenues.
39.94.040	State finance committee—Duties—Legislative approval required, when.
39.94.050	Financing program to be self-supporting—Payment of program expenses.
39.94.900	Application.

39.94.010 Purposes—Construction. The purposes of this chapter are to confirm the authority of the state, its agencies, departments, and instrumentalities, the state board for community and technical colleges, and the state institutions of higher education to enter into contracts for the acquisition of real and personal property which provide for payments over a term of more than one year and to exclude such contracts from the computation of indebtedness under Article VIII, section 1 of the state Constitution. It is further the purpose of this chapter to permit the state, its agencies, departments, and instrumentalities, the state board for community

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and technical colleges, and the state institutions of higher education to enter into financing contracts which make provision for the issuance of certificates of participation and other financing structures. Financing contracts of the state, whether or not entered into under this chapter, shall be subject to approval by the state finance committee except as provided in this chapter.

This chapter shall be liberally construed to effect its purposes. [2009 c 500 § 6; 1998 c 291 § 2; 1989 c 356 § 1.]

Effective date—2009 c 500: See note following RCW 39.42.070.

Additional notes found at www.leg.wa.gov

39.94.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Credit enhancement" includes insurance, letters of credit, lines of credit, or other similar agreements which enhance the security for the payment of the state's or an other agency's obligations under financing contracts.

(2) "Financing contract" means any contract entered into by the state for itself or on behalf of an other agency which provides for the use and purchase of real or personal property by the state and provides for payment by the state over a term of more than one year, and which provides that title to the subject property may secure performance of the state or transfer to the state or an other agency by the end of the term, upon exercise of an option, for a nominal amount or for a price determined without reference to fair market value. Financing contracts include, but are not limited to, conditional sales contracts, financing leases, lease purchase contracts, or refinancing contracts, but do not include operating or true leases. For purposes of this chapter, the term "financing contract" does not include any nonrecourse financing contract or other obligation payable only from money or other property received from private sources and not payable from any public money or property. The term "financing contract" includes a "master financing contract."

(3) "Master financing contract" means a financing contract which provides for the use and purchase of property by the state, and which may include more than one financing contract and appropriation.

(4) "Other agency" means any commission established under Title 15 RCW, a library or regional library, an educational service district, the superintendent of public instruction, the school directors' association, a health district, a public facilities district, or any county, city, town, school district, or other municipal corporation or quasi-municipal corporation.

(5) "State" means the state, agency, department, or instrumentality of the state, the state board for community and technical colleges, and any state institution of higher education.

(6) "State finance committee" means the state finance committee under chapter 43.33 RCW.

(7) "Trustee" means a bank or trust company, within or without the state, authorized by law to exercise trust powers. [2010 1st sp.s. c 15 § 13; 2010 c 115 § 1; 1998 c 291 § 3; 1990 c 47 § 3; 1989 c 356 § 2.]

Findings—Intent—Construction—2010 1st sp.s. c 15: See notes following RCW 36.100.010.

Authority—2010 c 115: See note following RCW 39.94.030.

Additional notes found at www.leg.wa.gov

39.94.030 Authority to enter into financing contracts—Terms—Intent—Obligation of state revenues.

(1) The state may enter into financing contracts for itself or on behalf of an other agency for the use and acquisition for public purposes of real and personal property. Payments under financing contracts of the state shall be made by the state from currently appropriated funds or funds not constituting "general state revenues" as defined in Article VIII, section 1 of the state Constitution. Except as provided in subsection (4)(b) of this section, payments under financing contracts of the state on behalf of any other agency shall be made solely from the sources identified in the financing contract, which may not obligate general state revenues as defined in Article VII, section 1 of the state Constitution. The treasurer of an other agency shall remit payments under financing contracts to the office of the state treasurer or to the state treasurer's designee. In the event of any deficiency of payments by an other agency under a financing contract, the treasurer of the other agency shall transfer any legally available funds of the other agency in satisfaction of the other agency's obligations under the financing contract if such funds have been obligated by the other agency under the financing contract and, if such deficiency is not thereby cured, the office of the state treasurer is directed to withdraw from that agency's share of state revenues for distribution or other money an amount sufficient to fulfill the terms and conditions of the financing contract. The term of any financing contract shall not exceed thirty years or the remaining useful life of the property, whichever is shorter. Financing contracts may include other terms and conditions agreed upon by the parties.

(2) The state for itself or on behalf of an other agency may enter into contracts for credit enhancement, which limits the recourse of the provider of credit enhancement solely to the security provided under the financing contract secured by the credit enhancement.

(3) The state or an other agency may grant a security interest in real or personal property acquired under financing contracts. The security interest may be perfected as provided by the uniform commercial code - secured transactions, or otherwise as provided by law for perfecting liens on real estate. Other terms and conditions may be included as agreed upon by the parties. An other agency that is authorized by applicable law to enter into a financing contract may make payments due under such a contract from the proceeds of annual tax levies approved by the voters under RCW 84.52.056, among other sources.

(4)(a) Financing contracts and contracts for credit enhancement entered into under the limitations set forth in this chapter do not constitute a debt or the contracting of indebtedness under any law limiting debt of the state. It is the intent of the legislature that such contracts also do not constitute a debt or the contracting of indebtedness under Article VIII, section 1 of the state Constitution. Certificates of participation in payments to be made under financing contracts also do not constitute a debt or the contracting of an indebtedness under any law limiting debt of the state if payment is conditioned upon payment by the state under the financing contract with respect to which the same relates. It is the intent of the legislature that such certificates also do not constitute a

debt or the contracting of indebtedness under Article VIII, section 1 of the state Constitution if payment of the certificates is conditioned upon payment by the state under the financing contract with respect to which those certificates relate.

(b) An other agency authorized by law to issue bonds, notes or other evidences of indebtedness or to enter into conditional sales contracts or lease obligations, may participate in a program under this chapter in which the state enters into a financing contract on behalf of that other agency, and the other agency's obligations to the state under the program may be evidenced by an agreement, lease, bond, note, or other appropriate instrument. A financing contract made by the state on behalf of an other agency may be secured by the pledge of revenues of the other agency or other agency's full faith and credit or may, at the option of the state finance committee, include a contingent obligation by the state for payment under such financing contract. [2010 c 115 § 2; 2009 c 500 § 7; 1998 c 291 § 4; 1989 c 356 § 3.]

Authority—2010 c 115: "The authority conferred on the state and any municipal corporation or other agency under this act is in addition and supplemental to any other authority granted by applicable law. Any action previously taken by the state, a municipal corporation, or other agency consistent with the provisions of this act is approved and confirmed." [2010 c 115 § 4.]

Effective date—2009 c 500: See note following RCW 39.42.070.

Additional notes found at www.leg.wa.gov

39.94.040 State finance committee—Duties—Legislative approval required, when.

(1) Except as provided in RCW 28B.10.022, the state may not enter into any financing contract for itself if the aggregate principal amount payable thereunder is greater than an amount to be established from time to time by the state finance committee or participate in a program providing for the issuance of certificates of participation, including any contract for credit enhancement, without the prior approval of the state finance committee. Except as provided in RCW 28B.10.022, the state finance committee shall approve the form of all financing contracts or a standard format for all financing contracts. The state finance committee also may:

(a) Consolidate existing or potential financing contracts into master financing contracts with respect to property acquired by one or more agencies, departments, instrumentalities of the state, the state board for community and technical colleges, or a state institution of higher learning; or to be acquired by another agency;

(b) Approve programs providing for the issuance of certificates of participation in master financing contracts for the state or for other agencies;

(c) Enter into agreements with trustees relating to master financing contracts; and

(d) Make appropriate rules for the performance of its duties under this chapter.

(2) In the performance of its duties under this chapter, the state finance committee may consult with representatives from the department of general administration, the office of financial management, and the office of the chief information officer.

(3) With the approval of the state finance committee, the state also may enter into agreements with trustees relating to

financing contracts and the issuance of certificates of participation.

(4) Except for financing contracts for real property used for the purposes described under chapter 28B.140 RCW, the state may not enter into any financing contract for real property of the state without prior approval of the legislature. For the purposes of this requirement, a financing contract must be treated as used for real property if it is being entered into by the state for the acquisition of land; the acquisition of an existing building; the construction of a new building; or a major remodeling, renovation, rehabilitation, or rebuilding of an existing building. Prior approval of the legislature is not required under this chapter for a financing contract entered into by the state under this chapter for energy conservation improvements to existing buildings where such improvements include: (a) Fixtures and equipment that are not part of a major remodeling, renovation, rehabilitation, or rebuilding of the building, or (b) other improvements to the building that are being performed for the primary purpose of energy conservation. Such energy conservation improvements must be determined eligible for financing under this chapter by the office of financial management in accordance with financing guidelines established by the state treasurer, and are to be treated as personal property for the purposes of this chapter.

(5) The state may not enter into any financing contract on behalf of another agency without the approval of such a financing contract by the governing body of the other agency. [2011 1st sp.s. c 43 § 726; 2011 c 151 § 7. Prior: 2010 1st sp.s. c 36 § 6015; 2010 1st sp.s. c 35 § 406; 2003 c 6 § 2; 2002 c 151 § 6; 1998 c 291 § 5; 1989 c 356 § 4.]

Reviser's note: This section was reenacted by 2011 c 151 § 7 and amended by 2011 1st sp.s. c 43 § 726, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2010 1st sp.s. c 36: See note following RCW 43.155.050.

Contingent effective date—2010 1st sp.s. c 35: See note following RCW 43.331.040.

Additional notes found at www.leg.wa.gov

39.94.050 Financing program to be self-supporting—Payment of program expenses. (1) It is the intent of the legislature that the financing program authorized by this chapter be self-supporting.

(2) The state treasurer is authorized to levy fees and apply specified investment earnings from time to time in amounts not to exceed sums sufficient to pay program expenses including, but not limited to, costs of issuance, and to create reserves to assure timely payment of financing contracts. The investment earnings available for this purpose represent the earnings on payments received from state and other agencies. [1998 c 291 § 1.]

Additional notes found at www.leg.wa.gov

39.94.900 Application. The provisions of this chapter shall apply to all financing contracts entered into following July 23, 1989. [1989 c 356 § 5.]

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Chapter 39.96 RCW PAYMENT AGREEMENTS

Sections

39.96.010	Findings and declaration.
39.96.020	Definitions.
39.96.030	Payment agreements authorized—Conditions.
39.96.040	Terms and conditions.
39.96.050	Payments—Credit enhancements.
39.96.060	Calculations regarding payment of obligations—Status of payments.
39.96.080	Authority cumulative.
39.96.900	Liberal construction—1993 c 273.
39.96.901	Captions not law—1993 c 273.
39.96.902	Severability—1993 c 273.
39.96.903	Effective date—1993 c 273.

39.96.010 Findings and declaration. The legislature finds and declares that the issuance by state and local governments of bonds and other obligations involves exposure to changes in interest rates; that a number of financial instruments are available to lower the net cost of these borrowings, or to reduce the exposure of state and local governments to changes in interest rates; that these reduced costs for state and local governments will benefit taxpayers and ratepayers; and that the legislature desires to provide state and local governments with express statutory authority to take advantage of these instruments. In recognition of the complexity of these financial instruments, the legislature desires that this authority be subject to certain limitations. [2004 c 108 § 1; 2000 c 184 § 1; 1995 c 192 § 1; 1993 c 273 § 1.]

Additional notes found at www.leg.wa.gov

39.96.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Financial advisor" means a financial services or financial advisory firm:

(a) With recognized knowledge and experience in connection with the negotiation and execution of payment agreements;

(b) That is acting solely as financial advisor to the governmental entity in connection with the execution of the payment agreement and the issuance or incurring of any related obligations, and not as a principal, placement agent, purchaser, underwriter, or other similar party, and that does not control, nor is it controlled by or under common control with, any such party;

(c) That is compensated for its services in connection with the execution of payment agreements, either directly or indirectly, solely by the governmental entity; and

(d) Whose compensation is not based on a percentage of the notional amount of the payment agreement or of the principal amount of any related obligations.

(2) "Governmental entity" means state government or local government.

(3) "Local government" means any city, county, city transportation authority, regional transit authority established under chapter 81.112 RCW, port district, public hospital district, public facilities district, or public utility district, or any joint operating agency formed under RCW 43.52.360, that has or will have outstanding obligations in an aggregate principal amount of at least one hundred million dollars as of the date a payment agreement is executed or is scheduled by its

terms to commence or had at least one hundred million dollars in gross revenues during the preceding calendar year.

(4) "Obligations" means bonds, notes, bond anticipation notes, commercial paper, or other obligations for borrowed money, or lease, installment purchase, or other similar financing agreements or certificates of participation in such agreements.

(5) "Payment agreement" means a written agreement which provides for an exchange of payments based on interest rates, or for ceilings or floors on these payments, or an option on these payments, or any combination, entered into on either a current or forward basis.

(6) "State government" means (a) the state of Washington, acting by and through its state finance committee, (b) the Washington health care facilities authority, (c) the Washington higher education facilities authority, (d) the Washington state housing finance commission, or (e) the state finance committee upon adoption of a resolution approving a payment agreement on behalf of any state institution of higher education as defined under RCW 28B.10.016: PROVIDED, That such approval shall not constitute the pledge of the full faith and credit of the state, but a pledge of only those funds specified in the approved agreement. [2005 c 154 § 1; 2004 c 108 § 2; 2003 c 47 § 1; 1993 c 273 § 2.]

39.96.030 Payment agreements authorized—Conditions. (1) Subject to subsections (2) and (3) of this section, any governmental entity may enter into a payment agreement in connection with, or incidental to, the issuance, incurring, or carrying of specific obligations, for the purpose of managing or reducing the governmental entity's exposure to fluctuations or levels of interest rates. No governmental entity may carry on a business of acting as a dealer in payment agreements. Nothing in this chapter shall be construed to provide governmental entities with separate or additional authority to invest funds or moneys relating to or held in connection with any obligations.

(2) No governmental entity may enter into a payment agreement under this chapter unless it first:

(a) Finds and determines, by ordinance or resolution, that the payment agreement, if fully performed by all parties thereto, will (i) reduce the amount or duration of its exposure to changes in interest rates; or (ii) result in a lower net cost of borrowing with respect to the related obligations;

(b) Obtains, on or prior to the date of execution of the payment agreement, a written certification from a financial advisor that (i) the terms and conditions of the payment agreement and any ancillary agreements, including without limitation, the interest rate or rates and any other amounts payable thereunder, are commercially reasonable in light of then existing market conditions; and (ii) the finding and determination contained in the ordinance or resolution required by (a) of this subsection is reasonable.

(3) Prior to selecting the other party to a payment agreement, a governmental entity shall solicit and give due consideration to proposals from at least two entities that meet the criteria set forth in RCW 39.96.040(2). Such solicitation and consideration shall be conducted in such manner as the governmental entity shall determine is reasonable. [2000 c 184 § 2; 1993 c 273 § 3.]

Additional notes found at www.leg.wa.gov

39.96.040 Terms and conditions. (1) Subject to subsections (2), (3), and (4) of this section, payment agreements entered into by any governmental entity may include those payment, term, security, default, remedy, termination, and other terms and conditions, and may be with those parties, as the governmental entity deems reasonably necessary or desirable.

(2) No governmental entity may enter into a payment agreement under this chapter unless:

(a) The other party to the agreement has a rating from at least two nationally recognized credit rating agencies, as of the date of execution of the agreement, that is within the two highest long-term investment grade rating categories, without regard to subcategories, or the payment obligations of the party under the agreement are unconditionally guaranteed by an entity that then has the required ratings; or

(b)(i) The other party to the agreement has a rating from at least two nationally recognized credit rating agencies, as of the date of execution of the agreement, that is within the three highest long-term investment grade rating categories, without regard to subcategories, or the payment obligations of the party under the agreement are unconditionally guaranteed by an entity that has the required ratings; and

(ii) The payment obligations of the other party under the agreement are collateralized by direct obligations of, or obligations the principal and interest on which are guaranteed by, the United States of America, that (A) are deposited with the governmental entity or an agent of the governmental entity; and (B) maintain a market value of not less than one hundred two percent of the net market value of the payment agreement to the governmental entity, as such net market value may be defined and determined from time to time under the terms of the payment agreement.

(3) No governmental entity may enter into a payment agreement with a party who qualifies under subsection (2)(a) of this section unless the payment agreement provides that, in the event the credit rating of the other party or its guarantor falls below the level required by subsection (2)(a) of this section, such party will comply with the collateralization requirements contained in subsection (2)(b) of this section.

(4) No governmental entity may enter into a payment agreement unless:

(a) The notional amount of the payment agreement does not exceed the principal amount of the obligations with respect to which the payment agreement is made; and

(b) The term of the payment agreement does not exceed the final term of the obligations with respect to which the payment agreement is made. [1993 c 273 § 4.]

39.96.050 Payments—Credit enhancements. (1) Subject to any covenants or agreements applicable to the obligations issued or incurred by the governmental entity, any payments required to be made by the governmental entity under a payment agreement entered into in connection with the issuance, incurring, or carrying of those obligations may be made from money set aside or pledged to pay or secure the payment of those obligations or from any other legally available source.

(2) Any governmental entity may enter into credit enhancement, liquidity, line of credit, or other similar agreements in connection with, or incidental to, the execution of a

payment agreement. The credit enhancement, liquidity, line of credit, or other similar agreement may include those payment, term, security, default, remedy, termination, and other terms and conditions, and may be with those parties, as the governmental entity deems reasonably necessary or desirable. [1993 c 273 § 5.]

39.96.060 Calculations regarding payment of obligations—Status of payments. (1) Subject to any covenants or agreements applicable to the obligations issued or incurred by the governmental entity, if the governmental entity enters into a payment agreement with respect to those obligations, then it may elect to treat the amounts payable from time to time with respect to those obligations as the amounts payable after giving effect to the payment agreement for the purposes of calculating:

(a) Rates and charges to be imposed by a revenue-producing enterprise if the revenues are pledged or used to pay those obligations;

(b) Any taxes to be levied and collected to pay those obligation[s]; and

(c) Payments or debt service on those obligations for any other purpose.

(2) A payment agreement and any obligation of the governmental entity to make payments under the agreement in future fiscal years shall not constitute debt or indebtedness of the governmental entity for purposes of state constitutional and statutory debt limitation provisions if the obligation to make any payments is contingent upon the performance of the other party or parties to the agreement, and no moneys are paid to the governmental entity under the payment agreement that must be repaid in future fiscal years. [1993 c 273 § 6.]

39.96.080 Authority cumulative. The powers conferred by this chapter are in addition to, and not in substitution for, the powers conferred by any existing law, and the limitations imposed by this chapter do not directly or indirectly modify, limit, or affect the powers conferred by any existing law. [1993 c 273 § 8.]

39.96.900 Liberal construction—1993 c 273. This chapter shall be liberally construed to effect its purposes. [1993 c 273 § 9.]

39.96.901 Captions not law—1993 c 273. Captions used in this chapter do not constitute any part of the law. [1993 c 273 § 10.]

39.96.902 Severability—1993 c 273. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 273 § 11.]

39.96.903 Effective date—1993 c 273. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 7, 1993]. [1993 c 273 § 13.]

(2014 Ed.)

Chapter 39.98 RCW SCHOOL DISTRICT CREDIT ENHANCEMENT PROGRAM

Sections

39.98.010	Finding—School district debt obligation not removed.
39.98.020	Definitions.
39.98.030	Bonds guaranteed by full faith, credit, and taxing power of the state—Reference to chapter on face of bond conclusively establishes guaranty.
39.98.040	Certificate issued by state treasurer evidence of guaranty—Limitations on issuance of guaranteed bonds—Fees.
39.98.050	Debt service payments—Notifications upon nonpayment—Payments by state treasurer—Repayment.
39.98.060	Reimbursement of state-paid debt service payments—Interest and penalties—Legal actions—Revision of collection of taxes to meet obligations.
39.98.070	Appropriation required.
39.98.080	Adoption of rules.
39.98.900	Contingent effective date—1999 c 273.

39.98.010 Finding—School district debt obligation not removed. The legislature finds that implementation of the credit enhancement program provided for in this chapter can provide substantial savings to the taxpayers of the state of Washington with minimal cost or risk to the state government. The guaranty provided by pledging the credit of the state to the payment of voter-approved school district general obligation bonds will encourage lower interest rates, and therefore lower taxes, for such bonds than school districts alone can command, despite the excellent credit history of such obligations. Any such guarantee does not remove the debt obligation of the school district and is not state debt. [1999 c 273 § 1.]

39.98.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Bond" means any voted general obligation bond issued by a school district, holding a certificate issued pursuant to this chapter for such a bond.

(2) "Credit enhancement program" means the school district bond guaranty established by this chapter.

(3) "General obligation bond" means any bond, note, warrant, certificate of indebtedness, or other obligation of a district that constitutes an indebtedness within the meaning of any applicable constitutional or statutory debt limitations.

(4) "Paying agent" means the paying agent selected, from time to time, for a bond issue pursuant to state law.

(5) "Refunding bond" means any general obligation bond issued by a district for the purpose of refunding its outstanding general obligation bonds.

(6) "School district" or "district" means any school district existing now or later under the laws of the state. [1999 c 273 § 2.]

39.98.030 Bonds guaranteed by full faith, credit, and taxing power of the state—Reference to chapter on face of bond conclusively establishes guaranty. (1)(a) The full faith, credit, and taxing power of the state is pledged to guarantee full and timely payment of the principal of and interest on bonds as such payments become due. However, in the event of any acceleration of the due date of the principal by reason of mandatory redemption or acceleration resulting from default, the payments guaranteed shall be made in the

amounts and at the times as payments of principal would have been due had there not been any acceleration.

(b) This guaranty does not extend to the payment of any redemption premium.

(c) Reference to this chapter by its title on the face of any bond conclusively establishes the guaranty provided to that bond under the provisions of this chapter.

(2)(a) The state pledges to and agrees with the owners of any bonds that the state will not alter, impair, or limit the rights vested by the credit enhancement program with respect to the bonds until the bonds, together with applicable interest, are fully paid and discharged. However, this chapter does not preclude an alteration, impairment, or limitation if full provision is made by law for the payment of the bonds.

(b) Each district may refer to this pledge and undertaking by the state in its bonds.

(3) Only validly issued bonds issued after January 1, 2000, may be guaranteed under this chapter. [1999 c 273 § 3.]

39.98.040 Certificate issued by state treasurer evidence of guaranty—Limitations on issuance of guaranteed bonds—Fees. (1)(a) Any district, by resolution of its board of directors, may request that the state treasurer issue a certificate evidencing the state's guaranty, under this chapter, of its bonds.

(b) After reviewing the request, if the state treasurer determines that the district is eligible under rules adopted by the state finance committee, the state treasurer shall promptly issue the certificate as to specific bonds of the district and provide it to the requesting district.

(c)(i) The district receiving the certificate and all other persons may rely on the certificate as evidencing the guaranty for bonds issued within one year from and after the date of the certificate, without making further inquiry during that year.

(ii) The certificate of eligibility is valid for one year even if the state treasurer later determines that the school district is ineligible.

(2) Any district that chooses to forego the benefits of the guaranty provided by this chapter for a particular issue of bonds may do so by not referring to this chapter on the face of its bonds.

(3) Any district that has bonds, the principal of or interest on which has been paid, in whole or in part, by the state under this chapter, may not issue any additional bonds guaranteed by this chapter until:

(a) All payment obligations of the district to the state under the credit enhancement program are satisfied; and

(b) The state treasurer and the state superintendent of public instruction each certify in writing, to be kept on file by the state treasurer and the state superintendent of public instruction, that the district is fiscally solvent.

(4) The state finance committee may establish by rule fees sufficient to cover the costs of administering this chapter. [1999 c 273 § 4.]

39.98.050 Debt service payments—Notifications upon nonpayment—Payments by state treasurer—Repayment. (1)(a) The county treasurer for each district with outstanding, unpaid bonds shall transfer money sufficient for each scheduled debt service payment to its paying

agent on or before any principal or interest payment date for the bonds.

(b) A county treasurer who is unable to transfer a scheduled debt service payment to the paying agent on the transfer date shall immediately notify the paying agent and the state treasurer by:

(i) Telephone;

(ii) A writing sent by facsimile or electronic transmission; and

(iii) A writing sent by first-class United States mail.

(2) If sufficient funds are not transferred to the paying agent as required by subsection (1) of this section, the paying agent shall immediately notify the state treasurer of that failure by:

(a) Telephone;

(b) A writing sent by facsimile or electronic transmission; and

(c) A writing sent by first-class United States mail.

(3)(a) If sufficient money to pay the scheduled debt service payment have not been so transferred to the paying agent, the state treasurer shall, forthwith, transfer sufficient money to the paying agent to make the scheduled debt service payment.

(b) The payment by the state treasurer:

(i) Discharges the obligation of the issuing district to its bond owners for the payment, but does not retire any bond that has matured. The terms of that bond remain in effect until the state is repaid; and

(ii) Transfers the rights represented by the general obligation of the district from the bond owners to the state.

(c) The district shall repay to the state the money so transferred as provided in this chapter. [1999 c 273 § 5.]

39.98.060 Reimbursement of state-paid debt service payments—Interest and penalties—Legal actions—Revision of collection of taxes to meet obligations. (1) Any district that has issued bonds for which the state has made all or part of a debt service payment shall:

(a) Reimburse all money drawn by the state treasurer on its behalf;

(b) Pay interest to the state on all money paid by the state from the date that money was drawn to the date the state is repaid at a rate to be prescribed by rule by the state finance committee; and

(c) Pay all penalties required by this chapter.

(2)(a) The state treasurer shall establish the reimbursement interest rate after considering the circumstances of any prior draws by the district on the state, market interest and penalty rates, and the cost of funds or opportunity cost of investments, if any, that were required to be borrowed or liquidated by the state to make payment on the bonds.

(b) The state treasurer may, after considering the circumstances giving rise to the failure of the district to make payment on its bonds in a timely manner, impose on the district a penalty of not more than five percent of the amount paid by the state pursuant to its guaranty for each instance in which a payment by the state is made.

(3)(a)(i) If the state treasurer determines that amounts obtained under this chapter will not reimburse the state in full within one year from the state's payment of a district's scheduled debt service payment, the state treasurer may pursue any

legal action, including mandamus, against the district to compel it to meet its repayment obligations to the state.

(ii) In pursuing its rights under (a)(i) of this subsection, the state shall have the same substantive and procedural rights as would a holder of the bonds of a district. If and to the extent that the state has made payments to the holders of bonds of a district under RCW 39.98.050 and has not been reimbursed by the district, the state shall be subrogated to the rights of those bond holders.

(iii) The state treasurer may also direct the district and the appropriate county officials to restructure and revise the collection of taxes for the payment of bonds on which the state treasurer has made payments under this chapter and, to the extent permitted by law, may require that the proceeds of such taxes be applied to the district's obligations to the state if all outstanding obligations of the school district payable from such taxes are fully paid or their payment is fully provided for.

(b) The district shall pay the fees, expenses, and costs incurred by the state in recovering amounts paid under the guaranty authorized by this chapter. [1999 c 273 § 6.]

39.98.070 Appropriation required. In order to effect the provisions of Article VIII, section 1(e) of the state Constitution, Senate Joint Resolution No. 8206, the legislature shall make provision for such amounts as may be required to make timely payments under the state school district credit enhancement program under this chapter in each and every biennial appropriations act. [1999 c 273 § 7.]

39.98.080 Adoption of rules. The state finance committee may adopt, under chapter 34.05 RCW, all rules necessary and appropriate for the implementation and administration of this chapter. [1999 c 273 § 8.]

39.98.900 Contingent effective date—1999 c 273. This act takes effect January 1, 2000, if the proposed amendment to Article VIII, section 1 of the state Constitution, guaranteeing the general obligation debt of school districts, is validly submitted to and is approved and ratified by the voters at the next general election. If the proposed amendment is not approved and ratified, this act is void in its entirety. [1999 c 273 § 10.]

Reviser's note: 1999 Senate Joint Resolution No. 8206 was approved at the November 1999 general election. See Article VIII, section 1 and Amendment 78 of the state Constitution.

Chapter 39.100 RCW

HOSPITAL BENEFIT ZONES

Sections

39.100.010	Definitions.
39.100.020	Conditions for financing public improvements.
39.100.030	Benefit zone creation—Agreement, hearing, and notice requirements—Ordinance requirements.
39.100.040	Benefit zone ordinance, publicizing and delivery—Challenges to benefit zone formation.
39.100.050	Use of excess local excise tax—Boundary information—Definitions.
39.100.060	Issuance of revenue bonds.
39.100.900	Effective date—2006 c 111.

(2014 Ed.)

39.100.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Benefit zone" means the geographic zone from which taxes are to be appropriated to finance public improvements authorized under this chapter and in which a hospital that has received a certificate of need is to be constructed.

(2) "Department" means the department of revenue.

(3) "Local government" means any city, town, county, or any combination thereof.

(4) "Ordinance" means any appropriate method of taking legislative action by a local government.

(5) "Participating taxing authority" means a taxing authority that has entered into a written agreement with a local government for the use of hospital benefit zone financing to the extent of allocating excess local excise taxes to the local government for the purpose of financing all or a portion of the costs of designated public improvements.

(6) "Public improvements" means:

(a) Infrastructure improvements within the benefit zone that include:

(i) Street and road construction and maintenance;

(ii) Water and sewer system construction and improvements;

(iii) Sidewalks and streetlights;

(iv) Parking, terminal, and dock facilities;

(v) Park and ride facilities of a transit authority;

(vi) Park facilities and recreational areas; and

(vii) Storm water and drainage management systems; and

(b) The construction, maintenance, and improvement of state highways that are connected to the benefit zone, including interchanges connected to the benefit zone.

(7) "Public improvement costs" means the costs of: (a) Design, planning, acquisition including land acquisition, site preparation including land clearing, construction, reconstruction, rehabilitation, improvement, and installation of public improvements; (b) demolishing, relocating, maintaining, and operating property pending construction of public improvements; (c) relocating utilities as a result of public improvements; and (d) financing public improvements, including interest during construction, legal and other professional services, taxes, insurance, principal and interest costs on indebtedness issued to finance public improvements, and any necessary reserves for indebtedness; and administrative expenses and feasibility studies reasonably necessary and related to these costs, including related costs that may have been incurred before adoption of the ordinance authorizing the public improvements and the use of hospital benefit zone financing to fund the costs of the public improvements.

(8) "Tax allocation revenues" means those tax revenues derived from the receipt of excess local excise taxes under RCW 39.100.050 and distributed by a local government, participating taxing authority, or both, to finance public improvements.

(9) "Taxing authority" means a governmental entity that imposes a sales or use tax under chapter 82.14 RCW upon the occurrence of any taxable event within a proposed or approved benefit zone. [2011 c 363 § 1; 2007 c 266 § 2; 2006 c 111 § 1.]

Finding—2007 c 266: "The legislature finds that local governments need flexible financing for public improvements that do not increase the combined state and local sales tax rate." [2007 c 266 § 1.]

Application—2007 c 266: "This act applies retroactively to July 1, 2006." [2007 c 266 § 10.]

Effective date—2007 c 266: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 266 § 11.]

39.100.020 Conditions for financing public improvements. A local government may finance public improvements using hospital benefit zone financing subject to the following conditions:

(1)(a) The local government adopts an ordinance designating a benefit zone within its boundaries and specifying the public improvements proposed to be financed in whole or in part with the use of hospital benefit zone financing;

(b) A local government may modify the public improvements to be financed in whole or in part with the use of hospital benefit zone financing by amending the ordinance adopted under (a) of this subsection and holding a public hearing consistent with RCW 39.100.030(1)(b); provided that the total cost of the public improvements is not increased;

(2) The public improvements proposed to be financed in whole or in part using hospital benefit zone financing are expected both to encourage private development within the benefit zone and to support the development of a hospital that has received a certificate of need;

(3) Private development that is anticipated to occur within the benefit zone, as a result of the public improvements, will be consistent with the countywide planning policy adopted by the county under RCW 36.70A.210 and the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW;

(4) The governing body of the local government finds that the public improvements proposed to be financed in whole or in part using hospital benefit zone financing are reasonably likely to:

(a) Increase private investment within the benefit zone;

(b) Increase employment within the benefit zone; and

(c) Generate, over the period of time that the local sales and use tax will be imposed under RCW 82.14.465, excess state excise taxes that are equal to or greater than the state contributions made under this chapter;

(5) The boundaries of a hospital benefit zone may not overlap any part of the boundaries of another hospital benefit zone or a revenue development area defined in chapter 39.102 RCW; and

(6) The boundaries of a hospital benefit zone may not change once the hospital benefit zone is established and approved by the department. [2011 c 363 § 2; 2007 c 266 § 3; 2006 c 111 § 2.]

Finding—Application—Effective date—2007 c 266: See notes following RCW 39.100.010.

39.100.030 Benefit zone creation—Agreement, hearing, and notice requirements—Ordinance requirements. (1) Before adopting an ordinance creating the benefit zone, a local government must:

(a) Obtain written agreement for the use of hospital benefit zone financing to finance all or a portion of the costs of the designated public improvements from any taxing authority that imposes a sales or use tax under chapter 82.14 RCW within the benefit zone if the taxing authority chooses to participate in the public improvements to the extent of providing limited funding under hospital benefit zone financing authorized under this chapter. The agreement must be authorized by the governing body of such participating taxing authorities; and

(b) Hold a public hearing on the proposed financing of the public improvement in whole or in part with hospital benefit zone financing.

(i) Notice of the public hearing must be published in a legal newspaper of general circulation within the proposed benefit zone at least ten days before the public hearing and posted in at least six conspicuous public places located in the proposed benefit zone.

(ii) Notices must describe the contemplated public improvements, estimate the costs of the public improvements, describe the portion of the costs of the public improvements to be borne by hospital benefit zone financing, describe any other sources of revenue to finance the public improvements, describe the boundaries of the proposed benefit zone, and estimate the period during which hospital benefit zone financing is contemplated to be used. The public hearing may be held by either the governing body of the local government, or a committee of the governing body that includes at least a majority of the whole governing body.

(2) In order to create a benefit zone, a local government must adopt an ordinance establishing the benefit zone that:

(a) Describes the public improvements;

(b) Describes the boundaries of the benefit zone;

(c) Estimates the cost of the public improvements and the portion of these costs to be financed by hospital benefit zone financing;

(d) Estimates the time during which excess local excise taxes are to be used to finance public improvement costs associated with the public improvements financed in whole or in part by hospital benefit zone financing;

(e) Estimates the average amount of tax revenue to be received in all fiscal years through the imposition of a sales and use tax under RCW 82.14.465;

(f) Provides the date when the use of excess local excise taxes will commence; and

(g) Finds that the conditions of RCW 39.100.020 are met.

(3) For purposes of this section, "fiscal year" means the year beginning July 1st and ending the following June 30th. [2007 c 266 § 4; 2006 c 111 § 3.]

Finding—Application—Effective date—2007 c 266: See notes following RCW 39.100.010.

39.100.040 Benefit zone ordinance, publicizing and delivery—Challenges to benefit zone formation. (1) A local government that adopts an ordinance creating a benefit zone under this chapter shall, within ninety days of adopting the ordinance:

(a) Publish notice in a legal newspaper of general circulation within the benefit zone that describes the public improvement, describes the boundaries of the benefit zone,

and identifies the location and times where the ordinance and other public information concerning the public improvement may be inspected; and

(b) Deliver a certified copy of the ordinance to the county treasurer, the county assessor, the department of revenue, and the governing body of each participating taxing authority within which the benefit zone is located.

(2) Any challenge to the formation shall be brought within sixty days of the later of the date of its formation or July 1, 2007. All parties, including the holders of bonds payable from tax revenue under chapter 266, Laws of 2007, may rely upon the presumption of validity of formation of the benefit zone following the expiration of the sixty-day period. [2007 c 266 § 5; 2006 c 111 § 4.]

Finding—Application—Effective date—2007 c 266: See notes following RCW 39.100.010.

39.100.050 Use of excess local excise tax—Boundary information—Definitions. (1) A local government that creates a benefit zone and has received approval from the department under RCW 82.32.700 to impose the local option sales and use tax authorized in RCW 82.14.465 may use annually any excess local excise taxes received by it from taxable activity within the benefit zone to finance public improvement costs associated with the public improvements financed in whole or in part by hospital benefit zone financing. The use of excess local excise taxes must cease when tax allocation revenues are no longer necessary or obligated to pay the costs of the public improvements. Any participating taxing authority is authorized to allocate excess local excise taxes to the local government as long as the local government has received approval from the department under RCW 82.32.700 to impose the local option sales and use tax authorized in RCW 82.14.465. The legislature declares that it is a proper purpose of a local government or participating taxing authority to allocate excess local excise taxes for purposes of financing public improvements under this chapter.

(2) A local government must provide the department accurate information describing the geographical boundaries of the benefit zone at least seventy-five days before the effective date of the ordinance creating the benefit zone. The local government must ensure that the boundary information provided to the department is kept current.

(3) The department must provide the necessary information to calculate excess local excise taxes to each local government that has provided boundary information to the department as provided in this section and that has received approval from the department under RCW 82.32.700 to impose the local option sales and use tax authorized in RCW 82.14.465.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Base year" means the calendar year immediately following the creation of a benefit zone.

(b) "Excess local excise taxes" means the amount of local excise taxes received by the local government during the measurement year from taxable activity within the benefit zone over and above the amount of local excise taxes received by the local government during the base year from taxable activity within the benefit zone. However, if a local government creates the benefit zone and reasonably deter-

mines that no activity subject to tax under chapters 82.08 and 82.12 RCW occurred in the twelve months immediately preceding the creation of the benefit zone within the boundaries of the area that became the benefit zone, "excess local excise taxes" means the entire amount of local excise taxes received by the local government during a calendar year period beginning with the calendar year immediately following the creation of the benefit zone and continuing with each measurement year thereafter.

(c) "Local excise taxes" means local revenues derived from the imposition of sales and use taxes authorized in RCW 82.14.030 at the tax rate that was in effect at the time the hospital benefit zone is approved by the department, except that if a local government reduces the rate of such tax after the hospital benefit zone was approved, "local excise taxes" means the local revenues derived from the imposition of the sales and use taxes authorized in RCW 82.14.030 at the lower tax rate.

(d) "Measurement year" means a calendar year, beginning with the calendar year following the base year and each calendar year thereafter, that is used annually to measure the amount of excess state excise taxes and excess local excise taxes required to be used to finance public improvement costs associated with public improvements financed in whole or in part by hospital benefit zone financing. [2010 c 106 § 201; 2007 c 266 § 6; 2006 c 111 § 5.]

Effective date—2010 c 106: See note following RCW 35.102.145.

Finding—Application—Effective date—2007 c 266: See notes following RCW 39.100.010.

39.100.060 Issuance of revenue bonds. (1) A local government may issue revenue bonds to fund public improvements, or portions of public improvements, that are located within a benefit zone and that it is authorized to provide or operate. Whenever revenue bonds are to be issued, the legislative authority of the local government shall create or have created a special fund or funds from which, along with any reserves created pursuant to RCW 39.44.140, the principal and interest on these revenue bonds shall exclusively be payable. The legislative authority of the local government may obligate the local government to set aside and pay into the special fund or funds a fixed proportion or a fixed amount of the revenues obtained from within the benefit zone of the development, construction, operation, and maintenance of businesses supported by the public improvements that are funded by the revenue bonds. This amount or proportion is a lien and charge against these revenues, subject only to operating and maintenance expenses. The local government shall have due regard for the cost of operation and maintenance of the public improvements that are funded by the revenue bonds, and shall not set aside into the special fund or funds a greater amount or proportion of the revenues that in its judgment will be available over and above the cost of maintenance and operation and the amount or proportion, if any, of the revenue previously pledged. The local government may also provide that revenue bonds payable out of the same source or sources of revenue may later be issued on a parity with any revenue bonds being issued and sold.

(2) Revenue bonds issued pursuant to this section are not an indebtedness of the local government issuing the bonds, and the interest and principal on the bonds shall only be pay-

able from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created pursuant to RCW 39.44.140. The owner or bearer of a revenue bond or any interest coupon issued pursuant to this section shall not have any claim against the local government arising from the bond or coupon except for payment from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created pursuant to RCW 39.44.140. The substance of the limitations included in this subsection shall be plainly printed, written, or engraved on each bond issued pursuant to this section.

(3) Revenue bonds with a maturity in excess of thirty years shall not be issued. The legislative authority of the local government shall by resolution determine for each revenue bond issue the amount, date, form, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, manner of execution, manner of sale, callable provisions, if any, and covenants including the refunding of existing revenue bonds. Facsimile signatures may be used on the bonds and any coupons. Refunding revenue bonds may be issued in the same manner as revenue bonds are issued. [2006 c 111 § 6.]

39.100.900 Effective date—2006 c 111. This act takes effect July 1, 2006. [2006 c 111 § 11.]

Chapter 39.102 RCW LOCAL INFRASTRUCTURE FINANCING TOOL PROGRAM

Sections

39.102.010	Finding.
39.102.020	Definitions.
39.102.030	Creation.
39.102.040	Application process—Board approval.
39.102.050	Demonstration projects.
39.102.060	Limitations on revenue development areas.
39.102.070	Local infrastructure financing—Conditions.
39.102.080	Revenue development area adoption—Process.
39.102.090	Revenue development area adoption—Ordinance—Hearing and delivery requirements.
39.102.100	Revenue development area adoption—Notice requirements.
39.102.110	Local excise tax allocation revenues.
39.102.120	Local property tax allocation revenues.
39.102.130	Use of sales and use tax funds.
39.102.140	Reporting requirements.
39.102.150	Issuance of general obligation bonds.
39.102.160	Use of tax revenue for bond repayment.
39.102.170	Limitation on bonds issued.
39.102.190	Revenue bonds to fund public improvements.
39.102.195	Limitation on use of revenues.
39.102.200	Joint legislative audit and review committee reports.
39.102.210	Program evaluation.
39.102.220	Administration by department and board.
39.102.900	Captions and part headings not law—2006 c 181.
39.102.901	Severability—2006 c 181.
39.102.902	Construction—2006 c 181.
39.102.903	Effective date—2006 c 181.
39.102.905	Expiration date—2013 2nd sp.s. c 21.

39.102.010 Finding. (Expires June 30, 2044.) The legislature recognizes that the state as a whole benefits from investment in public infrastructure because it promotes community and economic development. Public investment stimulates business activity and helps create jobs; stimulates the redevelopment of brownfields and blighted areas in the inner city; lowers the cost of housing; and promotes efficient land

use. The legislature finds that these activities generate revenue for the state and that it is in the public interest to invest in these projects through a credit against the state sales and use tax and an allocation of property tax revenue to those sponsoring local governments that can demonstrate the expected returns to the state. [2006 c 181 § 101.]

39.102.020 Definitions. (Expires June 30, 2044.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Annual state contribution limit" means seven million five hundred thousand dollars statewide per fiscal year.

(2) "Assessed value" means the valuation of taxable real property as placed on the last completed assessment roll.

(3) "Board" means the community economic revitalization board under chapter 43.160 RCW.

(4) "Dedicated" means pledged, set aside, allocated, received, budgeted, or otherwise identified.

(5) "Demonstration project" means one of the following projects:

(a) Bellingham waterfront redevelopment project;

(b) Spokane river district project at Liberty Lake; and

(c) Vancouver riverwest project.

(6) "Department" means the department of revenue.

(7) "Fiscal year" means the twelve-month period beginning July 1st and ending the following June 30th.

(8) "Local excise tax allocation revenue" means an amount of local excise taxes equal to some or all of the sponsoring local government's local excise tax increment, amounts of local excise taxes equal to some or all of any participating local government's excise tax increment as agreed upon in the written agreement under RCW 39.102.080(1), or both, and dedicated to local infrastructure financing.

(9) "Local excise tax increment" means an amount equal to the estimated annual increase in local excise taxes in each calendar year following the approval of the revenue development area by the board from taxable activity within the revenue development area, as set forth in the application provided to the board under RCW 39.102.040, and updated in accordance with RCW 39.102.140(1)(f).

(10) "Local excise taxes" means local revenues derived from the imposition of sales and use taxes authorized in RCW 82.14.030.

(11) "Local government" means any city, town, county, port district, and any federally recognized Indian tribe.

(12) "Local infrastructure financing" means the use of revenues received from local excise tax allocation revenues, local property tax allocation revenues, other revenues from local public sources, and revenues received from the local option sales and use tax authorized in RCW 82.14.475, dedicated to pay either the principal and interest on bonds authorized under RCW 39.102.150 or to pay public improvement costs on a pay-as-you-go basis subject to RCW 39.102.195, or both.

(13) "Local property tax allocation revenue" means those tax revenues derived from the receipt of regular property taxes levied on the property tax allocation revenue value and used for local infrastructure financing.

(14) "Low-income housing" means residential housing for low-income persons or families who lack the means which is necessary to enable them, without financial assis-

tance, to live in decent, safe, and sanitary dwellings, without overcrowding. For the purposes of this subsection, "low income" means income that does not exceed eighty percent of the median family income for the standard metropolitan statistical area in which the revenue development area is located.

(15) "Ordinance" means any appropriate method of taking legislative action by a local government.

(16) "Participating local government" means a local government having a revenue development area within its geographic boundaries that has entered into a written agreement with a sponsoring local government as provided in RCW 39.102.080 to allow the use of all or some of its local excise tax allocation revenues or other revenues from local public sources dedicated for local infrastructure financing.

(17) "Participating taxing district" means a local government having a revenue development area within its geographic boundaries that has entered into a written agreement with a sponsoring local government as provided in RCW 39.102.080 to allow the use of some or all of its local property tax allocation revenues or other revenues from local public sources dedicated for local infrastructure financing.

(18) "Property tax allocation revenue base value" means the assessed value of real property located within a revenue development area less the property tax allocation revenue value.

(19)(a)(i) "Property tax allocation revenue value" means seventy-five percent of any increase in the assessed value of real property in a revenue development area resulting from:

(A) The placement of new construction, improvements to property, or both, on the assessment roll, where the new construction and improvements are initiated after the revenue development area is approved by the board;

(B) The cost of new housing construction, conversion, and rehabilitation improvements, when such cost is treated as new construction for purposes of chapter 84.55 RCW as provided in RCW 84.14.020, and the new housing construction, conversion, and rehabilitation improvements are initiated after the revenue development area is approved by the board;

(C) The cost of rehabilitation of historic property, when such cost is treated as new construction for purposes of chapter 84.55 RCW as provided in RCW 84.26.070, and the rehabilitation is initiated after the revenue development area is approved by the board.

(ii) Increases in the assessed value of real property in a revenue development area resulting from (a)(i)(A) through (C) of this subsection are included in the property tax allocation revenue value in the initial year. These same amounts are also included in the property tax allocation revenue value in subsequent years unless the property becomes exempt from property taxation.

(b) "Property tax allocation revenue value" includes seventy-five percent of any increase in the assessed value of new construction consisting of an entire building in the years following the initial year, unless the building becomes exempt from property taxation.

(c) Except as provided in (b) of this subsection, "property tax allocation revenue value" does not include any increase in the assessed value of real property after the initial year.

(d) There is no property tax allocation revenue value if the assessed value of real property in a revenue development area has not increased as a result of any of the reasons specified in (a)(i)(A) through (C) of this subsection.

(e) For purposes of this subsection, "initial year" means:

(i) For new construction and improvements to property added to the assessment roll, the year during which the new construction and improvements are initially placed on the assessment roll;

(ii) For the cost of new housing construction, conversion, and rehabilitation improvements, when such cost is treated as new construction for purposes of chapter 84.55 RCW, the year when such cost is treated as new construction for purposes of levying taxes for collection in the following year; and

(iii) For the cost of rehabilitation of historic property, when such cost is treated as new construction for purposes of chapter 84.55 RCW, the year when such cost is treated as new construction for purposes of levying taxes for collection in the following year.

(20) "Public improvement costs" means the cost of: (a) Design, planning, acquisition including land acquisition, site preparation including land clearing, construction, reconstruction, rehabilitation, improvement, and installation of public improvements; (b) demolishing, relocating, maintaining, and operating property pending construction of public improvements; (c) the local government's portion of relocating utilities as a result of public improvements; (d) financing public improvements, including interest during construction, legal and other professional services, taxes, insurance, principal and interest costs on general indebtedness issued to finance public improvements, and any necessary reserves for general indebtedness; (e) assessments incurred in revaluing real property for the purpose of determining the property tax allocation revenue base value that are in excess of costs incurred by the assessor in accordance with the revaluation plan under chapter 84.41 RCW, and the costs of apportioning the taxes and complying with this chapter and other applicable law; (f) administrative expenses and feasibility studies reasonably necessary and related to these costs; and (g) any of the above-described costs that may have been incurred before adoption of the ordinance authorizing the public improvements and the use of local infrastructure financing to fund the costs of the public improvements.

(21) "Public improvements" means:

(a) Infrastructure improvements within the revenue development area that include:

(i) Street, bridge, and road construction and maintenance, including highway interchange construction;

(ii) Water and sewer system construction and improvements, including wastewater reuse facilities;

(iii) Sidewalks, traffic controls, and streetlights;

(iv) Parking, terminal, and dock facilities;

(v) Park and ride facilities of a transit authority;

(vi) Park facilities and recreational areas, including trails; and

(vii) Storm water and drainage management systems;

(b) Expenditures for facilities and improvements that support affordable housing as defined in RCW 43.63A.510.

(22) "Real property" has the same meaning as in RCW 84.04.090 and also includes any privately owned improve-

ments located on publicly owned land that are subject to property taxation.

(23) "Regular property taxes" means regular property taxes as defined in RCW 84.04.140, except: (a) Regular property taxes levied by public utility districts specifically for the purpose of making required payments of principal and interest on general indebtedness; (b) regular property taxes levied by the state for the support of the common schools under RCW 84.52.065; and (c) regular property taxes authorized by RCW 84.55.050 that are limited to a specific purpose. "Regular property taxes" do not include excess property tax levies that are exempt from the aggregate limits for junior and senior taxing districts as provided in RCW 84.52.043.

(24) "Relocating a business" means the closing of a business and the reopening of that business, or the opening of a new business that engages in the same activities as the previous business, in a different location within a one-year period, when an individual or entity has an ownership interest in the business at the time of closure and at the time of opening or reopening. "Relocating a business" does not include the closing and reopening of a business in a new location where the business has been acquired and is under entirely new ownership at the new location, or the closing and reopening of a business in a new location as a result of the exercise of the power of eminent domain.

(25) "Revenue development area" means the geographic area adopted by a sponsoring local government and approved by the board, from which local excise and property tax allocation revenues are derived for local infrastructure financing.

(26)(a) "Revenues from local public sources" means:

(i) Amounts of local excise tax allocation revenues and local property tax allocation revenues, dedicated by sponsoring local governments, participating local governments, and participating taxing districts, for local infrastructure financing; and

(ii) Any other local revenues, except as provided in (b) of this subsection, including revenues derived from federal and private sources.

(b) Revenues from local public sources do not include any local funds derived from state grants, state loans, or any other state moneys including any local sales and use taxes credited against the state sales and use taxes imposed under chapter 82.08 or 82.12 RCW.

(27) "Small business" has the same meaning as provided in RCW 19.85.020.

(28) "Sponsoring local government" means a city, town, or county, and for the purpose of this chapter a federally recognized Indian tribe or any combination thereof, that adopts a revenue development area and applies to the board to use local infrastructure financing.

(29) "State contribution" means the lesser of:

(a) One million dollars;

(b) The total amount of local excise tax allocation revenues, local property tax allocation revenues, and other revenues from local public sources, that are dedicated by a sponsoring local government, any participating local governments, and participating taxing districts, in the preceding calendar year to the payment of principal and interest on bonds issued under RCW 39.102.150 or to pay public improvement costs on a pay-as-you-go basis subject to RCW 39.102.195, or both;

(c) The amount of project award granted by the board in the notice of approval to use local infrastructure financing under RCW 39.102.040; or

(d) The highest amount of state excise tax allocation revenues and state property tax allocation revenues for any one calendar year as determined by the sponsoring local government and reported to the board and the department as required by RCW 39.102.140.

(30) "State excise tax allocation revenue" means an amount equal to the annual increase in state excise taxes estimated to be received by the state in each calendar year following the approval of the revenue development area by the board, from taxable activity within the revenue development area as set forth in the application provided to the board under RCW 39.102.040 and periodically updated and reported as required in RCW 39.102.140(1)(f).

(31) "State excise taxes" means revenues derived from state retail sales and use taxes under RCW 82.08.020(1) and 82.12.020 at the rate provided in RCW 82.08.020(1), less the amount of tax distributions from all local retail sales and use taxes, other than the local sales and use taxes authorized by RCW 82.14.475 for the applicable revenue development area, imposed on the same taxable events that are credited against the state retail sales and use taxes under chapters 82.08 and 82.12 RCW.

(32) "State property tax allocation revenue" means an amount equal to the estimated tax revenues derived from the imposition of property taxes levied by the state for the support of common schools under RCW 84.52.065 on the property tax allocation revenue value, as set forth in the application submitted to the board under RCW 39.102.040 and updated annually in the report required under RCW 39.102.140(1)(f).

(33) "Taxing district" means a government entity that levies or has levied for it regular property taxes upon real property located within a proposed or approved revenue development area. [2013 2nd sp.s. c 21 § 6; 2010 c 164 § 11. Prior: 2009 c 267 § 1; 2008 c 209 § 1; 2007 c 229 § 1; 2006 c 181 § 102.]

Expiration date—2010 c 164 §§ 11 and 12: "Sections 11 and 12 of this act expire June 30, 2039." [2010 c 164 § 13.]

Expiration date—2009 c 267: "This act expires June 30, 2039." [2009 c 267 § 9.]

Expiration date—2008 c 209 § 1: "Section 1 of this act expires June 30, 2039." [2008 c 209 § 2.]

Application—2007 c 229: "This act applies retroactively as well as prospectively." [2007 c 229 § 15.]

Severability—2007 c 229: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 229 § 16.]

Expiration date—2007 c 229: "This act expires June 30, 2039." [2007 c 229 § 17.]

39.102.030 Creation. (Expires June 30, 2044.) The local infrastructure financing tool program is created to assist local governments in financing authorized public infrastructure projects designed to promote economic development in the jurisdiction. The local infrastructure financing tool program is not created to enable existing Washington-based businesses from outside a revenue development area to relocate into a revenue development area. [2006 c 181 § 201.]

39.102.040 Application process—Board approval. (*Expires June 30, 2044.*) (1) Prior to applying to the board to use local infrastructure financing, a sponsoring local government shall:

(a) Designate a revenue development area within the limitations in RCW 39.102.060;

(b) Certify that the conditions in RCW 39.102.070 are met;

(c) Complete the process in RCW 39.102.080;

(d) Provide public notice as required in RCW 39.102.100; and

(e) Pass an ordinance adopting the revenue development area as required in RCW 39.102.090.

(2) Any local government that has created an increment area under chapter 39.89 RCW and has not issued bonds to finance any public improvement may apply to the board and have its increment area considered for approval as a revenue development area under this chapter without adopting a new revenue development area under RCW 39.102.090 and 39.102.100 if it amends its ordinance to comply with RCW 39.102.090(1) and otherwise meets the conditions and limitations under this chapter.

(3) As a condition to imposing a sales and use tax under RCW 82.14.475, a sponsoring local government, including any cosponsoring local government seeking authority to impose a sales and use tax under RCW 82.14.475, must apply to the board and be approved for a project award amount. The application shall be in a form and manner prescribed by the board and include but not be limited to information establishing that the applicant is an eligible candidate to impose the local sales and use tax under RCW 82.14.475, the anticipated effective date for imposing the tax, the estimated number of years that the tax will be imposed, and the estimated amount of tax revenue to be received in each fiscal year that the tax will be imposed. The board shall make available forms to be used for this purpose. As part of the application, each applicant must provide to the board a copy of the ordinance or ordinances creating the revenue development area as required in RCW 39.102.090. A notice of approval to use local infrastructure financing shall contain a project award that represents the maximum amount of state contribution that the applicant, including any cosponsoring local governments, can earn each year that local infrastructure financing is used. The total of all project awards shall not exceed the annual state contribution limit. The determination of a project award shall be made based on information contained in the application and the remaining amount of annual state contribution limit to be awarded. Determination of a project award by the board is final.

(4)(a) Sponsoring local governments, and any cosponsoring local governments, applying in calendar year 2007 for a competitive project award, must submit completed applications to the board no later than July 1, 2007. By September 15, 2007, in consultation with the department of revenue and the department of commerce, the board shall approve competitive project awards from competitive applications submitted by the 2007 deadline. No more than two million five hundred thousand dollars in competitive project awards shall be approved in 2007. For projects not approved by the board in 2007, sponsoring and cosponsoring local governments

may apply again to the board in 2008 for approval of a project.

(b) Sponsoring local governments, and any cosponsoring local governments, applying in calendar year 2008 for a competitive project award, must submit completed applications to the board no later than July 1, 2008. By September 18, 2008, in consultation with the department of revenue and the department of commerce, the board shall approve competitive project awards from competitive applications submitted by the 2008 deadline.

(c) Except as provided in RCW 39.102.050(2), a total of no more than five million dollars in competitive project awards shall be approved for local infrastructure financing.

(d) The project selection criteria and weighting developed prior to July 22, 2007, for the application evaluation and approval process shall apply to applications received prior to November 1, 2007. In evaluating applications for a competitive project award after November 1, 2007, the board shall develop the relative weight to be assigned to the following criteria:

(i) The project's potential to enhance the sponsoring local government's regional and/or international competitiveness;

(ii) The project's ability to encourage mixed use and transit-oriented development and the redevelopment of a geographic area;

(iii) Achieving an overall distribution of projects statewide that reflect geographic diversity;

(iv) The estimated wages and benefits for the project is greater than the average labor market area;

(v) The estimated state and local net employment change over the life of the project;

(vi) The current economic health and vitality of the proposed revenue development area and the contiguous community and the estimated impact of the proposed project on the proposed revenue development area and contiguous community;

(vii) The estimated state and local net property tax change over the life of the project;

(viii) The estimated state and local sales and use tax increase over the life of the project;

(ix) An analysis that shows that, over the life of the project, neither the local excise tax allocation revenues nor the local property tax allocation revenues will constitute more than eighty percent of the total local funds as described in RCW 39.102.020(29)(b); and

(x) If a project is located within an urban growth area, evidence that the project utilizes existing urban infrastructure and that the transportation needs of the project will be adequately met through the use of local infrastructure financing or other sources.

(e)(i) Except as provided in this subsection (4)(e), the board may not approve the use of local infrastructure financing within more than one revenue development area per county.

(ii) In a county in which the board has approved the use of local infrastructure financing, the use of such financing in additional revenue development areas may be approved, subject to the following conditions:

(A) The sponsoring local government is located in more than one county; and

(B) The sponsoring local government designates a revenue development area that comprises portions of a county within which the use of local infrastructure financing has not yet been approved.

(iii) In a county where the local infrastructure financing tool is authorized under RCW 39.102.050, the board may approve additional use of the local infrastructure financing tool.

(5) Once the board has approved the sponsoring local government, and any cosponsoring local governments, to use local infrastructure financing, notification must be sent by the board to the sponsoring local government, and any cosponsoring local governments, authorizing the sponsoring local government, and any cosponsoring local governments, to impose the local sales and use tax authorized under RCW 82.14.475, subject to the conditions in RCW 82.14.475. [2014 c 112 § 105; 2007 c 229 § 2; 2006 c 181 § 202.]

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

39.102.050 Demonstration projects. (Expires June 30, 2044.) (1) In addition to a competitive process, demonstration projects are provided to determine the feasibility of the local infrastructure financing tool. Notwithstanding RCW 39.102.040, the board shall approve each demonstration project. Demonstration project applications must be received by the board no later than July 1, 2008. The Bellingham waterfront redevelopment project award shall not exceed one million dollars per year, the Spokane river district project award shall not exceed one million dollars per year, and the Vancouver riverwest project award shall not exceed five hundred thousand dollars per year. The board shall approve by September 15, 2007, demonstration project applications submitted no later than July 1, 2007. The board shall approve by September 18, 2008, demonstration project applications submitted by July 1, 2008.

(2) If before board approval of the final competitive project award in 2008, a demonstration project has not received approval by the board, the state dollars set aside for the demonstration project in subsection (1) of this section shall be available for the competitive application process. If a demonstration project has received a partial award before the approval of the final competitive project award, the remaining state dollars set aside for the demonstration project in subsection (1) of this section shall be available for the competitive process. [2007 c 229 § 3; 2006 c 181 § 203.]

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

39.102.060 Limitations on revenue development areas. (Expires June 30, 2044.) The designation of a revenue development area is subject to the following limitations:

(1) The taxable real property within the revenue development area boundaries may not exceed one billion dollars in assessed value at the time the revenue development area is designated;

(2) The average assessed value per square foot of taxable land within the revenue development area boundaries, as of January 1st of the year the application is submitted to the board under RCW 39.102.040, may not exceed seventy dollars at the time the revenue development area is designated;

(3) No revenue development area shall have within its geographic boundaries any part of a hospital benefit zone under chapter 39.100 RCW or any part of another revenue development area created under this chapter;

(4) A revenue development area is limited to contiguous tracts, lots, pieces, or parcels of land without the creation of islands of property not included in the revenue development area;

(5) The boundaries may not be drawn to purposely exclude parcels where economic growth is unlikely to occur;

(6) The public improvements financed through local infrastructure financing must be located in the revenue development area;

(7) A revenue development area cannot comprise an area containing more than twenty-five percent of the total assessed value of the taxable real property within the boundaries of the sponsoring local government, including any cosponsoring local government, at the time the revenue development area is designated;

(8) The boundaries of the revenue development area shall not be changed for the time period that local infrastructure financing is used; and

(9) A revenue development area cannot include any part of an increment area created under chapter 39.89 RCW, except those increment areas created prior to January 1, 2006. [2007 c 229 § 4; 2006 c 181 § 204.]

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

39.102.070 Local infrastructure financing—Conditions. (Expires June 30, 2044.) The use of local infrastructure financing under this chapter is subject to the following conditions:

(1) No funds may be used to finance, design, acquire, construct, equip, operate, maintain, remodel, repair, or reequip public facilities funded with taxes collected under RCW 82.14.048 or 82.14.390;

(2)(a) Except as provided in (b) of this subsection no funds may be used for public improvements other than projects identified within the capital facilities, utilities, housing, or transportation element of a comprehensive plan required under chapter 36.70A RCW;

(b) Funds may be used for public improvements that are historical preservation activities as defined in RCW 39.89.020;

(3) The public improvements proposed to be financed in whole or in part using local infrastructure financing are expected to encourage private development within the revenue development area and to increase the fair market value of real property within the revenue development area;

(4) A sponsoring local government, participating local government, or participating taxing district has entered or expects to enter into a contract with a private developer relating to the development of private improvements within the revenue development area or has received a letter of intent from a private developer relating to the developer's plans for the development of private improvements within the revenue development area;

(5) Private development that is anticipated to occur within the revenue development area, as a result of the public improvements, will be consistent with the countywide plan-

ning policy adopted by the county under RCW 36.70A.210 and the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW;

(6) The governing body of the sponsoring local government, and any cosponsoring local government, must make a finding that local infrastructure financing:

(a) Is not expected to be used for the purpose of relocating a business from outside the revenue development area, but within this state, into the revenue development area; and

(b) Will improve the viability of existing business entities within the revenue development area;

(7) The governing body of the sponsoring local government, and any cosponsoring local government, finds that the public improvements proposed to be financed in whole or in part using local infrastructure financing are reasonably likely to:

(a) Increase private residential and commercial investment within the revenue development area;

(b) Increase employment within the revenue development area;

(c) Improve the viability of any existing communities that are based on mixed-use development within the revenue development area; and

(d) Generate, over the period of time that the local option sales and use tax will be imposed under RCW 82.14.475, state excise tax allocation revenues and state property tax allocation revenues derived from the revenue development area that are equal to or greater than the respective state contributions made under this chapter;

(8) The sponsoring local government may only use local infrastructure financing in areas deemed in need of economic development or redevelopment within boundaries of the sponsoring local government. [2009 c 267 § 2; 2006 c 181 § 205.]

Expiration date—2009 c 267: See note following RCW 39.102.020.

39.102.080 Revenue development area adoption—Process. (Expires June 30, 2044.) Before adopting an ordinance creating the revenue development area, a sponsoring local government must:

(1) Obtain written agreement from any participating local government and participating taxing district to use dedicated amounts of local excise tax allocation revenues, local property tax allocation revenues, and other revenues from local public sources in whole or in part, for local infrastructure financing authorized under this chapter. The agreement to opt into the local infrastructure financing public improvement project must be authorized by the governing body of such participating local government and participating taxing district;

(2) Estimate the impact of the revenue development area on small business and low-income housing and develop a mitigation plan for the impacted businesses and housing. In analyzing the impact of the revenue development area, the sponsoring local government must develop:

(a) An inventory of existing low-income housing units, and businesses and retail activity within the revenue development area;

(b) A reasonable estimate of the number of low-income housing units, small businesses, and other commercial activ-

ity that may be vulnerable to displacement within the revenue development area;

(c) A reasonable estimate of projected net job growth and net housing growth caused by creation of the revenue development area when compared to the existing jobs or housing balance for the area; and

(d) A reasonable estimate of the impact of net housing growth on the current housing price mix. [2006 c 181 § 206.]

39.102.090 Revenue development area adoption—Ordinance—Hearing and delivery requirements. (Expires June 30, 2044.) (1) To adopt a revenue development area, a sponsoring local government, and any cosponsoring local government, must adopt an ordinance establishing the revenue development area that:

(a) Describes the public improvements proposed to be made in the revenue development area;

(b) Describes the boundaries of the revenue development area, subject to the limitations in RCW 39.102.060;

(c) Estimates the cost of the proposed public improvements and the portion of these costs to be financed by local infrastructure financing;

(d) Estimates the time during which local excise tax allocation revenues, local property tax allocation revenues, and other revenues from local public sources are to be used for local infrastructure financing;

(e) Provides the date when the use of local excise tax allocation revenues and local property tax allocation revenues will commence; and

(f) Finds that the conditions in RCW 39.102.070 are met and the findings in RCW 39.102.080 are complete.

(2) The sponsoring local government, and any cosponsoring local government, must hold a public hearing on the proposed financing of the public improvements in whole or in part with local infrastructure financing before passage of the ordinance establishing the revenue development area. The public hearing may be held by either the governing body of the sponsoring local government and the governing body of any cosponsoring local government, or by a committee of those governing bodies that includes at least a majority of the whole governing body or bodies. The public hearing is subject to the notice requirements in RCW 39.102.100.

(3) The sponsoring local government, and any cosponsoring local government, shall deliver a certified copy of the adopted ordinance to the county treasurer, the governing body of each participating local government and participating taxing district within which the revenue development area is located, the board, and the department. [2007 c 229 § 5; 2006 c 181 § 207.]

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

39.102.100 Revenue development area adoption—Notice requirements. (Expires June 30, 2044.) Prior to adopting the ordinance creating the revenue development area and to meet the requirements of *RCW 39.102.150(1)(b), a sponsoring local government and any cosponsoring local government must provide public notice.

(1) Notice of the public hearing must be published in a legal newspaper of general circulation within the proposed revenue development area at least ten days before the public

hearing and posted in at least six conspicuous public places located in the proposed revenue development area.

(2) Notice must also be sent by United States mail to the property owners, all identifiable community-based organizations with involvement in the proposed revenue development area, and the business enterprises located within the proposed revenue development area at least thirty days prior to the hearing. In implementing provisions under this chapter, the local governing body may also consult with community-based groups, business organizations, including the local chamber of commerce, and the office of minority and women's business enterprises to assist with providing appropriate notice to business enterprises and property owners for whom English is a second language.

(3) Notices must describe the contemplated public improvements, estimate the public improvement costs, describe the portion of the public improvement costs to be borne by local infrastructure financing, describe any other sources of revenue to finance the public improvements, describe the boundaries of the proposed revenue development area, estimate the impact that the public improvements will have on small businesses and low-income housing, and estimate the period during which local infrastructure financing is contemplated to be used.

(4) Notices must inform the public where to obtain the information that shows how the limitations, conditions, and findings required in RCW 39.102.060 through 39.102.080 are met.

(5) The sponsoring local government and any cosponsoring local government shall deliver a certified copy of the proposed ordinance to the county treasurer, the governing body of each participating local government and participating taxing district within which the revenue development area is located, the board, and the department. [2006 c 181 § 208.]

*Reviser's note: RCW 39.102.150 was amended by 2009 c 267 § 6, changing subsection (1)(b) to subsection (1)(a)(ii).

39.102.110 Local excise tax allocation revenues. (Expires June 30, 2044.) (1) A sponsoring local government or participating local government that has received approval by the board to use local infrastructure financing may use annually its local excise tax allocation revenues to finance public improvements in the revenue development area financed in whole or in part by local infrastructure financing. The use of local excise tax allocation revenues dedicated by participating local governments must cease on the date specified in the written agreement required in RCW 39.102.080(1), or if no date is specified then the date when the local tax under RCW 82.14.475 expires. Any participating local government is authorized to dedicate local excise tax allocation revenues to the sponsoring local government as authorized in RCW 39.102.080(1).

(2) A sponsoring local government shall provide the board accurate information describing the geographical boundaries of the revenue development area at the time of application. The information shall be provided in an electronic format or manner as prescribed by the department. The sponsoring local government shall ensure that the boundary information provided to the board and department is kept current.

(3) In the event a city annexes a county area located within a county-sponsored revenue development area, the city shall remit to the county the portion of the local excise tax allocation revenue that the county would have received had the area not been annexed to the city. The city shall remit such revenues until such time as the bonds issued under RCW 39.102.150 are retired. [2009 c 267 § 3; 2007 c 229 § 6; 2006 c 181 § 301.]

Expiration date—2009 c 267: See note following RCW 39.102.020.

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

39.102.120 Local property tax allocation revenues. (Expires June 30, 2044.) (1) Commencing in the second calendar year following board approval of a revenue development area, the county treasurer shall distribute receipts from regular taxes imposed on real property located in the revenue development area as follows:

(a) Each participating taxing district and the sponsoring local government shall receive that portion of its regular property taxes produced by the rate of tax levied by or for the taxing district on the property tax allocation revenue base value for that local infrastructure financing project in the taxing district; and

(b) The sponsoring local government shall receive an additional portion of the regular property taxes levied by it and by or for each participating taxing district upon the property tax allocation revenue value within the revenue development area. However, if there is no property tax allocation revenue value, the sponsoring local government shall not receive any additional regular property taxes under this subsection (1)(b). The sponsoring local government may agree to receive less than the full amount of the additional portion of regular property taxes under this subsection (1)(b) as long as bond debt service, reserve, and other bond covenant requirements are satisfied, in which case the balance of these tax receipts shall be allocated to the participating taxing districts that levied regular property taxes, or have regular property taxes levied for them, in the revenue development area for collection that year in proportion to their regular tax levy rates for collection that year. The sponsoring local government may request that the treasurer transfer this additional portion of the property taxes to its designated agent. The portion of the tax receipts distributed to the sponsoring local government or its agent under this subsection (1)(b) may only be expended to finance public improvement costs associated with the public improvements financed in whole or in part by local infrastructure financing.

(2) The county assessor shall determine the property tax allocation revenue value and property tax allocation revenue base value. This section does not authorize revaluations of real property by the assessor for property taxation that are not made in accordance with the assessor's revaluation plan under chapter 84.41 RCW or under other authorized revaluation procedures.

(3) The distribution of local property tax allocation revenue to the sponsoring local government must cease when local property tax allocation revenues are no longer obligated to pay the costs of the public improvements. Any excess local property tax allocation revenues and earnings on such revenues remaining at the time the distribution of local property

tax allocation revenue terminates must be returned to the county treasurer and distributed to the participating taxing districts that imposed regular property taxes, or had regular property taxes imposed for it, in the revenue development area for collection that year, in proportion to the rates of their regular property tax levies for collection that year.

(4) The allocation to the revenue development area of that portion of the sponsoring local government's and each participating taxing district's regular property taxes levied by or for each taxing district upon the property tax allocation revenue value within that revenue development area is declared to be a public purpose of and benefit to the sponsoring local government and each participating taxing district.

(5) The distribution of local property tax allocation revenues pursuant to this section shall not affect or be deemed to affect the rate of taxes levied by or within any sponsoring local government and participating taxing district or the consistency of any such levies with the uniformity requirement of Article VII, section 1 of the state Constitution.

(6) This section does not apply to those revenue development areas that include any part of an increment area created under chapter 39.89 RCW. [2009 c 267 § 4; 2007 c 229 § 7; 2006 c 181 § 302.]

Expiration date—2009 c 267: See note following RCW 39.102.020.

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

39.102.130 Use of sales and use tax funds. (Expires June 30, 2044.) Money collected from the taxes imposed under RCW 82.14.475 may be used only for the purpose of paying debt service on bonds issued under the authority of RCW 39.102.150 or to pay public improvement costs on a pay-as-you-go basis as provided in RCW 39.102.195, or both. [2007 c 229 § 11; 2006 c 181 § 402.]

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

39.102.140 Reporting requirements. (Expires June 30, 2044.) (1) A sponsoring local government shall provide a report to the board and the department by March 1st of each year. The report shall contain the following information:

(a) The amount of local excise tax allocation revenues, local property tax allocation revenues, other revenues from local public sources, and taxes under RCW 82.14.475 received by the sponsoring local government, cosponsoring local government, or any participating local government during the preceding calendar year that were dedicated to pay the public improvements financed in whole or in part with local infrastructure financing, and a summary of how these revenues were expended;

(b) The names of any businesses locating within the revenue development area as a result of the public improvements undertaken by the sponsoring local government and financed in whole or in part with local infrastructure financing;

(c) The total number of permanent jobs created in the revenue development area as a result of the public improvements undertaken by the sponsoring local government and financed in whole or in part with local infrastructure financing;

(d) The average wages and benefits received by all employees of businesses locating within the revenue devel-

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opment area as a result of the public improvements undertaken by the sponsoring local government and financed in whole or in part with local infrastructure financing;

(e) That the sponsoring local government is in compliance with RCW 39.102.070; and

(f) Beginning with the reports due March 1, 2010, the following must also be included:

(i) A list of public improvements financed on a pay-as-you-go basis in previous calendar years and by indebtedness issued under this chapter;

(ii) The date when any indebtedness issued under this chapter is expected to be retired;

(iii) At least once every three years, updated estimates of state excise tax allocation revenues, state property tax allocation revenues, and local excise tax increments, as determined by the sponsoring local government, that are estimated to have been received by the state, any participating local government, sponsoring local government, and cosponsoring local government, since the approval of the project award under RCW 39.102.040 by the board; and

(iv) Any other information required by the department or the board to enable the department or the board to fulfill its duties under this chapter and RCW 82.14.475.

(2) The board shall make a report available to the public and the legislature by June 1st of each even-numbered year. The report shall include a list of public improvements undertaken by sponsoring local governments and financed in whole or in part with local infrastructure financing and it shall also include a summary of the information provided to the department by sponsoring local governments under subsection (1) of this section.

(3) The department, upon request, must assist a sponsoring local government in estimating the amount of state excise tax allocation revenues and local excise tax increments required in subsection (1)(f)(iii) of this section. [2013 2nd sp.s. c 21 § 5. Prior: 2009 c 518 § 12; 2009 c 267 § 5; 2007 c 229 § 9; 2006 c 181 § 403.]

Expiration date—2009 c 518 § 12: "Section 12 of this act expires June 30, 2039." [2009 c 518 § 25.]

Expiration date—2009 c 267: See note following RCW 39.102.020.

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

39.102.150 Issuance of general obligation bonds. (Expires June 30, 2044.) (1) A sponsoring local government that has designated a revenue development area and instead of paying public improvement costs on a pay-as-you-go basis has been authorized the use of local infrastructure financing may incur general indebtedness, including issuing general obligation bonds, to finance the public improvements and retire the indebtedness in whole or in part from local excise tax allocation revenues, local property tax allocation revenues, and sales and use taxes imposed under the authority of RCW 82.14.475 that it receives, subject to the following requirements:

(a)(i) The ordinance adopted by the sponsoring local government and authorizing the use of local infrastructure financing indicates an intent to incur this indebtedness and the maximum amount of this indebtedness that is contemplated; and

(ii) The sponsoring local government includes this statement of the intent in all notices required by RCW 39.102.100; or

(b) The sponsoring local government adopts a resolution, after opportunity for public comment, that indicates an intent to incur this indebtedness and the maximum amount of this indebtedness that is contemplated.

(2)(a) Except as provided in (b) of this subsection, the general indebtedness incurred under subsection (1) of this section may be payable from other tax revenues, the full faith and credit of the local government, and nontax income, revenues, fees, and rents from the public improvements, as well as contributions, grants, and nontax money available to the local government for payment of costs of the public improvements or associated debt service on the general indebtedness.

(b) A sponsoring local government that issues bonds under this section may not pledge any money received from the state of Washington for the payment of such bonds, other than the local sales and use taxes imposed under the authority of RCW 82.14.475 and collected by the department.

(3) In addition to the requirements in subsection (1) of this section, a sponsoring local government designating a revenue development area and authorizing the use of local infrastructure financing may require the nonpublic participant to provide adequate security to protect the public investment in the public improvement within the revenue development area.

(4) Bonds issued under this section must be authorized by ordinance of the governing body of the sponsoring local government and may be issued in one or more series and must bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered as provided in RCW 39.46.030, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption with or without premium, be secured in such manner, and have such other characteristics, as may be provided by such ordinance or trust indenture or mortgage issued pursuant thereto.

(5) The sponsoring local government may annually pay into a fund to be established for the benefit of bonds issued under this section a fixed proportion or a fixed amount of any local excise tax allocation revenues and local property tax allocation revenues derived from property or business activity within the revenue development area containing the public improvements funded by the bonds, such payment to continue until all bonds payable from the fund are paid in full. The local government may also annually pay into the fund established in this section a fixed proportion or a fixed amount of any revenues derived from taxes imposed under RCW 82.14.475, such payment to continue until all bonds payable from the fund are paid in full. Revenues derived from taxes imposed under RCW 82.14.475 are subject to the use restriction in RCW 39.102.130.

(6) In case any of the public officials of the sponsoring local government whose signatures appear on any bonds or any coupons issued under this chapter cease to be such officials before the delivery of such bonds, such signatures, nevertheless, are valid and sufficient for all purposes, the same as

if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued under this chapter are fully negotiable.

(7) Notwithstanding subsections (4) through (6) of this section, bonds issued under this section may be issued and sold in accordance with chapter 39.46 RCW. [2013 2nd sp.s. c 21 § 4; 2009 c 267 § 6; 2007 c 229 § 10; 2006 c 181 § 501.]

Expiration date—2009 c 267: See note following RCW 39.102.020.

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

39.102.160 Use of tax revenue for bond repayment. (Expires June 30, 2044.) A sponsoring local government that issues bonds under RCW 39.102.150 to finance public improvements may pledge for the payment of such bonds all or part of any local excise tax allocation revenues and all or part of any local property tax allocation revenues dedicated by the sponsoring local government, any participating local government, or participating taxing district. The sponsoring local government may also pledge all or part of any revenues derived from taxes imposed under RCW 82.14.475 and held in connection with the public improvements. All of such tax revenues are subject to the use restrictions in RCW 39.102.040 through 39.102.070, and the process requirements in RCW 39.102.080(1). [2006 c 181 § 502.]

39.102.170 Limitation on bonds issued. (Expires June 30, 2044.) The bonds issued by a sponsoring local government under RCW 39.102.150 to finance public improvements shall not constitute an obligation of the state of Washington, either general or special. [2006 c 181 § 503.]

39.102.190 Revenue bonds to fund public improvements. (Expires June 30, 2044.) (1) A sponsoring local government may issue revenue bonds to fund revenue-generating public improvements, or portions of public improvements, that are located within a revenue development area. Whenever revenue bonds are to be issued, the legislative authority of the sponsoring local government shall create or have created a special fund or funds from which, along with any reserves created pursuant to RCW 39.44.140, the principal and interest on these revenue bonds shall exclusively be payable. The legislative authority of the sponsoring local government may obligate the sponsoring local government to set aside and pay into the special fund or funds a fixed proportion or a fixed amount of the revenues from the public improvements that are funded by the revenue bonds. This amount or proportion is a lien and charge against these revenues, subject only to operating and maintenance expenses. The sponsoring local government shall have due regard for the cost of operation and maintenance of the public improvements that are funded by the revenue bonds, and shall not set aside into the special fund or funds a greater amount or proportion of the revenues that in its judgment will be available over and above the cost of maintenance and operation and the amount or proportion, if any, of the revenue previously pledged. The sponsoring local government may also provide that revenue bonds payable out of the same source or sources of revenue may later be issued on a parity with any revenue bonds being issued and sold.

(2) Revenue bonds issued pursuant to this section are not an indebtedness of the sponsoring local government issuing the bonds, and the interest and principal on the bonds shall only be payable from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created pursuant to RCW 39.44.140. The owner or bearer of a revenue bond or any interest coupon issued pursuant to this section shall not have any claim against the sponsoring local government arising from the bond or coupon except for payment from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created pursuant to RCW 39.44.140. The substance of the limitations included in this subsection shall be plainly printed, written, or engraved on each bond issued pursuant to this section.

(3) Revenue bonds with a maturity in excess of twenty-five years shall not be issued. The legislative authority of the sponsoring local government shall by resolution determine for each revenue bond issue the amount, date, form, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, manner of execution, manner of sale, callable provisions, if any, and covenants including the refunding of existing revenue bonds. Facsimile signatures may be used on the bonds and any coupons. Refunding revenue bonds may be issued in the same manner as revenue bonds are issued.

(4) Notwithstanding subsections (1) through (3) of this section, bonds issued under this section may be issued and sold in accordance with chapter 39.46 RCW. [2006 c 181 § 505.]

39.102.195 Limitation on use of revenues. (Expires June 30, 2044.) To the extent that amounts received as local excise tax allocation revenues, local property tax allocation revenues, other revenues from local public sources, that are dedicated to local infrastructure financing, and revenues received from the local option sales and use tax authorized in RCW 82.14.475, are set aside in a debt service fund that is pledged to the repayment of bonds, those amounts so set aside and pledged may not be used to pay for public improvement costs on a pay-as-you-go basis after the date that the sponsoring local government that issued the bonds as provided in RCW 39.102.150 is required to begin paying debt service on those bonds, unless and until those bonds to which the amounts have been so pledged have been retired. [2009 c 267 § 7; 2007 c 229 § 14.]

Expiration date—2009 c 267: See note following RCW 39.102.020.

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

39.102.200 Joint legislative audit and review committee reports. (Expires June 30, 2044.) Beginning September 1, 2013, and continuing every five years thereafter, the joint legislative audit and review committee shall submit a report to the appropriate committees of the legislature.

(1) The report shall, at a minimum, evaluate the effectiveness of the local infrastructure financing tool program, including a project-by-project review. The report shall evaluate the project's interim results based on the selection criteria. The report shall also measure:

- (a) Employment changes in the revenue development area;
- (b) Property tax changes in the revenue development area;
- (c) Sales and use tax changes in the revenue development area;
- (d) Property value changes in the revenue development area; and
- (e) Changes in housing and existing commercial activities based on the impact analysis and mitigation plan required in RCW 39.102.080(2).

(2) The report that is due September 1, 2028, should also include any recommendations regarding whether or not the program should be expanded statewide and what impact the expansion would have on economic development in Washington. [2006 c 181 § 601.]

39.102.210 Program evaluation. (Expires June 30, 2044.) The department of revenue and the community economic revitalization board shall evaluate and periodically report on the implementation of the local infrastructure financing [tool] program to the governor and legislature as the department and the board deems appropriate and recommend such amendments, changes in, and modifications of chapter 181, Laws of 2006 as seem proper. [2006 c 181 § 701.]

39.102.220 Administration by department and board. (Expires June 30, 2044.) The department of revenue and the community economic revitalization board may adopt any rules under chapter 34.05 RCW they consider necessary for the administration of this chapter. [2007 c 229 § 13.]

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

39.102.900 Captions and part headings not law—2006 c 181. Captions and part headings used in this act are not any part of the law. [2006 c 181 § 703.]

39.102.901 Severability—2006 c 181. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2006 c 181 § 704.]

39.102.902 Construction—2006 c 181. Nothing in this act shall be construed to give port districts the authority to impose a sales or use tax under chapter 82.14 RCW. [2006 c 181 § 705.]

39.102.903 Effective date—2006 c 181. This act takes effect July 1, 2006. [2006 c 181 § 706.]

39.102.905 Expiration date—2013 2nd sp.s. c 21. This chapter expires June 30, 2044. [2013 2nd sp.s. c 21 § 1.]

Chapter 39.104 RCW LOCAL REVITALIZATION FINANCING

Sections

39.104.010 Finding.

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39.104.010 Finding. The legislature recognizes that the state as a whole benefits from investment in public infrastructure because it promotes community and economic development. Public investment stimulates business activity and helps create jobs, stimulates the redevelopment of brown-fields and blighted areas in the inner city, lowers the cost of housing, and promotes efficient land use. The legislature finds that these activities generate revenue for the state and that it is in the public interest to invest in these projects through a credit against the state sales and use tax to those local governments that can demonstrate the expected returns to the state. [2009 c 270 § 101.]

39.104.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Annual state contribution limit" means two million five hundred thousand dollars statewide per fiscal year, plus the additional amounts approved for demonstration projects in RCW 82.14.505.

(2) "Assessed value" means the valuation of taxable real property as placed on the last completed assessment roll.

(3) "Bond" means a bond, a note or other evidence of indebtedness, including but not limited to a lease-purchase agreement or an executory conditional sales contract.

(4) "Department" means the department of revenue.

(5) "Fiscal year" means the twelve-month period beginning July 1st and ending the following June 30th.

(6) "Local government" means any city, town, county, and port district.

(7) "Local property tax allocation revenue" means those tax revenues derived from the receipt of regular property taxes levied on the property tax allocation revenue value and used for local revitalization financing.

(8) "Local revitalization financing" means the use of revenues from local public sources, dedicated to pay the principal and interest on bonds authorized under RCW 39.104.110 and public improvement costs within the revitalization area on a pay-as-you-go basis, and revenues received from the local option sales and use tax authorized in RCW 82.14.510, dedicated to pay the principal and interest on bonds authorized under RCW 39.104.110.

(9) "Local sales and use tax increment" means the estimated annual increase in local sales and use taxes as determined by the local government in the calendar years follow-

ing the approval of the revitalization area by the department from taxable activity within the revitalization area.

(10) "Local sales and use taxes" means local revenues derived from the imposition of sales and use taxes authorized in RCW 82.14.030.

(11) "Ordinance" means any appropriate method of taking legislative action by a local government.

(12) "Participating local government" means a local government having a revitalization area within its geographic boundaries that has taken action as provided in RCW 39.104.070(1) to allow the use of all or some of its local sales and use tax increment or other revenues from local public sources dedicated for local revitalization financing.

(13) "Participating taxing district" means a taxing district that:

(a) Has a revitalization area wholly or partially within its geographic boundaries;

(b) Levies or has levied for it regular property taxes as defined in this section; and

(c) Has not taken action as provided in RCW 39.104.060(2).

(14) "Property tax allocation revenue base value" means the assessed value of real property located within a revitalization area, less the property tax allocation revenue value.

(15)(a)(i) "Property tax allocation revenue value" means seventy-five percent of any increase in the assessed value of real property in a revitalization area resulting from:

(A) The placement of new construction, improvements to property, or both, on the assessment roll, where the new construction and improvements are initiated after the revitalization area is approved by the department;

(B) The cost of new housing construction, conversion, and rehabilitation improvements, when the cost is treated as new construction for purposes of chapter 84.55 RCW as provided in RCW 84.14.020, and the new housing construction, conversion, and rehabilitation improvements are initiated after the revitalization area is approved by the department;

(C) The cost of rehabilitation of historic property, when the cost is treated as new construction for purposes of chapter 84.55 RCW as provided in RCW 84.26.070, and the rehabilitation is initiated after the revitalization area is approved by the department.

(ii) Increases in the assessed value of real property in a revitalization area resulting from (a)(i)(A) through (C) of this subsection are included in the property tax allocation revenue value in the initial year. These same amounts are also included in the property tax allocation revenue value in subsequent years unless the property becomes exempt from property taxation.

(b) "Property tax allocation revenue value" includes seventy-five percent of any increase in the assessed value of new construction consisting of an entire building in the years following the initial year, unless the building becomes exempt from property taxation.

(c) Except as provided in (b) of this subsection, "property tax allocation revenue value" does not include any increase in the assessed value of real property after the initial year.

(d) There is no property tax allocation revenue value if the assessed value of real property in a revitalization area has

not increased as a result of any of the reasons specified in (a)(i)(A) through (C) of this subsection.

(e) For purposes of this subsection, "initial year" means:

(i) For new construction and improvements to property added to the assessment roll, the year during which the new construction and improvements are initially placed on the assessment roll;

(ii) For the cost of new housing construction, conversion, and rehabilitation improvements, when the cost is treated as new construction for purposes of chapter 84.55 RCW, the year when the cost is treated as new construction for purposes of levying taxes for collection in the following year; and

(iii) For the cost of rehabilitation of historic property, when the cost is treated as new construction for purposes of chapter 84.55 RCW, the year when such cost is treated as new construction for purposes of levying taxes for collection in the following year.

(16) "Public improvement costs" means the costs of:

(a) Design, planning, acquisition, including land acquisition, site preparation including land clearing, construction, reconstruction, rehabilitation, improvement, and installation of public improvements;

(b) Demolishing, relocating, maintaining, and operating property pending construction of public improvements;

(c) Relocating utilities as a result of public improvements;

(d) Financing public improvements, including interest during construction, legal and other professional services, taxes, insurance, principal and interest costs on general indebtedness issued to finance public improvements, and any necessary reserves for general indebtedness; and

(e) Administrative expenses and feasibility studies reasonably necessary and related to these costs, including related costs that may have been incurred before adoption of the ordinance authorizing the public improvements and the use of local revitalization financing to fund the costs of the public improvements.

(17) "Public improvements" means:

(a) Infrastructure improvements within the revitalization area that include:

(i) Street, road, bridge, and rail construction and maintenance;

(ii) Water and sewer system construction and improvements;

(iii) Sidewalks, streetlights, landscaping, and streetscaping;

(iv) Parking, terminal, and dock facilities;

(v) Park and ride facilities of a transit authority;

(vi) Park facilities, recreational areas, and environmental remediation;

(vii) Storm water and drainage management systems;

(viii) Electric, gas, fiber, and other utility infrastructures;

and

(b) Expenditures for any of the following purposes:

(i) Providing environmental analysis, professional management, planning, and promotion within the revitalization area, including the management and promotion of retail trade activities in the revitalization area;

(ii) Providing maintenance and security for common or public areas in the revitalization area; or

(iii) Historic preservation activities authorized under RCW 35.21.395.

(18) "Real property" has the same meaning as in RCW 84.04.090 and also includes any privately owned improvements located on publicly owned land that are subject to property taxation.

(19)(a) "Regular property taxes" means regular property taxes as defined in RCW 84.04.140, except: (i) Regular property taxes levied by public utility districts specifically for the purpose of making required payments of principal and interest on general indebtedness; (ii) regular property taxes levied by the state for the support of common schools under RCW 84.52.065; and (iii) regular property taxes authorized by RCW 84.55.050 that are limited to a specific purpose.

(b) "Regular property taxes" do not include:

(i) Excess property tax levies that are exempt from the aggregate limits for junior and senior taxing districts as provided in RCW 84.52.043; and

(ii) Property taxes that are specifically excluded through an interlocal agreement between the sponsoring local government and a participating taxing district as set forth in RCW 39.104.060(3).

(20)(a) "Revenues from local public sources" means:

(i) The local sales and use tax amounts received as a result of interlocal agreement, local sales and use tax amounts from sponsoring local governments based on its local sales and use tax increment, and local property tax allocation revenues, which are dedicated by a sponsoring local government, participating local governments, and participating taxing districts, for payment of bonds under RCW 39.104.110 or public improvement costs within the revitalization area on a pay-as-you-go basis; and

(ii) Any other local revenues, except as provided in (b) of this subsection, including revenues derived from federal and private sources and amounts received by taxing districts as set forth by an interlocal agreement as described in RCW 39.104.060(4), which are dedicated for the payment of bonds under RCW 39.104.110 or public improvement costs within the revitalization area on a pay-as-you-go basis.

(b) Revenues from local public sources do not include any local funds derived from state grants, state loans, or any other state moneys including any local sales and use taxes credited against the state sales and use taxes imposed under chapter 82.08 or 82.12 RCW.

(21) "Revitalization area" means the geographic area adopted by a sponsoring local government and approved by the department, from which local sales and use tax increments are estimated and property tax allocation revenues are derived for local revitalization financing.

(22) "Sponsoring local government" means a city, town, county, or any combination thereof, that adopts a revitalization area.

(23) "State contribution" means the lesser of:

(a) Five hundred thousand dollars;

(b) The project award amount approved by the department as provided in RCW 39.104.100 or 82.14.505; or

(c) The total amount of revenues from local public sources dedicated in the preceding calendar year to the payment of principal and interest on bonds issued under RCW 39.104.110 and public improvement costs within the revitalization area on a pay-as-you-go basis. Revenues from local

public sources dedicated in the preceding calendar year that are in excess of the project award may be carried forward and used in later years for the purpose of this subsection (23)(c).

(24) "State property tax increment" means the estimated amount of annual tax revenues estimated to be received by the state from the imposition of property taxes levied by the state for the support of common schools under RCW 84.52.065 on the property tax allocation revenue value, as determined by the sponsoring local government in an application under RCW 39.104.100 and updated periodically as required in RCW 82.32.765.

(25) "State sales and use tax increment" means the estimated amount of annual increase in state sales and use taxes to be received by the state from taxable activity within the revitalization area in the years following the approval of the revitalization area by the department as determined by the sponsoring local government in an application under RCW 39.104.100 and updated periodically as required in RCW 82.32.765.

(26) "State sales and use taxes" means state retail sales and use taxes under RCW 82.08.020(1) and 82.12.020 at the rate provided in RCW 82.08.020(1), less the amount of tax distributions from all local retail sales and use taxes, other than the local sales and use taxes authorized by RCW 82.14.510 for the applicable revitalization area, imposed on the same taxable events that are credited against the state retail sales and use taxes under RCW 82.08.020(1) and 82.12.020.

(27) "Taxing district" means a government entity that levies or has levied for it regular property taxes upon real property located within a proposed or approved revitalization area. [2010 c 164 § 1; 2009 c 270 § 102.]

39.104.030 Conditions. A local government may finance public improvements using local revitalization financing subject to the following conditions:

(1) The local government has adopted an ordinance designating a revitalization area within its boundaries and specified the public improvements proposed to be financed in whole or in part with the use of local revitalization financing;

(2) The public improvements proposed to be financed in whole or in part using local revitalization financing are expected to encourage private development within the revitalization area and to increase the fair market value of real property within the revitalization area;

(3) The local government has entered into a contract with a private developer relating to the development of private improvements within the revitalization area or has received a letter of intent from a private developer relating to the developer's plans for the development of private improvements within the revitalization area;

(4) Private development that is anticipated to occur within the revitalization area, as a result of the public improvements, will be consistent with the countywide planning policy adopted by the county under RCW 36.70A.210 and the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW;

(5) The local government may not use local revitalization financing to finance the costs associated with the financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, and reequipping of pub-

lic facilities funded with taxes collected under RCW 82.14.048 or 82.14.390;

(6) The governing body of the local government must make a finding that local revitalization financing:

(a) Will not be used for the purpose of relocating a business from outside the revitalization area, but within this state, into the revitalization area unless convincing evidence is provided that the firm being relocated would otherwise leave the state;

(b) Will improve the viability of existing business entities within the revitalization area; and

(c) Will be used exclusively in areas within the jurisdiction of the local government deemed in need of either economic development or redevelopment, or both, and absent the financing available under this chapter and RCW 82.14.510 and 82.14.515 the proposed economic development or redevelopment would more than likely not occur; and

(7) The governing body of the local government finds that the public improvements proposed to be financed in whole or in part using local revitalization financing are reasonably likely to:

(a) Increase private investment within the revitalization area;

(b) Increase employment within the revitalization area; and

(c) Generate, over the period of time that the local sales and use tax will be imposed under RCW 82.14.510, increases in state and local property, sales, and use tax revenues that are equal to or greater than the respective state and local contributions made under this chapter. [2009 c 270 § 103.]

39.104.040 Creation of revitalization area. (1) Before adopting an ordinance creating the revitalization area, a sponsoring local government must:

(a) Provide notice to all taxing districts that levy or have levied for it regular property taxes and local governments with geographic boundaries within the proposed revitalization area of the sponsoring local government's intent to create a revitalization area. Notice must be provided in writing to the governing body of the taxing districts and local governments at least sixty days in advance of the public hearing as required by (b) of this subsection. The notice must include at least the following information:

(i) The name of the proposed revitalization area;

(ii) The date for the public hearing as required by (b) of this subsection;

(iii) The earliest anticipated date when the sponsoring local government will take action to adopt the proposed revitalization area; and

(iv) The name of a contact person with phone number of the sponsoring local government and mailing address where a copy of an ordinance adopted under RCW 39.104.050 and 39.104.060 may be sent; and

(b) Hold a public hearing on the proposed financing of the public improvements in whole or in part with local revitalization financing. Notice of the public hearing must be published in a legal newspaper of general circulation within the proposed revitalization area at least ten days before the public hearing and posted in at least six conspicuous public places located in the proposed revitalization area. Notices

must describe the contemplated public improvements, estimate the costs of the public improvements, describe the portion of the costs of the public improvements to be borne by local revitalization financing, describe any other sources of revenue to finance the public improvements, describe the boundaries of the proposed revitalization area, and estimate the period during which local revitalization financing is contemplated to be used. The public hearing may be held by either the governing body of the sponsoring local government, or a committee of the governing body that includes at least a majority of the whole governing body.

(2) To create a revitalization area, a sponsoring local government must adopt an ordinance establishing the revitalization area that:

(a) Describes the public improvements proposed to be made in the revitalization area;

(b) Describes the boundaries of the revitalization area, subject to the limitations in RCW 39.104.050;

(c) Estimates the cost of the proposed public improvements and the portion of these costs to be financed by local revitalization financing;

(d) Estimates the time during which local property tax allocation revenues, and other revenues from local public sources, such as amounts of local sales and use taxes from participating local governments, are to be used for local revitalization financing;

(e) Provides the date when the use of local property tax allocation revenues will commence and a list of the participating taxing districts and the regular property taxes that must be used to calculate property tax allocation revenues;

(f) Finds that all of the requirements in RCW 39.104.030 are met;

(g) Provides the anticipated rate of sales and use tax under RCW 82.14.510 that the local government will impose if awarded a state contribution under RCW 39.104.100;

(h) Provides the anticipated date when the criteria for the sales and use tax in RCW 82.14.510 will be met and the anticipated date when the sales and use tax in RCW 82.14.510 will be imposed.

(3) The sponsoring local government must deliver a certified copy of the adopted ordinance to the county treasurer, county assessor, the governing body of each participating taxing authority and participating taxing district within which the revitalization area is located, and the department. [2010 c 164 § 2; 2009 c 270 § 104.]

39.104.050 Limitations on revitalization areas. The designation of a revitalization area is subject to the following limitations:

(1)(a) Except as provided in (b) of this subsection, no revitalization area may have within its geographic boundaries any part of a hospital benefit zone under chapter 39.100 RCW, any part of a revenue development area created under chapter 39.102 RCW, any part of an increment area under chapter 39.89 RCW, or any part of another revitalization area under this chapter;

(b) A revitalization area's boundaries may include all or a portion of an existing increment area if:

(i) The state of Washington has loaned money for environmental cleanup on such area in order to stimulate redevelopment of brownfields;

(ii) The environmental cleanup, for which the state's loans were intended, has been completed; and

(iii) The sponsoring local government determines the creation of the revitalization area is necessary for redevelopment and protecting the state's investment by increasing property tax revenue;

(2) A revitalization area is limited to contiguous tracts, lots, pieces, or parcels of land without the creation of islands of property not included in the revitalization area;

(3) The boundaries may not be drawn to purposely exclude parcels where economic growth is unlikely to occur;

(4) The public improvements financed through bonds issued under RCW 39.104.110 must be located in the revitalization area;

(5) A revitalization area cannot comprise an area containing more than twenty-five percent of the total assessed value of the taxable real property within the boundaries of the sponsoring local government at the time the revitalization area is created;

(6) The boundaries of the revitalization area may not be changed for the time period that local property tax allocation revenues, local sales and use taxes of participating local governments, and the local sales and use tax under RCW 82.14.510 are used to pay bonds issued under RCW 39.104.110 and public improvement costs within the revitalization area on a pay-as-you-go basis, as provided under this chapter; and

(7) A revitalization area must be geographically restricted to the location of the public improvement and adjacent locations that the sponsoring local government finds to have a high likelihood of receiving direct positive business and economic impacts due to the public improvement, such as a neighborhood or a block. [2010 c 164 § 3; 2009 c 270 § 105.]

39.104.060 Use of property tax allocation revenues for revitalization financing—Opting out—Partial participation. (1) Participating taxing districts must allow the use of all of their local property tax allocation revenues for local revitalization financing.

(2)(a) If a taxing district does not want to allow the use of its property tax revenues for the local revitalization financing of public improvements in a revitalization area, its governing body must adopt an ordinance to remove itself as a participating taxing district and must notify the sponsoring local government.

(b) The taxing district must provide a copy of the adopted ordinance and notice to the sponsoring local government creating the revitalization area before the anticipated date that the sponsoring local government proposes to adopt the ordinance creating the revitalization area as provided in the notice required by RCW 39.104.040(1)(a).

(3) If a taxing district wants to become a participating taxing district by allowing one or more but not all of its regular property tax levies to be used for the calculation of local property tax allocation revenues, it may do so through an interlocal agreement specifying the regular property taxes that will be used for calculating its local property tax allocation revenues. This subsection does not authorize a taxing district to allow the use of only part of one or more of its regular property tax levies by the sponsoring local government.

(4) If a taxing district wants to participate on a partial basis by providing a specified amount of money to a sponsoring local government to be used for local revitalization financing for a specified amount of time, it may do so through an interlocal agreement. However, the taxing district must adopt an ordinance as described in subsection (2) of this section to remove itself as a participating taxing district for purposes of calculating property tax allocation revenues and instead partially participate through an interlocal agreement outlining the specifics of its participation. [2010 c 164 § 4; 2009 c 270 § 106.]

39.104.070 Participating in revitalization financing—Interlocal agreement—Imposition of sales and use tax—Ordinance to opt out—Notice. (1) A participating local government must enter into an interlocal agreement as provided in chapter 39.34 RCW to participate in local revitalization financing with the sponsoring local government.

(2)(a) If a local government that imposes a sales and use tax under RCW 82.14.030 does not want to participate in a revitalization area, its governing body must adopt an ordinance and notify the sponsoring local government that the taxing authority will not be a participating local government.

(b) The local government must provide a copy of the adopted ordinance and the notice to the sponsoring local government creating the revitalization area before the anticipated date that the sponsoring local government proposes to adopt an ordinance creating the revitalization area as provided in the notice required by RCW 39.104.040(1)(a). [2009 c 270 § 107.]

39.104.080 Local property tax allocation revenues—Distribution—Determination—Termination—Exception. (1) Commencing in the second calendar year following the creation of a revitalization area by a sponsoring local government, the county treasurer must distribute receipts from regular taxes imposed on real property located in the revitalization area as follows:

(a) Each participating taxing district and the sponsoring local government must receive that portion of its regular property taxes produced by the rate of tax levied by or for the taxing district on the property tax allocation revenue base value for that local revitalization financing project in the taxing district; and

(b) The sponsoring local government must receive an additional portion of the regular property taxes levied by it and by or for each participating taxing district upon the property tax allocation revenue value within the revitalization area. However, if there is no property tax allocation revenue value, the sponsoring local government may not receive any additional regular property taxes under this subsection (1)(b). The sponsoring local government may agree to receive less than the full amount of the additional portion of regular property taxes under this subsection (1)(b) as long as bond debt service, reserve, and other bond covenant requirements are satisfied, in which case the balance of these tax receipts shall be allocated to the participating taxing districts that levied regular property taxes, or have regular property taxes levied for them, in the revitalization area for collection that year in proportion to their regular tax levy rates for collection that

year. The sponsoring local government may request that the treasurer transfer this additional portion of the property taxes to its designated agent. The portion of the tax receipts distributed to the sponsoring local government or its agent under this subsection (1)(b) may only be expended to finance public improvement costs associated with the public improvements financed in whole or in part by local revitalization financing.

(2) The county assessor must determine the property tax allocation revenue value and property tax allocation revenue base value. This section does not authorize revaluations of real property by the assessor for property taxation that are not made in accordance with the assessor's revaluation plan under chapter 84.41 RCW or under other authorized revaluation procedures.

(3) The distribution of local property tax allocation revenue to the sponsoring local government must cease when local property tax allocation revenues are no longer obligated to pay the costs of the public improvements. Any excess local property tax allocation revenues, and earnings on the revenues, remaining at the time the distribution of local property tax allocation revenue terminates, must be returned to the county treasurer and distributed to the participating taxing districts that imposed regular property taxes, or had regular property taxes imposed for it, in the revitalization area for collection that year, in proportion to the rates of their regular property tax levies for collection that year.

(4) The allocation to the revitalization area of that portion of the sponsoring local government's and each participating taxing district's regular property taxes levied upon the property tax allocation revenue value within that revitalization area is declared to be a public purpose of and benefit to the sponsoring local government and each participating taxing district.

(5) The distribution of local property tax allocation revenues under this section may not affect or be deemed to affect the rate of taxes levied by or within any sponsoring local government and participating taxing district or the consistency of any such levies with the uniformity requirement of Article VII, section 1 of the state Constitution.

(6) This section does not apply to a revitalization area that has boundaries that include all or a portion of the boundaries of an increment area created under chapter 39.89 RCW. [2010 c 164 § 5; 2009 c 270 § 201.]

39.104.090 Local sales and use tax increments. (1) A sponsoring local government may use annually local sales and use tax amounts equal to some or all of its local sales and use tax increments to finance public improvements in the revitalization area. The amounts of local sales and use tax dedicated by a participating local government must begin and cease on the dates specified in an interlocal agreement authorized in chapter 39.34 RCW. Sponsoring local governments and participating local governments are authorized to allocate some or all of their local sales and use tax increment to the sponsoring local government as provided by RCW 39.104.070(1).

(2) The department, upon request, must assist sponsoring local governments in estimating sales and use tax revenues from estimated taxable activity in the proposed or adopted revitalization area. The sponsoring local government must provide the department with accurate information describing

the geographical boundaries of the revitalization area in an electronic format or in a manner as otherwise prescribed by the department. [2009 c 270 § 301.]

39.104.100 Application process—Department of revenue approval. (1) Prior to applying to the department to receive a state contribution, a sponsoring local government shall adopt a revitalization area within the limitations in RCW 39.104.050 and in accordance with RCW 39.104.040.

(2)(a) As a condition to imposing a sales and use tax under RCW 82.14.510, a sponsoring local government must apply to the department and be approved for a project award amount. The application must be in a form and manner prescribed by the department and include, but not be limited to:

(i) Information establishing that over the period of time that the local sales and use tax will be imposed under RCW 82.14.510, increases in state and local property, sales, and use tax revenues as a result of public improvements in the revitalization area will be equal to or greater than the respective state and local contributions made under this chapter;

(ii) Information demonstrating that the sponsoring local government will meet the requirements necessary to receive the full amount of state contribution it is requesting on an annual basis;

(iii) The amount of state contribution it is requesting;

(iv) The anticipated effective date for imposing the tax under RCW 82.14.510;

(v) The estimated number of years that the tax will be imposed;

(vi) The anticipated rate of tax to be imposed under RCW 82.14.510, subject to the rate-setting conditions in RCW 82.14.510(3), should the sponsoring local government be approved for a project award; and

(vii) The anticipated date when bonds under RCW 39.104.110 will be issued.

(b) The department must make available electronic forms to be used for this purpose. As part of the application, each applicant must provide to the department a copy of the adopted ordinance creating the revitalization area as required in RCW 39.104.040, copies of any adopted interlocal agreements from participating local governments, and any notices from taxing districts that elect not to be a participating taxing district.

(3)(a) Project awards must be determined on:

(i) A first-come basis for applications completed in their entirety and submitted electronically;

(ii) The availability of a state contribution;

(iii) Whether the sponsoring local government would be able to generate enough tax revenue under RCW 82.14.510 to generate the amount of project award requested.

(b) The total of all project awards may not exceed the annual state contribution limit.

(c) If the level of available state contribution is less than the amount requested by the next available applicant, the applicant must be given the first opportunity to accept the lesser amount of state contribution but only if the applicant produces a new application within sixty days of being notified by the department and the application describes the impact on the proposed project as a result of the lesser award in addition to new application information outlined in subsection (2) of this section.

(d) Applications that are not approved for a project award due to lack of available state contribution must be retained on file by the department in order of the date of their receipt.

(e) Once total project awards reach the amount of annual state contribution limit, no more applications will be accepted.

(f) If the annual contribution limit is increased by making additional funds available for applicants that apply on a first-come basis, applications will be accepted again beginning sixty days after the effective date of the increase. However, in the time period before any new applications are accepted, all sponsoring local governments with a complete application already on file with the department must be provided an opportunity to either withdraw their application or update the information in the application. The updated application must be for a project that is substantially the same as the project in the original application. The department must consider these applications, in the order originally submitted, for project awards prior to considering any new applications.

(4) The department must notify the sponsoring local government of approval or denial of a project award within sixty days of the department's receipt of the sponsoring local government's application. Determination of a project award by the department is final. Notification must include the earliest date when the tax authorized under RCW 82.14.510 may be imposed, subject to conditions in chapter 82.14 RCW. The project award notification must specify the rate requested in the application and any adjustments to the rate that would need to be made based on the project award and rate restrictions in RCW 82.14.510.

(5) The department must begin accepting applications on September 1, 2009. [2010 c 164 § 6; 2009 c 270 § 401.]

39.104.110 Issuance of general obligation bonds. (1) A sponsoring local government creating a revitalization area and authorizing the use of local revitalization financing may incur general indebtedness, including issuing general obligation bonds, to finance the public improvements and retire the indebtedness in whole or in part from local revitalization financing it receives, subject to the following requirements:

(a)(i) The ordinance adopted by the sponsoring local government creating the revitalization area and authorizing the use of local revitalization financing indicates an intent to incur this indebtedness and the maximum amount of this indebtedness that is contemplated; and

(ii) The sponsoring local government includes this statement of intent in all notices required by RCW 39.104.040; or

(b) The sponsoring local government adopts a resolution, after opportunity for public comment, that indicates an intent to incur this indebtedness and the maximum amount of this indebtedness that is contemplated.

(2) The general indebtedness incurred under subsection (1) of this section may be payable from other tax revenues, the full faith and credit of the sponsoring local government, and nontax income, revenues, fees, and rents from the public improvements, as well as contributions, grants, and nontax money available to the local government for payment of costs of the public improvements or associated debt service on the general indebtedness.

(3) In addition to the requirements in subsection (1) of this section, a sponsoring local government creating a revitalization area and authorizing the use of local revitalization financing may require any nonpublic participants to provide adequate security to protect the public investment in the public improvement within the revitalization area.

(4) Bonds issued under this section must be authorized by ordinance of the sponsoring local government and may be issued in one or more series and must bear a date or dates, be payable upon demand or mature at a time or times, bear interest at a rate or rates, be in a denomination or denominations, be in a form either coupon or registered as provided in RCW 39.46.030, carry conversion or registration privileges, have a rank or priority, be executed in a manner, be payable in a medium of payment, at a place or places, and be subject to terms of redemption with or without premium, be secured in a manner, and have other characteristics, as may be provided by an ordinance or trust indenture or mortgage issued pursuant thereto.

(5) The sponsoring local government may:

(a) Annually pay into a special fund to be established for the benefit of bonds issued under this section a fixed proportion or a fixed amount of any local property tax allocation revenues derived from property within the revitalization area containing the public improvements funded by the bonds, the payment to continue until all bonds payable from the fund are paid in full;

(b) Annually pay into the special fund established pursuant to this section a fixed proportion or a fixed amount of any revenues derived from taxes imposed under RCW 82.14.510, such payment to continue until all bonds payable from the fund are paid in full. Revenues derived from taxes imposed under RCW 82.14.510 are subject to the use restriction in RCW 82.14.515; and

(c) Issue revenue bonds payable from any or all revenues deposited in the special fund established pursuant to this section.

(6) In case any of the public officials of the sponsoring local government whose signatures appear on any bonds or any coupons issued under this chapter cease to be the officials before the delivery of the bonds, the signatures must, nevertheless, be valid and sufficient for all purposes, the same as if the officials had remained in office until the delivery. Any provision of any law to the contrary notwithstanding, any bonds issued under this chapter are fully negotiable.

(7) Notwithstanding subsections (4) through (6) of this section, bonds issued under this section may be issued and sold in accordance with chapter 39.46 RCW. [2010 c 164 § 7; 2009 c 270 § 701.]

39.104.120 Use of tax revenue for bond repayment.

A sponsoring local government that issues bonds under RCW 39.104.110 to finance public improvements may pledge for the payment of such bonds all or part of any local property tax allocation revenues derived from the public improvements. The sponsoring local government may also pledge all or part of any revenues derived from taxes imposed under RCW 82.14.510 and held in connection with the public improvements. All of such tax revenues are subject to the use restriction in RCW 82.14.515. [2009 c 270 § 702.]

39.104.130 Limitation on bonds issued. The bonds issued by a local government under RCW 39.104.110 to finance public improvements do not constitute an obligation of the state of Washington, either general or special. [2009 c 270 § 703.]

39.104.140 Construction—Port districts—Authority. Nothing in this act may be construed to give port districts the authority to impose a sales or use tax under chapter 82.14 RCW. [2009 c 270 § 803.]

39.104.150 Administration by the department—Adoption of rules. The department of revenue may adopt any rules under chapter 34.05 RCW it considers necessary for the administration of this chapter. [2009 c 270 § 804.]

39.104.900 Severability—2009 c 270. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2009 c 270 § 801.]

39.104.901 Captions and part headings not law—2009 c 270. Captions and part headings used in this act do not constitute any part of the law. [2009 c 270 § 802.]

Chapter 39.106 RCW

JOINT MUNICIPAL UTILITY SERVICES

Sections

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39.106.070	Tax exemptions and preferences.
39.106.080	Conversion of existing entities into authorities.
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39.106.010 Short title—Purpose—Intent—2011 c 258. (1) Chapter 258, Laws of 2011 shall be known as the joint municipal utility services act.

(2) It is the purpose of chapter 258, Laws of 2011 to improve the ability of local government utilities to plan, finance, construct, acquire, maintain, operate, and provide facilities and utility services to the public, and to reduce costs and improve the benefits, efficiency, and quality of utility services.

(3) Chapter 258, Laws of 2011 is intended to facilitate joint municipal utility services and is not intended to expand the types of services provided by local governments or their utilities. Further, nothing in chapter 258, Laws of 2011 is intended to alter the regulatory powers of cities, counties, or other local governments or state agencies that exercise such powers. Further, nothing in chapter 258, Laws of 2011 may be construed to alter the underlying authority of the units of local government that enter into agreements under chapter 258, Laws of 2011 or to diminish in any way the authority of local governments to enter into agreements under chapter 39.34 RCW or other applicable law. [2011 c 258 § 1.]

39.106.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agreement" means a joint municipal utility services agreement, among members, that forms an authority, as more fully described in this chapter.

(2) "Authority" means a joint municipal utility services authority formed under this chapter.

(3) "Board of directors" or "board" means the board of directors of an authority.

(4) "Member" means a city, town, county, water-sewer district, public utility district, other special purpose district, municipal corporation, or other unit of local government of this or another state that provides utility services, and any Indian tribe recognized as such by the United States government, that is a party to an agreement forming an authority.

(5) "Utility services," for purposes of this chapter, means any or all of the following functions: The provision of retail or wholesale water supply and water conservation services; the provision of wastewater, sewage, or septage collection, handling, treatment, transmission, or disposal services; the provision of point and nonpoint water pollution monitoring programs; the provision for the generation, production, storage, distribution, use, or management of reclaimed water; and the management and handling of storm water, surface water, drainage, and flood waters. [2011 c 258 § 2.]

39.106.030 Formation of authorities—Characteristics—Substantive powers. (1) An authority may be formed by two or more members pursuant to this chapter by execution of a joint municipal utility services agreement that materially complies with the requirements of RCW 39.106.050. Except as otherwise provided in RCW 39.106.080, at the time of execution of an agreement each member must be providing the type of utility service or services that will be provided by the authority. The agreement must be approved by the legislative authority of each of the members. The agreement must be filed with the Washington state secretary of state, who must provide a certificate of filing with respect to any authority. An authority shall be deemed to have been formed as of the date of that filing. The formation and activities of an authority, and the admission or withdrawal of members, are not subject to review by any boundary review board. Any amendments to an agreement must be filed with the Washington state secretary of state, and will become effective on the date of filing.

(2) An authority is a municipal corporation. Subject to RCW 39.106.040(3), the provisions of a joint municipal utility services agreement, and any limitations imposed pursuant to RCW 39.106.050: (a) An authority may perform or provide any or all of the utility service or services that all of its members, other than tribal government members, perform or provide under applicable law; and (b) in performing or providing those utility services, an authority may exercise any or all of the powers described in RCW 39.106.040(1).

(3) An authority shall be entitled to all the immunities and exemptions that are available to local governmental entities under applicable law, including without limitation the provisions of chapter 4.96 RCW. Notwithstanding this subsection (3), if all of an authority's members are the same type

of Washington local government entity, then the immunities and exemptions available to that type of entity shall govern.

(4) Nothing in this chapter shall diminish a member's powers in connection with its provision or management of utility services, or its taxing power with respect to those services, nor does this chapter diminish in any way the authority of local governments to enter into agreements under chapter 39.34 RCW or other applicable law.

(5) Nothing in this chapter shall impair or diminish a valid water right, including rights established under state law and rights established under federal law. [2011 c 258 § 3.]

39.106.040 Corporate powers of authorities. (1) For the purpose of performing or providing utility services, and subject to subsection (3) of this section and RCW 39.106.050, an authority has and is entitled to exercise the following powers:

(a) To sue and be sued, complain and defend, in its corporate name;

(b) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;

(c) To purchase, take, receive, take by lease, condemn, receive by grant, or otherwise acquire, and to own, hold, improve, use, operate, maintain, add to, extend, and fully control the use of and otherwise deal in and with, real or personal property or property rights, including without limitation water and water rights, or other assets, or any interest therein, wherever situated;

(d) To sell, convey, lease out, exchange, transfer, surplus, and otherwise dispose of all or any part of its property and assets;

(e) To incur liabilities for any of its utility services purposes, to borrow money at such rates of interest as the authority may determine, to issue its bonds, notes, and other obligations, and to pledge any or all of its revenues to the repayment of bonds, notes, and other obligations;

(f) To enter into contracts for any of its utility services purposes with any individual or entity, both public and private, and to enter into intergovernmental agreements with its members and with other public agencies;

(g) To be eligible to apply for and to receive state, federal, and private grants, loans, and assistance that any of its members are eligible to receive in connection with the development, design, acquisition, construction, maintenance, and/or operation of facilities and programs for utility services;

(h) To adopt and alter rules, policies, and guidelines, not inconsistent with this chapter or with other laws of this state, for the administration and regulation of the affairs and assets of the authority;

(i) To obtain insurance, to self-insure, and to participate in pool insurance programs;

(j) To indemnify any officer, director, employee, volunteer, or former officer, employee, or volunteer, or any member, for acts, errors, or omissions performed in the exercise of their duties in the manner approved by the board;

(k) To employ such persons, as public employees, that the board determines are needed to carry out the authority's

purposes and to fix wages, salaries, and benefits, and to establish any bond requirements for those employees;

(l) To provide for and pay pensions and participate in pension plans and other benefit plans for any or all of its officers or employees, as public employees;

(m) To determine and impose fees, rates, and charges for its utility services;

(n) Subject to RCW 39.106.050(20), to have a lien for delinquent and unpaid rates and charges for retail connections and retail utility service to the public, together with recording fees and penalties (not exceeding eight percent) determined by the board, including interest (at a rate determined by the board) on such rates, charges, fees, and penalties, against the premises to which such service has been furnished or is available, which lien shall be superior to all other liens and encumbrances except general taxes and local and special assessments;

(o) To make expenditures to promote and advertise its programs, educate its members, customers, and the general public, and provide and support conservation and other practices in connection with providing utility services;

(p) With the consent of the member within whose geographic boundaries an authority is so acting, to compel all property owners within an area served by a wastewater collection system owned or operated by an authority to connect their private drain and sewer systems with that system, or to participate in and follow the requirements of an inspection and maintenance program for on-site systems, and to pay associated rates and charges, under such terms and conditions, and such penalties, as the board shall prescribe by resolution;

(q) With the consent of the member within whose geographic or service area boundaries an authority is so acting, to create local improvement districts or utility local improvement districts, to impose and collect assessments and to issue bonds and notes, all consistent with the statutes governing local improvement districts or utility local improvement districts applicable to the member that has provided such consent. Notwithstanding this subsection (1)(q), the guaranty fund provisions of chapter 35.54 RCW shall not apply to a local improvement district created by an authority;

(r) To receive contributions or other transfers of real and personal property and property rights, money, other assets, and franchise rights, wherever situated, from its members or from any other person;

(s) To prepare and submit plans relating to utility services on behalf of itself or its members;

(t) To terminate its operations, wind up its affairs, dissolve, and provide for the handling and distribution of its assets and liabilities in a manner consistent with the applicable agreement;

(u) To transfer its assets, rights, obligations, and liabilities to a successor entity, including without limitation a successor authority or municipal corporation;

(v) Subject to subsection (3) of this section, RCW 39.106.050, and applicable law, to have and exercise any other corporate powers capable of being exercised by any of its members in providing utility services.

(2) An authority, as a municipal corporation, is subject to the public records act (chapter 42.56 RCW), the open public meetings act (chapter 42.30 RCW), and the code of ethics for

municipal officers (chapter 42.23 RCW), and an authority is subject to audit by the state auditor under chapter 43.09 RCW.

(3) In the exercise of its powers in connection with performing or providing utility services, an authority is subject to the following:

(a) An authority has no power to levy taxes.

(b) An authority has the power of eminent domain as necessary to perform or provide utility services, but only if all of its members, other than tribal government members, have powers of eminent domain. Further, an authority may exercise the power of eminent domain only pursuant to the provisions of Washington law, in the manner and subject to the statutory limitations applicable to one or more of its Washington local government members. If all of its members are the same type of Washington governmental entity, then the statute governing the exercise of eminent domain by that type of entity shall govern. An authority may not exercise the power of eminent domain with respect to property owned by a city, town, county, special purpose district, authority, or other unit of local government, but may acquire or use such property under mutually agreed upon terms and conditions.

(c) An authority may pledge its revenues in connection with its obligations, and may acquire property or property rights through and subject to the terms of a conditional sales contract, a real estate contract, or a financing contract under chapter 39.94 RCW, or other federal or state financing program. However, an authority must not in any other manner mortgage or provide security interests in its real or personal property or property rights. As a local governmental entity without taxing power, an authority may not issue general obligation bonds. However, an authority may pledge its full faith and credit to the payment of amounts due pursuant to a financing contract under chapter 39.94 RCW or other federal or state financing program.

(d) In order for an authority to provide a particular utility service in a geographical area, one or more of its members must have authority, under applicable law, to provide that utility service in that geographical area.

(e) As a separate municipal corporation, an authority's obligations and liabilities are its own and are not obligations or liabilities of its members except to the extent and in the manner established under the provisions of an agreement or otherwise expressly provided by contract.

(f) Upon its dissolution, after provision is made for an authority's liabilities, remaining assets must be distributed to a successor entity, or to one or more of the members, or to another public body of this state. [2011 c 258 § 4.]

39.106.050 Elements of joint municipal utility services agreements. A joint municipal utility services agreement that forms and governs an authority must include the elements described in this section, together with such other provisions an authority's members deem appropriate. However, the failure of an agreement to include each and every one of the elements described in this section shall not render the agreement invalid. An agreement must:

(1) Identify the members, together with conditions upon which additional members that are providing utility services may join the authority, the conditions upon which members may or must withdraw, including provisions for handling of

relevant assets and liabilities upon a withdrawal, and the effect of boundary adjustments of the authority and boundary adjustments between or among members;

(2) State the name of the authority;

(3) Describe the utility services that the authority will provide;

(4) Specify how the number of directors of the authority's board will be determined, and how those directors will be appointed. Each director on the board of an authority must be an elected official of a member. Except as limited by an agreement, an authority's board may exercise the authority's powers;

(5) Describe how votes of the members represented on the authority's board are to be weighted, and set forth any limitations on the exercise of powers of the authority's board, which may include, by way of example, requirements that certain decisions be made by a supermajority of members represented on an authority's board, based on the number of members and/or some other factor or factors, and that certain decisions be ratified by the legislative authorities of the members;

(6) Describe how the agreement is to be amended;

(7) Describe how the authority's rules may be adopted and amended;

(8) Specify the circumstances under which the authority may be dissolved, and how it may terminate its operations, wind up its affairs, and provide for the handling, assumption, and/or distribution of its assets and liabilities;

(9) List any legally authorized substantive or corporate powers that the authority will not exercise;

(10) Specify under which personnel laws the authority will operate, which may be the personnel laws applicable to any one of its Washington local government members;

(11) Specify under which public works and procurement laws the authority will operate, which may be the public works and procurement laws applicable to any one of its Washington local government members;

(12) Consistent with RCW 39.106.040(3)(b), specify under which Washington eminent domain laws any condemnations by the authority will be subject;

(13) Specify how the treasurer of the authority will be appointed, which may be an officer or employee of the authority, the treasurer or chief finance officer of any Washington local government member, or the treasurer of any Washington county in which any member of the authority is located. However, if the total number of utility customers of all of the members of an authority does not exceed two thousand five hundred, the treasurer of an authority must be either the treasurer of any member or the treasurer of a county in which any member of the authority is located;

(14) Specify under which Washington state statute or statutes surplus property of the authority will be disposed;

(15) Describe how the authority's budgets will be prepared and adopted;

(16) Describe how any assets of members that are transferred to or managed by the authority will be accounted for;

(17) Generally describe the financial obligations of members to the authority;

(18) Describe how rates and charges imposed by the authority, if any, will be determined. An agreement may specify a specific Washington state statute applicable to one

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or all of its members for the purpose of governing rate-setting criteria applicable to retail customers, if any;

(19) Specify the Washington state statute or statutes under which bonds, notes, and other obligations of the authority will be issued for the purpose of performing or providing utility services, which must be a bond issuance statute applicable to one or more of its members other than a tribal member. If all of its members are the same type of Washington governmental entity, then a Washington state statute or statutes governing the issuance of bonds, notes, and other obligations issued by that type of entity shall govern;

(20) Specify under which Washington state statute or statutes any liens of an authority shall be exercised, which must be statutes applicable to the type or types of utility service for which the lien shall apply. Further, if all of its members are the same type of Washington governmental entity, then the statute or statutes governing that type of entity shall govern;

(21) Include any other provisions deemed necessary and appropriate by the members. [2011 c 258 § 5.]

39.106.060 Authority of members to assist authority and to transfer funds, property, and other assets. For the purpose of assisting the authority in providing utility services, the members of an authority are authorized, with or without payment or other consideration and without submitting the matter to the electors of those members, to lease, convey, transfer, assign, or otherwise make available to an authority any money, real or personal property or property rights, other assets including licenses, water rights (subject to applicable law), other property (whether held by a member's utility or by a member's general government), or franchises or rights thereunder. [2011 c 258 § 6.]

39.106.070 Tax exemptions and preferences. (1) As a municipal corporation, the property of an authority is exempt from taxation.

(2) An authority is entitled to all of the exemptions from or preferences with respect to taxes that are available to any or all of its members, other than a tribal member, in connection with the provision or management of utility services. [2011 c 258 § 7.]

39.106.080 Conversion of existing entities into authorities. (1) Any intergovernmental entity formed under chapter 39.34 RCW or other applicable law may become a joint municipal utility services authority and be entitled to all the powers and privileges available under this chapter, if: (a) The public agencies that are parties to an existing interlocal agreement would otherwise be eligible to form an authority to provide the relevant utility services; (b) the public agencies that are parties to the existing interlocal agreement amend, restate, or replace that interlocal agreement so that it materially complies with the requirements of RCW 39.106.050; (c) the amended, restated, or replacement agreement is filed with the Washington state secretary of state consistent with RCW 39.106.030; and (d) the amended, restated, or replacement agreement expressly provides that all rights and obligations of the entity formerly existing under chapter 39.34 RCW or other applicable law shall thereafter be the obligations of the new authority created under this chapter. Upon compliance

with those requirements, the new authority shall be a successor of the former intergovernmental entity for all purposes, and all rights and obligations of the former entity shall transfer to the new authority. Those obligations shall be treated as having been incurred, entered into, or issued by the new authority, and those obligations shall remain in full force and effect and shall continue to be enforceable in accordance with their terms.

(2) If an interlocal agreement under chapter 39.34 RCW or other applicable law relating to utility services includes among its original participants a city or county that does not itself provide or no longer provides utility services, that city or county may continue as a party to the amended, restated, or replacement agreement and shall be treated as a member for all purposes under this chapter. [2011 c 258 § 8.]

39.106.090 Powers conferred by chapter are supplemental. The powers and authority conferred by this chapter shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained in this chapter shall be construed as limiting any other powers or authority of any member or any other entity formed under chapter 39.34 RCW or other applicable law. [2011 c 258 § 9.]

Chapter 39.108 RCW

LOCAL INFRASTRUCTURE PROJECT AREAS

Sections

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39.108.005 Findings. (1) Recognizing that uncoordinated and poorly planned growth poses a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state, the legislature passed the growth management act, chapter 36.70A RCW. The planning goals adopted through the growth management act encourage development in urban areas where public facilities and services exist or can be provided efficiently, conservation of productive forest and agricultural lands, and a reduction of sprawl.

(2) Under RCW 36.70A.090 and 43.362.005 the legislature has encouraged:

(a) The use of innovative land use management techniques, including the transfer of development rights, to meet growth management goals; and

(b) The creation of a regional transfer of development rights marketplace in the central Puget Sound to assist in conserving agricultural and forest land, as well as other lands of state or regional priority.

(3) The legislature finds that:

(a) Local governments are in need of additional resources to provide public infrastructure to meet the needs of a growing population, and that public infrastructure is fundamental to community health, safety, and economic vitality. Investment in public infrastructure in growing urban areas supports growth management goals, encourages the redevelopment of underutilized or blighted urban areas, stimulates business activity and helps create jobs, lowers the cost of housing, promotes efficient land use, and improves residents' quality of life;

(b) Transferring development rights from agricultural and forest lands to urban areas where public facilities and services exist or can be provided efficiently and cost-effectively will ensure vibrant, economically viable communities. Directing growth to communities where people can live close to where they work or have access to transportation choices will also advance state goals regarding climate change by reducing vehicle miles traveled and by reducing fuel consumption and emissions that contribute to climate change. Directing growth to these communities will further help avoid the impacts of storm water runoff to Puget Sound by avoiding impervious surfaces associated with development in watershed uplands;

(c) A transfer of development rights marketplace is particularly appropriate for conserving agricultural and forest land of long-term commercial significance. Transferring the development rights from these lands of statewide importance to cities will help achieve a specific goal of the growth management act by keeping them in farming and forestry, thereby helping ensure these remain viable industries in counties experiencing population growth. Transferring growth from agricultural and forest land of long-term commercial significance will also reduce costs to the counties that otherwise would be responsible for the provision of infrastructure and services for development on these lands, which are generally further from existing infrastructure and services; and

(d) The state and its residents benefit from investment in public infrastructure that is associated with urban growth facilitated by the transfer of development from agricultural and forest lands of long-term commercial significance. These activities advance multiple state growth management goals and benefit the state and local economies. It is in the public interest to enable local governments to finance such infrastructure investments and to incentivize development right transfers in the central Puget Sound through this chapter. [2011 c 318 § 101.]

Rules—2011 c 318: "The department of commerce may adopt any rules under chapter 34.05 RCW it considers necessary for the administration of this chapter." [2011 c 318 § 901.]

39.108.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Assessed value" means the valuation of taxable real property as placed on the last completed assessment roll.

(2) "Eligible county" means any county that borders Puget Sound, that has a population of six hundred thousand or more, and that has an established program for transfer of development rights.

(3) "Employment" means total employment in a county or city, as applicable, estimated by the office of financial management.

(4) "Exchange rate" means an increment of development beyond what base zoning allows that is assigned to a development right by a sponsoring city for use in a receiving area.

(5) "Local infrastructure project area" means the geographic area identified by a sponsoring city under RCW 39.108.120.

(6) "Local infrastructure project financing" means the use of local property tax allocation revenue distributed to the sponsoring city to pay or finance public improvement costs within the local infrastructure project area in accordance with RCW 39.108.150.

(7) "Local property tax allocation revenue" means those tax revenues derived from the receipt of regular property taxes levied on the property tax allocation revenue value and used for local infrastructure project financing.

(8) "Participating taxing district" means a taxing district that:

(a) Has a local infrastructure project area wholly or partially within the taxing district's geographic boundaries; and

(b) Levies, or has levied on behalf of the taxing district, regular property taxes as defined in this section.

(9) "Population" means the population of a city or county, as applicable, estimated by the office of financial management.

(10) "Property tax allocation revenue base value" means the assessed value of real property located within a local infrastructure project area, less the property tax allocation revenue value.

(11)(a)(i) "Property tax allocation revenue value" means an amount equal to the sponsoring city ratio multiplied by seventy-five percent of any increase in the assessed value of real property in a local infrastructure project area resulting from:

(A) The placement of new construction, improvements to property, or both, on the assessment roll, where the new construction and improvements are initiated after the local infrastructure project area is created by the sponsoring city;

(B) The cost of new housing construction, conversion, and rehabilitation improvements, when the cost is treated as new construction for purposes of chapter 84.55 RCW as provided in RCW 84.14.020, and the new housing construction, conversion, and rehabilitation improvements are initiated after the local infrastructure project area is created by the sponsoring city;

(C) The cost of rehabilitation of historic property, when the cost is treated as new construction for purposes of chapter 84.55 RCW as provided in RCW 84.26.070, and the rehabilitation is initiated after the local infrastructure project area is created by the sponsoring city.

(ii) Increases in the assessed value of real property resulting from (a)(i)(A) through (C) of this subsection are included in the property tax allocation revenue value in the

initial year. These same amounts are also included in the property tax allocation revenue value in subsequent years unless the property becomes exempt from property taxation.

(b) "Property tax allocation revenue value" includes an amount equal to the sponsoring city ratio multiplied by seventy-five percent of any increase in the assessed value of new construction consisting of an entire building in the years following the initial year, unless the building becomes exempt from property taxation.

(c) Except as provided in (b) of this subsection, "property tax allocation revenue value" does not include any increase in the assessed value of real property after the initial year.

(d) There is no property tax allocation revenue value if the assessed value of real property in a local infrastructure project area has not increased as a result of any of the reasons specified in (a)(i)(A) through (C) of this subsection.

(e) For purposes of this subsection, "initial year" means:

(i) For new construction and improvements to property added to the assessment roll, the year during which the new construction and improvements are initially placed on the assessment roll;

(ii) For the cost of new housing construction, conversion, and rehabilitation improvements, when the cost is treated as new construction for purposes of chapter 84.55 RCW, the year when the cost is treated as new construction for purposes of levying taxes for collection in the following year; and

(iii) For the cost of rehabilitation of historic property, when the cost is treated as new construction for purposes of chapter 84.55 RCW, the year when such cost is treated as new construction for purposes of levying taxes for collection in the following year.

(12)(a) "Public improvements" means:

(i) Infrastructure improvements within the local infrastructure project area that include:

(A) Street, road, bridge, and rail construction and maintenance;

(B) Water and sewer system construction and improvements;

(C) Sidewalks, streetlights, landscaping, and streetscaping;

(D) Parking, terminal, and dock facilities;

(E) Park and ride facilities of a transit authority and other facilities that support transportation efficient development;

(F) Park facilities, recreational areas, bicycle paths, and environmental remediation;

(G) Storm water and drainage management systems;

(H) Electric, gas, fiber, and other utility infrastructures; and

(ii) Expenditures for facilities and improvements that support affordable housing;

(iii) Providing maintenance and security for common or public areas in the local infrastructure project area; or

(iv) Historic preservation activities authorized under RCW 35.21.395.

(b) Public improvements do not include the acquisition by a sponsoring city of transferable development rights.

(13) "Real property" has the same meaning as in RCW 84.04.090 and also includes any privately owned improvements located on publicly owned land that are subject to property taxation.

(14)(a) "Regular property taxes" means regular property taxes as defined in RCW 84.04.140, except: (i) Regular property taxes levied by port districts or public utility districts specifically for the purpose of making required payments of principal and interest on general indebtedness; (ii) regular property taxes levied by the state for the support of common schools under RCW 84.52.065; and (iii) regular property taxes authorized by RCW 84.55.050 that are limited to a specific purpose.

(b) "Regular property taxes" do not include:

(i) Excess property tax levies that are exempt from the aggregate limits for junior and senior taxing districts as provided in RCW 84.52.043; and

(ii) Property taxes that are specifically excluded through an interlocal agreement between the sponsoring local government and a participating taxing district as set forth in RCW 39.104.060(3).

(15) "Receiving areas," for purposes of this chapter, are those designated lands within local infrastructure project areas in which transferable development rights from sending areas may be used.

(16) "Receiving city" means any incorporated city with population plus employment equal to twenty-two thousand five hundred or greater within an eligible county.

(17) "Receiving city allocated share" means the total number of transferable development rights from agricultural and forest land of long-term commercial significance and rural zoned lands designated under RCW 39.108.050 within the eligible counties allocated to a receiving city under RCW 39.108.070 (1) and (2).

(18) "Sending areas" means those lands within an eligible county that meet conservation criteria as described in RCW 39.108.030 and 39.108.050.

(19) "Sponsoring city" means a receiving city that accepts all or a portion of its receiving city allocated share, adopts a plan for development of infrastructure within one or more proposed local infrastructure project areas in accordance with RCW 39.108.080, and creates one or more local infrastructure project areas, as specified in RCW 39.108.070(4).

(20) "Sponsoring city allocated share" means the total number of transferable development rights a sponsoring city agrees to accept, under RCW 39.108.070(4), from agricultural and forest land of long-term commercial significance and rural zoned lands designated under RCW 39.108.050 within the eligible counties, plus the total number of transferable development rights transferred to the sponsoring city from another receiving city under RCW 39.108.070(5).

(21) "Sponsoring city ratio" means the ratio of the sponsoring city specified portion to the sponsoring city allocated share.

(22) "Sponsoring city specified portion" means the portion of a sponsoring city allocated share which may be used within one or more local infrastructure project areas, as set forth in the sponsoring city's plan for development of infrastructure under RCW 39.108.080.

(23) "Taxing district" means a city or county that levies or has levied on behalf of the taxing district, regular property taxes upon real property located within a local infrastructure project area.

(24) "Transfer of development rights" includes methods for protecting land from development by voluntarily removing the development rights from a sending area and transferring them to one or more receiving areas for the purpose of increasing development density or intensity.

(25) "Transferable development rights" means a right to develop one or more residential units in a sending area that can be sold and transferred. [2011 c 318 § 201.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.030 Designation of sending areas—Inclusion of agricultural and forest land of long-term commercial significance. An eligible county must designate all agricultural and forest land of long-term commercial significance within its jurisdiction as sending areas for conservation under the eligible county's program for transfer of development rights. The development rights from all such agricultural and forest land of long-term commercial significance within the eligible counties must be available for transfer to receiving cities under this chapter. [2011 c 318 § 301.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.040 Development rights from agricultural and forest land of long-term commercial significance. (1) An eligible county must calculate the number of development rights from agricultural and forest land of long-term commercial significance that are eligible for transfer to receiving areas. An eligible county must determine transferable development rights for allocation purposes in this program by:

(a) Base zoning in effect as of January 1, 2011; or

(b) An allocation other than base zoning as reflected by an eligible county's transfer of development rights program or an interlocal agreement with a receiving city in effect as of January 1, 2011.

(2) The number of transferable development rights includes the development rights from agricultural and forest lands of long-term commercial significance that have been previously issued under the eligible county's program for transfer of development rights, but that have not as yet been utilized to increase density or intensity in a development as of January 1, 2011.

(3) The number of transferable development rights does not include development rights from agricultural and forest lands of long-term commercial significance that have previously been removed or extinguished, such as through an existing conservation easement or mitigation or habitat restoration plan, except when consistent with subsection (2) of this section. [2011 c 318 § 302.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.050 Designation of sending areas—Inclusion of rural zoned lands under certain circumstances. (1) Subject to the requirements of this section, an eligible county may designate a portion of its rural zoned lands as sending areas for conservation under the eligible county's program for transfer of development rights available for transfer to receiving cities under this chapter.

(2) An eligible county may designate rural zoned lands as available for transfer to receiving cities under this chapter only if, and at such time as, fifty percent or more of the total acreage of land classified as agricultural and forest land

long-term commercial significance in the county, as of January 1, 2011, has been protected through either a permanent conservation easement, ownership in fee by the county for land protection or conservation purposes, or ownership in fee by a nongovernmental land conservation organization.

(3) To be designated as available for transfer to receiving cities under this chapter, rural zoned lands must either:

(a) Be identified by the county as top conservation priorities because they:

(i) Provide ecological effectiveness in achieving water resource inventory area goals;

(ii) Provide contiguous habitat protection, are adjacent to already protected habitat areas, or improve ecological function;

(iii) Are of sufficient size and location in the landscape to yield strategic growth management benefits;

(iv) Provide improved access for regional recreational opportunity;

(v) Prevent forest fragmentation or are appropriate for forest management;

(vi) Provide flood protection or reduce flood risk; or

(vii) Have other attributes that meet natural resource preservation program priorities; or

(b) Be identified by the state or in regional conservation plans as highly important to the water quality of Puget Sound.

(4) The portion of rural zoned lands in an eligible county designated as sending areas for conservation under the eligible county's program for transfer of development rights available for transfer to receiving cities under this chapter must not exceed one thousand five hundred development rights. [2011 c 318 § 303.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.060 Determination of total number of transferable development rights for agricultural and forest land of long-term commercial significance and designated rural zoned lands. On or before September 1, 2011, each eligible county must report to the Puget Sound regional council the total number of transferable development rights from agricultural and forest land of long-term commercial significance and designated rural zoned lands within the eligible county that may be available for allocation to receiving cities under this chapter, as determined under RCW 39.108.040 and 39.108.050. [2011 c 318 § 304.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.070 Allocation among local governments of transferable development rights from agricultural and forest land of long-term commercial significance and designated rural zoned lands. (1) The Puget Sound regional council must allocate among receiving cities the total number of development rights reported by eligible counties under RCW 39.108.060. Each receiving city allocated share must be determined by the Puget Sound regional council, in consultation with eligible counties and receiving cities, based on growth targets, determined by established growth management processes, and other relevant factors as determined by the Puget Sound regional council in conjunction with the counties and receiving cities.

(2) The Puget Sound regional council must report to each receiving city its receiving city allocated share on or before March 1, 2012.

(3) The Puget Sound regional council must report each receiving city allocated share to the department of commerce on or before March 1, 2012.

(4) A receiving city may become a sponsoring city by accepting all or a portion of its receiving city allocated share, adopting a plan in accordance with RCW 39.108.080, and creating one or more local infrastructure project areas to pay or finance costs of public improvements.

(5) A receiving city may, by interlocal agreement, transfer all or a portion of its receiving city allocated share to another sponsoring city. The transferred portion of the receiving city allocated share must be included in the other sponsoring city allocated share. [2011 c 318 § 305.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.080 Development plan for infrastructure. (1) Before adopting an ordinance or resolution creating one or more local infrastructure project areas, a sponsoring city must adopt a plan for development of public infrastructure within one or more proposed local infrastructure project areas sufficient to utilize, on an aggregate basis, a sponsoring city specified portion that is equal to or greater than twenty percent of the sponsoring city allocated share.

(2) The plan must be developed in consultation with the department of transportation and the county where the local infrastructure project area to be created is located, be consistent with any transfer of development rights policies or development regulations adopted by the sponsoring city under RCW 39.108.090, specify the public improvements to be financed using local infrastructure project financing under RCW 39.108.120, estimate the number of any transferable development rights that will be used within the local infrastructure project area or areas and estimate the cost of the public improvements.

(3) A plan adopted under this section may be revised from time to time by the sponsoring city, in consultation with the county where the local infrastructure project area or areas are located, to increase the sponsoring city specified portion. [2011 c 318 § 401.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.090 Program for transfer of development rights into receiving areas—Requirements. (1) Before adopting an ordinance or resolution creating one or more local infrastructure project areas, a sponsoring city must:

(a) Adopt transfer of development rights policies or implement development regulations as required by subsection (2) of this section; or

(b) Make a finding that the sponsoring city will:

(i) Receive its sponsoring city specified portion within one or more local infrastructure project areas; or

(ii) Purchase its sponsoring city specified portion should the sponsoring city not be able to receive its sponsoring city specified portion within one or more local infrastructure project areas such that purchased development rights can be held in reserve by the sponsoring city and used in future development.

(2) Any adoption of transfer of development rights policies or implementation of development regulations must:

- (a) Comply with chapter 36.70A RCW;
- (b) Designate a receiving area or areas;
- (c) Adopt incentives consistent with subsection (4) of this section for developers purchasing transferable development rights;
- (d) Establish an exchange rate consistent with subsection (5) of this section; and
- (e) Require that the sale of a transferable development right from agricultural or forest land of long-term commercial significance or designated rural zoned lands under RCW 39.108.050 be evidenced by its permanent removal from the sending site, such as through a conservation easement on the sending site.

(3) Any adoption of transfer of development rights policies or implementation of development regulations must not be based upon a downzone within one or more receiving areas solely to create a market for the transferable development rights.

(4) Developer incentives should be designed to:

(a) Achieve the densities or intensities reasonably likely to result from absorption of the sponsoring city specified portion identified in the plan under RCW 39.108.080;

(b) Include streamlined permitting strategies such as by-right permitting; and

(c) Include streamlined environmental review strategies such as development and substantial environmental review of a subarea plan for a receiving area that benefits projects that use transferable development rights, with adoption as appropriate under RCW 43.21C.420 of optional elements of their comprehensive plan and optional development regulations that apply within the receiving area, adoption as appropriate of a categorical exemption for infill under RCW 43.21C.229 for a receiving area, and adoption as appropriate of a planned action under *RCW 43.21C.031 for the receiving area.

(5) Each sponsoring city may determine, at its option, what developer incentives to adopt within its jurisdiction.

(6) Exchange rates should be designed to:

(a) Create a marketplace in which transferable development rights are priced at a level at which sending site landowners are willing to sell and developers are willing to buy transferable development rights;

(b) Achieve the densities or intensities anticipated by the plan adopted under RCW 39.108.080;

(c) Provide for translation to commodities in addition to residential density, such as building height, commercial floor area, parking ratio, impervious surface, parkland and open space, setbacks, and floor area ratio; and

(d) Allow for appropriate exemptions from other land use or building requirements.

(7) A sponsoring city must designate all agricultural and forest land of long-term commercial significance and designated rural zoned lands under RCW 39.108.050 within the eligible counties as available sending areas.

(8) A sponsoring city, in accordance with its existing comprehensive planning and development regulation authority under chapter 36.70A RCW, and in accordance with RCW 36.70A.080, may elect to adopt an optional comprehensive plan element and optional development regulations

that apply within one or more local infrastructure project areas under this chapter. [2011 c 318 § 402.]

*Reviser's note: The requirements for a planned action were moved by 2012 1st sp.s. c 1 from RCW 43.21C.031 to RCW 43.21C.440.

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.100 Development rights available for transfer to receiving cities. Only development rights from agricultural and forest land of long-term commercial significance within the eligible counties as determined under RCW 39.108.040, and rural-zoned lands with the eligible counties designated under RCW 39.108.050, may be available for transfer to receiving cities in accordance with this chapter. [2011 c 318 § 403.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.110 Quantitative and qualitative performance measures—Reporting. The eligible counties, in collaboration with sponsoring cities, must provide a report to the department of commerce by March 1st of every other year. The report must contain the following information:

(1) The number of sponsoring cities that have adopted transfer of development rights policies and regulations incorporating transfer of development rights under this chapter, and have an interlocal agreement or have adopted the department of commerce transfer of development rights interlocal terms and conditions rule;

(2) The number of transfer of development rights transactions under this chapter using different types of transfer of development rights mechanisms;

(3) The number of acres under conservation easement under this chapter, broken out by agricultural land, forest land, and rural lands;

(4) The number of transferable development rights transferred from sending areas under this chapter;

(5) The number of transferable development rights transferred from a county into a sponsoring city under this chapter;

(6) Sponsoring city development under this chapter using transferable development rights, including:

(a) The number of total new residential units;

(b) The number of residential units created in receiving areas using transferable development rights transferred from sending areas;

(c) The amount of additional commercial floor area;

(d) The amount of additional building height;

(e) The number of required structured parking spaces reduced, if transferable development rights are specifically converted into reduced structured parking space requirements;

(f) The number of additional parking spaces allowed, if transferable development rights are specifically converted into additional receiving area parking spaces; and

(g) The amount of additional impervious surface allowed, if transferable development rights are specifically converted into receiving area impervious surfaces;

(7) The amount of the local property tax allocation revenues, if any, received in the preceding calendar year by the sponsoring city;

(8) A list of public improvements paid or financed with local infrastructure project financing;

(9) The names of any businesses locating within local infrastructure project areas as a result of the public improvements undertaken by the sponsoring local government and paid or financed in whole or in part with local infrastructure project financing;

(10) The total number of permanent jobs created in the local infrastructure project area as a result of the public improvements undertaken by the sponsoring local government and paid or financed in whole or in part with local infrastructure project financing;

(11) The average wages and benefits received by all employees of businesses locating within the local infrastructure project area as a result of the public improvements undertaken by the sponsoring local government and paid or financed in whole or in part with local infrastructure project financing; and

(12) The date when any indebtedness issued for local infrastructure project financing is expected to be retired. [2011 c 318 § 501.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.120 Creating a local infrastructure project area. (1) Before adopting an ordinance or resolution creating one or more local infrastructure project areas, a sponsoring city must:

(a) Provide notice to the county assessor, county treasurer, and county within the proposed local infrastructure project area of the sponsoring city's intent to create one or more local infrastructure project areas. This notice must be provided at least one hundred eighty days in advance of the public hearing as required by (b) of this subsection;

(b) Hold a public hearing on the proposed formation of the local infrastructure project area.

(2) A sponsoring city may create one or more local infrastructure project areas by ordinance or resolution that:

(a) Describes the proposed public improvements, identified in the plan under RCW 39.108.080, to be financed in each local infrastructure project area;

(b) Describes the boundaries of each local infrastructure project area, subject to the limitations in RCW 39.108.130; and

(c) Provides the date when the use of local property tax allocation revenues will commence and a list of the participating taxing districts.

(3) The sponsoring city must deliver a certified copy of the adopted ordinance or resolution to the county assessor, county treasurer, and each other participating taxing district within which the local infrastructure project area is located. [2011 c 318 § 601.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.130 Limitations on local infrastructure project areas. The designation of any local infrastructure project area is subject to the following limitations:

(1) A local infrastructure project area is limited to contiguous tracts, lots, pieces, or parcels of land without the creation of islands of territory not included in the local infrastructure project area;

(2) The public improvements to be financed with local infrastructure project financing must be located in the local

infrastructure project area and must, in the determination of the sponsoring city, further the intent of this chapter;

(3) Local infrastructure project areas created by a sponsoring city may not comprise an area containing more than twenty-five percent of the total assessed value of taxable property within the sponsoring city at the time the local infrastructure project areas are created;

(4) The boundaries of each local infrastructure project area may not overlap and may not be changed during the time period that local infrastructure project financing is used within the local infrastructure project area, as provided under this chapter; and

(5) All local infrastructure project areas created by the sponsoring city must comprise, in the aggregate, an area that the sponsoring city determines (a) is sufficient to use the sponsoring city specified portion, unless the sponsoring city satisfies its sponsoring city allocated share under RCW 39.108.090(1)(b)(ii), and (b) is no larger than reasonably necessary to use the sponsoring city specified portion in projected future developments. [2011 c 318 § 602.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.140 Participating taxing districts. Participating taxing districts must allow the use of all of their local property tax allocation revenues for local infrastructure project financing. [2011 c 318 § 603.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.150 Allocation of property tax revenues. (1) Commencing in the second calendar year following the creation of a local infrastructure project area by a sponsoring city, the county treasurer must distribute receipts from regular taxes imposed on real property located in the local infrastructure project area as follows:

(a) Each participating taxing district and the sponsoring city must receive that portion of its regular property taxes produced by the rate of tax levied by or for the taxing district on the property tax allocation revenue base value for that local infrastructure project area in the taxing district; and

(b) The sponsoring city must receive an additional portion of the regular property taxes levied by it and by or for each participating taxing district upon the property tax allocation revenue value within the local infrastructure project area. However, if there is no property tax allocation revenue value, the sponsoring city may not receive any additional regular property taxes under this subsection (1)(b). The sponsoring city may agree to receive less than the full amount of the additional portion of regular property taxes under this subsection (1)(b) as long as bond debt service, reserve, and other bond covenant requirements are satisfied, in which case the balance of these tax receipts must be allocated to the participating taxing districts that levied regular property taxes, or have regular property taxes levied for them, in the local infrastructure project area for collection that year in proportion to their regular tax levy rates for collection that year. The sponsoring city may request that the treasurer transfer this additional portion of the property taxes to its designated agent. The portion of the tax receipts distributed to the sponsoring local government or its agent under this subsection (1)(b) may only be expended to pay or finance public improvement costs within the local infrastructure project area.

(2) The county assessor must determine the property tax allocation revenue value and property tax allocation revenue base value. This section does not authorize revaluations of real property by the assessor for property taxation that are not made in accordance with the assessor's revaluation plan under chapter 84.41 RCW or under other authorized revaluation procedures.

(3)(a) The distribution of local property tax allocation revenue to the sponsoring city must cease on the date that is the earlier of:

(i) The date when local property tax allocation revenues are no longer used or obligated to pay the costs of the public improvements; or

(ii) The final termination date as determined under (b) of this subsection.

(b) The final termination date is determined as follows:

(i) Except as provided otherwise in this subsection (3)(b), if the sponsoring city certifies to the county treasurer that the local property tax threshold level 1 is met, the final termination date is ten years after the date of the first distribution of local property tax allocation revenues under subsection (1) of this section;

(ii) If the sponsoring city certifies to the county treasurer that the local property tax threshold level 2 is met at least six months prior to the final termination date under (b)(i) of this subsection (3), the final termination date is fifteen years after the date of the first distribution of local property tax allocation revenues under subsection (1) of this section;

(iii) If the sponsoring city certifies to the county treasurer that the local property tax threshold level 3 is met at least six months prior to the final termination date under (b)(ii) of this subsection (3), the final termination date is twenty years after the date of the first distribution of local property tax allocation revenues under subsection (1) of this section;

(iv) If the sponsoring city certifies to the county treasurer that the local property tax threshold level 4 is met at least six months prior to the final termination date under (b)(iii) of this subsection (3), the final termination date is twenty-five years after the date of the first distribution of local property tax allocation revenues under subsection (1) of this section.

(4) For purposes of this section:

(a) The "local property tax threshold level 1" is met when the sponsoring city has either:

(i) Issued building permits for development within the local infrastructure project area that, on an aggregate basis, uses at least twenty-five percent of the sponsoring city specified portion; or

(ii) Acquired transferable development rights equal to at least twenty-five percent of the sponsoring city specified portion for use in the local infrastructure project area or for extinguishment.

(b) The "local property tax threshold level 2" is met when the sponsoring city has either:

(i) Issued building permits for development within the local infrastructure project area that, on an aggregate basis, uses at least fifty percent of the sponsoring city specified portion; or

(ii) Acquired transferable development rights equal to at least fifty percent of the sponsoring city specified portion for use in the local infrastructure project area or for extinguishment.

(c) The "local property tax threshold level 3" is met when the sponsoring city has either:

(i) Issued building permits for development within the local infrastructure project area that, on an aggregate basis, uses at least seventy-five percent of the sponsoring city specified portion; or

(ii) Acquired transferable development rights equal to at least seventy-five percent of the sponsoring city specified portion for use in the local infrastructure project area or for extinguishment.

(d) The "local property tax threshold level 4" is met when the sponsoring city has either:

(i) Issued building permits for development within the local infrastructure project area that, on an aggregate basis, uses at least one hundred percent of the sponsoring city specified portion; or

(ii) Acquired transferable development rights equal to at least one hundred percent of the sponsoring city specified portion for use in the local infrastructure project area or for extinguishment.

(5) Any excess local property tax allocation revenues, and earnings on the revenues, remaining at the time the distribution of local property tax allocation revenue terminates must be returned to the county treasurer and distributed to the participating taxing districts that imposed regular property taxes, or had regular property taxes imposed for it, in the local infrastructure project area for collection that year, in proportion to the rates of their regular property tax levies for collection that year.

(6) The allocation to local infrastructure project financing of that portion of the sponsoring city's and each participating taxing district's regular property taxes levied upon the property tax allocation revenue value within that local infrastructure project area is declared to be a public purpose of and benefit to the sponsoring city and each participating taxing district.

(7) The distribution of local property tax allocation revenues under this section may not affect or be deemed to affect the rate of taxes levied by or within any sponsoring local government and participating taxing district or the consistency of any such levies with the uniformity requirement of Article VII, section 1 of the state Constitution. [2011 c 318 § 701.]

Rules—2011 c 318: See note following RCW 39.108.005.

Chapter 39.110 RCW

LOCAL ECONOMIC DEVELOPMENT FINANCING

Sections

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39.110.005 Findings—Purpose. (1) The legislature finds that the issuance of taxable nonrecourse revenue bonds by the Washington economic development finance authority has provided a number of Washington firms with the financing necessary to grow and create jobs. The legislature further finds that municipal authority to issue taxable nonrecourse revenue bonds does not exist and that authorizing the local issuance of taxable bonds for economic development purposes will increase local capacity to strengthen businesses and create jobs.

(2) It is the purpose of this chapter to grant new authority for cities, counties, and port districts that created public corporations under chapter 39.84 RCW prior to 2012, in order to build on the expertise with tax-exempt nonrecourse revenue bond financing developed by these municipalities. Therefore, these municipalities are permitted to create local economic development finance authorities to act as a financial conduit that, without using state or local government funds or lending the credit of the state or local governments, can issue taxable and nontaxable nonrecourse revenue bonds, and participate in federal, state, and local economic development programs to help facilitate access to needed capital by Washington businesses. It is also a primary purpose of this chapter to encourage the development of local innovative approaches to the problem of unmet capital needs. This chapter must be construed liberally to carry out its purposes and objectives. [2012 c 193 § 1.]

39.110.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authority" means a local economic development finance authority created under this chapter. An authority is a public body within the meaning of RCW 39.53.010.

(2) "Board of directors" means the board of directors of an authority.

(3) "Bonds" means any bonds, notes, debentures, interim certificates, conditional sales or lease financing agreements, lines of credit, forward purchase agreements, investment agreements, and other banking or financial arrangements, guaranties, or other obligations issued by or entered into by the authority. Such bonds may be issued on either a tax-exempt or taxable basis.

(4) "Borrower" means one or more public or private persons or entities acting as lessee, purchaser, mortgagor, or borrower who has obtained or is seeking to obtain financing either from an authority or from an eligible banking organization that has obtained or is seeking to obtain funds from the authority to finance a project. A borrower may include a party who transfers the right of use and occupancy to another party by lease, sublease, or otherwise, or a party who is seeking or has obtained a financial guaranty from the authority.

(5) "Economic development activities" means activities related to: Manufacturing, processing, the commercialization of research, production, assembly, tooling, warehousing, exporting products made in Washington or services provided by Washington firms, airports, docks and wharves, mass

commuting facilities, high-speed intercity rail facilities, public broadcasting, pollution control, solid waste disposal, federally qualified hazardous waste facilities, energy generating, conservation, or transmission facilities, sports facilities, industrial parks, and activities conducted within a federally designated enterprise or empowerment zone or geographic area of similar nature.

(6) "Eligible banking organization" means any organization subject to regulation by the director of the department of financial institutions, any national bank, federal savings and loan association, and federal credit union located within this state.

(7) "Eligible person" means an individual, partnership, corporation, or joint venture carrying on business, or proposing to carry on business, within the state and seeking financial assistance under chapter 193, Laws of 2012.

(8) "Financial assistance" means the infusion of capital to persons for use in the development and exploitation of specific inventions and products.

(9) "Financing agreements" means, and includes without limitation, a contractual arrangement with an eligible person whereby an authority obtains rights from or in an invention or product or proceeds from an invention or product in exchange for the granting of financial and other assistance to the person.

(10) "Financing document" means an instrument executed by an authority and one or more persons or entities pertaining to the issuance of or security for bonds, or the application of the proceeds of bonds or other funds of, or payable to, the authority. A financing document may include, but need not be limited to, a lease, installment sale agreement, conditional sale agreement, mortgage, loan agreement, trust agreement or indenture, security agreement, letter or line of credit, reimbursement agreement, insurance policy, guaranty agreement, or currency or interest rate swap agreement. A financing document also may be an agreement between the authority and an eligible banking organization which has agreed to make a loan to a borrower.

(11) "Investment grade credit rating" means a rating of at least BBB- by Standard & Poor's, Baa3 by Moody's investors service, or BBB- by Fitch.

(12) "Municipality" means a city, town, county, or port district of this state.

(13) "Ordinance" means any appropriate method of taking official action or adopting a legislative decision by any municipality, whether known as a resolution, ordinance, or otherwise.

(14) "Plan" means the general plan of economic development finance objectives developed and adopted by the authority, and updated from time to time, as required under RCW 43.163.090.

(15) "Product" means a product, device, technique, or process that is or may be exploitable commercially. "Product" does not refer to pure research, but does apply to products, devices, techniques, or processes that have advanced beyond the theoretic stage and are readily capable of being, or have been, reduced to practice.

(16) "Project costs" means costs of:

(a) Acquisition, lease, construction, reconstruction, remodeling, refurbishing, rehabilitation, extension, and enlargement of land, rights to land, buildings, structures,

docks, wharves, fixtures, machinery, equipment, excavations, paving, landscaping, utilities, approaches, roadways and parking, handling and storage areas, and similar ancillary facilities, and any other real or personal property included in an economic development activity;

(b) Architectural, engineering, consulting, accounting, and legal costs related directly to the development, financing, acquisition, lease, construction, reconstruction, remodeling, refurbishing, rehabilitation, extension, and enlargement of an activity included under subsection (5) of this section, including costs of studies assessing the feasibility of an economic development activity;

(c) Finance costs, including the costs of credit enhancement and discounts, if any, the costs of issuing revenue bonds, and costs incurred in carrying out any financing document;

(d) Start-up costs, working capital, capitalized research and development costs, capitalized interest during construction and during the eighteen months after estimated completion of construction, and capitalized debt service or repair and replacement or other appropriate reserves;

(e) The refunding of any outstanding obligations incurred for any of the costs outlined in this subsection; and

(f) Other costs incidental to any of the costs listed in this subsection. [2012 c 193 § 2.]

39.110.020 Economic development finance authority—Creation—Dissolution—Requirements—Penalty.

(1) A municipality that formed a public corporation under chapter 39.84 RCW prior to January 1, 2012, may, if that public corporation is still in existence, enact an ordinance creating an economic development finance authority for the purposes authorized in this chapter. The ordinance creating the authority must approve a charter for the authority containing such provisions as are authorized by and not in conflict with this chapter. Any charter issued under this chapter must contain in substance the limitations set forth in RCW 39.110.030. In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority is conclusively presumed to be established and authorized to transact business and exercise its powers under this chapter upon proof of the adoption of the ordinance creating the authority by the governing body. A copy of the ordinance duly certified by the clerk of the governing body of the municipality is admissible in evidence in any suit, action, or proceeding.

(2) An authority created by a municipality pursuant to this chapter may be dissolved by the municipality if: (a) The authority has no property to administer, other than funds or property, if any, to be paid or transferred to the municipality by which it was established; and (b) all the authority's outstanding obligations have been satisfied. Such a dissolution must be accomplished by the governing body of the municipality adopting an ordinance providing for the dissolution.

(3) The creating municipality may, at its discretion and at any time, alter or change the structure, organizational programs, or activities of an authority, including termination of the authority if contracts entered into by the authority are not impaired. Any net earnings of an authority, beyond those necessary for retirement of indebtedness incurred by it, do not inure to the benefit of any person other than the creating

municipality. Upon dissolution of an authority, title to all property owned by the authority vests in the municipality.

(4) The ordinance creating an authority must include provisions establishing a board of directors to govern the affairs of the authority, what constitutes a quorum of the board of directors, and how the authority must conduct its affairs.

(5) For a period of ten years after any financing through an authority, it is illegal for a director, officer, agent, or employee of an authority to have, directly or indirectly, any financial interest in any property to be included in or any contract for property, services, or materials to be furnished or used in connection with any economic development activity financed through the authority. Violation of any provision of this section is a gross misdemeanor.

(6) The finances of any authority are subject to examination by the state auditor's office pursuant to RCW 43.09.260. [2012 c 193 § 3.]

39.110.030 Lending to authority—Issuance of revenue obligations—Delegation of authority.

(1) No municipality may give or lend any money or property in aid of an authority. The municipality that creates an authority must annually review any financial statements of the authority and at all times must have access to the books and records of the authority. No authority may issue revenue obligations under this chapter except upon the approval of both the municipality under the auspices of which it was created and the county, city, or town within whose planning jurisdiction the economic development activity to be financed lies. Upon receiving approval from these jurisdictions, an authority must, before bonds may be issued, obtain one of the following:

(a) A letter of credit supporting the creditworthiness of the borrower from a bank with an investment grade credit rating;

(b) Confirmation that the borrower has arranged for private placement of the bonds with an institutional investor; or

(c) Confirmation that the borrower has an investment grade credit rating of their own.

(2) An authority established under the terms of this chapter constitutes an authority and an instrumentality (within the meaning of those terms in the regulations of the United States treasury and the rulings of the internal revenue service prescribed pursuant to 26 U.S.C. Sec. 103 of the federal internal revenue code of 1986, as amended) may act on behalf of the municipality under whose auspices it is created for the specific public purposes authorized by this chapter. The authority is not a municipal corporation within the meaning of the state Constitution and the laws of the state, or a political subdivision within the meaning of the state Constitution and the laws of the state, including without limitation, Article VIII, section 7 of the Washington state Constitution. A municipality may not delegate to an authority any of the municipality's attributes of sovereignty including, without limitation, the power to tax, the power of eminent domain, and the police power. [2012 c 193 § 4.]

39.110.040 Powers and duties of authority—Economic development activities.

(1) An authority established pursuant to this chapter may develop and conduct a program

or programs to provide nonrecourse revenue bond financing for the project costs for economic development activities.

(2) An authority is authorized to participate fully in federal and other governmental economic development finance programs and to take such actions as are necessary and consistent with this chapter to secure the benefits of those programs and to meet their requirements.

(3) An authority may develop and conduct a program that will stimulate and encourage the development of new products within Washington state by the infusion of financial aid for invention and innovation in situations in which the financial aid would not otherwise be reasonably available from commercial sources. The authority is authorized to provide nonrecourse revenue bond financing for this program.

(a) For the purposes of this program, the authority has the following powers and duties:

(i) To enter into financing agreements with eligible persons doing business in Washington state, upon terms and on conditions consistent with the purposes of this chapter, for the advancement of financial and other assistance to the persons for the development of specific products, procedures, and techniques, to be developed and produced in this state, and to condition the agreements upon contractual assurances that the benefits of increasing or maintaining employment and tax revenues remain in this state and accrue to it;

(ii) Own, possess, and take license in patents, copyrights, and proprietary processes and negotiate and enter into contracts and establish charges for the use of the patents, copyrights, and proprietary processes when the patents and licenses for products result from assistance provided by the authority;

(iii) Negotiate royalty payments to the authority on patents and licenses for products arising as a result of assistance provided by the authority;

(iv) Negotiate and enter into other types of contracts with eligible persons that assure that public benefits will result from the provision of services by the authority; provided that the contracts are consistent with the state Constitution;

(v) Encourage and provide technical assistance to eligible persons in the process of developing new products;

(vi) Refer eligible persons to researchers or laboratories for the purpose of testing and evaluating new products, processes, or innovations; and

(vii) To the extent permitted under its contract with eligible persons, to consent to a termination, modification, forgiveness, or other change of a term of a contractual right, payment, royalty, contract, or agreement of any kind to which the authority is a party.

(b) Eligible persons seeking financial and other assistance under this program must forward an application, together with an application fee prescribed by rule, to the authority. An investigation and report concerning the advisability of approving an application for assistance must be completed by the staff of the authority. The investigation and report may include, but is not limited to, facts about the company under consideration as its history, wage standards, job opportunities, stability of employment, past and present financial condition and structure, pro forma income statements, present and future markets and prospects, integrity of management as well as the feasibility of the proposed product and invention to be granted financial assistance, including the

state of development of the product as well as the likelihood of its commercial feasibility. After receipt and consideration of the report set out in this subsection and after other action as is deemed appropriate, the application must be approved or denied by the authority. The applicant must be promptly notified of action by the authority.

(4) An authority may receive no appropriation of state funds. The department of commerce and the Washington economic development finance authority may assist a local economic development finance authority in organizing itself and in designing programs.

(5) An authority may use any funds legally available to it for any purpose specifically authorized by this chapter, or for otherwise improving economic development by assisting businesses and farm enterprises that do not have access to capital at terms and rates comparable to large corporations due to the location of the business, the size of the business, the lack of financial expertise, or other appropriate reasons.

(6) An authority must coordinate its activities with those, including bond issuance activities, of the creating municipality and the public corporation created under chapter 39.84 RCW by the creating municipality. [2012 c 193 § 5.]

39.110.045 Powers of authority—Generally. In addition to carrying out the economic development finance activities and programs specifically authorized in this chapter, an authority may:

(1) Maintain an office or offices;

(2) Sue and be sued in its own name, and plead and be impleaded;

(3) Engage consultants, agents, attorneys, and advisers, contract with federal, state, and local governmental entities for services, and hire such employees, agents, and other personnel as the authority deems necessary, useful, or convenient to accomplish its purposes;

(4) Make and execute all manner of contracts, agreements and instruments, and financing documents with public and private parties as the authority deems necessary, useful, or convenient to accomplish its purposes;

(5) Acquire and hold real or personal property, or any interest therein, in the name of the authority, and to sell, assign, lease, encumber, mortgage, or otherwise dispose of the same in such manner as the authority deems necessary, useful, or convenient to accomplish its purposes;

(6) Open and maintain accounts in qualified public depositories and otherwise provide for the investment of any funds not required for immediate disbursement, and provide for the selection of investments;

(7) Appear in its own behalf before boards, commissions, departments, or agencies of federal, state, or local government;

(8) Procure such insurance in such amounts and from such insurers as the authority deems desirable including, but not limited to, insurance against any loss or damage to its property or other assets, public liability insurance for injuries to persons or property, and directors and officers liability insurance;

(9) Apply for and accept subventions, grants, loans, advances, and contributions from any source of money, property, labor, or other things of value, to be held, used, and

applied as the authority deems necessary, useful, or convenient to accomplish its purposes;

(10) Establish guidelines for the participation by eligible banking organizations in programs conducted by the authority under this chapter;

(11) Act as an agent, by agreement, for federal, state, or local governmental entities to carry out the programs authorized in this chapter;

(12) Establish, revise, and collect such fees and charges as the authority deems necessary, useful, or convenient to accomplish its purposes;

(13) Make such expenditures as are appropriate for paying the administrative costs and expenses of the authority in carrying out the provisions of this chapter;

(14) Establish such reserves and special funds, and controls on deposits to and disbursements from them, as the authority deems necessary, useful, or convenient to accomplish its purposes;

(15) Prepare, publish, and distribute, with or without charge, such studies, reports, bulletins, and other material as the authority deems necessary, useful, or convenient to accomplish its purposes;

(16) Delegate any of its powers and duties if consistent with the purposes of this chapter;

(17) Adopt rules concerning its exercise of the powers authorized by this chapter; and

(18) Exercise any other power the authority deems necessary, useful, or convenient to accomplish its purposes and exercise the powers expressly granted in this chapter. [2012 c 193 § 8.]

39.110.050 Operating procedures. (1) An authority established pursuant to this chapter must adopt general operating procedures for the authority. The authority must also adopt operating procedures for individual programs as they are developed for obtaining funds and for providing funds to borrowers. These operating procedures must be adopted by resolution prior to the authority operating the applicable programs.

(2) The operating procedures must include, but are not limited to:

(a) Appropriate standards for securing loans and other financing the authority provides to borrowers, such as guarantees or collateral; and

(b) Strict standards for providing financing to borrowers, such as:

(i) The borrower is a responsible party with a high probability of being able to repay the financing provided by the authority;

(ii) The financing is reasonably expected to benefit the creating municipality by enabling a borrower to increase or maintain jobs or capital in the municipality;

(iii) The borrowers with the greatest needs or that provide the most public benefit are given higher priority by the authority; and

(iv) The financing is consistent with any plan adopted by the authority under the provisions of RCW 39.110.060. [2012 c 193 § 6.]

39.110.060 Plan of economic development. (1) Any authority established pursuant to this chapter must adopt a

general plan of economic development finance objectives to be implemented by the authority during the period of the plan. The authority may exercise the powers authorized under this chapter prior to the adoption of the initial plan. In developing the plan, the authority must consider and set objectives for:

(a) Employment generation associated with the authority's programs;

(b) The application of funds to economic sectors and economic development activity evidencing need for improved access to capital markets and funding resources;

(c) Eligibility criteria for participants in authority programs;

(d) The use of funds and resources available from or through federal, state, local, and private sources and programs;

(e) New programs which serve a targeted need for financing assistance within the purposes of this chapter; and

(f) Opportunities to improve capital access as evidenced by programs existent in other localities or as they are made possible by results of private capital market circumstances.

(2) Upon adoption of the general plan the authority must conduct its programs in observance of the objectives established in the plan. The authority may periodically update the plan as determined necessary by the authority. [2012 c 193 § 7.]

39.110.070 Prohibited practices. Notwithstanding any other provision of this chapter, an authority may not:

(1) Give any municipal or state money or property or loan any municipal or state money or credit to or in aid of any individual, association, company, or corporation, or become directly or indirectly the owner of any stock in or bonds of any association, company, or corporation;

(2) Issue bills of credit or accept deposits of money for time or demand deposit, administer trusts, engage in any form or manner in, or in the conduct of, any private or commercial banking business, or act as a savings bank or savings and loan association other than as provided in this chapter;

(3) Be or constitute a bank or trust company within the jurisdiction or under the control of the director of financial institutions, the comptroller of the currency of the United States of America, or the treasury department thereof;

(4) Be or constitute a bank, broker, or dealer in securities within the meaning of, or subject to the provisions of, any securities, securities exchange, or securities dealers' law of the United States of America or the state;

(5) Engage in the financing of housing as provided for in chapter 43.180 RCW;

(6) Engage in the financing of health care facilities as provided for in chapter 70.37 RCW;

(7) Engage in financing higher education facilities as provided for in chapter 28B.07 RCW; or

(8) Exercise any of the powers authorized in this chapter or issue any revenue bonds with respect to any economic development activity unless the economic development activity is located wholly within the boundaries of the municipality under whose auspices the authority is created or unless the economic development activity comprises energy facilities or solid waste disposal facilities which provide energy

for or dispose of solid waste from the municipality or the residents thereof. [2012 c 193 § 9.]

39.110.080 Nonrecourse revenue bonds. (1) An authority may issue its nonrecourse revenue bonds in order to obtain the funds to carry out the programs authorized in this chapter. The bonds must be special obligations of the authority, payable solely out of the special fund or funds established by the authority for their repayment.

(2) Any bonds issued under this chapter may be secured by a financing document between the authority and the purchasers or owners of such bonds or between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state.

(a) The financing document may pledge or assign, in whole or in part, the revenues and funds held or to be received by the authority, any present or future contract or other rights to receive the same, and the proceeds thereof.

(b) The financing document may contain such provisions for protecting and enforcing the rights, security, and remedies of bond owners as may be reasonable and proper including, without limiting the generality of the foregoing, provisions defining defaults and providing for remedies in the event of default which may include the acceleration of maturities, restrictions on the individual rights of action by bond owners, and covenants setting forth duties of and limitations on the authority in conduct of its programs and the management of its property.

(c) In addition to other security provided in this chapter or otherwise by law, bonds issued by the authority may be secured, in whole or in part, by financial guaranties, by insurance or by letters of credit issued to the authority or a trustee or any other person, by any bank, trust company, insurance or surety company, or other financial institution, within or without the state. The authority may pledge or assign, in whole or in part, the revenues and funds held or to be received by the authority, any present or future contract or other rights to receive the same, and the proceeds thereof, as security for such guaranties or insurance or for the reimbursement by the authority to any issuer of such letter of credit of any payments made under such letter of credit.

(3) Without limiting the powers of the authority contained in this chapter, in connection with each issue of its obligation bonds, the authority must create and establish one or more special funds including, but not limited to, debt service and sinking funds, reserve funds, project funds, and such other special funds as the authority deems necessary, useful, or convenient.

(4) Any security interest created against the unexpended bond proceeds and against the special funds created by the authority is immediately valid and binding against the money and any securities in which the money may be invested without authority or trustee possession. The security interest must be prior to any party having any competing claim against the moneys or securities, without filing or recording under Article 9A of the uniform commercial code, Title 62A RCW, and regardless of whether the party has notice of the security interest.

(5) The bonds may be issued as serial bonds, term bonds, or any other type of bond instrument consistent with the pro-

visions of this chapter. The bonds must bear such date or dates; mature at such time or times; bear interest at such rate or rates, either fixed or variable; be payable at such time or times; be in such denominations; be in such form; bear such privileges of transferability, exchangeability, and interchangeability; be subject to such terms of redemption; and be sold at public or private sale, in such manner, at such time or times, and at such price or prices as the authority determines. The bonds must be executed by the manual or facsimile signatures of the authority's chair and either its secretary or executive director, and may be authenticated by the trustee (if the authority determines to use a trustee) or any registrar which may be designated for the bonds by the authority.

(6) Bonds may be issued by the authority to refund other outstanding authority bonds, at or prior to maturity of, and to pay any redemption premium on, the outstanding bonds. Bonds issued for refunding purposes may be combined with bonds issued for the financing or refinancing of new projects. Pending the application of the proceeds of the refunding bonds to the redemption of the bonds to be redeemed, the authority may enter into an agreement or agreements with a corporate trustee regarding the interim investment of the proceeds and the application of the proceeds and the earnings on the proceeds to the payment of the principal of and interest on, and the redemption of, the bonds to be redeemed.

(7) The bonds of the authority may be negotiable instruments under Title 62A RCW.

(8) Neither the board of directors of the authority, nor its employees or agents, nor any person executing the bonds is personally liable on the bonds or subject to any personal liability or accountability by reason of the issuance of the bonds.

(9) The authority may purchase its bonds with any of its funds available for the purchase. The authority may hold, pledge, cancel, or resell the bonds subject to and in accordance with agreements with bond owners.

(10) The state finance committee must be notified in advance of the issuance of bonds by the authority in order to promote the orderly offering of obligations in the financial markets. [2012 c 193 § 10.]

39.110.090 Bonds—Payment source—Disclosures—Proceeds not public money—Contracting.

(1) Bonds issued by an authority established under this chapter are not considered to constitute a debt of the state, of the municipality, or of any other municipal corporation, quasi-municipal corporation, subdivision, or agency of this state or to pledge any or all of the faith and credit of any of these entities. The revenue bonds are payable solely from both the revenues derived as a result of the economic development activities funded by the revenue bonds including, without limitation, amounts received under the terms of any financing document or by reason of any additional security furnished by beneficiaries of the economic development activity in connection with the financing thereof, and money and other property received from private sources. The issuance of bonds under this chapter do not obligate, directly, indirectly, or contingently, the state or any political subdivision of the state to levy any taxes or appropriate or expend any funds for the payment of the principal or the interest on the bonds. Each revenue bond must contain on its face, and any disclosure

document prepared in conjunction with the offer and sale of bonds must include, statements to the effect that:

(a) Neither the state, the municipality, or any other municipal corporation, quasi-municipal corporation, subdivision, or agency of the state is obligated to pay the principal or the interest thereon;

(b) No tax funds or governmental revenue may be used to pay the principal or interest thereon; and

(c) Neither any or all of the faith and credit nor the taxing power of the state, the municipality, or any other municipal corporation, quasi-municipal corporation, subdivision, or agency thereof is pledged to the payment of the principal of or the interest on the revenue bond.

(2) Neither the proceeds of bonds issued under this chapter nor any money used or to be used to pay the principal of, premium, if any, or interest on the bonds constitute public money or property. All of such money must be kept segregated and set apart from funds of the state and any political subdivision of the state and are not subject to appropriation or allotment by the state or subject to the provisions of chapter 43.88 RCW.

(3) Contracts entered into by an authority must be entered into in the name of the authority and not in the name of the state or any political subdivision of the state. The obligations of the authority under such contracts are obligations only of the authority and are not, in any way, obligations of the municipality creating the authority or the state. An authority may incur only those financial obligations which will be paid from revenues received pursuant to financing documents, from fees or charges paid by beneficiaries of the economic development activities funded by the revenue bonds, or from the proceeds of revenue bonds. [2012 c 193 § 11.]

39.110.100 Financing documents with borrowers—Trust—Trust agreement. (1)(a) An authority may enter into financing documents with borrowers regarding bonds issued by the authority that may provide for the payment by each borrower of amounts sufficient, together with other revenues available to the authority, if any, to:

(i) Pay the borrower's share of the fees established by the authority;

(ii) Pay the principal of, premium, if any, and interest on outstanding bonds of the authority issued in respect of such borrower as the same become due and payable; and

(iii) Create and maintain reserves required or provided for by the authority in connection with the issuance of such bonds.

(b) The payments are not subject to supervision or regulation by any department, committee, board, body, bureau, or agency of the state.

(2) All money received by or on behalf of the authority with respect to this issuance of its bonds must be trust funds to be held and applied solely as provided in this chapter. The authority, in lieu of receiving and applying the moneys itself, may enter into trust agreement or indenture with one or more banks or trust companies having the power and authority to conduct trust business in the state to:

(a) Perform all or any part of the obligations of the authority with respect to:

(i) Bonds issued by it;

(ii) The receipt, investment, and application of the proceeds of the bonds and money paid by a participant or available from other sources for the payment of the bonds;

(iii) The enforcement of the obligations of a borrower in connection with the financing or refinancing of any project; and

(iv) Other matters relating to the exercise of the authority's powers under this chapter;

(b) Receive, hold, preserve, and enforce any security interest or evidence of security interest granted by a participant for purposes of securing the payment of the bonds; and

(c) Act on behalf of the authority or the owners of bonds of the authority for purposes of assuring or enforcing the payment of the bonds, when due. [2012 c 193 § 12.]

39.110.110 Protection and enforcement of rights of bond owners and trustees—Bonds as securities. (1) Any owner of bonds issued under this chapter by any authority, and the trustee under any trust agreement or indenture, may, either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any of their respective rights, and may become the purchaser at any foreclosure sale if the person is the highest bidder, except to the extent the rights given are restricted by the authority in any bond resolution or trust agreement or indenture authorizing the issuance of the bonds.

(2) The bonds of an authority are securities in which all public officers and bodies of this state and all counties, cities, municipal corporations, and political subdivisions, all banks, eligible banking organizations, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, insurance companies and associations, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control. However, a municipality under the auspices of which an authority was created and the county, city, or town within whose planning jurisdiction the economic development activity to be financed lies, may not invest in bonds issued by the authority. [2012 c 193 § 13.]

39.110.120 Chapter supplemental and additional. This chapter provides a complete, additional, and alternative method for accomplishing the purposes of this chapter and must be regarded as supplemental and additional to powers conferred by other laws. The issuance of bonds and refunding bonds under this chapter need not comply with the requirements of any other law applicable to the issuance of bonds. [2012 c 193 § 14.]

39.110.900 Construction. Insofar as the provisions of this chapter are inconsistent with the provisions of any general or special law, or parts thereof, the provisions of this chapter are controlling. [2012 c 193 § 15.]

Title 40

PUBLIC DOCUMENTS, RECORDS, AND PUBLICATIONS

Chapters

- 40.04 Public documents.**
- 40.06 State publications distribution center.**
- 40.07 Management and control of state publications.**
- 40.10 Microfilming of records to provide continuity of civil government.**
- 40.14 Preservation and destruction of public records.**
- 40.16 Penal provisions.**
- 40.20 Reproduced records for governments and business.**
- 40.24 Address confidentiality for victims of domestic violence, sexual assault, and stalking.**

Historical materials, preservation: Chapter 27.48 RCW.

Minutes of governmental agencies open to public inspection: RCW 42.32.030.

Newspapers: Chapter 19.56 RCW.

Public documents as evidence: Chapter 5.44 RCW.

Public records act: Chapter 42.56 RCW.

Publication of legal notices: Chapter 65.16 RCW.

Recording, registration, and legal publication: Title 65 RCW.

Records and exhibits of superior court, destruction, reproduction: RCW 36.23.065, 36.23.067, 36.23.070.

State records

secretary of state as custodian: RCW 43.07.040.

to be kept at the seat of government: State Constitution Art. 3 § 24.

Uniform business records as evidence act: Chapter 5.45 RCW.

Uniform photographic copies of business and public records as evidence act: Chapter 5.46 RCW.

Chapter 40.04 RCW PUBLIC DOCUMENTS

Sections

- 40.04.031 Session laws—Publication, distribution, sale, exchange.
- 40.04.090 Legislative journals—Distribution, sale, exchange.
- 40.04.100 Supreme court and court of appeals reports—Distribution, exchange—Duties of reporter of decisions.
- 40.04.110 Supreme court and court of appeals reports—Provision by publisher to reporter.

Attorney general to give written opinions: RCW 43.10.030.

Revised Code of Washington, publication: Chapter 1.08 RCW.

Session laws, publication, etc.: Chapter 44.20 RCW.

Supreme court reports, publication: Chapter 2.32 RCW.

40.04.031 Session laws—Publication, distribution, sale, exchange. The statute law committee, after each legislative session, shall distribute, sell, or exchange session laws as required under this section.

(1) The statute law committee, in its discretion, may provide for provision of free copies in digital or print format of the session laws to selected federal, state, and local agencies. Special consideration shall be given to correctional institutions where internet access is not allowed and to public libraries and other public agencies where internet access is limited or not available.

(2) Surplus paper sets of the session laws shall be sold and delivered by the statute law committee, in which case the price of the paper sets shall be sufficient to cover costs.

All money received from sale of the session laws shall be paid into the statute law committee publications account.

(3) The statute law committee may exchange session law sets for similar laws or legal materials of other states, territories, and governments, and make such other distribution of the sets as in its judgment seems proper.

(4)(a) The statute law committee, in its discretion, may publish the official copy of the session laws in a digital format on the code reviser or legislative web site.

(b) The code reviser shall provide a paper copy of any individual session law or the compiled session laws of any session upon request. The code reviser may charge a minimal fee sufficient to cover costs of printing and mailing the paper copy. [2011 c 156 § 5; 2007 c 456 § 1; 2006 c 46 § 3.]

Purpose—Finding—Intent—2011 c 156: See note following RCW 1.08.080.

40.04.090 Legislative journals—Distribution, sale, exchange. The house and senate journals shall be distributed and sold by the chief clerk of the house of representatives and the secretary of the senate as follows:

(1) Subject to subsection (5) of this section, sets shall be distributed as follows: One to each requesting official whose office is created by the Constitution, and one to each requesting state department director; two copies to the state library; ten copies to the state law library; two copies to the University of Washington library; one to the King county law library; one to the Washington State University library; one to the library of each of the regional universities and to The Evergreen State College; one each to the law library of any accredited law school in this state; and one to each free public library in the state that requests it.

(2) House and senate journals of the preceding regular session during an odd- or even-numbered year, and of any intervening special session, shall be provided for use of legislators and legislative staff in such numbers as directed by the chief clerk of the house of representatives and secretary of the senate.

(3) Surplus sets of the house and senate journals shall be sold and delivered by the chief clerk of the house of representatives and the secretary of the senate at a price set by them after consulting with the state printer to determine reasonable costs associated with the production of the journals, and the proceeds therefrom shall be paid to the state treasurer for the general fund.

(4) The chief clerk of the house of representatives and the secretary of the senate may exchange copies of the house and senate journals for similar journals of other states, territories, and governments, or for other legal materials, and make such other and further distribution of them as in their judgment seems proper.

(5) Periodically the chief clerk of the house of representatives and the secretary of the senate may canvas those entitled to receive copies under this section, and may reduce or eliminate the number of copies distributed to anyone who so concurs. [1995 c 24 § 4; 1993 c 169 § 1; 1982 1st ex.s. c 32 § 2; 1980 c 87 § 13; 1977 ex.s. c 169 § 95; 1973 c 33 § 2; 1941 c 150 § 5; Rem. Supp. 1941 § 8217-5.]

Additional notes found at www.leg.wa.gov

40.04.100 Supreme court and court of appeals reports—Distribution, exchange—Duties of reporter of decisions. The supreme court reports and the court of appeals reports shall be distributed by the reporter of decisions as follows:

(1) Each supreme court justice and court of appeals judge is entitled to receive one copy of each volume containing an opinion signed by him or her.

(2) The state law library shall receive such copies as are necessary of each for the benefit of the state law library, the supreme court and its subsidiary offices; and the court of appeals and its subsidiary offices.

(3) The reporter shall provide one copy of each volume to each county for use in the county law library and one copy of the same to each accredited law school established in the state.

(4) The reporter shall likewise provide the state law library with such copies of volumes as necessary to exchange copies of the supreme court reports and the court of appeals reports for similar reports of other states, territories, and governments. [1995 c 257 § 4; 1991 c 363 § 113; 1979 c 151 § 49; 1973 c 33 § 3; 1971 c 42 § 3; 1941 c 150 § 6; Rem. Supp. 1941 § 8217-6.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Washington court reports commission: RCW 2.32.160.

40.04.110 Supreme court and court of appeals reports—Provision by publisher to reporter. On the publication of each volume of reports the publisher to whom the contract is awarded shall provide to the reporter the number of copies of each volume of supreme court and court of appeals reports necessary for the reporter and the state law library to comply with RCW 40.04.100. [1995 c 257 § 5; 1971 c 42 § 4; 1941 c 150 § 7; Rem. Supp. 1941 § 8217-7.]

Chapter 40.06 RCW

STATE PUBLICATIONS DISTRIBUTION CENTER

Sections

40.06.010	Definitions.
40.06.020	Center created as division of state library—Depository library system—Rules.
40.06.030	Deposits by state agencies—Exemptions.
40.06.040	Interlibrary depository contracts—Repository of electronic publications.
40.06.050	Center to publish list of publications and other descriptive matter.
40.06.060	Agencies to furnish lists to center.
40.06.070	Exemptions.
40.06.900	Effective date—1963 c 233.

40.06.010 Definitions.

As used in this chapter:
(1) "Electronic repository" means a collection of publicly accessible electronic publications stored in a secure digital environment with redundant backup to preserve the collection.

(2) "Format" includes any media used in the publication of state information including electronic, print, audio, visual, and microfilm.

(3) "State agency" includes every state office, officer, department, division, bureau, board, commission and agency of the state, and, where applicable, all subdivisions of each.

(4) "State publication" means information published by state agencies, regardless of format, intended for distribution to state government or the public. Examples may include annual, biennial, and special reports required by law, state agency newsletters, periodicals, and magazines, and other informational material intended for general dissemination to state agencies, the public, or the legislature. [2006 c 199 § 3; 1977 ex.s. c 232 § 8; 1963 c 233 § 1.]

Findings—2006 c 199: See note following RCW 27.04.045.

40.06.020 Center created as division of state library—Depository library system—Rules. There is hereby created as a division of the state library, and under the direction of the state librarian, a state publications distribution center. The center shall utilize the depository library system to permit citizens economical and convenient access to state publications, regardless of format. To this end the secretary of state shall make such rules as may be deemed necessary to carry out the provisions of this chapter. [2006 c 199 § 4; 2002 c 342 § 5; 1977 ex.s. c 232 § 9; 1963 c 233 § 2.]

Findings—2006 c 199: See note following RCW 27.04.045.

Additional notes found at www.leg.wa.gov

40.06.030 Deposits by state agencies—Exemptions.

(1) Every state agency shall promptly submit to the state library copies of published information that are state publications.

(a) For state publications available only in print format, each state agency shall deposit, at a minimum, two copies of each of its publications with the state library. For the purposes of broad public access, state agencies may deposit additional copies with the state library for distribution to additional depository libraries.

(b) For state publications available only in electronic format, each state agency shall deposit one copy of each of its publications with the state library.

(c) For state publications available in both print and electronic format, each state agency shall deposit two print copies and one electronic copy of the publication with the state library.

(2) Annually, each state agency shall provide the state library with a listing of all its publications made available to state government and the public during the preceding year, including those published in electronic form. The secretary of state shall, by rule, establish the annual date by which state agencies must provide the list of its publications to the state library.

(3) In the interest of economy and efficiency, the state librarian may specifically or by general rule exempt a given state publication or class of publications from the require-

ments of this section in full or in part. [2011 1st sp.s. c 43 § 304; 2006 c 199 § 5; 1977 ex.s. c 232 § 10; 1963 c 233 § 3.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—2006 c 199: See note following RCW 27.04.045.

40.06.040 Interlibrary depository contracts—Repository of electronic publications. (1) To provide economical public access to state publications, the center may enter into depository contracts with any free public library, The Evergreen State College, regional university, or state university library, or, if needed, the library of any privately incorporated college or university in this state. The requirements for eligibility to contract as a depository library shall be established by the secretary of state upon recommendations of the state librarian. The standards shall include and take into consideration the type of library, available housing and space for the publications, the number and qualifications of personnel, and availability for public use. The center may also contract with public, out-of-state libraries for the exchange of state and other publications on a reciprocal basis. Any state publication to be distributed to the public and the legislature shall be mailed at the lowest available postal rate.

(2) The office of the secretary of state through the state librarian shall preserve and make accessible state agency electronic publications deposited with the state library through an electronic repository. [2006 c 199 § 6; 2002 c 342 § 6; 1981 c 260 § 8. Prior: 1977 ex.s. c 232 § 11; 1977 ex.s. c 169 § 96; 1963 c 233 § 4.]

Findings—2006 c 199: See note following RCW 27.04.045.

Additional notes found at www.leg.wa.gov

40.06.050 Center to publish list of publications and other descriptive matter. The center shall publish and distribute regularly a list of available state publications, and may publish and distribute such other descriptive matter as will facilitate the distribution of and access to state publications. [2006 c 199 § 7; 1963 c 233 § 5.]

Findings—2006 c 199: See note following RCW 27.04.045.

40.06.060 Agencies to furnish lists to center. Upon request by the center, issuing state agencies shall furnish the center with a complete list of its current state publications and a copy of its mailing and/or exchange lists. [1963 c 233 § 6.]

40.06.070 Exemptions. This chapter shall not apply to nor affect the duties concerning publications distributed by, or officers of:

(1) The state law library; and

(2) The statute law committee and the code reviser. [1983 c 3 § 83; 1963 c 233 § 7.]

40.06.900 Effective date—1963 c 233. The effective date of this chapter shall be July 1, 1963. [1963 c 233 § 8.]

**Chapter 40.07 RCW
MANAGEMENT AND CONTROL
OF STATE PUBLICATIONS**

Sections

40.07.010 Legislative declaration.

(2014 Ed.)

40.07.020 Definitions.

40.07.030 Reports—Where filed—Review of state publications—Duties of agency head with respect to publications—Guidelines for publications—Director's duties.

40.07.040 Duties of the governor.

40.07.060 Notification—Removal from mailing lists, exceptions—Mailing rates.

40.07.070 Advertising in state publications—Prerequisites for advertisers.

40.07.010 Legislative declaration. It is the intent of this legislation to improve executive management and control of state publications and reduce state expenditures through: (1) Elimination of reports and publications which are economically or otherwise unjustified; and (2) the simplification and consolidation of other reports and publications. [1977 ex.s. c 232 § 1.]

40.07.020 Definitions. The terms defined in this section shall have the meanings indicated when used in this chapter.

(1) "Director" means the director of financial management.

(2) "State agency" includes every state office, department, division, bureau, board, commission, committee, higher education institution, community college, and agency of the state and all subordinate subdivisions of such agencies in the executive branch financed in whole or in part from funds held in the state treasury, but does not include the offices of executive officials elected on a statewide basis, agricultural commodity commissions, the legislature, the judiciary, or agencies of the legislative or judicial branches of state government.

(3)(a) "State publication" means publications of state agencies and shall include any annual and biennial reports, any special report required by law, state agency newsletters, periodicals and magazines, and other printed informational material intended for general dissemination to the public or to the legislature.

(b) "State publication" may include such other state agency printed informational material as the director may prescribe by rule or regulation, in the interest of economy and efficiency, after consultation with the governor, the state librarian, and any state agencies affected.

(c) "State publication" does not include:

(i) Business forms, preliminary draft reports, working papers, or copies of testimony and related exhibit material prepared solely for purposes of a presentation to a committee of the state legislature;

(ii) Typewritten correspondence and interoffice memoranda, and staff memoranda and similar material prepared exclusively as testimony or exhibits in any proceeding in the courts of this state, the United States, or before any administrative entity;

(iii) Any notices of intention to adopt rules under RCW 34.05.320;

(iv) Publications relating to a multistate program financed by more than one state or by federal funds or private subscriptions; or

(v) News releases sent exclusively to the news media.

(4) "Print" includes all forms of reproducing multiple copies with the exception of typewritten correspondence and

interoffice memoranda. [1989 c 175 § 86; 1979 c 151 § 50; 1977 ex.s. c 232 § 2.]

Additional notes found at www.leg.wa.gov

40.07.030 Reports—Where filed—Review of state publications—Duties of agency head with respect to publications—Guidelines for publications—Director's duties.

(1) Any annual, biennial, or special report required to be made by any state officer, board, agency, department, commissioner, regents, trustees, or institution to the governor or to the legislature may be typewritten and a copy shall be filed with the governor, or the governor's designee, and the legislature as the law may require. An additional copy shall be filed with the state library as a public record.

(2) The director or the director's designee may selectively review state publications in order to determine if specific state publications are economically and effectively contributing to the accomplishment of state agency program objectives. The director or the director's designee shall provide general guidelines as to the number of copies to be printed for use or distribution by the issuing agency and any public or other distribution under chapter 40.06 RCW as now or hereafter amended, or other applicable directives.

(3) No agency head shall recommend a state publication for printing and distribution, other than those required by law, unless the benefits from the publication and distribution thereof to the citizens and taxpayers of this state clearly exceed the costs of preparation, printing, and distribution.

(4) The director, after consultation with affected agencies, shall prepare and publish guidelines for use by state agencies in determining and evaluating the benefits and costs of current and proposed state publications. All state agencies shall evaluate each new state publication they propose and shall annually evaluate each continuing state publication they produce in accordance with the guidelines published by the director.

(5) The director shall, after consultation with affected state agencies, also provide by general rules and regulations for overall control of the quality of the printing of state publications. Necessary publications are to be prepared and printed in the most economic manner consistent with effectiveness and achievement of program objectives. [1977 ex.s. c 232 § 3.]

40.07.040 Duties of the governor. (1) The governor or the governor's designee shall take such other action as may be necessary to maximize the economy, efficiency, and effectiveness of state publications and to do so may eliminate, consolidate, or simplify state agency publications.

(2) Nothing in this chapter shall be construed in any way as restricting public access to public records or the public right to copy such records as provided by chapter 42.56 RCW. [2005 c 274 § 276; 1977 ex.s. c 232 § 4.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

40.07.060 Notification—Removal from mailing lists, exceptions—Mailing rates. Each state agency shall at least once each biennium notify the addressees of each state publication in or with that publication that they may be removed from the mailing list by notifying the originating agency.

Mailings required by a state or federal statute, rule, or regulation, those maintained by an institution of higher education for official fund-raising or curriculum offerings, bulk mailings addressed to "occupant" or a similar designation, and paid subscriptions are excluded from the provisions of this paragraph.

All publications shall be distributed or mailed at the lowest available rate. [1977 ex.s. c 232 § 6.]

40.07.070 Advertising in state publications—Prerequisites for advertisers. A state agency may not accept advertising for placement in a state publication unless the advertiser: (1) Has obtained a certificate of registration from the department of revenue under chapter 82.32 RCW; and (2) if the advertiser is not otherwise obligated to collect and remit Washington retail sales tax or use tax, the advertiser either (a) agrees to voluntarily collect and remit the Washington use tax upon all sales to Washington consumers, or (b) agrees to provide to the department of revenue, no less frequently than quarterly, a listing of the names and addresses of Washington customers to whom sales were made. This section does not apply to advertising that does not offer items for sale or to advertising that does not solicit orders for sales. [1993 c 74 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 40.10 RCW

MICROFILMING OF RECORDS TO PROVIDE CONTINUITY OF CIVIL GOVERNMENT

Sections

- | | |
|-----------|---|
| 40.10.010 | Essential records—Designation—List—Security and protection—Reproduction. |
| 40.10.020 | Essential records—Reproduction and storage—Coordination of protection program—Fees. |

40.10.010 Essential records—Designation—List—Security and protection—Reproduction. In order to provide for the continuity and preservation of civil government, each elected and appointed officer of the state shall designate those public documents which are essential records of his or her office and needed in an emergency and for the reestablishment of normal operations after any such emergency. A list of such records shall be forwarded to the state archivist on forms prescribed by the state archivist. This list shall be reviewed at least annually by the elected or appointed officer to insure its completeness. Any changes or revisions following this review shall be forwarded to the state archivist. Each such elected and appointed officer of state government shall insure that the security of essential records of his or her office is by the most economical means commensurate with adequate protection. Protection of essential records may be by vaulting, planned or natural dispersal of copies, or any other method approved by the state archivist. Reproductions of essential records may be by photo copy, magnetic tape, microfilm, or other method approved by the state archivist. Local government offices may coordinate the protection of their essential records with the state archivist as necessary to provide continuity of local government under emergency conditions. [2011 c 336 § 816; 1982 c 36 § 1; 1973 c 54 § 1; 1963 c 241 § 1.]

Additional notes found at www.leg.wa.gov

40.10.020 Essential records—Reproduction and storage—Coordination of protection program—Fees.

The state archivist is authorized to reproduce those documents designated as essential records by the several elected and appointed officials of the state and local government by microfilm or other miniature photographic process and to assist and cooperate in the storage and safeguarding of such reproductions in such place as is recommended by the state archivist with the advice of the *director of community, trade, and economic development. The state archivist shall coordinate the essential records protection program and shall carry out the provisions of the state emergency plan as they relate to the preservation of essential records. The state archivist is authorized to charge the several departments of the state and local government the actual cost incurred in reproducing, storing and safeguarding such documents: PROVIDED, That nothing herein shall authorize the destruction of the originals of such documents after reproduction thereof. [1995 c 399 § 58; 1986 c 266 § 45; 1985 c 7 § 106; 1982 c 36 § 2; 1973 c 54 § 2; 1963 c 241 § 2.]

*Reviser's note: The "director of community, trade, and economic development" was renamed the "director of commerce" by 2009 c 565.

Additional notes found at www.leg.wa.gov

**Chapter 40.14 RCW
PRESERVATION AND DESTRUCTION
OF PUBLIC RECORDS**

Sections

- 40.14.010 Definition and classification of public records.
- 40.14.020 Division of archives and records management—State archivist—Powers and duties—Duties of public officials.
- 40.14.022 Division of archives and records management—Imaging account.
- 40.14.024 Division of archives and records management—Local government archives account.
- 40.14.025 Division of archives and records management—Allocation of costs of services—Public records efficiency, preservation, and access account.
- 40.14.027 Local government archives and records management services—Judgment debtor surcharge.
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- 40.14.060 Destruction, disposition of official public records or office files and memoranda—Record retention schedules.
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- 40.14.160 Legislative records—Rules for access to records.
- 40.14.170 Legislative records—Sound recordings.
- 40.14.180 Legislative records—Construction—Confidentiality of bill drafting records.

Materials specifically authorized to be printed and distributed by secretary of state: RCW 43.07.140.

40.14.010 Definition and classification of public records. As used in this chapter, the term "public records" shall include any paper, correspondence, completed form, bound record book, photograph, film, sound recording, map drawing, machine-readable material, compact disc meeting current industry ISO specifications, or other document, regardless of physical form or characteristics, and including such copies thereof, that have been made by or received by any agency of the state of Washington in connection with the transaction of public business, and legislative records as described in RCW 40.14.100.

For the purposes of this chapter, public records shall be classified as follows:

(1) Official public records shall include all original vouchers, receipts, and other documents necessary to isolate and prove the validity of every transaction relating to the receipt, use, and disposition of all public property and public income from all sources whatsoever; all agreements and contracts to which the state of Washington or any agency thereof may be a party; all fidelity, surety, and performance bonds; all claims filed against the state of Washington or any agency thereof; all records or documents required by law to be filed with or kept by any agency of the state of Washington; all legislative records as defined in RCW 40.14.100; and all other documents or records determined by the records committee, created in RCW 40.14.050, to be official public records.

(2) Office files and memoranda include such records as correspondence, exhibits, drawings, maps, completed forms, or documents not above defined and classified as official public records; duplicate copies of official public records filed with any agency of the state of Washington; documents and reports made for the internal administration of the office to which they pertain but not required by law to be filed or kept with such agency; and other documents or records as determined by the records committee to be office files and memoranda. [1996 c 71 § 1; 1982 c 36 § 3; 1981 c 32 § 4; 1971 ex.s. c 102 § 1; 1957 c 246 § 1.]

40.14.020 Division of archives and records management—State archivist—Powers and duties—Duties of public officials. All public records shall be and remain the property of the state of Washington. They shall be delivered by outgoing officials and employees to their successors and shall be preserved, stored, transferred, destroyed or disposed of, and otherwise managed, only in accordance with the provisions of this chapter. In order to insure the proper management and safeguarding of public records, the division of archives and records management is established in the office of the secretary of state. The state archivist, who shall administer the division and have reasonable access to all public records, wherever kept, for purposes of information, surveying, or cataloguing, shall undertake the following functions, duties, and responsibilities:

- (1) To manage the archives of the state of Washington;
- (2) To centralize the archives of the state of Washington, to make them available for reference and scholarship, and to insure their proper preservation;
- (3) To inspect, inventory, catalog, and arrange retention and transfer schedules on all record files of all state departments and other agencies of state government;

(4) To insure the maintenance and security of all state public records and to establish safeguards against unauthorized removal or destruction;

(5) To establish and operate such state record centers as may from time to time be authorized by appropriation, for the purpose of preserving, servicing, screening and protecting all state public records which must be preserved temporarily or permanently, but which need not be retained in office space and equipment;

(6) To adopt rules under chapter 34.05 RCW:

(a) Setting standards for the durability and permanence of public records maintained by state and local agencies;

(b) Governing procedures for the creation, maintenance, transmission, cataloging, indexing, storage, or reproduction of photographic, optical, electronic, or other images of public documents or records in a manner consistent with current standards, policies, and procedures of the office of the chief information officer for the acquisition of information technology;

(c) Governing the accuracy and durability of, and facilitating access to, photographic, optical, electronic, or other images used as public records; or

(d) To carry out any other provision of this chapter;

(7) To gather and disseminate to interested agencies information on all phases of records management and current practices, methods, procedures, techniques, and devices for efficient and economical management and preservation of records;

(8) To operate a central microfilming bureau which will microfilm, at cost, records approved for filming by the head of the office of origin and the archivist; to approve microfilming projects undertaken by state departments and all other agencies of state government; and to maintain proper standards for this work;

(9) To maintain necessary facilities for the review of records approved for destruction and for their economical disposition by sale or burning; directly to supervise such destruction of public records as shall be authorized by the terms of this chapter;

(10) To assist and train state and local agencies in the proper methods of creating, maintaining, cataloging, indexing, transmitting, storing, and reproducing photographic, optical, electronic, or other images used as public records;

(11) To solicit, accept, and expend donations as provided in RCW 43.07.037 for the purpose of the archive program. These purposes include, but are not limited to, acquisition, accession, interpretation, and display of archival materials. Donations that do not meet the criteria of the archive program may not be accepted. [2011 1st sp.s. c 43 § 727; 2002 c 358 § 4; 1995 c 326 § 1. Prior: 1991 c 237 § 4; 1991 c 184 § 1; 1986 c 275 § 1; 1983 c 84 § 1; 1981 c 115 § 1; 1957 c 246 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

40.14.022 Division of archives and records management—Imaging account. The imaging account is created in the custody of the state treasurer. All receipts collected under RCW 40.14.020(8) for contract imaging, micrographics, reproduction, and duplication services provided by the divi-

sion of archives and records management must be deposited into the account, and expenditures from the account may be used only for these purposes. Only the secretary of state or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2003 c 163 § 2.]

40.14.024 Division of archives and records management—Local government archives account. The local government archives account is created in the state treasury. All receipts collected by the county auditors under RCW 40.14.027 and 36.22.175 for local government services, such as providing records scheduling, security microfilm inspection and storage, archival preservation, cataloging, and indexing for local government records and digital data and access to those records and data through the regional branch archives of the division of archives and records management, must be deposited into the account, and expenditures from the account may be used only for these purposes. During the 2007-2009 biennium, the legislature may transfer from the local government archives account to the Washington state heritage center account such amounts as reflect the excess fund balance in the account. [2008 c 328 § 6005; 2003 c 163 § 3.]

Part headings not law—Severability—Effective date—2008 c 328: See notes following RCW 43.155.050.

40.14.025 Division of archives and records management—Allocation of costs of services—Public records efficiency, preservation, and access account. (1) The secretary of state and the director of financial management shall jointly establish a procedure and formula for allocating the costs of services provided by the division of archives and records management to state agencies. The total amount allotted for services to state agencies shall not exceed the appropriation to the *archives and records management account during any allotment period.

(2) There is created the public records efficiency, preservation, and access account in the state treasury which shall consist of all fees and charges collected under this section. The account shall be appropriated exclusively for the payment of costs and expenses incurred in the operation of the division of archives and records management as specified by law. [2011 1st sp.s. c 50 § 932; 2003 c 163 § 1; 1996 c 245 § 3; 1991 sp.s. c 13 § 5; 1985 c 57 § 22; 1981 c 115 § 4.]

*Reviser's note: The "archives and records management account" was changed to the "public records efficiency, preservation, and access account" by 2011 1st sp.s. c 50 § 932.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Additional notes found at www.leg.wa.gov

40.14.027 Local government archives and records management services—Judgment debtor surcharge. State agencies shall collect a surcharge of twenty dollars from the judgment debtor upon the satisfaction of a warrant filed in superior court for unpaid taxes or liabilities. The surcharge is imposed on the judgment debtor in the form of a penalty in addition to the filing fee provided in RCW 36.18.012(10). The surcharge revenue shall be transmitted to

the state treasurer for deposit in the public records efficiency, preservation, and access account.

Surcharge revenue deposited in the local government archives account under RCW 40.14.024 shall be expended by the secretary of state exclusively for disaster recovery, essential records protection services, and records management training for local government agencies by the division of archives and records management. The secretary of state shall, with local government representatives, establish a committee to advise the state archivist on the local government archives and records management program. [2011 1st sp.s. c 50 § 933; 2003 c 163 § 4; 2001 c 146 § 4; 1996 c 245 § 4; 1995 c 292 § 17; 1994 c 193 § 2.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Findings—1994 c 193: "The legislature finds that: (1) Accountability for and the efficient management of local government records are in the public interest and that compliance with public records management requirements significantly affects the cost of local government administration; (2) the secretary of state is responsible for insuring the preservation of local government archives and may assist local government compliance with public records statutes; (3) as provided in RCW 40.14.025, all archives and records management services provided by the secretary of state are funded exclusively by a schedule of fees and charges established jointly by the secretary of state and the director of financial management; (4) the secretary of state's costs for preserving and providing public access to local government archives and providing records management assistance to local government agencies have been funded by fees paid by state government agencies; (5) local government agencies are responsible for costs associated with managing, protecting, and providing public access to the records in their custody; (6) local government should help fund the secretary of state's local government archives and records management services; (7) the five dollar fee collected by county clerks for processing warrants for unpaid taxes or liabilities filed by the state of Washington is not sufficient to cover processing costs and is far below filing fees commonly charged for similar types of minor civil actions; (8) a surcharge of twenty dollars would bring the filing fee for warrants for the collection of unpaid taxes and liabilities up to a level comparable to other minor civil filings and should be applied to the support of the secretary of state's local government archives and records services without placing an undue burden on local government; and (9) the process of collecting and transmitting surcharge revenue should not have an undue impact on the operations of the state agencies that file warrants for the collection of unpaid taxes and liabilities or the clerks of superior court who process them." [1994 c 193 § 1.]

Additional notes found at www.leg.wa.gov

40.14.030 Transfer to state archives—Certified copies, cost—Public disclosure. (1) All public records, not required in the current operation of the office where they are made or kept, and all records of every agency, commission, committee, or any other activity of state government which may be abolished or discontinued, shall be transferred to the state archives so that the valuable historical records of the state may be centralized, made more widely available, and insured permanent preservation: PROVIDED, That this section shall have no application to public records approved for destruction under the subsequent provisions of this chapter.

When so transferred, copies of the public records concerned shall be made and certified by the archivist, which certification shall have the same force and effect as though made by the officer originally in charge of them. Fees may be charged to cover the cost of reproduction. In turning over the archives of his or her office, the officer in charge thereof, or his or her successor, thereby loses none of his or her rights of access to them, without charge, whenever necessary.

(2) Records that are confidential, privileged, or exempt from public disclosure under state or federal law while in the possession of the originating agency, commission, board, committee, or other entity of state or local government retain their confidential, privileged, or exempt status after transfer to the state archives unless the archivist, with the concurrence of the originating jurisdiction, determines that the records must be made accessible to the public according to proper and reasonable rules adopted by the secretary of state, in which case the records may be open to inspection and available for copying after the expiration of seventy-five years from creation of the record. If the originating jurisdiction is no longer in existence, the archivist shall make the determination of availability according to such rules. If, while in the possession of the originating agency, commission, board, committee, or other entity, any record is determined to be confidential, privileged, or exempt from public disclosure under state or federal law for a period of less than seventy-five years, then the record, with the concurrence of the originating jurisdiction, must be made accessible to the public upon the expiration of the shorter period of time according to proper and reasonable rules adopted by the secretary of state. [2011 c 336 § 817; 2003 c 305 § 1; 1957 c 246 § 3.]

Columbia River boundary compact, transfer of records to division of archives: RCW 43.58.070.

40.14.040 Records officers—Designation—Powers and duties. Each department or other agency of the state government shall designate a records officer to supervise its records program and to represent the office in all contacts with the records committee, hereinafter created, and the division of archives and records management. The records officer shall:

(1) Coordinate all aspects of the records management program.

(2) Inventory, or manage the inventory, of all public records at least once during a biennium for disposition scheduling and transfer action, in accordance with procedures prescribed by the state archivist and state records committee: PROVIDED, That essential records shall be inventoried and processed in accordance with chapter 40.10 RCW at least annually.

(3) Consult with any other personnel responsible for maintenance of specific records within his or her state organization regarding records retention and transfer recommendations.

(4) Analyze records inventory data, examine and compare divisional or unit inventories for duplication of records, and recommend to the state archivist and state records committee minimal retentions for all copies commensurate with legal, financial, and administrative needs.

(5) Approve all records inventory and destruction requests which are submitted to the state records committee.

(6) Review established records retention schedules at least annually to insure that they are complete and current.

(7) Exercise internal control over the acquisition of filming and file equipment.

If a particular agency or department does not wish to transfer records at a time previously scheduled therefor, the records officer shall, within thirty days, notify the archivist and request a change in such previously set schedule, includ-

ing his or her reasons therefor. [2011 c 336 § 818; 1982 c 36 § 4; 1979 c 151 § 51; 1973 c 54 § 3; 1957 c 246 § 4.]

40.14.050 Records committee—Composition, travel expenses, meetings, powers and duties—Retention schedules. There is created a committee, to be known as the records committee, composed of the archivist, an appointee of the state auditor, an appointee of the attorney general, and an appointee of the director of financial management. Committee members shall serve without additional salary, but shall be entitled to travel expenses incurred in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Such expenses shall be paid from the appropriations made for operation of their respective departments or offices.

The records committee shall meet at least once every quarter or oftener as business dictates. Action by the committee shall be by majority vote and records shall be kept of all committee business.

It shall be the duty of the records committee to approve, modify or disapprove the recommendations on retention schedules of all files of public records and to act upon requests to destroy any public records: PROVIDED, That any modification of a request or recommendation must be approved by the head of the agency originating the request or recommendation.

The division of archives and records management shall provide forms, approved by the records committee, upon which it shall prepare recommendations to the committee in cooperation with the records officer of the department or other agency whose records are involved. [1985 c 192 § 1; 1975-'76 2nd ex.s. c 34 § 83; 1957 c 246 § 5.]

Additional notes found at www.leg.wa.gov

40.14.060 Destruction, disposition of official public records or office files and memoranda—Record retention schedules. (1) Any destruction of official public records shall be pursuant to a schedule approved under RCW 40.14.050. Official public records shall not be destroyed unless:

(a) Except as provided under RCW 40.14.070(2)(b), the records are six or more years old;

(b) The department of origin of the records has made a satisfactory showing to the state records committee that the retention of the records for a minimum of six years is both unnecessary and uneconomical, particularly if lesser federal retention periods for records generated by the state under federal programs have been established; or

(c) The originals of official public records less than six years old have been copied or reproduced by any photographic or other process approved by the state archivist which accurately reproduces or forms a durable medium for so reproducing the original.

(2) Any lesser term of retention than six years must have the additional approval of the director of financial management, the state auditor and the attorney general, except when records have federal retention guidelines the state records committee may adjust the retention period accordingly. An automatic reduction of retention periods from seven to six years for official public records on record retention schedules existing on June 10, 1982, shall not be made, but the same

shall be reviewed individually by the state records committee for approval or disapproval of the change to a retention period of six years.

Recommendations for the destruction or disposition of office files and memoranda shall be submitted to the records committee upon approved forms prepared by the records officer of the agency concerned and the archivist. The committee shall determine the period of time that any office file or memorandum shall be preserved and may authorize the division of archives and records management to arrange for its destruction or disposition. [1999 c 326 § 1; 1982 c 36 § 5; 1979 c 151 § 52; 1973 c 54 § 4; 1957 c 246 § 6.]

40.14.070 Destruction, disposition, donation of local government records—Preservation for historical interest—Local records committee, duties—Record retention schedules—Sealed records. (1)(a) County, municipal, and other local government agencies may request authority to destroy noncurrent public records having no further administrative or legal value by submitting to the division of archives and records management lists of such records on forms prepared by the division. The archivist, a representative appointed by the state auditor, and a representative appointed by the attorney general shall constitute a committee, known as the local records committee, which shall review such lists and which may veto the destruction of any or all items contained therein.

(b) A local government agency, as an alternative to submitting lists, may elect to establish a records control program based on recurring disposition schedules recommended by the agency to the local records committee. The schedules are to be submitted on forms provided by the division of archives and records management to the local records committee, which may either veto, approve, or amend the schedule. Approval of such schedule or amended schedule shall be by unanimous vote of the local records committee. Upon such approval, the schedule shall constitute authority for the local government agency to destroy the records listed thereon, after the required retention period, on a recurring basis until the schedule is either amended or revised by the committee.

(2)(a) Except as otherwise provided by law, no public records shall be destroyed until approved for destruction by the local records committee. Official public records shall not be destroyed unless:

(i) The records are six or more years old;

(ii) The department of origin of the records has made a satisfactory showing to the state records committee that the retention of the records for a minimum of six years is both unnecessary and uneconomical, particularly where lesser federal retention periods for records generated by the state under federal programs have been established; or

(iii) The originals of official public records less than six years old have been copied or reproduced by any photographic, photostatic, microfilm, miniature photographic, or other process approved by the state archivist which accurately reproduces or forms a durable medium for so reproducing the original.

An automatic reduction of retention periods from seven to six years for official public records on record retention schedules existing on June 10, 1982, shall not be made, but the same shall be reviewed individually by the local records

committee for approval or disapproval of the change to a retention period of six years.

The state archivist may furnish appropriate information, suggestions, and guidelines to local government agencies for their assistance in the preparation of lists and schedules or any other matter relating to the retention, preservation, or destruction of records under this chapter. The local records committee may adopt appropriate regulations establishing procedures to be followed in such matters.

Records of county, municipal, or other local government agencies, designated by the archivist as of primarily historical interest, may be transferred to a recognized depository agency.

(b)(i) Records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenders contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020 that are not required in the current operation of the law enforcement agency or for pending judicial proceedings shall, following the expiration of the applicable schedule of the law enforcement agency's retention of the records, be transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval. Upon electronic retention of any document, the association shall be permitted to destroy the paper copy of the document.

(ii) Any sealed record transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval, including records sealed after transfer, shall be electronically retained in such a way that the record is clearly marked as sealed.

(iii) The Washington association of sheriffs and police chiefs shall be permitted to destroy both the paper copy and electronic record of any offender verified as deceased.

(c) Any record transferred to the Washington association of sheriffs and police chiefs pursuant to (b) of this subsection shall be deemed to no longer constitute a public record pursuant to RCW 42.56.010 and shall be exempt from public disclosure. Such records shall be disseminated only to criminal justice agencies as defined in RCW 10.97.030 for the purpose of determining if a sex offender met the criteria of a sexually violent predator as defined in chapter 71.09 RCW and the end-of-sentence review committee as defined by RCW 72.09.345 for the purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420.

Electronic records marked as sealed shall only be accessible by criminal justice agencies as defined in RCW 10.97.030 who would otherwise have access to a sealed paper copy of the document, the end-of-sentence review committee as defined by RCW 72.09.345 for the purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420, and the system administrator for the purposes of system administration and maintenance.

(3) Except as otherwise provided by law, county, municipal, and other local government agencies may, as an alternative to destroying noncurrent public records having no further administrative or legal value, donate the public records to the state library, local library, historical society, genealogical society, or similar society or organization.

Public records may not be donated under this subsection unless:

- (a) The records are seventy years old or more;

(b) The local records committee has approved the destruction of the public records; and

(c) The state archivist has determined that the public records have no historic interest. [2011 c 60 § 18; 2005 c 227 § 1; 2003 c 240 § 1; 1999 c 326 § 2; 1995 c 301 § 71; 1982 c 36 § 6; 1973 c 54 § 5; 1971 ex.s. c 10 § 1; 1957 c 246 § 7.]

Effective date—2011 c 60: See RCW 42.17A.919.

Copying, preserving, and indexing of documents recorded by county auditor: RCW 36.22.160 through 36.22.190.

Destruction and reproduction of court records: RCW 36.23.065 through 36.23.070.

40.14.080 Chapter not to affect other laws. The provisions of this chapter shall not be construed as repealing or modifying any other acts or parts of acts authorizing the destruction of public records save for those specifically named in *section 9 of this act; nor shall this chapter affect the provisions of chapter 40.07 RCW requiring the deposit of all state publications in the state library. [1983 c 3 § 84; 1957 c 246 § 8.]

***Reviser's note:** "section 9 of this act" refers to 1957 c 246 § 9, which repealed RCW 40.08.010 through 40.08.050 and 40.12.010 through 40.12.110.

40.14.100 Legislative records—Defined. As used in RCW 40.14.010 and 40.14.100 through 40.14.180, unless the context requires otherwise, "legislative records" shall be defined as correspondence, amendments, reports, and minutes of meetings made by or submitted to legislative committees or subcommittees and transcripts or other records of hearings or supplementary written testimony or data thereof filed with committees or subcommittees in connection with the exercise of legislative or investigatory functions, but does not include the records of an official act of the legislature kept by the secretary of state, bills and their copies, published materials, digests, or multi-copied matter which are routinely retained and otherwise available at the state library or in a public repository, or reports or correspondence made or received by or in any way under the personal control of the individual members of the legislature. [1971 ex.s. c 102 § 2.]

40.14.110 Legislative records—Contribution of papers by legislators and employees. Nothing in RCW 40.14.010 and 40.14.100 through 40.14.180 shall prohibit a legislator or legislative employee from contributing his or her personal papers to any private library, public library, or the state archives. The state archivist is authorized to receive papers of legislators and legislative employees and is directed to encourage the donation of such personal records to the state. The state archivist is authorized to establish such guidelines and procedures for the collection of personal papers and correspondence relating to the legislature as he or she sees fit. Legislators and legislative employees are encouraged to contribute their personal papers to the state for preservation. [2011 c 336 § 819; 1971 ex.s. c 102 § 3.]

40.14.120 Legislative records—"Clerk," "secretary" defined. As used in RCW 40.14.010 and 40.14.100 through 40.14.180 "clerk" means clerk of the Washington state house of representatives and "secretary" means the secretary of the Washington state senate. [1971 ex.s. c 102 § 4.]

40.14.130 Legislative records—Duties of legislative officials, employees and state archivist—Delivery of records—Custody—Availability. The legislative committee chair, subcommittee chair, committee member, or employed personnel of the state legislature having possession of legislative records that are not required for the regular performance of official duties shall, within ten days after the adjournment sine die of a regular or special session, deliver all such legislative records to the clerk of the house or the secretary of the senate.

The clerk of the house and the secretary of the senate are charged to include requirements and responsibilities for keeping committee minutes and records as part of their instructions to committee chairs and employees.

The clerk or the secretary, with the assistance of the state archivist, shall classify and arrange the legislative records delivered to the clerk or secretary in a manner that he or she considers best suited to carry out the efficient and economical utilization, maintenance, preservation, and disposition of the records. The clerk or the secretary may deliver to the state archivist all legislative records in his or her possession when such records have been classified and arranged and are no longer needed by either house. The state archivist shall thereafter be custodian of the records so delivered, but shall deliver such records back to either the clerk or secretary upon his or her request.

The chair, member, or employee of a legislative interim committee responsible for maintaining the legislative records of that committee shall, on a scheduled basis agreed upon by the chair, member, or employee of the legislative interim committee, deliver to the clerk or secretary all legislative records in his or her possession, as long as such records are not required for the regular performance of official duties. He or she shall also deliver to the clerk or secretary all records of an interim committee within ten days after the committee ceases to function. [2011 c 336 § 820; 1971 ex.s. c 102 § 5.]

40.14.140 Legislative records—Party caucuses to be advised—Information and instructions. It shall be the duty of the clerk and the secretary to advise the party caucuses in each house concerning the necessity to keep public records. The state archivist or his or her representative shall work with the clerk and secretary to provide information and instructions on the best method for keeping legislative records. [2011 c 336 § 821; 1971 ex.s. c 102 § 6.]

40.14.150 Legislative records—Use for research. Committee records may be used by legislative employees for research at the discretion of the clerk or the secretary. [1971 ex.s. c 102 § 7.]

40.14.160 Legislative records—Rules for access to records. The clerk or the secretary shall, with advice of the state archivist, prescribe rules for access to records more than three years old when such records have been delivered to the state archives for preservation and maintenance. [1971 ex.s. c 102 § 8.]

40.14.170 Legislative records—Sound recordings. Any sound recording of debate in the house or senate made by legislative employees shall be preserved by the chief clerk

of the house and by the secretary of the senate, respectively, for two years from the end of the session at which made, and thereafter shall be transmitted to the state archivist. The chief clerk and the secretary shall catalogue or index the recordings in their custody according to a uniform system, in order to allow easy access to the debate on specific questions before either house, and shall make available to any court of record, at the cost of reproduction, such portions of the recordings as the court may request. [1971 ex.s. c 102 § 9.]

40.14.180 Legislative records—Construction—Confidentiality of bill drafting records. The provisions of RCW 40.14.010 and 40.14.100 through 40.14.180 shall not be construed as repealing or modifying any other acts or parts of acts authorizing the retention or destruction of public records nor shall RCW 40.14.010 and 40.14.100 through 40.14.180 affect the provisions of chapter 40.07 RCW requiring the deposit of all state publications in the state library nor shall it affect the confidentiality of the bill drafting records of the code reviser's office. [1983 c 3 § 85; 1971 ex.s. c 102 § 10.]

Chapter 40.16 RCW PENAL PROVISIONS

Sections

- 40.16.010 Injury to public record.
- 40.16.020 Injury to and misappropriation of record.
- 40.16.030 Offering false instrument for filing or record.

Fraud: Chapter 9A.60 RCW.

Materials specifically authorized to be printed and distributed by secretary of state: RCW 43.07.140.

Misconduct of public officers: Chapter 42.20 RCW.

Public works accounts and records, penalty for falsifying: RCW 39.04.110.

40.16.010 Injury to public record. Every person who shall willfully and unlawfully remove, alter, mutilate, destroy, conceal, or obliterate a record, map, book, paper, document, or other thing filed or deposited in a public office, or with any public officer, by authority of law, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than one thousand dollars, or by both. [2003 c 53 § 214; 1992 c 7 § 34; 1909 c 249 § 95; RRS § 2347.]

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

40.16.020 Injury to and misappropriation of record. Every officer who shall mutilate, destroy, conceal, erase, obliterate, or falsify any record or paper appertaining to the officer's office, or who shall fraudulently appropriate to the officer's own use or to the use of another person, or secrete with intent to appropriate to such use, any money, evidence of debt or other property intrusted to the officer by virtue of the officer's office, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [2003 c 53 § 215; 1992 c 7 § 35; 1909 c 249 § 96; RRS § 2348.]

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

40.16.030 Offering false instrument for filing or record. Every person who shall knowingly procure or offer any false or forged instrument to be filed, registered, or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in such office under any law of this state or of the United States, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than five thousand dollars, or by both. [2003 c 53 § 216; 1992 c 7 § 36; 1909 c 249 § 97; RRS § 2349.]

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

Chapter 40.20 RCW

REPRODUCED RECORDS FOR GOVERNMENTS AND BUSINESS

Sections

- 40.20.010 "Business" defined.
- 40.20.020 Reproduction by film or photograph.
- 40.20.030 Use as original.

Court records, destruction and reproduction: RCW 36.23.065 through 36.23.070.

Materials specifically authorized to be printed and distributed by secretary of state: RCW 43.07.140.

Method for recordation of plats and documents: RCW 65.04.040.

Uniform business records as evidence act: Chapter 5.45 RCW.

Uniform photographic copies of business and public records as evidence act: Chapter 5.46 RCW.

40.20.010 "Business" defined. For the purpose of this chapter, the term "business" shall mean and include business, industry, profession, occupation and calling of every kind. [1949 c 223 § 3; Rem. Supp. 1949 § 1257-6.]

40.20.020 Reproduction by film or photograph. The head of any business or the head of any state, county or municipal department, commission, bureau or board may cause any or all records required or authorized by law to be made or kept by such official, department, commission, bureau, board, or business to be photographed, microphotographed, reproduced on film, or photocopied for all purposes of recording documents, plats, files or papers, or copying or reproducing such records. Such film or reproducing material shall be of permanent material and the device used to reproduce such records on such film or material shall be such as to accurately reproduce and perpetuate the original records in all details, and shall be approved for the intended purpose: PROVIDED, That the state archivist shall approve such material for state records use: PROVIDED, FURTHER, That the state auditor shall approve such material for use by local governmental subdivisions. [1981 c 32 § 5; 1973 c 95 § 1; 1949 c 223 § 1; Rem. Supp. 1949 § 1257-4.]

40.20.030 Use as original. Such photostatic copy, photograph, microphotograph or photographic film record, or copy of the original records shall be deemed to be an original record for all purposes, and shall be admissible in evidence in all courts or administrative agencies. A facsimile, exemplification or certified copy thereof shall, for all purposes recited herein, be deemed to be a transcript, exemplification or certi-

fied copy of the original. [1949 c 223 § 2; Rem. Supp. 1949 § 1257-5.]

Chapter 40.24 RCW

ADDRESS CONFIDENTIALITY FOR VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, AND STALKING

Sections

- 40.24.010 Findings—Purpose.
- 40.24.020 Definitions.
- 40.24.030 Address confidentiality program—Application—Certification.
- 40.24.040 Certification cancellation.
- 40.24.050 Agency use of designated address.
- 40.24.060 Voting by program participant—Use of name or address by county auditor.
- 40.24.070 Disclosure of records prohibited—Exceptions.
- 40.24.075 Court order for address confidentiality program participant information.
- 40.24.080 Assistance for program applicants.
- 40.24.090 Adoption of rules.

40.24.010 Findings—Purpose. The legislature finds that persons attempting to escape from actual or threatened domestic violence, sexual assault, trafficking, or stalking frequently establish new addresses in order to prevent their assailants or probable assailants from finding them. The purpose of this chapter is to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence, sexual assault, trafficking, or stalking, to enable interagency cooperation with the secretary of state in providing address confidentiality for victims of domestic violence, sexual assault, trafficking, or stalking, and to enable state and local agencies to accept a program participant's use of an address designated by the secretary of state as a substitute mailing address. [2008 c 312 § 1; 2001 c 28 § 1; 1998 c 138 § 1; 1991 c 23 § 1.]

40.24.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Address" means a residential street address, school address, or work address of an individual, as specified on the individual's application to be a program participant under this chapter.

(2) "Domestic violence" means an act as defined in RCW 10.99.020 and includes a threat of such acts committed against an individual in a domestic situation, regardless of whether these acts or threats have been reported to law enforcement officers.

(3) "Program participant" means a person certified as a program participant under RCW 40.24.030.

(4) "Stalking" means an act defined in RCW 9A.46.110 and includes a threat of such acts committed against an individual, regardless of whether these acts or threats have been reported to law enforcement officers.

(5) "Trafficking" means an act as defined in RCW 9A.40.100 or an act recognized as a severe form of trafficking under 22 U.S.C. Sec. 7102(8) as it existed on June 12, 2008, or such subsequent date as may be provided by the secretary of state by rule, consistent with the purposes of this subsection, regardless of whether the act has been reported to

law enforcement. [2008 c 312 § 2; 2008 c 18 § 1; 1991 c 23 § 2.]

Reviser's note: This section was amended by 2008 c 18 § 1 and by 2008 c 312 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

40.24.030 Address confidentiality program—Application—Certification. (1)(a) An adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person, as defined in RCW 11.88.010, and (b) any criminal justice participant as defined in RCW 9A.46.020 who is a target for threats or harassment prohibited under RCW 9A.46.020(2)(b) (iii) or (iv), and any family members residing with him or her, may apply to the secretary of state to have an address designated by the secretary of state serve as the person's address or the address of the minor or incapacitated person. The secretary of state shall approve an application if it is filed in the manner and on the form prescribed by the secretary of state and if it contains:

(i) A sworn statement, under penalty of perjury, by the applicant that the applicant has good reason to believe (A) that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, sexual assault, trafficking, or stalking and that the applicant fears for his or her safety or his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made; or (B) that the applicant, as a criminal justice participant as defined in RCW 9A.46.020, is a target for threats or harassment prohibited under RCW 9A.46.020(2)(b) (iii) or (iv);

(ii) If applicable, a sworn statement, under penalty of perjury, by the applicant, that the applicant has reason to believe they are a victim of (A) domestic violence, sexual assault, or stalking perpetrated by an employee of a law enforcement agency, or (B) threats or harassment prohibited under RCW 9A.46.020(2)(b) (iii) or (iv);

(iii) A designation of the secretary of state as agent for purposes of service of process and for the purpose of receipt of mail;

(iv) The residential address and any telephone number where the applicant can be contacted by the secretary of state, which shall not be disclosed because disclosure will increase the risk of (A) domestic violence, sexual assault, trafficking, or stalking, or (B) threats or harassment prohibited under RCW 9A.46.020(2)(b) (iii) or (iv);

(v) The signature of the applicant and of any individual or representative of any office designated in writing under RCW 40.24.080 who assisted in the preparation of the application, and the date on which the applicant signed the application.

(2) Applications shall be filed with the office of the secretary of state.

(3) Upon filing a properly completed application, the secretary of state shall certify the applicant as a program participant. Applicants shall be certified for four years following the date of filing unless the certification is withdrawn or invalidated before that date. The secretary of state shall by rule establish a renewal procedure.

(4) A person who knowingly provides false or incorrect information upon making an application or falsely attests in an application that disclosure of the applicant's address would

endanger (a) the applicant's safety or the safety of the applicant's children or the minor or incapacitated person on whose behalf the application is made, or (b) the safety of any criminal justice participant as defined in RCW 9A.46.020 who is a target for threats or harassment prohibited under RCW 9A.46.020(2)(b) (iii) or (iv), or any family members residing with him or her, shall be punished under RCW 40.16.030 or other applicable statutes. [2011 c 64 § 2. Prior: 2008 c 312 § 3; 2008 c 18 § 2; 2001 c 28 § 2; 1998 c 138 § 2; 1991 c 23 § 3.]

40.24.040 Certification cancellation. (1) If the program participant obtains a legal change of identity, he or she loses certification as a program participant.

(2) The secretary of state may cancel a program participant's certification if there is a change in the residential address, unless the program participant provides the secretary of state with at least two days' prior notice in writing of the change of address.

(3) The secretary of state may cancel certification of a program participant if mail forwarded by the secretary to the program participant's address is returned as nondeliverable, refused, or unclaimed.

(4) The secretary of state shall cancel certification of a program participant who applies using false information. [2008 c 18 § 3; 1991 c 23 § 4.]

40.24.050 Agency use of designated address. (1) A program participant may request that state and local agencies use the address designated by the secretary of state as his or her address. When creating a new public record, state and local agencies shall accept the address designated by the secretary of state as a program participant's substitute address, unless the secretary of state has determined that:

(a) The agency has a bona fide statutory or administrative requirement for the use of the address which would otherwise be confidential under this chapter; and

(b) This address will be used only for those statutory and administrative purposes.

(2) A program participant may use the address designated by the secretary of state as his or her work address.

(3) The office of the secretary of state shall forward all first-class mail to the appropriate program participants. [1991 c 23 § 5.]

40.24.060 Voting by program participant—Use of name or address by county auditor. The county auditor shall mail a ballot to a program participant qualified and registered at the mailing address provided. Neither the name nor the address of a program participant shall be included in any list of registered voters available to the public. [2011 c 10 § 81; 2008 c 18 § 4; 1991 c 23 § 6.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

40.24.070 Disclosure of records prohibited—Exceptions. The secretary of state may not make any records in a program participant's file available for inspection or copying, other than the address designated by the secretary of state, except under the following circumstances:

(1) If requested by a law enforcement agency, to the law enforcement agency; and

(a) The participant's application contains no indication that he or she has been a victim of domestic violence, sexual assault, or stalking perpetrated by a law enforcement employee; and

(b) The request is in accordance with official law enforcement duties and is in writing on official law enforcement letterhead stationery and signed by the law enforcement agency's chief officer, or his or her designee; or

(2) If directed by a court order, to a person identified in the order; and

(a) The request is made by a nonlaw enforcement agency; or

(b) The participant's file indicates he or she has reason to believe he or she is a victim of domestic violence, sexual assault, or stalking perpetrated by a law enforcement employee. [2008 c 18 § 5; 1999 c 53 § 1; 1998 c 138 § 3; 1991 c 23 § 7.]

Additional notes found at www.leg.wa.gov

40.24.075 Court order for address confidentiality program participant information. A court order for address confidentiality program participant information may only be issued upon a probable cause finding by a judicial officer that release of address confidentiality program participant information is legally necessary:

(1) In the course of a criminal investigation or prosecution; or

(2) To prevent immediate risk to a minor and meet the statutory requirements of the Washington child welfare system.

Any court order so issued will prohibit the release of the information to any other agency or person not a party to the order. [2008 c 18 § 6.]

40.24.080 Assistance for program applicants. The secretary of state shall designate state and local agencies and nonprofit agencies that provide counseling and shelter services to victims of domestic violence, sexual assault, trafficking, or stalking to assist persons applying to be program participants. Any assistance and counseling rendered by the office of the secretary of state or its designees to applicants shall in no way be construed as legal advice. [2008 c 312 § 4; 2001 c 28 § 3; 1998 c 138 § 4; 1991 c 23 § 8.]

40.24.090 Adoption of rules. The secretary of state may adopt rules to facilitate the administration of this chapter by state and local agencies. [1991 c 23 § 9.]

Title 41

PUBLIC EMPLOYMENT, CIVIL SERVICE, AND PENSIONS

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- 41.04 General provisions.
- 41.05 State health care authority.
- 41.05A Overpayments of assistance and coordination of benefits.
- 41.06 State civil service law.
- 41.07 Central personnel-payroll system.
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Application forms for public employment—Mention of race or religion prohibited—Penalty: RCW 43.01.100.

Assumption of obligations of private pension plan when private utility acquired by public utility district: RCW 54.04.130 through 54.04.150.

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utility employees in cities of first class, collective bargaining for wages, etc.: RCW 35.22.350.

County employees, payroll deductions for contributions, payments, and dues authorized: RCW 36.17.045.

County officers, salaries and expenses: Chapter 36.17 RCW.

Designation of agency to carry out federal social security disability program: RCW 43.17.120, 43.17.130.

Emergency management employees, compensation for injuries, etc., procedure: RCW 38.52.190 through 38.52.380.

Exemption from payment of college fees for children and surviving spouses of law enforcement officer, firefighter, or state patrol officer totally disabled or losing life: RCW 28B.15.380, 28B.15.385, and 28B.15.520.

Fire protection district personnel—Group life insurance: RCW 52.12.031.

Free transportation for public officers prohibited: State Constitution Art. 12 § 20.

Institutions' employees, hours and wages: RCW 72.01.042, 72.01.043.

Insurance for certain school employees: RCW 28A.400.350, 28B.10.660.

Labor regulations: Title 49 RCW.

Leaves for duty with emergency management agency: RCW 38.52.140.

Military leave of absence for public employees: RCW 38.40.060.

Militia officers and enlisted persons

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State patrol retirement: Chapter 43.43 RCW.

Subversive activities, public officers and employees: Chapter 9.81 RCW.

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Chapter 41.04 RCW GENERAL PROVISIONS

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- 41.04.005 "Veteran" defined for certain purposes.
- 41.04.007 "Veteran" defined for certain purposes.
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- 41.04.036 Salary and wage deductions for contributions to charitable agencies—Deduction and payment to United Fund or Washington state combined fund drive—Rules, procedures.
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- 41.04.110 Persons employed by more than one agency—Joint operation—May provide membership in single system.
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- 41.04.220 Department of general administration to procure health benefit programs—Other governmental entities may use services.
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- 41.04.445 Members' retirement contributions—Pick up by employer—Implementation.
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- 41.04.760 Supported employment—State agency participation.
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- 41.04.800 Chapter not applicable to officers and employees of state convention and trade center.
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- 41.04.820 Temporary salary reductions—Exceptions—Implementation.
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Payroll deductions authorized for school district employees: RCW 28A.405.400 and 28A.405.410.

41.04.003 Title application—Health benefit exchange. Except for chapters 41.05 and 41.40 RCW, this title does not apply to any position in or employee of the Washington health benefit exchange established in chapter 43.71 RCW. [2012 c 87 § 19.]

Effective date—2012 c 87 §§ 4, 16, 18, and 19-23: See note following RCW 43.71.030.

Spiritual care services—2012 c 87: See RCW 43.71.901.

41.04.005 "Veteran" defined for certain purposes.

(1) As used in RCW 41.04.005, 41.16.220, 41.20.050, 41.40.170, and *28B.15.380 "veteran" includes every person, who at the time he or she seeks the benefits of RCW 41.04.005, 41.16.220, 41.20.050, 41.40.170, or *28B.15.380 has received an honorable discharge, is actively serving honorably, or received a discharge for physical reasons with an honorable record and who meets at least one of the following criteria:

(a) The person has served between World War I and World War II or during any period of war, as defined in subsection (2) of this section, as either:

(i) A member in any branch of the armed forces of the United States;

(ii) A member of the women's air forces service pilots;

(iii) A U.S. documented merchant mariner with service aboard an oceangoing vessel operated by the war shipping administration, the office of defense transportation, or their agents, from December 7, 1941, through December 31, 1946; or

(iv) A civil service crewmember with service aboard a U.S. army transport service or U.S. naval transportation service vessel in oceangoing service from December 7, 1941, through December 31, 1946; or

(b) The person has received the armed forces expeditionary medal, or marine corps and navy expeditionary medal, for opposed action on foreign soil, for service:

(i) In any branch of the armed forces of the United States; or

(ii) As a member of the women's air forces service pilots.

(2) A "period of war" includes:

(a) World War I;

(b) World War II;

(c) The Korean conflict;

(d) The Vietnam era, which means:

(i) The period beginning on February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period;

(ii) The period beginning August 5, 1964, and ending on May 7, 1975;

(e) The Persian Gulf War, which was the period beginning August 2, 1990, and ending on the date prescribed by presidential proclamation or law;

(f) The period beginning on the date of any future declaration of war by the congress and ending on the date prescribed by presidential proclamation or concurrent resolution of the congress; and

(g) The following armed conflicts, if the participant was awarded the respective campaign badge or medal: The crisis in Lebanon; the invasion of Grenada; Panama, Operation Just Cause; Somalia, Operation Restore Hope; Haiti, Operation Uphold Democracy; Bosnia, Operation Joint Endeavor;

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Operation Noble Eagle; southern or central Asia, Operation Enduring Freedom; and Persian Gulf, Operation Iraqi Freedom. [2005 c 255 § 1; 2005 c 247 § 1. Prior: 2002 c 292 § 1; 2002 c 27 § 1; 1999 c 65 § 1; 1996 c 300 § 1; 1991 c 240 § 1; 1984 c 36 § 1; 1983 c 230 § 1; 1982 1st ex.s. c 37 § 20; 1969 ex.s. c 269 § 1.]

Reviser's note: *(1) RCW 28B.15.380 was amended by 2005 c 249 § 2 and no longer applies to veterans. For later enactment, see RCW 28B.15.621.

(2) This section was amended by 2005 c 247 § 1 and by 2005 c 255 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—2005 c 247: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 247 § 3.]

Effective date—2005 c 247: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 3, 2005]." [2005 c 247 § 4.]

Additional notes found at www.leg.wa.gov

41.04.007 "Veteran" defined for certain purposes.

"Veteran" includes every person, who at the time he or she seeks the benefits of RCW 46.18.212, 46.18.235, 72.36.030, 41.04.010, 73.04.090, or 43.180.250 has received an honorable discharge or received a discharge for medical reasons with an honorable record, where applicable, and who has served in at least one of the following capacities:

(1) As a member in any branch of the armed forces of the United States, including the national guard and armed forces reserves, and has fulfilled his or her initial military service obligation;

(2) As a member of the women's air forces service pilots;

(3) As a member of the armed forces reserves, national guard, or coast guard, and has been called into federal service by a presidential select reserve call up for at least one hundred eighty cumulative days;

(4) As a civil service crewmember with service aboard a U.S. army transport service or U.S. naval transportation service vessel in oceangoing service from December 7, 1941, through December 31, 1946;

(5) As a member of the Philippine armed forces/scouts during the period of armed conflict from December 7, 1941, through August 15, 1945; or

(6) A United States documented merchant mariner with service aboard an oceangoing vessel operated by the department of defense, or its agents, from both June 25, 1950, through July 27, 1953, in Korean territorial waters and from August 5, 1964, through May 7, 1975, in Vietnam territorial waters, and who received a military commendation. [2013 c 42 § 1; 2010 c 161 § 1105; 2007 c 448 § 1; 2006 c 252 § 2. Prior: 2005 c 251 § 1; 2005 c 216 § 7; 2002 c 292 § 2.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

41.04.010 Veterans' scoring criteria status in examinations. In all competitive examinations, unless otherwise provided in this section, to determine the qualifications of applicants for public offices, positions, or employment, either the state, and all of its political subdivisions and all municipal corporations, or private companies or agencies contracted

with by the state to give the competitive examinations shall give a scoring criteria status to all veterans as defined in RCW 41.04.007, by adding to the passing mark, grade or rating only, based upon a possible rating of one hundred points as perfect a percentage in accordance with the following:

(1) Ten percent to a veteran who served during a period of war or in an armed conflict as defined in RCW 41.04.005 and does not receive military retirement. The percentage shall be added to the passing mark, grade, or rating of competitive examinations until the veteran's first appointment. The percentage shall not be utilized in promotional examinations;

(2) Five percent to a veteran who did not serve during a period of war or in an armed conflict as defined in RCW 41.04.005 or is receiving military retirement. The percentage shall be added to the passing mark, grade, or rating of competitive examinations until the veteran's first appointment. The percentage shall not be utilized in promotional examinations;

(3) Five percent to a veteran who was called to active military service from employment with the state or any of its political subdivisions or municipal corporations. The percentage shall be added to promotional examinations until the first promotion only;

(4) All veterans' scoring criteria may be claimed upon release from active military service or upon receipt of separation orders indicating an honorable discharge, issued by the respective military department. [2013 c 83 § 1; 2009 c 248 § 1; 2007 c 449 § 1; 2003 c 45 § 1; 2002 c 292 § 4; 2000 c 140 § 1; 1974 ex.s. c 170 § 1; 1969 ex.s. c 269 § 2; 1953 ex.s. c 9 § 1; 1949 c 134 § 1; 1947 c 119 § 1; 1945 c 189 § 1; Rem. Supp. 1949 § 9963-5.]

Veterans and veterans' affairs: Title 73 RCW.

41.04.015 Public employment—Evidence of educational competence. A Washington high school equivalency certificate as awarded by the Washington state superintendent of public instruction or a high school equivalency certificate as provided in RCW 28B.50.536 shall be accepted in lieu of a high school diploma by the state and any local political subdivision when considering applicants for employment or promotion. [2013 c 39 § 19; 1971 c 43 § 1.]

41.04.017 Death benefit—Course of employment—Occupational disease or infection. A one hundred fifty thousand dollar death benefit shall be paid as a sundry claim to the estate of an employee of any state agency, the common school system of the state, or institution of higher education who dies as a result of (1) injuries sustained in the course of employment; or (2) an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter, and is not otherwise provided a death benefit through coverage under their enrolled retirement system under chapter 402, Laws of 2003. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the director of the *department of general administration by order under RCW 51.52.050. [2007 c 487 § 1; 2003 c 402 § 4.]

*Reviser's note: The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

41.04.020 Public employees—Payroll deductions authorized. Any employee or group of employees of the state of Washington or any of its political subdivisions, or of any institution supported, in whole or in part, by the state or any of its political subdivisions, may authorize the deduction from his or her salaries or wages and payment to another, the amount or amounts of his or her subscription payments or contributions to any person, firm, or corporation administering, furnishing, or providing (1) medical, surgical, and hospital care or either of them, or (2) life insurance or accident and health disability insurance, or (3) any individual retirement account selected by the employee or the employee's spouse established under applicable state or federal law: PROVIDED, That such authorization by said employee or group of employees, shall be first approved by the head of the department, division office or institution of the state or any political subdivision thereof, employing such person or group of persons, and filed with the department of enterprise services; or in the case of political subdivisions of the state of Washington, with the auditor of such political subdivision or the person authorized by law to draw warrants against the funds of said political subdivision. [2011 1st sp.s. c 43 § 471; 1998 c 116 § 1; 1982 c 107 § 1; 1973 c 106 § 15; 1947 c 70 § 1; Rem. Supp. 1947 § 9963-10.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

*Group insurance disability: Chapter 48.21 RCW.
for employees of
cities and towns: RCW 35.23.460.
counties: RCW 36.32.400.
life: Chapter 48.24 RCW.*

41.04.030 Payroll deductions—Duty of auditing officer. Upon being authorized by any employee or group of employees so to do under the provisions of RCW 41.04.020, the auditor or other person authorized to draw warrants against the funds involved is authorized, and if such medical, surgical, and hospital care or either of them, or life insurance or accident and health disability insurance is to be provided on a group basis for groups each of not less than twenty-five individuals such auditor or other person is hereby required, to draw and issue a proper warrant or warrants directly to and in favor of the person, firm, or corporation, or organization named in the authorization for the total amount authorized to be deducted from the payroll of any such office, department, division, or institution. [1953 c 260 § 1; 1947 c 70 § 2; Rem. Supp. 1947 § 9963-11.]

41.04.033 Operation of the Washington state combined fund drive—Secretary of state—Rules. The secretary of state is authorized to adopt rules, after consultation with state agencies, institutions of higher education, and employee organizations for the operation of the Washington state combined fund drive. [2010 1st sp.s. c 7 § 9; 2010 c 101 § 1; 2003 c 205 § 1; 2002 c 61 § 4.]

Reviser's note: This section was amended by 2010 c 101 § 1 and by 2010 1st sp.s. c 7 § 9, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

41.04.0331 State combined fund drive program—Powers and duties of secretary of state. To operate the Washington state combined fund drive program, the secretary of state or the secretary's designee may, but is not limited to the following:

(1) Raise money for charity, and reducing [reduce] the disruption to government caused by multiple fund drives;

(2) Establish criteria by which a public or private non-profit organization may participate in the combined fund drive;

(3) Engage in or encouraging [encourage] fund-raising activities including the solicitation and acceptance of charitable gifts, grants, and donations from state employees, retired public employees, corporations, foundations, and other individuals for the benefit of the beneficiaries of the Washington state combined fund drive;

(4) Request the appointment of employees from state agencies and institutions of higher education to lead and manage workplace charitable giving campaigns within state government;

(5) Engage in educational activities, including classes, exhibits, seminars, workshops, and conferences, related to the basic purpose of the combined fund drive;

(6) Engage in appropriate fund-raising and advertising activities for the support of the administrative duties of the Washington state combined fund drive; and

(7) Charge an administrative fee to the beneficiaries of the Washington state combined fund drive to fund the administrative duties of the Washington state combined fund drive.

Activities of the Washington state combined fund drive shall not result in direct commercial solicitation of state employees, or a benefit or advantage that would violate one or more provisions of chapter 42.52 RCW. This section does not authorize individual state agencies to enter into contracts or partnerships unless otherwise authorized by law. [2010 1st sp.s. c 7 § 10; 2010 c 101 § 2; 2003 c 205 § 2.]

Reviser's note: This section was amended by 2010 c 101 § 2 and by 2010 1st sp.s. c 7 § 10, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

41.04.0332 State combined fund drive—Secretary of state—Contracts and partnerships. The secretary of state may enter into contracts and partnerships with private institutions, persons, firms, or corporations for the benefit of the beneficiaries of the Washington state combined fund drive. Activities of the Washington state combined fund drive shall not result in direct commercial solicitation of state employees, or a benefit or advantage that would violate one or more provisions of chapter 42.52 RCW. This section does not authorize individual state agencies to enter into contracts or partnerships unless otherwise authorized by law. [2010 1st sp.s. c 7 § 11; 2010 c 101 § 3; 2003 c 205 § 3.]

Reviser's note: This section was amended by 2010 c 101 § 3 and by 2010 1st sp.s. c 7 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

(2014 Ed.)

41.04.035 Salary and wage deductions for contributions to charitable agencies—"United Fund" defined—Includes Washington state combined fund drive. For the purpose of RCW 41.04.035 and 41.04.036 "United Fund" means the organization conducting the single, annual, consolidated effort to secure funds for distribution to agencies engaged in charitable and public health, welfare and service purposes, which is commonly known as the United Fund or the Washington state combined fund drive. [2002 c 61 § 1; 1957 c 208 § 1.]

41.04.036 Salary and wage deductions for contributions to charitable agencies—Deduction and payment to United Fund or Washington state combined fund drive—Rules, procedures. Any official of the state or of any of its political subdivisions authorized to disburse funds in payment of salaries or wages of public officers or employees is authorized, upon written request of the officer or employee, to deduct from the salary or wages of the officer or employee the amount of money designated by the officer or employee for payment to the United Fund or the Washington state combined fund drive.

The moneys so deducted shall be paid over promptly to the United Fund or the Washington state combined fund drive designated by the officer or employee. Subject to any rules adopted by the office of financial management, the official authorized to disburse the funds in payment of salaries or wages may prescribe any procedures necessary to carry out RCW 41.04.035 and 41.04.036. [2002 c 61 § 2; 1983 1st ex.s. c 28 § 2; 1979 c 151 § 53; 1973 c 106 § 16; 1957 c 208 § 2.]

Additional notes found at www.leg.wa.gov

41.04.039 Washington state combined fund drive account—Created. The Washington state combined fund drive account is created in the custody of the state treasurer. All receipts from the combined fund drive must be deposited into the account. Expenditures from the account may be used only for the beneficiaries of the Washington state combined fund drive. Only the secretary of state or the secretary's designee may authorize expenditures from the account. The account is not subject to allotment procedures under chapter 43.88 RCW, and an appropriation is not required for expenditures. [2010 c 101 § 4; 2002 c 61 § 3.]

41.04.110 Persons employed by more than one agency—Joint operation—May provide membership in single system. When there exists a joint operation of a public service, the authorities may make provision for membership of all new employees in one designated retirement system by agreement with the proper authorities. [1951 c 98 § 5.]

41.04.120 Civil service and retirement rights preserved when elective office assumed. Any civil service employee of the state of Washington or of any political subdivision thereof who is on leave of absence by reason of having been elected or appointed to an elective office shall be preserved in his or her civil service status, his or her seniority, rank and retirement rights so long as he or she regularly continues to make the usual contribution incident to the retention of such beneficial rights as if he or she were not on leave of

absence: PROVIDED, That such contributions being made shall be based on the rank at the time of taking such leave of absence. [2012 c 117 § 5; 1957 c 164 § 1.]

41.04.130 Extension of provisions of retirement and pension systems by cities of the first class to nonincluded personnel. Any city of the first class may, by ordinance, extend, upon conditions deemed proper, the provisions of retirement and pension systems for superannuated and disabled officers and employees to officers and employees with five years of continuous service and acting in capacities in which they would otherwise not be entitled to participation in such systems: PROVIDED, That the following shall be specifically exempted from the provisions of this section.

(1) Members of the police departments who are entitled to the benefits of the police relief and pension fund as established by state law.

(2) Members of the fire department who are entitled to the benefits of the firefighters' relief and pension fund as established by state law. [2013 c 23 § 68; 1945 c 52 § 1; 1941 c 192 § 1; Rem. Supp. 1945 § 9592-129. Formerly codified as RCW 41.28.250.]

41.04.140 Interchange of personnel between federal and state agencies—"State agency" defined. "State agency" means a board, department, commission or institution of the state or its political subdivisions. [1959 c 102 § 1.]

41.04.150 Interchange of personnel between federal and state agencies—Agreements—Provisions. A state agency may enter into agreements with departments or other subdivisions of the federal government for the interchange of personnel on projects which are of mutual benefit to the state and federal government.

An interchange agreement shall specify the fiscal arrangements to be made, including compensations, rights, benefits and obligations of the employees concerned, travel and transportation of employees, their immediate families and household goods, and the duties and supervision of employees while on assignment. [1959 c 102 § 2.]

41.04.160 Interchange of personnel between federal and state agencies—Employment status of state employees participating—Retirement—Civil service. State agency employees participating in an interchange may be carried on detail or in a leave of absence status.

(1) Wherever practicable, employees should be carried on detail. While on detail under an interchange agreement, employees shall remain employees of the state agency for all fiscal purposes, but shall receive no reimbursement for travel or other expenses except as provided in RCW 41.04.150.

(2) State agency employees who receive temporary appointments with federal agencies shall be carried by the state agency in a leave of absence status. Participation in an interchange shall be considered as service under any retirement system of which the employees are members. Arrangements for payment of employees' contributions to a retirement system may be by the interchange agreement or otherwise. Employees participating in an interchange shall be entitled to credit the full period toward promotion or salary

increase as provided by any applicable civil service laws or regulations. [1959 c 102 § 3.]

41.04.170 Interchange of personnel between federal and state agencies—Employment status of federal employees participating—Retirement—Civil service. Federal employees participating in an interchange may receive appointment by the state agency, or may be considered to be on detail with the state agency.

(1) Appointments of federal employees shall be made without regard to civil service laws or regulations. Compensation shall be in accordance with the usual rates paid by the state agency for similar positions.

An appropriate percentage of compensation shall be deducted and transmitted to the federal agency for retirement and insurance where the interchange agreement so provides.

(2) Federal employees on detail with a state agency remain employees of and shall continue to receive their compensation from the federal agency, subject to the terms of the interchange agreement. [1959 c 102 § 4.]

41.04.180 Hospitalization and medical aid for county, municipal and other political subdivision employees—Governmental contributions authorized. Any county, municipality, or other political subdivision of the state acting through its principal supervising official or governing body may, whenever funds shall be available for that purpose provide for all or a part of hospitalization and medical aid for its employees and their dependents through contracts with regularly constituted insurance carriers or with health care service contractors as defined in chapter 48.44 RCW or self-insurers as provided for in chapter 48.62 RCW, for group hospitalization and medical aid policies or plans: PROVIDED, That any county, municipality, or other political subdivision of the state acting through its principal supervising official or governing body shall provide the employees thereof a choice of policies or plans through contracts with not less than two regularly constituted insurance carriers or health care service contractors or other health care plans, including but not limited to, trusts of self-insurance as provided for in chapter 48.62 RCW: AND PROVIDED FURTHER, That any county may provide such hospitalization and medical aid to county elected officials and their dependents on the same basis as such hospitalization and medical aid is provided to other county employees and their dependents: PROVIDED FURTHER, That provision for school district personnel shall not be made under this section but shall be as provided for in RCW 28A.400.350. [1991 sp.s. c 30 § 18; 1974 ex.s. c 82 § 1; 1973 1st ex.s. c 147 § 6; 1970 ex.s. c 39 § 10; 1969 ex.s. c 237 § 1; 1967 c 135 § 1; 1965 c 57 § 1; 1963 c 75 § 1.]

Retirement allowance deductions for health care benefit plans: RCW 41.04.235.

State health care authority: Chapter 41.05 RCW.

Additional notes found at www.leg.wa.gov

41.04.190 Hospitalization and medical aid for county, municipal and other political subdivision employees or elected officials—Cost not additional compensation—Disbursement. The cost of a policy or plan to a public agency or body is not additional compensation to the employ-

ees or elected officials covered thereby. The elected officials to whom this section applies include but are not limited to commissioners elected under chapters 28A.315, 52.14, 53.12, 54.12, 57.12, 70.44, and 87.03 RCW, as well as any county elected officials who are provided insurance coverage under RCW 41.04.180, and city officials elected under chapters 35.17, 35.22, 35.23, 35.27, 35A.12, and 35A.13 RCW. Any officer authorized to disburse such funds may pay in whole or in part to an insurance carrier or health care service contractor the amount of the premiums due under the contract. [2007 c 42 § 1; 1996 c 230 § 1610; 1992 c 146 § 13; 1983 1st ex.s. c 37 § 1; 1965 c 57 § 2; 1963 c 75 § 2.]

Additional notes found at www.leg.wa.gov

41.04.205 Participation of county, municipal, and other political subdivision employees in state employees' insurance or self-insurance and health care program—

Transfer procedure. (1) Notwithstanding the provisions of RCW 41.04.180, the employees, with their dependents, of any county, municipality, or other political subdivision of this state shall be eligible to participate in any insurance or self-insurance program for employees administered under chapter 41.05 RCW if the legislative authority of any such county, municipality, or other political subdivisions of this state determines, subject to collective bargaining under applicable statutes, a transfer to an insurance or self-insurance program administered under chapter 41.05 RCW should be made. In the event of a special district employee transfer pursuant to this section, members of the governing authority shall be eligible to be included in such transfer if such members are authorized by law as of June 25, 1976 to participate in the insurance program being transferred from and subject to payment by such members of all costs of insurance for members.

(2) When the legislative authority of a county, municipality, or other political subdivision determines to so transfer, the state health care authority shall:

- (a) Establish the conditions for participation; and
- (b) Have the sole right to reject the application.

Approval of the application by the state health care authority shall effect a transfer of the employees involved to the insurance, self-insurance, or health care program applied for.

(3) Any application of this section to members of the law enforcement officers' and firefighters' retirement system under chapter 41.26 RCW is subject to chapter 41.56 RCW.

(4) School districts may voluntarily transfer, except that all eligible employees in a bargaining unit of a school district may transfer only as a unit and all nonrepresented employees in a district may transfer only as a unit. [1995 1st sp.s. c 6 § 8; 1993 c 386 § 3; 1992 c 199 § 1; 1990 c 222 § 1; 1988 c 107 § 17; 1975-'76 2nd ex.s. c 106 § 1.]

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.04.208 Local government retirees—Health care—Definitions—Participation—Exception. (1) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Disabled employee" means a person eligible to receive a disability retirement allowance from the Washing-

ton law enforcement officers' and firefighters' retirement system plan 2 and the public employees' retirement system.

(b) "Health plan" means a contract, policy, fund, trust, or other program established jointly or individually by a county, municipality, or other political subdivision of the state that provides for all or a part of hospitalization or medical aid for its employees and their dependents under RCW 41.04.180.

(c) "Retired employee" means a public employee meeting the retirement eligibility, years of service requirements, and other criteria of the Washington law enforcement officers' and firefighters' retirement system plan 2 and the public employees' retirement system.

(2) A county, municipality, or other political subdivision that provides a health plan for its employees shall permit retired and disabled employees and their dependents to continue participation in a plan subject to the exceptions, limitations, and conditions set forth in this section. However, this section does not apply to a county, municipality, or other political subdivision participating in an insurance program administered under chapter 41.05 RCW if retired and disabled employees and their dependents of the participating county, municipality, or other political subdivision are covered under an insurance program administered under chapter 41.05 RCW. Nothing in this subsection or chapter 319, Laws of 2002 precludes the local government employer from offering retired or disabled employees a health plan with a benefit structure, copayment, deductible, coinsurance, lifetime benefit maximum, and other plan features which differ from those offered through a health plan provided to active employees. Further, nothing in this subsection precludes a local government employer from joining with other public agency employers, including interjurisdictional benefit pools and multi-employer associations or consortiums, to fulfill its obligations under chapter 319, Laws of 2002.

(3) A county, municipality, or other political subdivision has full authority to require a person who requests continued participation in a health plan under subsection (2) of this section to pay the full cost of such participation, including any amounts necessary for administration. However, this subsection does not require an employer who is currently paying for all or part of a health plan for its retired and disabled employees to discontinue those payments.

(4) Payments for continued participation in a former employer's health plan may be assigned to the underwriter of the health plan from public pension benefits or may be paid to the former employer, as determined by the former employer, so that an underwriter of the health plan that is an insurance company, health care service contractor, or health maintenance organization is not required to accept individual payments from persons continuing participation in the employer's health plan.

(5) After an initial open enrollment period of ninety days after January 1, 2003, an employer may not be required to permit a person to continue participation in the health plan if the person is responsible for a lapse in coverage under the plan. In addition, an employer may not be required to permit a person to continue participation in the employer's health plan if the employer offered continued participation in a health plan that meets the requirements of chapter 319, Laws of 2002.

(6) If a person continuing participation in the former employer's health plan has medical coverage available through another employer, the medical coverage of the other employer is the primary coverage for purposes of coordination of benefits as provided for in the former employer's health plan.

(7) If a person's continued participation in a health plan was permitted because of the person's relationship to a retired or disabled employee of the employer providing the health plan and the retired or disabled employee dies, then that person is permitted to continue participation in the health plan for a period of not more than six months after the death of the retired or disabled employee. However, the employer providing the health plan may permit continued participation beyond that time period.

(8) An employer may offer one or more health plans different from that provided for active employees and designed to meet the needs of persons requesting continued participation in the employer's health plan. An employer, in designing or offering continued participation in a health plan, may utilize terms or conditions necessary to administer the plan to the extent the terms and conditions do not conflict with this section.

(9) If an employer changes the underwriter of a health plan, the replaced underwriter has no further responsibility or obligation to persons who continued participation in a health plan of the replaced underwriter. However, the employer shall permit those persons to participate in any new health plan.

(10) The benefits granted under this section are not considered a matter of contractual right. Should the legislature, a county, municipality, or other political subdivision of the state revoke or change any benefits granted under this section, an affected person is not entitled to receive the benefits as a matter of contractual right.

(11) This section does not affect any health plan contained in a collective bargaining agreement in existence as of January 1, 2003. However, any plan contained in future collective bargaining agreements shall conform to this section. In addition, this section does not affect any health plan contract or policy in existence as of January 1, 2003. However, any renewal of the contract or policy shall conform to this section.

(12) Counties, municipalities, and other political subdivisions that make a documented good faith effort to comply with the provisions of subsections (2) through (11) of this section and are unable to provide access to a fully insured group health benefit plan are discharged from any obligations under subsections (2) through (11) of this section but shall assist disabled employees and retired employees in applying for health insurance. Assistance may include developing and distributing standardized information on the availability and cost of individual health benefit plans, application packages, and health benefit fairs.

(13) The office of the insurance commissioner shall make available to counties, municipalities, and other political subdivisions information regarding individual health benefit plans, including a list of carriers offering individual coverage, the rates charged, and how to apply for coverage. [2004 c 173 § 1; 2002 c 319 § 2.]

Effective date—2004 c 173: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2004]." [2004 c 173 § 3.]

Intent—2002 c 319: "It is the intent of this act to provide retirees of local government employers access to health care benefits. It is also the intent of this act that local government employers be allowed the flexibility to design programs to meet the health care needs of their retirees and that the local government employer be able to recover all costs associated with providing retirees access to health benefits." [2002 c 319 § 1.]

41.04.212 Local government retirees—Health care—Administration. Employers providing access to health insurance coverage under chapter 319, Laws of 2002 may adopt criteria which specify allowable enrollment periods, require enrollees to keep current addresses and information, and outline other processes to ensure that plans can be administered efficiently and effectively. [2002 c 319 § 3.]

Intent—2002 c 319: See note following RCW 41.04.208.

41.04.220 Department of general administration to procure health benefit programs—Other governmental entities may use services. Any governmental entity other than state agencies, may use the services of the *department of general administration upon the approval of the director, in procuring health benefit programs as provided by RCW 41.04.180, 28A.400.350 and 28B.10.660: PROVIDED, That the *department of general administration may charge for the administrative cost incurred in the procuring of such services. [1983 c 3 § 88; 1969 ex.s. c 237 § 7.]

*Reviser's note: The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

Additional notes found at www.leg.wa.gov

41.04.230 Payroll deductions authorized. Any official of the state authorized to disburse funds in payment of salaries and wages of public officers or employees is authorized, upon written request of the officer or employee, to deduct from the salaries or wages of the officers or employees, the amount or amounts of subscription payments, premiums, contributions, or continuation thereof, for payment of the following:

(1) Credit union deductions: PROVIDED, That twenty-five or more employees of a single state agency or a total of one hundred or more state employees of several agencies have authorized such a deduction for payment to the same credit union. An agency may, in its own discretion, establish a minimum participation requirement of fewer than twenty-five employees.

(2) Parking fee deductions: PROVIDED, That payment is made for parking facilities furnished by the agency or by the department of enterprise services. Deductions shall be pretax, to the extent possible, for qualified parking and transit benefits as allowed under the federal internal revenue code.

(3) U.S. savings bond deductions: PROVIDED, That a person within the particular agency shall be appointed to act as trustee. The trustee will receive all contributions; purchase and deliver all bond certificates; and keep such records and furnish such bond or security as will render full accountability for all bond contributions.

(4) Board, lodging or uniform deductions when such board, lodging and uniforms are furnished by the state, or

deductions for academic tuitions or fees or scholarship contributions payable to the employing institution.

(5) Dues and other fees deductions: PROVIDED, That the deduction is for payment of membership dues to any professional organization formed primarily for public employees or college and university professors: AND PROVIDED, FURTHER, That twenty-five or more employees of a single state agency, or a total of one hundred or more state employees of several agencies have authorized such a deduction for payment to the same professional organization.

(6) Labor, employee, or retiree organization dues, and voluntary employee contributions to any funds, committees, or subsidiary organizations maintained by labor, employee, or retiree organizations, may be deducted in the event that a payroll deduction is not provided under a collective bargaining agreement under the provisions of chapter 41.80 RCW: PROVIDED, That each labor, employee, or retiree organization chooses only one fund for voluntary employee contributions: PROVIDED, FURTHER, That twenty-five or more officers or employees of a single agency, or a total of one hundred or more officers or employees of several agencies have authorized such a deduction for payment to the same labor, employee, or retiree organization: PROVIDED, FURTHER, That labor, employee, or retiree organizations with five hundred or more members in state government may have payroll deduction for employee benefit programs.

(7) Insurance contributions to the authority for payment of premiums under contracts authorized by the state health care authority. However, enrollment or assignment by the state health care authority to participate in a health care benefit plan, as required by RCW 41.05.065(8), shall authorize a payroll deduction of premium contributions without a written consent under the terms and conditions established by the public employees' benefits board.

(8) Deductions to a bank, savings bank, or savings and loan association if (a) the bank, savings bank, or savings and loan association is authorized to do business in this state; and (b) twenty-five or more employees of a single agency, or fewer, if a lesser number is established by such agency, or a total of one hundred or more state employees of several agencies have authorized a deduction for payment to the same bank, savings bank, or savings and loan association.

Deductions from salaries and wages of public officers and employees other than those enumerated in this section or by other law, may be authorized by the director of financial management for purposes clearly related to state employment or goals and objectives of the agency and for plans authorized by the state health care authority.

(9) Contributions to the Washington state combined fund drive.

The authority to make deductions from the salaries and wages of public officers and employees as provided for in this section shall be in addition to such other authority as may be provided by law: PROVIDED, That the state or any department, division, or separate agency of the state shall not be liable to any insurance carrier or contractor for the failure to make or transmit any such deduction. [2013 c 124 § 1; 2007 c 99 § 1; 2006 c 216 § 1; 2002 c 61 § 5; 1995 1st sp.s. c 6 § 21. Prior: 1993 c 2 § 26 (Initiative Measure No. 134, approved November 3, 1992); 1992 c 192 § 1; 1988 c 107 § 19; 1985 c 271 § 1; 1983 1st ex.s. c 28 § 3; 1980 c 120 § 1;

(2014 Ed.)

1979 c 151 § 54; 1973 1st ex.s. c 147 § 5; 1970 ex.s. c 39 § 11; 1969 c 59 § 5.]

Effective date—2006 c 216: "This act takes effect January 1, 2007." [2006 c 216 § 2.]

Additional notes found at www.leg.wa.gov

41.04.232 Transition to two payrolls per month—Guidelines on deductions and deferrals. In order to facilitate the transition from one payroll per month to two payrolls per month, the following guidelines concerning payroll deductions and deferrals are established:

(1) All mandatory and voluntary deductions which are based upon a percentage of salary shall be deducted, after August 23, 1983, from the salaries payable for each pay period. This subsection shall apply regardless of when the deductions were authorized or required.

(2) The office of financial management shall adopt reasonable procedures providing for deductions, including deferrals, which are not based on a percentage of salary.

(3) Amounts which are deducted in accordance with subsections (1) and (2) of this section shall be paid to the designated recipient no later than the established paydates except when other agreements are reached with the designated recipient.

(4) Payment of deductions and deferrals to the designated recipient shall be made by warrant or check except when the designated recipient requests payment by electronic funds transfer. If recipients request electronic funds transfers, sufficient time shall be made available to establish the process. The elapsed time to establish the process shall not exceed three months from the time the recipient has requested in writing to the appropriate data processing payroll systems manager to receive payment by electronic funds transfer.

Documentation and itemization of deductions or deferrals paid shall be in printed form unless the designated recipient requests computer tapes. If recipients request computer tapes, sufficient time shall be made available to establish the process. Computer tapes shall be made available to the requesting designated recipient if at least one hundred employees paid from an automated payroll system have such deductions. The elapsed time to establish the process for providing computer tapes shall not exceed three months from the time the recipient has requested in writing to the appropriate data processing payroll systems manager to receive computer tapes. With the approval of the office of financial management, more advanced technology may be utilized to provide payment, documentation, and itemization of deductions to designated recipients. [1983 1st ex.s. c 28 § 4.]

Additional notes found at www.leg.wa.gov

41.04.233 Payroll deductions for capitation payments to health maintenance organizations. Any employee or retired employee of the state or its departments, agencies, or subdivisions and any employee or retired employee of a county, public or municipal corporation, school district, or tax supported institution may authorize the deduction from his or her salary or wages of the amount of his or her capitation payments to any health maintenance organization receiving a certificate of authority under this chapter. Upon the filing of an authorization with the auditor or fiscal

officer of the employer, such auditor or fiscal officer shall make payments in favor of the health maintenance organizations referred to in the authorization for the amounts of the deductions authorized, *RCW 41.04.230(7) notwithstanding. [2012 c 117 § 6; 1975 1st ex.s. c 290 § 20.]

*Reviser's note: RCW 41.04.230 was amended by 1993 c 2 § 26 (Initiative Measure No. 134), and subsection (7) was deleted.

Additional notes found at www.leg.wa.gov

41.04.235 Retirement allowance deductions for health care benefit plans. Participants in a health care benefit plan approved pursuant to RCW 41.04.180, 41.05.065, or 28A.400.350, whichever is applicable, who are retired public employees, may authorize the deduction from their retirement allowances, of the amount or amounts of their subscription payments, premiums, or contributions to any person, firm, or corporation furnishing or providing medical, surgical, and hospital care or other health care insurance upon the approval by the retirement board of an application for such deduction on the prescribed form, and the treasurer of the state shall duly and timely draw and issue proper warrants directly to and in favor of the person, firm, or corporation, or organization named in the authorization for the amount authorized to be deducted. [1993 c 386 § 4; 1983 c 3 § 89; 1975 1st ex.s. c 73 § 1.]

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.04.240 Direct deposit of salaries into financial institutions—Alternate payment methods for employees of institutions of higher education—Conservation district exemption. (1) Except with regard to institutions of higher education as defined in RCW 28B.10.016, any official of the state or of any political subdivision, municipal corporation, or quasi-municipal corporation authorized to disburse funds in payment of salaries and wages of employees is authorized upon written request of at least twenty-five employees to pay all or part of such salaries or wages to any financial institution for either: (a) Credit to the employees' accounts in such financial institution; or (b) immediate transfer therefrom to the employees' accounts in any other financial institutions.

(2) In disbursing funds for payment of salaries and wages of employees, institutions of higher education as defined in RCW 28B.10.016 are authorized to require the following payment methods:

(a) For employees who have an account in a financial institution, payment to any financial institution for either: (i) Credit to the employees' accounts in such financial institution; or (ii) immediate transfer therefrom to the employees' accounts in any other financial institutions; and

(b) For employees who do not have an account in a financial institution, payment by alternate methods such as payroll cards.

(3) Nothing in this section shall be construed as authorizing any employer to require the employees to have an account in any particular financial institution or type of financial institution. A single warrant may be drawn in favor of such financial institution, for the total amount due the employees involved, and written directions provided to such financial institution of the amount to be credited to the account of an employee or to be transferred to an account in another finan-

cial institution for such employee. The issuance and delivery by the disbursing officer of a warrant in accordance with the procedure set forth herein and proper indorsement thereof by the financial institution shall have the same legal effect as payment directly to the employee.

(4) Conservation districts as established and authorized under chapter 89.08 RCW are exempt from the requirement to obtain a written request of twenty-five employees as required in subsection (1) of this section, and may disburse funds in payment of salaries and wages of employees consistent with this chapter and RCW 89.08.215.

(5) For the purposes of this section "financial institution" means any bank or trust company established in this state pursuant to chapter 2, Title 12, United States Code, or *Title 30 RCW, and any credit union established in this state pursuant to chapter 14, Title 12, United States Code, or chapter 31.12 RCW, and any mutual savings bank established in this state pursuant to Title 32 RCW, and any savings and loan association established in this state pursuant to chapter 12, Title 12, United States Code, or Title 33 RCW. [2013 c 164 § 1; 2012 c 230 § 3; 1977 ex.s. c 269 § 1; 1969 c 59 § 6.]

*Reviser's note: Title 30 RCW was recodified and/or repealed pursuant to 2014 c 37, effective January 5, 2015.

Savings report—2012 c 230: See RCW 28B.10.0291.

41.04.245 Payroll deductions to a bank, savings bank, credit union, or savings and loan association. Any official of any local political subdivision of the state, municipal corporation, or quasi-municipal corporation authorized to disburse funds in payment of salaries and wages of employees is authorized upon written request of any employee, to deduct all or part of such employee's salary or wages for payment to any bank, savings bank, credit union, or savings and loan association if (1) the bank, savings bank, credit union, or savings and loan association is authorized to do business in this state; and (2) twenty-five or more employees of a single local political subdivision, or fewer, if a lesser number is established by such local political subdivision, authorize such a deduction for payment to the same bank, savings bank, credit union, or savings and loan association. [1992 c 192 § 2.]

41.04.270 Public retirement systems—Members or beneficiaries estopped from becoming a member or accruing rights in any other public retirement system—Exceptions. (1) Except as provided in chapter 2.10, 2.12, 41.26, 41.28, 41.32, 41.35, 41.37, 41.40, or 43.43 RCW, on and after March 19, 1976, any member or former member who (a) receives a retirement allowance earned by the former member as deferred compensation from any public retirement system authorized by the general laws of this state, or (b) is eligible to receive a retirement allowance from any public retirement system listed in RCW 41.50.030, but chooses not to apply, or (c) is the beneficiary of a disability allowance from any public retirement system listed in RCW 41.50.030 shall be estopped from becoming a member of or accruing any contractual rights whatsoever in any other public retirement system listed in RCW 41.50.030: PROVIDED, That (a) and (b) of this subsection shall not apply to persons who have accumulated less than fifteen years service credit in any such system.

(2) Nothing in this section is intended to apply to any retirement system except those listed in RCW 41.50.030 and the city employee retirement systems for Seattle, Tacoma, and Spokane. Subsection (1)(b) of this section does not apply to a dual member as defined in RCW 41.54.010. [2006 c 309 § 3; 2005 c 327 § 1; 2001 c 180 § 4; 1988 c 195 § 5; 1987 c 192 § 9; 1980 c 29 § 1; 1975-'76 2nd ex.s. c 105 § 1.]

Effective date—2006 c 309: See note following RCW 41.37.005.

Additional notes found at www.leg.wa.gov

41.04.273 Prohibition of retirement benefits passing to slayer or abuser beneficiary—Determination by department of retirement systems—Duties upon notice—Payment upon verdicts—Admissibility of evidence—Immunity. (1) For purposes of this section, the following definitions shall apply:

(a) "Abuser" has the same meaning as provided in RCW 11.84.010.

(b) "Decedent" means any person who is entitled to benefits from the Washington state department of retirement systems by written designation or by operation of law:

(i) Whose life is taken by a slayer; or

(ii) Who is deceased and who, at any time during life in which he or she was a vulnerable adult, was the victim of financial exploitation by an abuser, except as provided in RCW 11.84.170.

(c) "Slayer" means a slayer as defined in RCW 11.84.010.

(2) Property that would have passed to or for the benefit of a beneficiary under one of the retirement systems listed in RCW 41.50.030 shall not pass to that beneficiary if the beneficiary was a slayer or abuser of the decedent and the property shall be distributed as if the slayer or abuser had predeceased the decedent.

(3) A slayer or abuser is deemed to have predeceased the decedent as to property which, by designation or by operation of law, would have passed from the decedent to the slayer or abuser because of the decedent's entitlement to benefits under one of the retirement systems listed in RCW 41.50.030.

(4)(a) The department of retirement systems has no affirmative duty to determine whether a beneficiary is, or is alleged to be, a slayer or abuser. However, upon receipt of written notice that a beneficiary is a defendant in a civil lawsuit or probate proceeding that alleges the beneficiary is a slayer or abuser, or is charged with a crime that, if committed, means the beneficiary is a slayer or abuser, the department of retirement systems shall determine whether the beneficiary is a defendant in such a civil proceeding or has been formally charged in court with the crime, or both. If so, the department shall withhold payment of any benefits until:

(i) The case or charges, or both if both are pending, are dismissed;

(ii) The beneficiary is found not guilty in the criminal case or prevails in the civil proceeding, or both if both are pending; or

(iii) The beneficiary is convicted or is found to be a slayer or abuser in the civil proceeding.

(b) If the case or charges, or both if both are pending, are dismissed or if a beneficiary is found not guilty or prevails in the civil proceeding, or both if both are pending, the department shall pay the beneficiary the benefits the beneficiary is

entitled to receive. If the beneficiary is convicted or found to be a slayer or abuser in a civil proceeding, the department shall distribute the benefits according to subsection (2) of this section.

(5) Any record of conviction for having participated in the willful and unlawful killing of the decedent or for conduct constituting financial exploitation against the decedent, including but not limited to theft, forgery, fraud, identity theft, robbery, burglary, or extortion, shall be admissible in evidence against a claimant of property in any civil action arising under this section.

(6) In the absence of a criminal conviction, a superior court may determine:

(a) By a preponderance of the evidence whether a person participated in the willful and unlawful killing of the decedent;

(b) By clear, cogent, and convincing evidence whether a person participated in conduct constituting financial exploitation against the decedent, as provided in chapter 11.84 RCW.

(7) This section shall not subject the department of retirement systems to liability for payment made to a slayer or abuser or alleged slayer or abuser, prior to the department's receipt of written notice that the slayer or abuser has been convicted of, or the alleged slayer or abuser has been formally criminally or civilly charged in court with, the death or financial exploitation of the decedent. If the conviction or civil judgment of a slayer or abuser is reversed on appeal, the department of retirement systems shall not be liable for payment made prior to the receipt of written notice of the reversal to a beneficiary other than the person whose conviction or civil judgment is reversed. [2009 c 525 § 19; 1998 c 292 § 501.]

Additional notes found at www.leg.wa.gov

41.04.276 Select committee on pension policy—Creation—Membership—Terms of office—Staff support.

(1) The select committee on pension policy is created. The select committee consists of:

(a) Four members of the senate appointed by the president of the senate, two of whom are members of the majority party and two of whom are members of the minority party. At least three of the appointees shall be members of the senate ways and means committee;

(b) Four members of the house of representatives appointed by the speaker, two of whom are members of the majority party and two of whom are members of the minority party. At least three of the appointees shall be members of the house of representatives appropriations committee;

(c) Four active members or representatives from organizations of active members of the state retirement systems appointed by the governor for staggered three-year terms, with no more than two appointees representing any one employee retirement system;

(d) Two retired members or representatives of retired members' organizations of the state retirement systems appointed by the governor for staggered three-year terms, with no two members from the same system;

(e) Four employer representatives of members of the state retirement systems appointed by the governor for staggered three-year terms; and

(f) The directors of the department of retirement systems and office of financial management.

(2)(a) The term of office of each member of the house of representatives or senate serving on the committee runs from the close of the session in which he or she is appointed until the close of the next regular session held in an odd-numbered year. If a successor is not appointed during a session, the member's term continues until the member is reappointed or a successor is appointed. The term of office for a committee member who is a member of the house of representatives or the senate who does not continue as a member of the senate or house of representatives ceases upon the convening of the next session of the legislature during the odd-numbered year following the member's appointment, or upon the member's resignation, whichever is earlier. All vacancies of positions held by members of the legislature must be filled from the same political party and from the same house as the member whose seat was vacated.

(b) Following the terms of members and representatives appointed under subsection (1)(d) of this section, the retiree positions shall be rotated to ensure that each system has an opportunity to have a retiree representative on the committee.

(3) The committee shall elect a chairperson and a vice chairperson. The chairperson shall be a member of the senate in even-numbered years and a member of the house of representatives in odd-numbered years and the vice chairperson shall be a member of the house of representatives in even-numbered years and a member of the senate in odd-numbered years.

(4) The committee shall establish an executive committee of six members, including the chairperson, the vice chairperson, one member from subsection (1)(c) of this section, one member from subsection (1)(d) of this section, one member from subsection (1)(e) of this section, and the director of the department of retirement systems.

(5) Nonlegislative members of the select committee serve without compensation, but shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

(6) The office of state actuary under chapter 44.44 RCW shall provide staff and technical support to the committee. [2005 c 24 § 1; 2003 c 295 § 1.]

41.04.278 Select committee on pension policy—Subcommittees. (1) The select committee on pension policy may form three function-specific subcommittees, as set forth under subsection (2) of this section, from the members under RCW 41.04.276(1) (a) through (e), as follows:

(a) A public safety subcommittee with one member from each group under RCW 41.04.276(1) (a) through (e);

(b) An education subcommittee with one member from each group under RCW 41.04.276(1) (a) through (e); and

(c) A state and local government subcommittee, with one retiree member under RCW 41.04.276(1)(d) and two members from each group under RCW 41.04.276(1) (a) through (e).

The retiree members may serve on more than one subcommittee to ensure representation on each subcommittee.

(2)(a) The public safety subcommittee shall focus on pension issues affecting public safety employees who are members of the law enforcement officers' and firefighters',

public safety employees', and Washington state patrol retirement systems.

(b) The education subcommittee shall focus on pension issues affecting educational employees who are members of the public employees', teachers', and school employees' retirement systems.

(c) The state and local government subcommittee shall focus on pension issues affecting state and local government employees who are members of the public employees' retirement system. [2006 c 309 § 4; 2003 c 295 § 2.]

Effective date—2006 c 309: See note following RCW 41.37.005.

41.04.281 Select committee on pension policy—Powers and duties. The select committee on pension policy has the following powers and duties:

(1) Study pension issues, develop pension policies for public employees in state retirement systems, and make recommendations to the legislature;

(2) Study the financial condition of the state pension systems, develop funding policies, and make recommendations to the legislature;

(3) Consult with the chair and vice chair on appointing members to the state actuary appointment committee upon the convening of the state actuary appointment committee established under RCW 44.44.013; and

(4) Receive the results of the actuarial audits of the actuarial valuations and experience studies administered by the pension funding council pursuant to RCW 41.45.110. The select committee on pension policy shall study and make recommendations on changes to assumptions or contribution rates to the pension funding council prior to adoption of changes under RCW 41.45.030, 41.45.035, or 41.45.060. [2003 c 295 § 5.]

41.04.300 Travel expenses of state officials and employees. Except as otherwise provided by law the payment of travel expenses by the state to any appointive official or employee of any commission, agency, or other body of the executive, judicial, or legislative branches of state government shall be in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 3.]

Additional notes found at www.leg.wa.gov

41.04.340 State employee attendance incentive program—Sick leave records to be kept—Remuneration or benefits for unused sick leave. (1) An attendance incentive program is established for all eligible employees. As used in this section the term "eligible employee" means any employee of the state, other than eligible employees of the community and technical colleges and the state board for community and technical colleges identified in RCW 28B.50.553, and teaching and research faculty at the state and regional universities and The Evergreen State College, entitled to accumulate sick leave and for whom accurate sick leave records have been maintained. No employee may receive compensation under this section for any portion of sick leave accumulated at a rate in excess of one day per month. The state and regional universities and The Evergreen State College shall maintain complete and accurate sick leave records for all teaching and research faculty.

(2) In January of the year following any year in which a minimum of sixty days of sick leave is accrued, and each January thereafter, any eligible employee may receive remuneration for unused sick leave accumulated in the previous year at a rate equal to one day's monetary compensation of the employee for each four full days of accrued sick leave in excess of sixty days. Sick leave for which compensation has been received shall be deducted from accrued sick leave at the rate of four days for every one day's monetary compensation.

From July 1, 2011, through June 29, 2013, the rate of monetary compensation for the purposes of this subsection shall not be reduced by any temporary salary reduction.

(3) At the time of separation from state service due to retirement or death, an eligible employee or the employee's estate may elect to receive remuneration at a rate equal to one day's current monetary compensation of the employee for each four full days of accrued sick leave. From July 1, 2011, through June 29, 2013, the rate of monetary compensation for the purposes of this subsection shall not be reduced by any temporary salary reduction.

(4) Remuneration or benefits received under this section shall not be included for the purpose of computing a retirement allowance under any public retirement system in this state.

(5) Except as provided in subsections (7) through (9) of this section for employees not covered by chapter 41.06 RCW, this section shall be administered, and rules shall be adopted to carry out its purposes, by the human resources director for persons subject to chapter 41.06 RCW: PROVIDED, That determination of classes of eligible employees shall be subject to approval by the office of financial management.

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

(7) In lieu of remuneration for unused sick leave at retirement as provided in subsection (3) of this section, an agency head or designee may with equivalent funds, provide eligible employees with a benefit plan that provides for reimbursement for medical expenses. This plan shall be implemented only after consultation with affected groups of employees. For eligible employees covered by chapter 41.06 RCW, procedures for the implementation of these plans shall be adopted by the human resources director. For eligible employees exempt from chapter 41.06 RCW, and classified employees who have opted out of coverage of chapter 41.06 RCW as provided in *RCW 41.56.201, implementation procedures shall be adopted by an agency head having jurisdiction over the employees.

(8) Implementing procedures adopted by the human resources director or agency heads shall require that each medical expense plan authorized by subsection (7) of this section apply to all eligible employees in any one of the following groups: (a) Employees in an agency; (b) employees in a major organizational subdivision of an agency; (c) employees at a major operating location of an agency; (d) exempt employees under the jurisdiction of an elected or appointed Washington state executive; (e) employees of the Washington state senate; (f) employees of the Washington state house

of representatives; (g) classified employees in a bargaining unit established by the director of personnel; or (h) other group of employees defined by an agency head that is not designed to provide an individual-employee choice regarding participation in a medical expense plan. However, medical expense plans for eligible employees in any of the groups under (a) through (h) of this subsection who are covered by a collective bargaining agreement shall be implemented only by written agreement with the bargaining unit's exclusive representative and a separate medical expense plan may be provided for unrepresented employees.

(9) Medical expense plans authorized by subsection (7) of this section must require as a condition of participation in the plan that employees in the group affected by the plan sign an agreement with the employer. The agreement must include a provision to hold the employer harmless should the United States government find that the employer or the employee is in debt to the United States as a result of the employee not paying income taxes due on the equivalent funds placed into the plan, or as a result of the employer not withholding or deducting a tax, assessment, or other payment on the funds as required by federal law. The agreement must also include a provision that requires an eligible employee to forfeit remuneration under subsection (3) of this section if the employee belongs to a group that has been designated to participate in the medical expense plan permitted under this section and the employee refuses to execute the required agreement. [2011 1st sp.s. c 43 § 432; 2011 1st sp.s. c 39 § 12; 2002 c 354 § 227. Prior: 1998 c 254 § 1; 1998 c 116 § 2; 1997 c 232 § 2; 1993 c 281 § 17; 1991 c 249 § 1; 1990 c 162 § 1; 1980 c 182 § 1; 1979 ex.s. c 150 § 1.]

Reviser's note: *(1) RCW 41.56.201 was repealed by 2002 c 354 § 403, effective July 1, 2005.

(2) This section was amended by 2011 1st sp.s. c 39 § 12 and by 2011 1st sp.s. c 43 § 432, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2011 1st sp.s. c 39: See note following RCW 41.04.820.

Additional notes found at www.leg.wa.gov

41.04.350 Mandatory retirement prior to seventy years of age prohibited—Exceptions—Waiver of mandatory retirement. (1) Notwithstanding any other provisions of law, no employee of the state of Washington or any of its political subdivisions or any institution supported in total or in part by the state or any of its political subdivisions, other than employees covered by chapters 41.26 and 43.43 RCW, shall be compelled to retire solely on the basis of age prior to attaining seventy years of age.

(2) All compulsory retirement provisions relating to public employees, other than employees covered by chapters 41.26 and 43.43 RCW, may be waived for individuals attaining seventy years of age by the individual's employer. [1979 ex.s. c 159 § 1.]

41.04.360 State-employed chaplains—Housing allowance. In the case of a minister or other clergyperson employed as a chaplain in a state institution or agency, there is designated in the salary or wage paid to the person an

amount up to forty percent of the gross salary as either of the following:

- (1) The rental value of a home furnished to the person as part of the person's compensation; or
- (2) The housing/rental allowance paid to the person as part of the person's compensation, to the extent used by the person to rent or provide a home. [1982 c 190 § 1.]

Appointment and duties of institutional chaplains: RCW 72.01.210 through 72.01.260.

Volunteer law enforcement chaplains: Chapter 41.22 RCW.

41.04.362 Employee wellness program. (1) Directors of state and local entities, in consultation with applicable state agencies and employee organizations, may develop and administer a voluntary state employee wellness program.

- (2) A director may:
 - (a) Develop and implement state employee wellness policies, procedures, and activities;
 - (b) Disseminate wellness educational materials to agencies and employees;
 - (c) Encourage the establishment of wellness activities in agencies;
 - (d) Provide technical assistance and training to agencies conducting wellness activities for their employees;
 - (e) Develop standards by which agencies sponsoring specific wellness activities may impose a fee to participating employees to help defray the cost of those activities;
 - (f) Monitor and evaluate the effectiveness of this program, including the collection, analysis, and publication of relevant statistical information; and
 - (g) Perform other duties and responsibilities as necessary to carry out the purpose of this section.
- (3) No wellness program or activity that involves or requires organized or systematic physical exercise may be implemented or conducted during normal working hours. [2010 c 128 § 4; 1987 c 248 § 2.]

Legislative findings—Purpose—1987 c 248: "The legislature finds that:

- (1) Improved health among employees will result in a more productive workforce, better morale, reduced stress, lower injury rates and absenteeism, and improved recruitment and retention rates;
- (2) A substantial amount of illness and injury in the workforce is preventable because it results from lifestyle decisions;
- (3) Illness and injury among state employees can be reduced if employees engage in healthier lifestyles.

The state, as an employer, desires to foster a working environment that promotes the health and well-being of its employees. Therefore, it is the purpose of this act to establish a state employee wellness program. "Wellness program" means those policies, procedures, and activities that promote the health and well-being of state employees and that contribute to a healthful work environment." [1987 c 248 § 1.]

41.04.370 Child care—Legislative intent. The legislature recognizes that supporting child care for employees of public and private organizations is a worthwhile pursuit. To further the goals of affordable, accessible, and quality child care for working parents, the legislature intends to provide for the development of self-supporting child care programs for employees of state government. [1993 c 194 § 1; 1984 c 162 § 1.]

41.04.375 Child care—Rental of suitable space. An agency may identify space they wish to use for child care facilities or they may request assistance from the *depart-

ment of general administration in identifying the availability of suitable space in state-owned or state-leased buildings for use as child care centers for the children of state employees.

When suitable space is identified in state-owned or state-leased buildings, the *department of general administration shall establish a rental rate for organizations to pay for the space used by persons who are not state employees. [1993 c 194 § 2; 1984 c 162 § 2.]

***Reviser's note:** The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

41.04.380 Child care—Contracts—Provision of suitable space at reduced cost authorized. When suitable space is determined to be available, either agencies or organizations of state employees may contract with one or more providers to operate child care facilities.

Subject to the approval of the director of financial management, suitable space for child care centers may be provided to organizations of state employees without charge or at reduced charge for rent or services solely for the purpose of reducing employee child care costs. [1993 c 194 § 3; 1984 c 162 § 3.]

41.04.382 Child care organizations—Qualifications for services. In order to qualify for services under RCW 41.04.380, state employee child care organizations shall be organized as nonprofit under chapter 24.03 RCW. [1993 c 194 § 4.]

41.04.385 Child care—Legislative findings—State policy—Responsibilities of director of enterprise services. The legislature finds that (1) demographic, economic, and social trends underlie a critical and increasing demand for child care in the state of Washington; (2) working parents and their children benefit when the employees' child care needs have been resolved; (3) the state of Washington should serve as a model employer by creating a supportive atmosphere, to the extent feasible, in which its employees may meet their child care needs; and (4) the state of Washington should encourage the development of partnerships between state agencies, state employees, state employee labor organizations, and private employers to expand the availability of affordable quality child care. The legislature finds further that resolving employee child care concerns not only benefits the employees and their children, but may benefit the employer by reducing absenteeism, increasing employee productivity, improving morale, and enhancing the employer's position in recruiting and retaining employees. Therefore, the legislature declares that it is the policy of the state of Washington to assist state employees by creating a supportive atmosphere in which they may meet their child care needs. Policies and procedures for state agencies to address employee child care needs will be the responsibility of the director of enterprise services in consultation with the director of the department of early learning and state employee representatives. [2011 1st sp.s. c 43 § 433; 2006 c 265 § 201; 2005 c 490 § 9; 2002 c 354 § 236; 1993 c 194 § 5; 1986 c 135 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Part headings not law—Effective date—Severability—2006 c 265: See RCW 43.215.904 through 43.215.906.

Effective date—2005 c 490: See note following RCW 43.215.540.

Additional notes found at www.leg.wa.gov

41.04.390 Flexible-time work schedules. (1) The legislature finds that flexible-time work schedules, which provide varying times for employees to arrive at and depart from work, tend to alleviate traffic congestion during peak rush hour periods and thereby reduce hazardous traffic conditions; provide more efficient use of highways and other transit facilities; and decrease fuel consumption. In addition, the legislature finds that flexible-time work schedules provide families in which both parents work outside of the home with the flexibility necessary to provide for day care; provide employees with flexibility allowing them to spend more time with their families; improve employee morale and, in-so-doing, improve productivity. Therefore, due to the clear advantages to both agencies and employees, the legislature finds that flexible-time work schedules should be utilized by agencies to the maximum extent possible.

(2) As used in this section, "flexible-time work schedule" means a daily work schedule which contains a core time of required hours during which an employee subject to the schedule is required to be present for work and designated hours before or after the core time during which an employee, with the approval of his or her agency, may elect a time of arrival to work and departure from work.

(3) Each agency shall prepare a flexible-time work schedule or schedules and shall offer the schedule or schedules to employees as an option to the traditional eight o'clock a.m. to five o'clock p.m. working day. However, an agency shall not be required to prepare or offer a flexible-time work schedule or schedules if the agency head determines that the implementation of such a schedule would serve as an impediment to the provision of services to the public or would in any other way impede the agency in accomplishing its mission.

(4) Any employee wishing to use a flexible-time work schedule prepared under subsection (3) of this section must first obtain the permission of the agency head or the agency head's designee. However, if there is an employee organization certified as an exclusive bargaining representative for a bargaining unit affected by the flexible-time work schedule, the agency shall first negotiate with the certified employee organization.

(5) Nothing in this section affects official hours during which state offices are required to be open for the transaction of business, as prescribed in RCW 42.04.060. [1985 c 411 § 1.]

41.04.393 Public safety officers—Retirement benefits—Death in the line of duty. Retirement benefits paid under chapter 41.26, 41.37, 41.40, or 43.43 RCW to beneficiaries of public safety officers who die in the line of duty shall be paid in accordance with Title 26 U.S.C. Sec. 101(h) as amended by the Fallen Hero Survivor Benefit Fairness Act of 2001. [2006 c 309 § 5; 2003 c 32 § 1.]

Effective date—2006 c 309: See note following RCW 41.37.005.

41.04.400 Consolidation of local governmental unit and first-class city retirement system—Intent. It is the purpose of RCW 41.04.405 through 41.04.430 to govern the

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retirement rights of persons whose employment status is altered when: (1) Two or more units of local government of this state, at least one of which is a first-class city with its own retirement system, enter into an agreement for the consolidated performance of a governmental service, activity, or undertaking; (2) the service, activity, or undertaking is to be performed either by one of the participating local governmental units or by a newly established separate legal entity; and (3) the employees of the participating local governmental units are not all members of the same Washington public retirement system.

RCW 41.04.405 through 41.04.430 are not intended to and do not govern retirement rights of any members of the retirement systems established by chapter 41.16, 41.18, 41.20, or 41.26 RCW, or of employees described in RCW 35.58.265, 35.58.390, or 70.08.070. To the extent there is any conflict between RCW 41.04.405 through 41.04.430 and RCW 41.04.110, the provisions of RCW 41.04.405 through 41.04.430 shall govern. [1984 c 184 § 22.]

Additional notes found at www.leg.wa.gov

41.04.405 Consolidation of local governmental unit and first-class city retirement system—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 41.04.400 through 41.04.430.

(1) "Legal entity" means any political subdivision or municipal corporation of the state, including but not limited to public agencies created under RCW 35.63.070, 36.70.060, or 39.34.030.

(2) "Consolidated employer" means the legal entity assigned by agreement to perform a governmental service, activity, or undertaking for two or more units of local government of the state, at least one of which is a first-class city with its own retirement system.

(3) "Existing employee" means a person who both (a) becomes employed by the consolidated employer within one year after the consolidation and (b) was employed by one of the combining legal entities at the time of the consolidation.

(4) "New employee" means an employee of the consolidated employer who is not an existing employee.

(5) "Active member" means a member of a retirement system who was making contributions to that retirement system at the time of the consolidation. [1984 c 184 § 23.]

Additional notes found at www.leg.wa.gov

41.04.410 Consolidation of local governmental unit and first-class city retirement system—Membership in public employees' or public safety employees' retirement system. If a consolidated employer is a participating member in the public employees' retirement system under chapter 41.40 RCW prior to the consolidation or in the public safety employees' retirement system under chapter 41.37 RCW prior to the consolidation:

(1) All existing employees of the consolidated employer who are active members of the public employees' or public safety employees' retirement system immediately prior to the consolidation shall continue to be members of that retirement system while employed by the consolidated employer.

(2) All existing employees of the consolidated employer who are active members of a first-class city retirement sys-

tem under chapter 41.28 RCW immediately prior to the consolidation shall cease to be members of that system at the time of the consolidation and, if eligible, shall immediately become members of the public employees' or public safety employees' retirement system. However, any such active member may, by a writing filed with the consolidated employer within thirty days after the consolidation or within thirty days after March 15, 1984, whichever is later, irrevocably elect instead to continue to be a member of the first-class city retirement system, thereby forever waiving any rights under the public employees' or public safety employees' retirement system based upon employment with the consolidated employer.

(3) Only prospective periods of qualifying service under the public employees' or public safety employees' retirement system may be established under this section. [2007 c 492 § 2; 1984 c 184 § 24.]

Additional notes found at www.leg.wa.gov

41.04.415 Consolidation of local governmental unit and first-class city retirement system—Membership in first-class city retirement system. If a consolidated employer is a city operating a first-class city retirement system under chapter 41.28 RCW prior to the consolidation:

(1) All existing employees of the consolidated employer who are active members of the first-class city retirement system immediately prior to the consolidation shall continue to be members of that retirement system while employed by the consolidated employer.

(2) All existing employees of the consolidated employer who are active members of the public employees' retirement system under chapter 41.40 RCW immediately prior to the consolidation shall cease to be members of that system at the time of the consolidation and, if eligible, shall immediately become members of the first-class city retirement system. However, any such active member may, by a writing filed with the consolidated employer within thirty days after the consolidation or within thirty days after March 15, 1984, whichever is later, irrevocably elect instead to continue to be a member of the public employees' retirement system, thereby forever waiving any rights under the first-class city retirement system based upon such employment with the consolidated employer.

(3) Only prospective periods of qualifying service under the first-class city retirement system may be established under this section. [1984 c 184 § 25.]

Additional notes found at www.leg.wa.gov

41.04.420 Consolidation of local governmental unit and first-class city retirement system—Newly created legal entity. If a consolidated employer is a newly created legal entity and does not immediately join the public employees' retirement system pursuant to RCW 41.40.062:

(1) All existing employees of the consolidated employer who are active members of a first-class city retirement system or the public employees' retirement system immediately prior to the consolidation shall cease to be members of these systems. However, any such active members may, by a writing filed with the consolidated employer within thirty days after the consolidation or within thirty days after March 15, 1984, whichever is later, irrevocably elect instead to continue

as members of the retirement system to which they belonged at the time of the consolidation for all periods of employment with the consolidated employer.

(2) If the consolidated employer later joins the public employees' retirement system, all existing employees still employed on that date shall, effective from that date, have the same retirement system rights and options, subject to the same conditions as employees governed by RCW 41.04.410, notwithstanding any previous election under subsection (1) of this section.

(3) No new employees of the consolidated employer may become members of an employer-sponsored retirement system until such time as the employer joins the public employees' retirement system pursuant to RCW 41.40.062. [1984 c 184 § 26.]

Additional notes found at www.leg.wa.gov

41.04.425 Consolidation of local governmental unit and first-class city retirement system—Limitations. Notwithstanding any provision of RCW 41.04.410, 41.04.415, or 41.04.420:

(1) No person may simultaneously accrue any contractual rights whatsoever in more than one Washington public retirement system as a consequence of employment by a consolidated employer.

(2) No person who makes a written election permitted by RCW 41.04.410, 41.04.415, or 41.04.420 may receive a retirement allowance from such retirement system under any circumstances while employed or reemployed by the consolidated employer.

(3) No person may accrue any benefits or rights under any Washington public retirement system as a result of RCW 41.04.410, 41.04.415, or 41.04.420 except such rights of continuing membership that are specifically and explicitly granted by RCW 41.04.410, 41.04.415, or 41.04.420.

(4) Nothing in RCW 41.04.400 through 41.04.425 is intended to constitute an amendment or waiver of any law or rule of any Washington public retirement system, including but not limited to those governing eligibility for service credit, benefits, or membership, except to broaden the class of legal entities that are deemed to be participating employers in the retirement systems in the specific circumstances stated in RCW 41.04.410, 41.04.415, and 41.04.420. [1984 c 184 § 27.]

Additional notes found at www.leg.wa.gov

41.04.430 Consolidation of local governmental unit and first-class city retirement system—Compliance with laws and rules—Application of sections. (1) Consolidated employers that employ persons governed by RCW 41.04.410, 41.04.415, or 41.04.420 shall comply with all laws and rules governing the retirement system in which the persons participate as members, including but not limited to the obligations to make employer contributions, to deduct and transmit employee contributions, and to submit required reports.

(2) RCW 41.04.410, 41.04.415, 41.04.420, and 41.04.425 govern any consolidation occurring on or after December 31, 1981. [1984 c 184 § 28.]

Additional notes found at www.leg.wa.gov

41.04.440 Members' retirement contributions—Pick up by employer—Purpose—Benefits not contractual right. (1) The sole purpose of RCW 41.04.445 and 41.04.450 is to allow the members of the retirement systems created in chapters 2.10, 2.12, 41.26, 41.32, 41.35, 41.37, 41.40, 41.34, and 43.43 RCW to enjoy the tax deferral benefits allowed under 26 U.S.C. 414(h). Chapter 227, Laws of 1984 does not alter in any manner the provisions of RCW 41.45.060, 41.45.061, and 41.45.067 which require that the member contribution rates shall be set so as to provide fifty percent of the cost of the respective retirement plans.

(2) Should the legislature revoke any benefit allowed under 26 U.S.C. 414(h), no affected employee shall be entitled thereafter to receive such benefit as a matter of contractual right. [2007 c 492 § 3; 2000 c 247 § 1101; 1995 c 239 § 322; 1984 c 227 § 1.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.04.445 Members' retirement contributions—Pick up by employer—Implementation. (1) This section applies to all members who are:

(a) Judges under the retirement system established under chapter 2.10, 2.12, or 2.14 RCW;

(b) Employees of the state under the retirement system established by chapter 41.32, 41.37, 41.40, or 43.43 RCW;

(c) Employees of school districts under the retirement system established by chapter 41.32 or 41.40 RCW, except for substitute teachers as defined by RCW 41.32.010;

(d) Employees of educational service districts under the retirement system established by chapter 41.32 or 41.40 RCW; or

(e) Employees of community college districts under the retirement system established by chapter 41.32 or 41.40 RCW.

(2) Only for compensation earned after the effective date of the implementation of this section and as provided by section 414(h) of the federal internal revenue code, the employer of all the members specified in subsection (1) of this section shall pick up only those member contributions as required under:

(a) RCW 2.10.090(1);

(b) RCW 2.12.060;

(c) RCW 2.14.090;

(d) RCW 41.32.263;

(e) RCW 41.32.350;

(f) RCW 41.40.330 (1) and (3);

(g) RCW 41.45.061 and 41.45.067;

(h) RCW 41.34.070;

(i) *RCW 43.43.300; and

(j) RCW 41.34.040.

(3) Only for the purposes of federal income taxation, the gross income of the member shall be reduced by the amount of the contribution to the respective retirement system picked up by the employer.

(4) All member contributions to the respective retirement system picked up by the employer as provided by this section, plus the accrued interest earned thereon, shall be paid to the member upon the withdrawal of funds or lump sum

payment of accumulated contributions as provided under the provisions of the retirement systems.

(5) At least forty-five days prior to implementing this section, the employer shall provide:

(a) A complete explanation of the effects of this section to all members; and

(b) Notification of such implementation to the director of the department of retirement systems. [2007 c 492 § 4; 2000 c 247 § 1102; 1995 c 239 § 323; 1992 c 212 § 15; 1990 c 274 § 6; 1988 c 109 § 24; 1985 c 13 § 2; 1984 c 227 § 2.]

*Reviser's note: RCW 43.43.300 was repealed by 2001 c 329 § 12.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Findings—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

Purpose—Application—1985 c 13: "The sole purpose of this 1985 act is to clarify and more explicitly state the intent of the legislature in enacting chapter 227, Laws of 1984. This 1985 act makes no substantive changes in the meaning or impact of that chapter and the provisions of this 1985 act shall be deemed to have retrospective application to September 1, 1984." [1985 c 13 § 1.]

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.04.450 Members' retirement contributions—Pick up by employer—Optional implementation and withdrawal. (1) Employers of those members under chapters 41.26, 41.34, 41.35, 41.37, and 41.40 RCW who are not specified in RCW 41.04.445 may choose to implement the employer pick up of all member contributions without exception under RCW 41.26.080(1)(a), 41.26.450, 41.40.330(1), 41.45.060, 41.45.061, and 41.45.067 and chapter 41.34 RCW. If the employer does so choose, the employer and members shall be subject to the conditions and limitations of RCW 41.04.445 (3), (4), and (5) and 41.04.455.

(2) An employer exercising the option under this section may later choose to withdraw from and/or reestablish the employer pick up of member contributions only once in a calendar year following forty-five days prior notice to the director of the department of retirement systems. [2007 c 492 § 5; 2003 c 294 § 1; 2000 c 247 § 1103; 1995 c 239 § 324; 1985 c 13 § 3; 1984 c 227 § 3.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.04.455 Members' retirement contributions—Pick up by employer—Conditions. The following two conditions apply to the employer pick up of member contributions authorized under RCW 41.04.445 (section 2, chapter 227, Laws of 1984):

(1) The retirement contributions, although designated as member contributions, will be picked up by the employer, as provided in RCW 41.04.445 (section 2, chapter 227, Laws of 1984) in lieu of contributions by the member.

(2) No retirement system member will have the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system. [1985 c 13 § 4.]

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

41.04.460 Financial planning for retirement—Department of enterprise services to provide information to retirement system members. The department of enterprise services, through the combined benefits communication project, shall prepare information encouraging individual financial planning for retirement and describing the potential consequences of early retirement, including members' assumption of health insurance costs, members' receipt of reduced retirement benefits, and the increased period of time before members will become eligible for cost-of-living adjustments. The department of retirement systems shall distribute the information to members who are eligible to retire under the provisions of chapter 234, Laws of 1992. Prior to retiring, such members who elect to retire shall sign a statement acknowledging their receipt and understanding of the information. [2011 1st sp.s. c 43 § 472; 1992 c 234 § 10.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.04.500 Disability leave supplement for law enforcement officers and firefighters. County, municipal, and political subdivision employers of full-time, commissioned law enforcement officers and full-time, paid firefighters shall provide a disability leave supplement to such employees who qualify for payments under RCW 51.32.090 due to a temporary total disability. [1985 c 462 § 1.]

Additional notes found at www.leg.wa.gov

41.04.505 Disability leave supplement for law enforcement officers and firefighters—Amount. The disability leave supplement shall be an amount which, when added to the amount payable under RCW 51.32.090 will result in the employee receiving the same pay he or she would have received for full time active service, taking into account that industrial insurance payments are not subject to federal income or social security taxes. [1985 c 462 § 2.]

Additional notes found at www.leg.wa.gov

41.04.510 Disability leave supplement for law enforcement officers and firefighters—Payment. The disability leave supplement shall be paid as follows:

(1) The disability leave supplement shall begin on the sixth calendar day from the date of the injury or illness which entitles the employee to benefits under RCW 51.32.090. For the purposes of this section, the day of injury shall constitute the first calendar day.

(2) One-half of the amount of the supplement as defined in RCW 41.04.505 shall be charged against the accrued paid leave of the employee. In computing such charge, the employer shall convert accumulated days, or other time units as the case may be, to a money equivalent based on the base monthly salary of the employee at the time of the injury or illness. "Base monthly salary" for the purposes of this section means the amount earned by the employee before any voluntary or involuntary payroll deductions, and not including overtime pay.

(3) One-half of the amount of the supplement as defined in RCW 41.04.505 shall be paid by the employer.

If an employee has no accrued paid leave at the time of an injury or illness which entitles him or her to benefits under RCW 51.32.090, or if accrued paid leave is exhausted during

the period of disability, the employee shall receive only that portion of the disability leave supplement prescribed by subsection (3) of this section. [2012 c 117 § 7; 1989 c 21 § 1; 1985 c 462 § 3.]

Additional notes found at www.leg.wa.gov

41.04.515 Disability leave supplement for law enforcement officers and firefighters—Time limitation. The disability leave supplement provided by RCW 41.04.500 through 41.04.530 shall continue as long as the employee is receiving benefits under RCW 51.32.090, up to a maximum of six months from the date of the injury or illness. [1985 c 462 § 4.]

Additional notes found at www.leg.wa.gov

41.04.520 Disability leave supplement for law enforcement officers and firefighters—Employee to perform light duty tasks. While an employee is receiving disability leave supplement, the employee, subject to the approval of his or her treating physician, shall perform light duty tasks in the employee's previous department as the employer may require, with no reduction in the disability leave supplement. [1985 c 462 § 5.]

Additional notes found at www.leg.wa.gov

41.04.525 Disability leave supplement for law enforcement officers and firefighters—Continuation of employee insurance benefits. The disability leave supplement provided in RCW 41.04.510(3) shall not be considered salary or wages for personal services: PROVIDED, That the employee shall also continue to receive all insurance benefits provided in whole or in part by the employer, notwithstanding the fact that some portion of the cost of those benefits is paid by the employee: PROVIDED FURTHER, That the portion of the cost not paid by the employer continues to be paid by the employee. [1989 c 11 § 10; 1985 c 462 § 7.]

Additional notes found at www.leg.wa.gov

41.04.530 Disability leave supplement for law enforcement officers and firefighters—Exhaustion of accrued sick leave. If an employee's accrued sick leave is exhausted during the period of disability, the employee may, for a period of two months following return to active service, draw prospectively upon sick leave the employee is expected to accumulate up to a maximum of three days or three work shifts, whichever is greater. Any sick leave drawn prospectively as provided in this section shall be charged against earned sick leave until such time as the employee has accrued the amount needed to restore the amount used. In the event an employee terminates active service without having restored the sick leave drawn prospectively, the employer shall deduct the actual cost of any payments made under this section from compensation or other money payable to the employee, or otherwise recover such payments. [1985 c 462 § 8.]

Additional notes found at www.leg.wa.gov

41.04.535 Disability leave supplement for law enforcement officers and firefighters—Greater benefits not precluded. Nothing in RCW 41.04.500 through 41.04.530 shall preclude employers of law enforcement officers and firefighters and such employees from entering into

agreements which provide benefits to employees which are greater than those prescribed by RCW 41.04.500 through 41.04.530, nor is there any intent by the legislature to alter or in any way affect any such agreements which may now exist. [1985 c 462 § 11.]

Additional notes found at www.leg.wa.gov

41.04.540 Disability leave supplement for law enforcement officers and firefighters—Supplement not required in smaller cities, towns, and counties. Cities and towns with a population of less than twenty-five hundred and counties with a population of less than ten thousand shall not be required to provide a disability leave supplement to their commissioned law enforcement officers and full-time paid firefighters who qualify for payments pursuant to RCW 51.32.090, due to temporary total disability. [1985 c 462 § 12.]

Additional notes found at www.leg.wa.gov

41.04.545 Disability leave supplement for law enforcement officers and firefighters—Vested right not created. Chapter 462, Laws of 1985 neither grants employees a vested right to receive a disability leave supplement nor creates a contractual obligation on behalf of the state or its political subdivisions to provide a disability leave supplement. [1985 c 462 § 13.]

Additional notes found at www.leg.wa.gov

41.04.550 Disability leave supplement for law enforcement officers and firefighters—Not subject to interest arbitration. Disability leave supplement payments for employees covered by chapter 462, Laws of 1985 shall not be subject to interest arbitration as defined in RCW 41.56.430 through 41.56.905. [1985 c 462 § 14.]

Additional notes found at www.leg.wa.gov

41.04.580 Dismissal of municipal employees during World War II—Redress authorized. A municipality may by ordinance or resolution provide for redress to any municipal employee or the surviving spouse of a municipal employee who, due to the promulgation of federal Executive Order 9066, was dismissed, terminated from a temporary position, or rejected during the person's probationary period, or who voluntarily resigned in lieu of dismissal from municipal employment, and who incurred salary and other employment related losses as a result thereof during the years 1942 through 1947. [1986 c 225 § 2.]

Legislative findings—1986 c 225: "The dismissal or termination of various municipal employees during World War II resulted from the promulgation of federal Executive Order 9066 which was based mainly on fear and suspicion rather than on factual justification. It is fair and just that redress be made to those employees who were terminated from municipal employment during the wartime years because of these circumstances. The legislature therefore finds that equity and fairness will be served by authorizing municipalities to accept claims for salary and other employment related losses suffered by the municipal employees directly affected and to pay the claims subject to the provisions of this chapter." [1986 c 225 § 1.]

Reparations to state employees terminated during World War II: Chapter 41.68 RCW.

Additional notes found at www.leg.wa.gov

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41.04.585 Dismissal of municipal employees during World War II—Redress not mandatory. RCW 41.04.580 through 41.04.595 do not require a municipality to adopt an ordinance or resolution providing for redress of salary and other employment related losses. [1986 c 225 § 3.]

Legislative findings—Severability—1986 c 225: See notes following RCW 41.04.580.

41.04.590 Dismissal of municipal employees during World War II—Redress—Limitations. Under the system of redress authorized under RCW 41.04.580 through 41.04.595:

(1) A municipality may determine in its sole discretion the monetary amount of redress for salary and other employment related losses, which may not exceed five thousand dollars for any undivided claim.

(2) If a municipality adopts an ordinance or resolution providing for redress of salary and other employment related losses, it has no obligation to notify directly any person of possible eligibility for redress of salary and other employment related losses. [1986 c 225 § 4.]

Legislative findings—Severability—1986 c 225: See notes following RCW 41.04.580.

41.04.595 Dismissal of municipal employees during World War II—Definitions. For the purposes of this chapter, "municipality" means a city, town, county, special purpose district, municipal corporation, quasi-municipal corporation, or political subdivision of the state of Washington. For the purposes of this chapter, a "municipal employee" means an employee of a municipality. [1986 c 225 § 5.]

Legislative findings—Severability—1986 c 225: See notes following RCW 41.04.580.

41.04.650 Leave sharing program—Intent. The legislature finds that: (1) State employees historically have joined together to help their fellow employees who suffer from, or have relatives or household members suffering from, an extraordinary or severe illness, injury, impairment, or physical or mental condition which prevents the individual from working and causes great economic and emotional distress to the employee and his or her family; and (2) these circumstances may be exacerbated because the affected employees use all their accrued sick leave and annual leave and are forced to take leave without pay or terminate their employment. Therefore, the legislature intends to provide for the establishment of a leave sharing program. [1989 c 93 § 1.]

Additional notes found at www.leg.wa.gov

41.04.655 Leave sharing program—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 41.04.650 through 41.04.670, 28A.400.380, and section 7, chapter 93, Laws of 1989.

(1) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, between family or household members as defined in RCW 26.50.010; (b) sexual assault of one family or household member by another family or household member; or (c) stalking as defined in RCW

9A.46.110 of one family or household member by another family or household member.

(2) "Employee" means any employee of the state, including employees of school districts and educational service districts, who are entitled to accrue sick leave or annual leave and for whom accurate leave records are maintained.

(3) "Program" means the leave sharing program established in RCW 41.04.660.

(4) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including state-ordered active duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

(5) "Sexual assault" has the same meaning as set forth in RCW 70.125.030.

(6) "Stalking" has the same meaning as set forth in RCW 9A.46.110.

(7) "State agency" or "agency" means departments, offices, agencies, or institutions of state government, the legislature, institutions of higher education, school districts, and educational service districts.

(8) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard, and any other category of persons designated by the president of the United States in time of war or national emergency.

(9) "Victim" means a person against whom domestic violence, sexual assault, or stalking has been committed as defined in this section. [2008 c 36 § 1; 2003 1st sp.s. c 12 § 1; 1990 c 33 § 569; 1989 c 93 § 2.]

Effective date—2008 c 36: "This act takes effect October 1, 2008." [2008 c 36 § 4.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Additional notes found at www.leg.wa.gov

41.04.660 Leave sharing program—Created. The Washington state leave sharing program is hereby created. The purpose of the program is to permit state employees, at no significantly increased cost to the state of providing annual leave, sick leave, or personal holidays, to come to the aid of a fellow state employee who is suffering from or has a relative or household member suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition; a fellow state employee who is a victim of domestic violence, sexual assault, or stalking; or a fellow state employee who has been called to service in the uniformed services, which has caused or is likely to cause the employee to take leave without pay or terminate his or her employment. [2008 c 36 § 2; 2003 1st sp.s. c 12 § 2; 1996 c 176 § 2; 1990 c 23 § 1; 1989 c 93 § 3.]

Effective date—2008 c 36: See note following RCW 41.04.655.

Additional notes found at www.leg.wa.gov

41.04.665 Leave sharing program—When employee may receive leave—When employee may transfer accrued leave—Transfer of leave between employees of different agencies. (1) An agency head may permit an employee to receive leave under this section if:

(a)(i) The employee suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;

(ii) The employee has been called to service in the uniformed services;

(iii) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has needed skills to assist in responding to the emergency or its aftermath and volunteers his or her services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;

(iv) The employee is a victim of domestic violence, sexual assault, or stalking; or

(v) During the 2009-2011 fiscal biennium only, the employee is eligible to use leave in lieu of temporary layoff under section 3(5), chapter 32, Laws of 2010 1st sp. sess.;

(b) The illness, injury, impairment, condition, call to service, emergency volunteer service, or consequence of domestic violence, sexual assault, temporary layoff under section 3(5), chapter 32, Laws of 2010 1st sp. sess., or stalking has caused, or is likely to cause, the employee to:

(i) Go on leave without pay status; or

(ii) Terminate state employment;

(c) The employee's absence and the use of shared leave are justified;

(d) The employee has depleted or will shortly deplete his or her:

(i) Annual leave and sick leave reserves if he or she qualifies under (a)(i) of this subsection;

(ii) Annual leave and paid military leave allowed under RCW 38.40.060 if he or she qualifies under (a)(ii) of this subsection; or

(iii) Annual leave if he or she qualifies under (a)(iii), (iv), or (v) of this subsection;

(e) The employee has abided by agency rules regarding:

(i) Sick leave use if he or she qualifies under (a)(i) or (iv) of this subsection; or

(ii) Military leave if he or she qualifies under (a)(ii) of this subsection; and

(f) The employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if he or she qualifies under (a)(i) of this subsection.

(2) The agency head shall determine the amount of leave, if any, which an employee may receive under this section. However, an employee shall not receive a total of more than five hundred twenty-two days of leave, except that, a supervisor may authorize leave in excess of five hundred twenty-two days in extraordinary circumstances for an employee qualifying for the shared leave program because he or she is suffering from an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature. Shared leave received under the uniformed service

shared leave pool in RCW 41.04.685 is not included in this total.

(3) An employee may transfer annual leave, sick leave, and his or her personal holiday, as follows:

(a) An employee who has an accrued annual leave balance of more than ten days may request that the head of the agency for which the employee works transfer a specified amount of annual leave to another employee authorized to receive leave under subsection (1) of this section. In no event may the employee request a transfer of an amount of leave that would result in his or her annual leave account going below ten days. For purposes of this subsection (3)(a), annual leave does not accrue if the employee receives compensation in lieu of accumulating a balance of annual leave.

(b) An employee may transfer a specified amount of sick leave to an employee requesting shared leave only when the donating employee retains a minimum of one hundred seventy-six hours of sick leave after the transfer.

(c) An employee may transfer, under the provisions of this section relating to the transfer of leave, all or part of his or her personal holiday, as that term is defined under RCW 1.16.050, or as such holidays are provided to employees by agreement with a school district's board of directors if the leave transferred under this subsection does not exceed the amount of time provided for personal holidays under RCW 1.16.050.

(4) An employee of an institution of higher education under RCW 28B.10.016, school district, or educational service district who does not accrue annual leave but does accrue sick leave and who has an accrued sick leave balance of more than twenty-two days may request that the head of the agency for which the employee works transfer a specified amount of sick leave to another employee authorized to receive leave under subsection (1) of this section. In no event may such an employee request a transfer that would result in his or her sick leave account going below twenty-two days. Transfers of sick leave under this subsection are limited to transfers from employees who do not accrue annual leave. Under this subsection, "sick leave" also includes leave accrued pursuant to RCW *28A.400.300(2) or 28A.310.240(1) with compensation for illness, injury, and emergencies.

(5) Transfers of leave made by an agency head under subsections (3) and (4) of this section shall not exceed the requested amount.

(6) Leave transferred under this section may be transferred from employees of one agency to an employee of the same agency or, with the approval of the heads of both agencies, to an employee of another state agency.

(7) While an employee is on leave transferred under this section, he or she shall continue to be classified as a state employee and shall receive the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued annual leave or sick leave.

(a) All salary and wage payments made to employees while on leave transferred under this section shall be made by the agency employing the person receiving the leave. The value of leave transferred shall be based upon the leave value of the person receiving the leave.

(b) In the case of leave transferred by an employee of one agency to an employee of another agency, the agencies

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involved shall arrange for the transfer of funds and credit for the appropriate value of leave.

(i) Pursuant to rules adopted by the office of financial management, funds shall not be transferred under this section if the transfer would violate any constitutional or statutory restrictions on the funds being transferred.

(ii) The office of financial management may adjust the appropriation authority of an agency receiving funds under this section only if and to the extent that the agency's existing appropriation authority would prevent it from expending the funds received.

(iii) Where any questions arise in the transfer of funds or the adjustment of appropriation authority, the director of financial management shall determine the appropriate transfer or adjustment.

(8) Leave transferred under this section shall not be used in any calculation to determine an agency's allocation of full time equivalent staff positions.

(9) The value of any leave transferred under this section which remains unused shall be returned at its original value to the employee or employees who transferred the leave when the agency head finds that the leave is no longer needed or will not be needed at a future time in connection with the illness or injury for which the leave was transferred or for any other qualifying condition. Before the agency head makes a determination to return unused leave in connection with an illness or injury, or any other qualifying condition, he or she must receive from the affected employee a statement from the employee's doctor verifying that the illness or injury is resolved. To the extent administratively feasible, the value of unused leave which was transferred by more than one employee shall be returned on a pro rata basis.

(10) An employee who uses leave that is transferred to him or her under this section may not be required to repay the value of the leave that he or she used.

(11) The human resources director may adopt rules as necessary to implement subsection (2) of this section. [2011 1st sp.s. c 43 § 435. Prior: 2010 1st sp.s. c 32 § 10; 2010 c 168 § 1; 2008 c 36 § 3; prior: 2007 c 454 § 1; 2007 c 25 § 2; 2003 1st sp.s. c 12 § 3; 1999 c 25 § 1; 1996 c 176 § 1; 1990 c 23 § 2; 1989 c 93 § 4.]

*Reviser's note: RCW 28A.400.300 was amended by 2012 c 186 § 20, changing subsection (2) to subsection (1)(b).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—Conflict with federal requirements—Effective date—2010 1st sp.s. c 32: See notes following RCW 42.04.060.

Effective date—2010 c 168: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 23, 2010]." [2010 c 168 § 2.]

Effective date—2008 c 36: See note following RCW 41.04.655.

Severability—Effective date—2007 c 25: See notes following RCW 41.04.685.

Additional notes found at www.leg.wa.gov

41.04.670 Leave sharing program—Adoption of rules. The office of financial management and other personnel authorities shall each adopt rules applicable to employees under their respective jurisdictions: (1) Establishing appropriate parameters for the program which are consistent with the provisions of RCW 41.04.650 through 41.04.665; (2) pro-

viding for equivalent treatment of employees between their respective jurisdictions and allowing transfers of leave in accordance with RCW 41.04.665(5); (3) establishing procedures to ensure that the program does not significantly increase the cost of providing leave; and (4) providing for the administration of the program and providing for maintenance and collection of sufficient information on the program to allow a thorough legislative review. [2011 1st sp.s. c 43 § 436; 1993 c 281 § 18; 1990 c 23 § 3; 1989 c 93 § 5.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.04.680 Pooled sick leave—Plan establishment—Calculations—Participation—Higher education institutions. The office of financial management and other personnel authorities shall adopt rules or policies governing the accumulation and use of sick leave for state agency and department employees, expressly for the establishment of a plan allowing participating employees to pool sick leave and allowing any sick leave thus pooled to be used by any participating employee who has used all of the sick leave, annual leave, and compensatory leave that has been personally accrued by him or her. Each department or agency of the state may allow employees to participate in a sick leave pool established by the office of financial management and other personnel authorities.

(1) For purposes of calculating maximum sick leave that may be donated or received by any one employee, pooled sick leave:

(a) Is counted and converted in the same manner as sick leave under the Washington state leave sharing program as provided in this chapter; and

(b) Does not create a right to sick leave in addition to the amount that may be donated or received under the Washington state leave sharing program as provided in this chapter.

(2) The office of financial management and other personnel authorities, except the personnel authorities for higher education institutions, shall adopt rules which provide:

(a) That employees are eligible to participate in the sick leave pool after one year of employment with the state or agency of the state if the employee has accrued a minimum amount of unused sick leave, to be established by rule;

(b) That participation in the sick leave pool shall, at all times, be voluntary on the part of the employees;

(c) That any sick leave pooled shall be removed from the personally accumulated sick leave balance of the employee contributing the leave;

(d) That any sick leave in the pool that is used by a participating employee may be used only for the employee's personal illness, accident, or injury;

(e) That a participating employee is not eligible to use sick leave accumulated in the pool until all of his or her personally accrued sick, annual, and compensatory leave has been used;

(f) A maximum number of days of sick leave in the pool that any one employee may use;

(g) That a participating employee who uses sick leave from the pool is not required to recontribute such sick leave to the pool, except as otherwise provided in this section;

(h) That an employee who cancels his or her membership in the sick leave pool is not eligible to withdraw the days of sick leave contributed by that employee to the pool;

(i) That an employee who transfers from one position in state government to another position in state government may transfer from one pool to another if the eligibility criteria of the pools are comparable and the administrators of the pools have agreed on a formula for transfer of credits;

(j) That alleged abuse of the use of the sick leave pool shall be investigated, and, on a finding of wrongdoing, the employee shall repay all of the sick leave credits drawn from the sick leave pool and shall be subject to such other disciplinary action as is determined by the agency head;

(k) That sick leave credits may be drawn from the sick leave pool by a part-time employee on a pro rata basis; and

(l) That each department or agency shall maintain accurate and reliable records showing the amount of sick leave which has been accumulated and is unused by employees, in accordance with guidelines established by the department of personnel.

(3) Personnel authorities for higher education institutions shall adopt policies consistent with the needs of the employees under their respective jurisdictions. [2011 1st sp.s. c 43 § 437; 2006 c 356 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2006 c 356: "This act takes effect July 1, 2007." [2006 c 356 § 2.]

41.04.685 Uniformed service shared leave pool—Creation—Administration—Restrictions—Definitions.

(1) The uniformed service shared leave pool is created to allow employees to donate leave to be used as shared leave for any employee who has been called to service in the uniformed services and who meets the requirements of RCW 41.04.665. Participation in the pool shall, at all times, be voluntary on the part of the employee. The military department, in consultation with the office of financial management, shall administer the uniformed service shared leave pool.

(2) Employees as defined in subsection (10) of this section who are eligible to donate leave under RCW 41.04.665 may donate leave to the uniformed service shared leave pool.

(3) An employee as defined in subsection (10) of this section who has been called to service in the uniformed services and is eligible for shared leave under RCW 41.04.665 may request shared leave from the uniformed service shared leave pool.

(4) It shall be the responsibility of the employee who has been called to service to provide an earnings statement verifying military salary, orders of service, and notification of a change in orders of service or military salary.

(5) Shared leave under this section may not be granted unless the pool has a sufficient balance to fund the requested shared leave for the expected term of service.

(6) Shared leave paid under this section, in combination with military salary, shall not exceed the level of the employee's state monthly salary.

(7) Any leave donated shall be removed from the personally accumulated leave balance of the employee donating the leave.

(8) An employee who receives shared leave from the pool is not required to recontribute such leave to the pool, except as otherwise provided in this section.

(9) Leave that may be donated or received by any one employee shall be calculated as in RCW 41.04.665.

(10) As used in this section:

(a) "Employee" has the meaning provided in RCW 41.04.655, except that "employee" as used in this section does not include employees of school districts and educational service districts.

(b) "Service in the uniformed services" has the meaning provided in RCW 41.04.655.

(c) "Military salary" includes base, specialty, and other pay, but does not include allowances such as the basic allowance for housing.

(d) "Monthly salary" includes monthly salary and special pay and shift differential, or the monthly equivalent for hourly employees. "Monthly salary" does not include:

- (i) Overtime pay;
- (ii) Call back pay;
- (iii) Standby pay; or
- (iv) Performance bonuses.

(11) The office of financial management, in consultation with the military department, shall adopt rules and policies governing the donation and use of shared leave from the uniformed service shared leave pool, including definitions of pay and allowances and guidelines for agencies to use in recordkeeping concerning shared leave.

(12) Agencies shall investigate any alleged abuse of the uniformed service shared leave pool and on a finding of wrongdoing, the employee may be required to repay all of the shared leave received from the uniformed service shared leave pool.

(13) Higher education institutions shall adopt policies consistent with the needs of the employees under their respective jurisdictions. [2011 1st sp.s. c 43 § 438; 2007 c 25 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Severability—2007 c 25: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 25 § 4.]

Effective date—2007 c 25: "This act takes effect October 1, 2007." [2007 c 25 § 5.]

41.04.700 Employee assistance program—Intent.

The legislature finds that:

(1) Assisting employees in resolving personal problems that impair their performance will result in a more productive workforce, better morale, reduced stress, reduced use of medical benefits, reduced absenteeism, lower turnover rates, and fewer accidents;

(2) A substantial number of employee problems can be identified and the employees referred to treatment by an employee assistance program;

(3) The state, as an employer, desires to foster a working environment that promotes safety and productivity as well as the health and well-being of its employees.

Therefore, it is the purpose of RCW 41.04.710 through 41.04.730 to assist state employees by establishing a state employee assistance program. [1990 c 60 § 301.]

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Additional notes found at www.leg.wa.gov

41.04.710 Employee assistance program—Created.

The employee assistance program is hereby created to provide support and services to state employees who have personal problems that impair their performance in the workplace. The goal of the program is to help promote a safe, productive, and healthy state workforce by assisting state employees and their supervisors to identify and deal with such personal problems. However, nothing in this chapter relieves employees from the responsibility of performing their jobs in an acceptable manner. [1990 c 60 § 302.]

Additional notes found at www.leg.wa.gov

41.04.720 Employee assistance program—Director of enterprise services—Duties. The director of enterprise services shall:

(1) Administer the state employee assistance program to assist employees who have personal problems that adversely affect their job performance or have the potential of doing so;

(2) Develop policies, procedures, and activities for the program;

(3) Encourage and promote the voluntary use of the employee assistance program by increasing employee awareness and disseminating educational materials;

(4) Provide technical assistance and training to agencies on how to use the employee assistance program;

(5) Assist and encourage supervisors to identify and refer employees with problems that impair their performance by incorporating proper use of the program in management training, management performance criteria, ongoing communication with agencies, and other appropriate means;

(6) Offer substance abuse prevention and awareness activities to be provided through the employee assistance program and the state employee wellness program;

(7) Monitor and evaluate the effectiveness of the program, including the collection, analysis, and publication of relevant statistical information; and

(8) Consult with state agencies, institutions of higher education, and employee organizations in carrying out the purposes of RCW 41.04.700 through 41.04.730. [2011 1st sp.s. c 43 § 439; 1990 c 60 § 303.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.04.730 Employee assistance program—Information confidential—Exceptions.

Individual employees' participation in the employee assistance program and all individually identifiable information gathered in the process of conducting the program shall be held in strict confidence; except that agency management may be provided with the following information about employees referred by that agency management due to poor job performance:

(1) Whether or not the referred employee made an appointment;

(2) The date and time the employee arrived and departed;

(3) Whether the employee agreed to follow the advice of counselors; and

(4) Whether further appointments were scheduled.

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Participation or nonparticipation by any employee in the employee assistance program shall not be a factor in any decision affecting an employee's job security, promotional opportunities, corrective or disciplinary action, or other employment rights. [1990 c 60 § 304.]

Additional notes found at www.leg.wa.gov

41.04.750 Supported employment—Definitions.

Unless the context clearly requires otherwise the definitions in this section apply throughout RCW 41.04.760 through 41.04.780.

(1) "Developmental disability" means a disability as defined in RCW 71A.10.020.

(2) "Significant disability" means a disability as defined in 29 U.S.C. Sec. 705.

(3) "Supported employment" means employment for individuals with developmental disabilities or other significant disabilities who require on-the-job training and long-term support in order to fulfill their job duties successfully. Supported employment offers the same wages and benefits as similar nonsupported employment positions.

(4) "State agency" means any office, department, division, bureau, board, commission, community college or institution of higher education, or agency of the state of Washington. [1999 c 178 § 2; 1997 c 287 § 2.]

Finding—1997 c 287: "The legislature finds that the rate of unemployment among individuals with developmental disabilities or other significant disabilities is high due to the limited employment opportunities available to them. Given that individuals with developmental disabilities or other significant disabilities are capable of filling employment positions in the general workforce population, supported employment is an effective way of integrating such individuals into the general workforce population. The creation of supported employment programs can increase the types and availability of employment positions for individuals with developmental disabilities or other significant disabilities." [1999 c 178 § 1; 1997 c 287 § 1.]

41.04.760 Supported employment—State agency participation. State agencies are encouraged to participate in supported employment activities. The department of social and health services, in conjunction with the department of personnel and the office of financial management, shall identify agencies that have positions and funding conducive to implementing supported employment. An agency may only participate in supported employment activities pursuant to this section if the agency is able to operate the program within its existing budget. These agencies shall:

(1) Designate a coordinator who will be responsible for information and resource referral regarding the agency's supported employment program. The coordinator shall serve as a liaison between the agency and the department of personnel regarding supported employment;

(2) Submit an annual update to the department of social and health services, the department of personnel, and the office of financial management. The annual update shall include: A description of the agency's supported employment efforts, the number of individuals placed in supported employment positions, and an overall evaluation of the effectiveness of supported employment for the agency. [1999 c 178 § 3; 1997 c 287 § 3.]

Finding—1997 c 287: See note following RCW 41.04.750.

41.04.770 Supported employment—Implementation.

The department of social and health services and the department of enterprise services shall, after consultation with supported employment provider associations and other interested parties, encourage, educate, and assist state agencies in implementing supported employment programs. The department of enterprise services shall provide human resources technical assistance to agencies implementing supported employment programs. [2011 1st sp.s. c 43 § 440; 1997 c 287 § 4.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Finding—1997 c 287: See note following RCW 41.04.750.

41.04.780 Supported employment—Impact on other employment positions. The creation of supported employment positions under RCW 41.04.760 and 41.04.770 shall not count against an agency's allotted full-time equivalent employee positions. Supported employment programs are not intended to displace employees or abrogate any reduction-in-force rights. [1997 c 287 § 5.]

Finding—1997 c 287: See note following RCW 41.04.750.

41.04.800 Chapter not applicable to officers and employees of state convention and trade center. The provisions of this chapter shall not be applicable to the officers and employees of the nonprofit corporation formed under *chapter 67.40 RCW. [1984 c 210 § 5.]

***Reviser's note:** A majority of chapter 67.40 RCW was repealed by 2010 1st sp.s. c 15 § 14, effective November 30, 2010. RCW 67.40.020 was repealed by 2010 1st sp.s. c 15 § 15, effective December 30, 2010.

Additional notes found at www.leg.wa.gov

41.04.803 Application of chapter 236, Laws of 2012.

(1) Chapter 236, Laws of 2012 is curative and remedial and is applicable to any future determination of eligibility for membership in a retirement system under chapters 41.26, 41.32, 41.35, 41.37, and 41.40 RCW.

(2) Chapter 236, Laws of 2012 does not apply to or contravene any prior final decision of the state supreme court regarding the interpretation of the statutes addressed in chapter 236, Laws of 2012. [2012 c 236 § 7.]

Purpose—Application—2012 c 236: See note following RCW 41.26.030.

41.04.810 Title not applicable to individual providers, family child care providers, adult family home providers, and language access providers. Individual providers, as defined in RCW 74.39A.240, and family child care providers, adult family home providers, and language access providers, all as defined in RCW 41.56.030, are not employees of the state or any of its political subdivisions and are specifically and entirely excluded from all provisions of this title, except as provided in RCW 74.39A.270, 41.56.028, and 41.56.029. [2010 c 296 § 5; 2007 c 184 § 4; 2006 c 54 § 4; 2004 c 3 § 3.]

Conflict with federal requirements—2010 c 296: See note following RCW 41.56.510.

Part headings not law—Severability—Conflict with federal requirements—2007 c 184: See notes following RCW 41.56.029.

Part headings not law—Severability—Conflict with federal requirements—Short title—Effective date—2006 c 54: See RCW 41.56.911 through 41.56.915.

Severability—Effective date—2004 c 3: See notes following RCW 74.39A.270.

41.04.820 Temporary salary reductions—Exceptions—Implementation. (1) Except as provided in this section, from July 1, 2011, through June 29, 2013, base salaries are reduced three percent for all state employees of the executive, legislative, and judicial branches, including those employees in the Washington management service and employees not subject to the provisions of chapter 41.06 RCW.

(2) The following employees of the executive, legislative, and judicial branches are not subject to subsection (1) of this section:

- (a) Elected officials whose salaries are set by the commission on salaries for elected officials;
- (b) Employees at state institutions of higher education;
- (c) Certificated employees of the state school for the blind and the center for childhood deafness and hearing loss;
- (d) Commissioned officers of the Washington state patrol represented by the state patrol troopers association and the Washington state patrol lieutenants association;
- (e) Represented ferry workers of the Washington state department of transportation; and
- (f) Employees whose monthly full-time equivalent salary is less than two thousand five hundred dollars per month.

(3) Except as provided in subsection (4) of this section, if an employee subject to the three percent salary reduction under subsection (1) of this section is entitled to leave, the employee will receive temporary salary reduction leave of up to five and two-tenths hours per month. The director of the department of personnel shall adopt rules governing the accrual and use of temporary salary reduction leave for non-represented employees. For represented employees, the accrual and use of temporary salary reduction leave shall be in accordance with the provisions of the collective bargaining agreements.

(4) If provisions of collective bargaining agreements prevent the implementation of subsection (1) of this section, agencies of the executive, legislative, and judicial branches shall achieve a three percent salary reduction for each employee through employee leave without pay, mandatory and voluntary temporary layoffs, reduced work hours, or other actions consistent with collective bargaining agreements. This subsection does not prohibit an agency from granting temporary salary reduction leave for employees entitled to leave in accordance with subsection (3) of this section.

(5) Subsection (2) of this section does not prohibit employers of the executive, legislative, and judicial branches from implementing a salary reduction for employees exempted under subsection (2) of this section. Employers of the executive, legislative, and judicial branches are encouraged to implement a salary reduction for employees exempted under subsection (2) of this section, except for those employees whose monthly full-time equivalent salary is less than two thousand five hundred dollars per month.

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(6) Subsection (2) of this section does not prohibit elected officials whose salaries are set by the commission on salaries for elected officials to voluntarily agree to a reduction in salary and elected officials are encouraged to take such action.

(7) This section does not prohibit a state agency or institution during the 2011-2013 fiscal biennium from instituting reduced work hours, mandatory or voluntary leave without pay, reductions in salaries, or temporary layoffs as an integral part of the employer's expenditure reduction efforts, as certified by the employer. This subsection must be implemented consistent with collective bargaining agreements. [2011 1st sp.s. c 39 § 1.]

Effective date—2011 1st sp.s. c 39: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 1st sp.s. c 39 § 15.]

41.04.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 85.]

Chapter 41.05 RCW

STATE HEALTH CARE AUTHORITY

(Formerly: State employees' insurance and health care)

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- Monitoring enrollee level in basic health plan and medicaid caseload of children—Funding levels adjustment: RCW 43.41.260.*
- Prepaid chiropractic, pilot projects: RCW 18.25.200.*

41.05.006 Purpose. (1) The legislature recognizes that (a) the state is a major purchaser of health care services, (b) the increasing costs of such health care services are posing and will continue to pose a great financial burden on the state, (c) it is the state's policy, consistent with the best interests of the state, to provide comprehensive health care as an employer, to state employees and officials and their dependents and to those who are dependent on the state for necessary medical care, and (d) it is imperative that the state begin to develop effective and efficient health care delivery systems and strategies for procuring health care services in order for the state to continue to purchase the most comprehensive health care possible.

(2) It is therefore the purpose of this chapter to establish the Washington state health care authority whose purpose shall be to (a) develop health care benefit programs that provide access to at least one comprehensive benefit plan funded to the fullest extent possible by the employer, and a health savings account/high deductible health plan option as defined in section 1201 of the medicare prescription drug improvement and modernization act of 2003, as amended, for eligible state employees, officials, and their dependents, and (b) study all state purchased health care, alternative health care delivery systems, and strategies for the procurement of health care services and make recommendations aimed at minimizing the financial burden which health care poses on the state, its employees, and its charges, while at the same time allowing the state to provide the most comprehensive health care options possible. [2006 c 299 § 1; 1988 c 107 § 2.]

41.05.008 Duties of employing agencies. (1) Every employing agency shall carry out all actions required by the authority under this chapter including, but not limited to, those necessary for the operation of benefit plans, education of employees, claims administration, and appeals process.

(2) Employing agencies shall report all data relating to employees eligible to participate in benefits or plans administered by the authority in a format designed and communicated by the authority. [2009 c 537 § 1; 2005 c 143 § 4.]

Effective date—2009 c 537: "This act takes effect January 1, 2010." [2009 c 537 § 9.]

41.05.009 Determination of employee eligibility for benefits. (1) The authority, or at the authority's direction, an

employing agency shall initially determine and periodically review whether an employee is eligible for benefits pursuant to the criteria established under this chapter.

(2) An employing agency shall inform an employee in writing whether or not he or she is eligible for benefits when initially determined and upon any subsequent change, including notice of the employee's right to an appeal. [2009 c 537 § 2.]

Effective date—2009 c 537: See note following RCW 41.05.008.

41.05.0091 Eligibility exists prior to January 1, 2010.

An employee determined eligible for benefits prior to January 1, 2010, shall not have his or her eligibility terminated pursuant to the criteria established under chapter 537, Laws of 2009 unless the termination is the result of: (1) A voluntary reduction in work hours; or (2) the employee's employment with an agency other than the agency by which he or she was determined eligible prior to January 1, 2010. [2009 c 537 § 10.]

Effective date—2009 c 537: See note following RCW 41.05.008.

41.05.011 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authority" means the Washington state health care authority.

(2) "Board" means the public employees' benefits board established under RCW 41.05.055.

(3) "Dependent care assistance program" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 129 or other sections of the internal revenue code.

(4) "Director" means the director of the authority.

(5) "Emergency service personnel killed in the line of duty" means law enforcement officers and firefighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and firefighters as defined in RCW 41.24.010 who die as a result of injuries sustained in the course of employment as determined consistent with Title 51 RCW by the department of labor and industries.

(6) "Employee" includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021(1)(g); (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization, and, effective

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October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021(1) (f) and (g); (e) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021(1) (g) and (n); and (f) employees of a charter school established under chapter 28A.710 RCW. "Employee" does not include: Adult family homeowners; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under this chapter or by the authority under this chapter.

(7) "Employer" means the state of Washington.

(8) "Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; charter school; and a tribal government covered by this chapter.

(9) "Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

(10) "Flexible benefit plan" means a benefit plan that allows employees to choose the level of health care coverage provided and the amount of employee contributions from among a range of choices offered by the authority.

(11) "Insuring entity" means an insurer as defined in chapter 48.01 RCW, a health care service contractor as defined in chapter 48.44 RCW, or a health maintenance organization as defined in chapter 48.46 RCW.

(12) "Medical flexible spending arrangement" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(13) "Participant" means an individual who fulfills the eligibility and enrollment requirements under the salary reduction plan.

(14) "Plan year" means the time period established by the authority.

(15) "Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under this chapter pursuant to 26

U.S.C. Sec. 125 or other sections of the internal revenue code.

(16) "Retired or disabled school employee" means:

(a) Persons who separated from employment with a school district or educational service district and are receiving a retirement allowance under chapter 41.32 or 41.40 RCW as of September 30, 1993;

(b) Persons who separate from employment with a school district, educational service district, or charter school on or after October 1, 1993, and immediately upon separation receive a retirement allowance under chapter 41.32, 41.35, or 41.40 RCW;

(c) Persons who separate from employment with a school district, educational service district, or charter school due to a total and permanent disability, and are eligible to receive a deferred retirement allowance under chapter 41.32, 41.35, or 41.40 RCW.

(17) "Salary" means a state employee's monthly salary or wages.

(18) "Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, medical flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(19) "Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

(20) "Separated employees" means persons who separate from employment with an employer as defined in:

(a) RCW 41.32.010(17) on or after July 1, 1996; or

(b) RCW 41.35.010 on or after September 1, 2000; or

(c) RCW 41.40.010 on or after March 1, 2002;

and who are at least age fifty-five and have at least ten years of service under the teachers' retirement system plan 3 as defined in RCW 41.32.010(33), the Washington school employees' retirement system plan 3 as defined in RCW 41.35.010, or the public employees' retirement system plan 3 as defined in RCW 41.40.010.

(21) "State purchased health care" or "health care" means medical and health care, pharmaceuticals, and medical equipment purchased with state and federal funds by the department of social and health services, the department of health, the basic health plan, the state health care authority, the department of labor and industries, the department of corrections, the department of veterans affairs, and local school districts.

(22) "Tribal government" means an Indian tribal government as defined in section 3(32) of the employee retirement income security act of 1974, as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state. [2013 c 2 § 306 (Initiative Measure No. 1240, approved November 6, 2012); 2012 c 87 § 22. Prior: 2011 1st sp.s. c 15 § 54; 2009 c 537 § 3; 2008 c 229 § 2; prior: 2007 c 488 § 2; 2007 c 114 § 2; 2005 c 143 § 1; 2001 c 165 § 2; prior: 2000 c 247 § 604; 2000 c 230 § 3; 1998 c 341 § 706; 1996 c 39 § 21; 1995 1st sp.s. c 6 § 2; 1994 c 153 § 2; prior: 1993 c 492 § 214; 1993 c 386 § 5; 1990 c 222 § 2; 1988 c 107 § 3.]

Findings—2013 c 2 (Initiative Measure No. 1240): See RCW 28A.710.005.

Effective date—2012 c 87 §§ 4, 16, 18, and 19-23: See note following RCW 43.71.030.

Spiritual care services—2012 c 87: See RCW 43.71.901.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Effective date—2009 c 537: See note following RCW 41.05.008.

Effective date—2008 c 229: See note following RCW 41.05.295.

Short title—2007 c 488: See note following RCW 43.43.285.

Intent—2007 c 114: "Consistent with the centennial accord, the new millennium agreement, related treaties, and federal and state law, it is the intent of the legislature to authorize tribal governments to participate in public employees' benefits board programs to the same extent that counties, municipalities, and other political subdivisions of the state are authorized to do so." [2007 c 114 § 1.]

Effective date—2007 c 114: "This act takes effect January 1, 2009." [2007 c 114 § 8.]

Reviser's note: Contractual right not granted—2006 c 345: See note following RCW 41.26.510.

Intent—1994 c 153: "It is the intent of the legislature to increase access to health insurance for retired and disabled state and school district employees and to increase equity between state and school employees and between state and school retirees." [1994 c 153 § 1.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.05.013 State purchased health care programs—Uniform policies—Report to the legislature. (1) The authority shall coordinate state agency efforts to develop and implement uniform policies across state purchased health care programs that will ensure prudent, cost-effective health services purchasing, maximize efficiencies in administration of state purchased health care programs, improve the quality of care provided through state purchased health care programs, and reduce administrative burdens on health care providers participating in state purchased health care programs. The policies adopted should be based, to the extent possible, upon the best available scientific and medical evidence and shall endeavor to address:

(a) Methods of formal assessment, such as a health technology assessment under RCW 70.14.080 through 70.14.130. Consideration of the best available scientific evidence does not preclude consideration of experimental or investigational treatment or services under a clinical investigation approved by an institutional review board;

(b) Monitoring of health outcomes, adverse events, quality, and cost-effectiveness of health services;

(c) Development of a common definition of medical necessity; and

(d) Exploration of common strategies for disease management and demand management programs, including asthma, diabetes, heart disease, and similar common chronic diseases. Strategies to be explored include individual asthma management plans. On January 1, 2007, and January 1, 2009, the authority shall issue a status report to the legislature summarizing any results it attains in exploring and coordinating strategies for asthma, diabetes, heart disease, and other chronic diseases.

(2) The administrator may invite health care provider organizations, carriers, other health care purchasers, and consumers to participate in efforts undertaken under this section.

(3) For the purposes of this section "best available scientific and medical evidence" means the best available clinical evidence derived from systematic research. [2006 c 307 § 8; 2005 c 462 § 3; 2003 c 276 § 1.]

Captions not law—Conflict with federal requirements—2006 c 307: See notes following RCW 70.14.080.

Findings—2005 c 462: See note following RCW 28A.210.370.

Additional notes found at www.leg.wa.gov

41.05.014 Applications and enrollment forms—Signatures. (1) The administrator may require applications, enrollment forms, and eligibility certification documents for benefits that are administered by the authority under this chapter and chapters 70.47 and 70.47A RCW to be signed by the person submitting them. The administrator may accept electronic signatures.

(2) For the purpose of this section, "electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature. [2009 c 201 § 2.]

41.05.015 Medical director—Appointment of personnel. The director shall designate a medical director who is licensed under chapter 18.57 or 18.71 RCW. The director shall also appoint such professional personnel and other assistants and employees, including professional medical screeners, as may be reasonably necessary to carry out the provisions of this chapter and chapter 74.09 RCW. The medical screeners must be supervised by one or more physicians whom the director or the director's designee shall appoint. [2011 1st sp.s. c 15 § 55; 2000 c 5 § 16.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Intent—Purpose—2000 c 5: See RCW 48.43.500.

Additional notes found at www.leg.wa.gov

41.05.017 Provisions applicable to health plans offered under this chapter. Each health plan that provides medical insurance offered under this chapter, including plans created by insuring entities, plans not subject to the provisions of Title 48 RCW, and plans created under RCW 41.05.140, are subject to the provisions of RCW 48.43.500, 70.02.045, 48.43.505 through 48.43.535, 43.70.235, 48.43.545, 48.43.550, 70.02.110, 70.02.900, 48.43.190, and 48.43.083. [2008 c 304 § 2; 2007 c 502 § 2; 2000 c 5 § 20.]

Savings—Severability—Effective date—2007 c 502: See notes following RCW 48.43.083.

Intent—Purpose—2000 c 5: See RCW 48.43.500.

Additional notes found at www.leg.wa.gov

41.05.019 Direct patient-provider primary care practices—Plan. (1) The Washington state health care authority shall develop a plan to incorporate direct patient-provider primary care practices as provided in chapter 48.150 RCW into one or more of the choices of health benefit programs made available to participants in the public employees'

benefits board system beginning no later than the open enrollment period beginning November 1, 2012.

(2) The plan will be developed in consultation with the board and interested parties, will identify statutory barriers to implementation, and will include proposed legislation to address those barriers and implement the plan. The plan will be submitted to the board and to the house of representatives and senate health care committees by December 1, 2011. [2011 1st sp.s. c 8 § 2.]

41.05.021 State health care authority—Director—Cost control and delivery strategies—Health information technology—Managed competition—Rules. (1) The Washington state health care authority is created within the executive branch. The authority shall have a director appointed by the governor, with the consent of the senate. The director shall serve at the pleasure of the governor. The director may employ a deputy director, and such assistant directors and special assistants as may be needed to administer the authority, who shall be exempt from chapter 41.06 RCW, and any additional staff members as are necessary to administer this chapter. The director may delegate any power or duty vested in him or her by law, including authority to make final decisions and enter final orders in hearings conducted under chapter 34.05 RCW. The primary duties of the authority shall be to: Administer state employees' insurance benefits and retired or disabled school employees' insurance benefits; administer the basic health plan pursuant to chapter 70.47 RCW; administer the children's health program pursuant to chapter 74.09 RCW; study state purchased health care programs in order to maximize cost containment in these programs while ensuring access to quality health care; implement state initiatives, joint purchasing strategies, and techniques for efficient administration that have potential application to all state-purchased health services; and administer grants that further the mission and goals of the authority. The authority's duties include, but are not limited to, the following:

(a) To administer health care benefit programs for employees and retired or disabled school employees as specifically authorized in RCW 41.05.065 and in accordance with the methods described in RCW 41.05.075, 41.05.140, and other provisions of this chapter;

(b) To analyze state purchased health care programs and to explore options for cost containment and delivery alternatives for those programs that are consistent with the purposes of those programs, including, but not limited to:

(i) Creation of economic incentives for the persons for whom the state purchases health care to appropriately utilize and purchase health care services, including the development of flexible benefit plans to offset increases in individual financial responsibility;

(ii) Utilization of provider arrangements that encourage cost containment, including but not limited to prepaid delivery systems, utilization review, and prospective payment methods, and that ensure access to quality care, including assuring reasonable access to local providers, especially for employees residing in rural areas;

(iii) Coordination of state agency efforts to purchase drugs effectively as provided in RCW 70.14.050;

(iv) Development of recommendations and methods for purchasing medical equipment and supporting services on a volume discount basis;

(v) Development of data systems to obtain utilization data from state purchased health care programs in order to identify cost centers, utilization patterns, provider and hospital practice patterns, and procedure costs, utilizing the information obtained pursuant to RCW 41.05.031; and

(vi) In collaboration with other state agencies that administer state purchased health care programs, private health care purchasers, health care facilities, providers, and carriers:

(A) Use evidence-based medicine principles to develop common performance measures and implement financial incentives in contracts with insuring entities, health care facilities, and providers that:

(I) Reward improvements in health outcomes for individuals with chronic diseases, increased utilization of appropriate preventive health services, and reductions in medical errors; and

(II) Increase, through appropriate incentives to insuring entities, health care facilities, and providers, the adoption and use of information technology that contributes to improved health outcomes, better coordination of care, and decreased medical errors;

(B) Through state health purchasing, reimbursement, or pilot strategies, promote and increase the adoption of health information technology systems, including electronic medical records, by hospitals as defined in RCW 70.41.020(4), integrated delivery systems, and providers that:

(I) Facilitate diagnosis or treatment;

(II) Reduce unnecessary duplication of medical tests;

(III) Promote efficient electronic physician order entry;

(IV) Increase access to health information for consumers and their providers; and

(V) Improve health outcomes;

(C) Coordinate a strategy for the adoption of health information technology systems using the final health information technology report and recommendations developed under chapter 261, Laws of 2005;

(c) To analyze areas of public and private health care interaction;

(d) To provide information and technical and administrative assistance to the board;

(e) To review and approve or deny applications from counties, municipalities, and other political subdivisions of the state to provide state-sponsored insurance or self-insurance programs to their employees in accordance with the provisions of RCW 41.04.205 and (g) of this subsection, setting the premium contribution for approved groups as outlined in RCW 41.05.050;

(f) To review and approve or deny the application when the governing body of a tribal government applies to transfer their employees to an insurance or self-insurance program administered under this chapter. In the event of an employee transfer pursuant to this subsection (1)(f), members of the governing body are eligible to be included in such a transfer if the members are authorized by the tribal government to participate in the insurance program being transferred from and subject to payment by the members of all costs of insurance for the members. The authority shall: (i) Establish the

conditions for participation; (ii) have the sole right to reject the application; and (iii) set the premium contribution for approved groups as outlined in RCW 41.05.050. Approval of the application by the authority transfers the employees and dependents involved to the insurance, self-insurance, or health care program approved by the authority;

(g) To ensure the continued status of the employee insurance or self-insurance programs administered under this chapter as a governmental plan under section 3(32) of the employee retirement income security act of 1974, as amended, the authority shall limit the participation of employees of a county, municipal, school district, educational service district, or other political subdivision, the Washington health benefit exchange, or a tribal government, including providing for the participation of those employees whose services are substantially all in the performance of essential governmental functions, but not in the performance of commercial activities;

(h) To establish billing procedures and collect funds from school districts in a way that minimizes the administrative burden on districts;

(i) To publish and distribute to nonparticipating school districts and educational service districts by October 1st of each year a description of health care benefit plans available through the authority and the estimated cost if school districts and educational service district employees were enrolled;

(j) To apply for, receive, and accept grants, gifts, and other payments, including property and service, from any governmental or other public or private entity or person, and make arrangements as to the use of these receipts to implement initiatives and strategies developed under this section;

(k) To issue, distribute, and administer grants that further the mission and goals of the authority;

(l) To adopt rules consistent with this chapter as described in RCW 41.05.160 including, but not limited to:

(i) Setting forth the criteria established by the board under RCW 41.05.065 for determining whether an employee is eligible for benefits;

(ii) Establishing an appeal process in accordance with chapter 34.05 RCW by which an employee may appeal an eligibility determination;

(iii) Establishing a process to assure that the eligibility determinations of an employing agency comply with the criteria under this chapter, including the imposition of penalties as may be authorized by the board;

(m)(i) To administer the medical services programs established under chapter 74.09 RCW as the designated single state agency for purposes of Title XIX of the federal social security act;

(ii) To administer the state children's health insurance program under chapter 74.09 RCW for purposes of Title XXI of the federal social security act;

(iii) To enter into agreements with the department of social and health services for administration of medical care services programs under Titles XIX and XXI of the social security act. The agreements shall establish the division of responsibilities between the authority and the department with respect to mental health, chemical dependency, and long-term care services, including services for persons with developmental disabilities. The agreements shall be revised as necessary, to comply with the final implementation plan

adopted under section 116, chapter 15, Laws of 2011 1st sp. sess.;

(iv) To adopt rules to carry out the purposes of chapter 74.09 RCW;

(v) To appoint such advisory committees or councils as may be required by any federal statute or regulation as a condition to the receipt of federal funds by the authority. The director may appoint statewide committees or councils in the following subject areas: (A) Health facilities; (B) children and youth services; (C) blind services; (D) medical and health care; (E) drug abuse and alcoholism; (F) rehabilitative services; and (G) such other subject matters as are or come within the authority's responsibilities. The statewide councils shall have representation from both major political parties and shall have substantial consumer representation. Such committees or councils shall be constituted as required by federal law or as the director in his or her discretion may determine. The members of the committees or councils shall hold office for three years except in the case of a vacancy, in which event appointment shall be only for the remainder of the unexpired term for which the vacancy occurs. No member shall serve more than two consecutive terms. Members of such state advisory committees or councils may be paid their travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended;

(n) To review and approve or deny the application from the governing board of the Washington health benefit exchange to provide state-sponsored insurance or self-insurance programs to employees of the exchange. The authority shall (i) establish the conditions for participation; (ii) have the sole right to reject an application; and (iii) set the premium contribution for approved groups as outlined in RCW 41.05.050.

(2) On and after January 1, 1996, the public employees' benefits board may implement strategies to promote managed competition among employee health benefit plans. Strategies may include but are not limited to:

- (a) Standardizing the benefit package;
- (b) Soliciting competitive bids for the benefit package;
- (c) Limiting the state's contribution to a percent of the lowest priced qualified plan within a geographical area;
- (d) Monitoring the impact of the approach under this subsection with regards to: Efficiencies in health service delivery, cost shifts to subscribers, access to and choice of managed care plans statewide, and quality of health services. The health care authority shall also advise on the value of administering a benchmark employer-managed plan to promote competition among managed care plans. [2012 c 87 § 23; 2011 1st sp.s. c 15 § 56; 2009 c 537 § 4. Prior: 2007 c 274 § 1; 2007 c 114 § 3; 2006 c 103 § 2; 2005 c 446 § 1; 2002 c 142 § 1; 1999 c 372 § 4; 1997 c 274 § 1; 1995 1st sp.s. c 6 § 7; 1994 c 309 § 1; prior: 1993 c 492 § 215; 1993 c 386 § 6; 1990 c 222 § 3; 1988 c 107 § 4.]

Effective date—2012 c 87 §§ 4, 16, 18, and 19-23: See note following RCW 43.71.030.

Spiritual care services—2012 c 87: See RCW 43.71.901.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Effective date—2009 c 537: See note following RCW 41.05.008.

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Intent—Effective date—2007 c 114: See notes following RCW 41.05.011.

Intent—2006 c 103: "(1) The legislature recognizes that improvements in the quality of health care lead to better health care outcomes for the residents of Washington state and contain health care costs. The improvements are facilitated by the adoption of electronic medical records and other health information technologies.

(2) It is the intent of the legislature to encourage all hospitals, integrated delivery systems, and providers in the state of Washington to adopt health information technologies by the year 2012." [2006 c 103 § 1.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.05.022 State agent for purchasing health services—Single community-rated risk pool. (1) The health care authority is hereby designated as the single state agent for purchasing health services.

(2) On and after January 1, 1995, at least the following state-purchased health services programs shall be merged into a single, community-rated risk pool: Health benefits for groups of employees of school districts and educational service districts that voluntarily purchase health benefits as provided in RCW 41.05.011; health benefits for state employees; health benefits for eligible retired or disabled school employees not eligible for parts A and B of medicare; and health benefits for eligible state retirees not eligible for parts A and B of medicare.

(3) At a minimum, and regardless of other legislative enactments, the state health services purchasing agent shall:

(a) Require that a public agency that provides subsidies for a substantial portion of services now covered under the basic health plan use uniform eligibility processes, insofar as may be possible, and ensure that multiple eligibility determinations are not required;

(b) Require that a health care provider or a health care facility that receives funds from a public program provide care to state residents receiving a state subsidy who may wish to receive care from them, and that an insuring entity that receives funds from a public program accept enrollment from state residents receiving a state subsidy who may wish to enroll with them;

(c) Strive to integrate purchasing for all publicly sponsored health services in order to maximize the cost control potential and promote the most efficient methods of financing and coordinating services;

(d) Consult regularly with the governor, the legislature, and state agency directors whose operations are affected by the implementation of this section; and

(e) Ensure the control of benefit costs under managed competition by adopting rules to prevent employers from entering into an agreement with employees or employee organizations when the agreement would result in increased utilization in public employees' benefits board plans or reduce the expected savings of managed competition. [1995 1st sp.s. c 6 § 3; 1994 c 153 § 3; 1993 c 492 § 227.]

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

41.05.023 Chronic care management program—Uniform medical plan—Definitions. (1) The health care authority, in collaboration with the department of health, shall design and implement a chronic care management program for state employees enrolled in the state's self-insured uniform medical plan. Programs must be evidence based, facilitating the use of information technology to improve quality of care and must improve coordination of primary, acute, and long-term care for those enrollees with multiple chronic conditions. The authority shall consider expansion of existing medical home and chronic care management programs. The authority shall use best practices in identifying those employees best served under a chronic care management model using predictive modeling through claims or other health risk information.

(2) For purposes of this section:

(a) "Medical home" means a site of care that provides comprehensive preventive and coordinated care centered on the patient needs and assures high-quality, accessible, and efficient care.

(b) "Chronic care management" means the authority's program that provides care management and coordination activities for health plan enrollees determined to be at risk for high medical costs. "Chronic care management" provides education and training and/or coordination that assist program participants in improving self-management skills to improve health outcomes and reduce medical costs by educating clients to better utilize services. [2007 c 259 § 6.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

41.05.026 Contracts—Proprietary data, trade secrets, actuarial formulas, statistics, cost and utilization data—Exemption from public inspection—Executive sessions. (1) When soliciting proposals for the purpose of awarding contracts for goods or services, the administrator shall, upon written request by the bidder, exempt from public inspection and copying such proprietary data, trade secrets, or other information contained in the bidder's proposal that relate to the bidder's unique methods of conducting business or of determining prices or premium rates to be charged for services under terms of the proposal.

(2) When soliciting information for the development, acquisition, or implementation of state purchased health care services, the administrator shall, upon written request by the respondent, exempt from public inspection and copying such proprietary data, trade secrets, or other information submitted by the respondent that relate to the respondent's unique methods of conducting business, data unique to the product or services of the respondent, or to determining prices or rates to be charged for services.

(3) Actuarial formulas, statistics, cost and utilization data, or other proprietary information submitted upon request of the administrator, board, or a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under this chapter by a contracting insurer, health care service contractor, health maintenance organization, vendor, or other health services organization may be withheld at any time from public inspection when necessary to preserve trade secrets or prevent unfair competition.

(4) The board, or a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under this chapter, may hold an executive session in accordance with chapter 42.30 RCW during any regular or special meeting to discuss information submitted in accordance with subsections (1) through (3) of this section.

(5) A person who challenges a request for or designation of information as exempt under this section is entitled to seek judicial review pursuant to chapter 42.56 RCW. [2005 c 274 § 277; 2003 c 277 § 2; 1991 c 79 § 1; 1990 c 222 § 6.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

41.05.031 Agencies to establish health care information systems. The following state agencies are directed to cooperate with the authority to establish appropriate health care information systems in their programs: The department of social and health services, the department of health, the department of labor and industries, the basic health plan, the department of veterans affairs, the department of corrections, and the superintendent of public instruction.

The authority, in conjunction with these agencies, shall determine:

- (1) Definitions of health care services;
- (2) Health care data elements common to all agencies;
- (3) Health care data elements unique to each agency; and
- (4) A mechanism for program and budget review of health care data. [1990 c 222 § 4; 1988 c 107 § 5.]

41.05.033 Shared decision-making demonstration project—Preference-sensitive care. (1) The legislature finds that there is growing evidence that, for preference-sensitive care involving elective surgery, patient-practitioner communication is improved through the use of high-quality decision aids that detail the benefits, harms, and uncertainty of available treatment options. Improved communication leads to more fully informed patient decisions. The legislature intends to increase the extent to which patients make genuinely informed, preference-based treatment decisions, by promoting public/private collaborative efforts to broaden the development, certification, use, and evaluation of effective decision aids and by recognition of shared decision making and patient decision aids in the state's laws on informed consent.

(2) The health care authority shall implement a shared decision-making demonstration project. The demonstration project shall be conducted at one or more multispecialty group practice sites providing state purchased health care in the state of Washington, and may include other practice sites providing state purchased health care. The demonstration project shall include the following elements:

(a) Incorporation into clinical practice of one or more decision aids for one or more identified preference-sensitive care areas combined with ongoing training and support of involved practitioners and practice teams, preferably at sites with necessary supportive health information technology;

(b) An evaluation of the impact of the use of shared decision making with decision aids, including the use of preference-sensitive health care services selected for the demonstration project and expenditures for those services, the

impact on patients, including patient understanding of the treatment options presented and concordance between patient values and the care received, and patient and practitioner satisfaction with the shared decision-making process; and

(c) As a condition of participating in the demonstration project, a participating practice site must bear the cost of selecting, purchasing, and incorporating the chosen decision aids into clinical practice.

(3) The health care authority may solicit and accept funding and in-kind contributions to support the demonstration and evaluation, and may scale the evaluation to fall within resulting resource parameters. [2007 c 259 § 2.]

Severability—2007 c 259: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 259 § 68.]

Subheadings not law—2007 c 259: "Subheadings used in this act are not any part of the law." [2007 c 259 § 71.]

41.05.035 Exchange of health information—Pilot—Advisory board, discretionary—Administrator's authority. (1) The administrator shall design and pilot a consumer-centric health information infrastructure and the first health record banks that will facilitate the secure exchange of health information when and where needed and shall:

(a) Complete the plan of initial implementation, including but not limited to determining the technical infrastructure for health record banks and the account locator service, setting criteria and standards for health record banks, and determining oversight of health record banks;

(b) Implement the first health record banks in pilot sites as funding allows;

(c) Involve health care consumers in meaningful ways in the design, implementation, oversight, and dissemination of information on the health record bank system; and

(d) Promote adoption of electronic medical records and health information exchange through continuation of the Washington health information collaborative, and by working with private payors and other organizations in restructuring reimbursement to provide incentives for providers to adopt electronic medical records in their practices.

(2) The administrator may establish an advisory board, a stakeholder committee, and subcommittees to assist in carrying out the duties under this section. The administrator may reappoint health information infrastructure advisory board members to assure continuity and shall appoint any additional representatives that may be required for their expertise and experience.

(a) The administrator shall appoint the chair of the advisory board, chairs, and cochairs of the stakeholder committee, if formed;

(b) Meetings of the board, stakeholder committee, and any advisory group are subject to chapter 42.30 RCW, the open public meetings act, including RCW 42.30.110(1)(l), which authorizes an executive session during a regular or special meeting to consider proprietary or confidential non-published information; and

(c) The members of the board, stakeholder committee, and any advisory group:

(i) Shall agree to the terms and conditions imposed by the administrator regarding conflicts of interest as a condition of appointment;

(ii) Are immune from civil liability for any official acts performed in good faith as members of the board, stakeholder committee, or any advisory group.

(3) Members of the board may be compensated for participation in accordance with a personal services contract to be executed after appointment and before commencement of activities related to the work of the board. Members of the stakeholder committee shall not receive compensation but shall be reimbursed under RCW 43.03.050 and 43.03.060.

(4) The administrator may work with public and private entities to develop and encourage the use of personal health records which are portable, interoperable, secure, and respectful of patients' privacy.

(5) The administrator may enter into contracts to issue, distribute, and administer grants that are necessary or proper to carry out this section. [2007 c 259 § 10.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

41.05.036 Health information—Definitions. The definitions in this section apply throughout RCW 41.05.039 through 41.05.046 unless the context clearly requires otherwise.

(1) "Director" means the director of the state health care authority under this chapter.

(2) "Exchange" means the methods or medium by which health care information may be electronically and securely exchanged among authorized providers, payors, and patients within Washington state.

(3) "Health care provider" or "provider" has the same meaning as in RCW 48.43.005.

(4) "Health data provider" means an organization that is a primary source for health-related data for Washington residents, including but not limited to:

(a) The children's health immunizations linkages and development profile immunization registry provided by the department of health pursuant to chapter 43.70 RCW;

(b) Commercial laboratories providing medical laboratory testing results;

(c) Prescription drugs clearinghouses, such as the national patient health information network; and

(d) Diagnostic imaging centers.

(5) "Lead organization" means a private sector organization or organizations designated by the director to lead development of processes, guidelines, and standards under chapter 300, Laws of 2009.

(6) "Payor" means public purchasers, as defined in this section, carriers licensed under chapters 48.20, 48.21, 48.44, 48.46, and 48.62 RCW, and the Washington state health insurance pool established in chapter 48.41 RCW.

(7) "Public purchaser" means the department of social and health services, the department of labor and industries, and the health care authority.

(8) "Secretary" means the secretary of the department of health. [2011 1st sp.s. c 15 § 57; 2009 c 300 § 2.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Finding—2009 c 300: "The legislature finds that:

(1) The inability to securely share critical health information between practitioners inhibits the delivery of safe, efficient care, as evidenced by:

(a) Adverse drug events that result in an average of seven hundred seventy thousand injuries and deaths each year; and

(b) Duplicative services that add to costs and jeopardize patient well-being;

(2) Consumers are unable to act as fully informed participants in their care unless they have ready access to their own health information;

(3) The blue ribbon commission on health care costs and access found that the development of a system to provide electronic access to patient information anywhere in the state was a key to improving health care; and

(4) In 2005, the legislature established a health information infrastructure advisory board to develop a strategy for the adoption and use of health information technologies that are consistent with emerging national standards and promote interoperability of health information systems." [2009 c 300 § 1.]

41.05.037 Nurse hotline, when funded. To the extent that funding is provided specifically for this purpose, the director shall provide all persons enrolled in health plans under this chapter and chapters 70.47 and 74.09 RCW with access to a twenty-four hour, seven day a week nurse hotline. [2011 1st sp.s. c 15 § 58; 2007 c 259 § 15.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

41.05.039 Health information—Secure access—Lead organization—Administrator's duties. (1) By August 1, 2009, the *administrator shall designate one or more lead organizations to coordinate development of processes, guidelines, and standards to:

(a) Improve patient access to and control of their own health care information and thereby enable their active participation in their own care; and

(b) Implement methods for the secure exchange of clinical data as a means to promote:

(i) Continuity of care;

(ii) Quality of care;

(iii) Patient safety; and

(iv) Efficiency in medical practices.

(2) The lead organization designated by the *administrator under this section shall:

(a) Be representative of health care privacy advocates, providers, and payors across the state;

(b) Have expertise and knowledge in the major disciplines related to the secure exchange of health data;

(c) Be able to support the costs of its work without recourse to state funding. The *administrator and the lead organization are authorized and encouraged to seek federal funds, including funds from the federal American recovery and reinvestment act, as well as solicit, receive, contract for, collect, and hold grants, donations, and gifts to support the implementation of this section and RCW 41.05.042;

(d) In collaboration with the *administrator, identify and convene work groups, as needed, to accomplish the goals of this section and RCW 41.05.042;

(e) Conduct outreach and communication efforts to maximize the adoption of the guidelines, standards, and processes developed by the lead organization;

(f) Submit regular updates to the *administrator on the progress implementing the requirements of this section and RCW 41.05.042; and

(g) With the *administrator, report to the legislature December 1, 2009, and on December 1st of each year through December 1, 2012, on progress made, the time necessary for completing tasks, and identification of future tasks that should be prioritized for the next improvement cycle.

(3) Within available funds as specified in subsection (2)(c) of this section, the *administrator shall:

(a) Participate in and review the work and progress of the lead organization, including the establishment and operation of work groups for this section and RCW 41.05.042; and

(b) Consult with the office of the attorney general to determine whether:

(i) An antitrust safe harbor is necessary to enable licensed carriers and providers to develop common rules and standards; and, if necessary, take steps, such as implementing rules or requesting legislation, to establish a safe harbor; and

(ii) Legislation is needed to limit provider liability if their health records are missing health information despite their participation in the exchange of health information.

(4) The lead organization or organizations shall take steps to minimize the costs that implementation of the processes, guidelines, and standards may have on participating entities, including providers. [2009 c 300 § 3.]

***Reviser's note:** The definition for "administrator" was changed to "director" by 2011 1st sp.s. c 15 § 57.

Findings—2009 c 300: See note following RCW 41.05.036.

41.05.042 Health information—Processes, guidelines, and standards. By December 1, 2011, the lead organization shall, consistent with the federal health insurance portability and accountability act, develop processes, guidelines, and standards that address:

(1) Identification and prioritization of high value health data from health data providers. High value health data include:

(a) Prescriptions;

(b) Immunization records;

(c) Laboratory results;

(d) Allergies; and

(e) Diagnostic imaging;

(2) Processes to request, submit, and receive data;

(3) Data security, including:

(a) Storage, access, encryption, and password protection;

(b) Secure methods for accepting and responding to requests for data;

(c) Handling unauthorized access to or disclosure of individually identifiable patient health information, including penalties for unauthorized disclosure; and

(d) Authentication of individuals, including patients and providers, when requesting access to health information, and maintenance of a permanent audit trail of such requests, including:

(i) Identification of the party making the request;

(ii) The data elements reported; and

(iii) Transaction dates;

(4) Materials written in plain language that explain the exchange of health information and how patients can effec-

tively manage such information, including the use of online tools for that purpose;

(5) Materials for health care providers that explain the exchange of health information and the secure management of such information. [2009 c 300 § 4.]

Findings—2009 c 300: See note following RCW 41.05.036.

41.05.046 Health information—Conflict with federal requirements. If any provision in RCW 41.05.036, 41.05.039, and 41.05.042 conflicts with existing or new federal requirements, the *administrator shall recommend modifications, as needed, to assure compliance with the aims of RCW 41.05.036, 41.05.039, and 41.05.042 and federal requirements. [2009 c 300 § 5.]

*Reviser's note: The definition for "administrator" was changed to "director" by 2011 1st sp.s. c 15 § 57.

Findings—2009 c 300: See note following RCW 41.05.036.

41.05.050 Contributions for employees and dependents—Definitions. (1) Every: (a) Department, division, or separate agency of state government; (b) county, municipal, school district, educational service district, or other political subdivisions; and (c) tribal governments as are covered by this chapter, shall provide contributions to insurance and health care plans for its employees and their dependents, the content of such plans to be determined by the authority. Contributions, paid by the county, the municipality, other political subdivision, or a tribal government for their employees, shall include an amount determined by the authority to pay such administrative expenses of the authority as are necessary to administer the plans for employees of those groups, except as provided in subsection (4) of this section.

(2) If the authority at any time determines that the participation of a county, municipal, other political subdivision, or a tribal government covered under this chapter adversely impacts insurance rates for state employees, the authority shall implement limitations on the participation of additional county, municipal, other political subdivisions, or a tribal government.

(3) The contributions of any: (a) Department, division, or separate agency of the state government; (b) county, municipal, or other political subdivisions; and (c) any tribal government as are covered by this chapter, shall be set by the authority, subject to the approval of the governor for availability of funds as specifically appropriated by the legislature for that purpose. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(4)(a) The authority shall collect from each participating school district and educational service district an amount equal to the composite rate charged to state agencies, plus an amount equal to the employee premiums by plan and family size as would be charged to state employees, for groups of district employees enrolled in authority plans. The authority may collect these amounts in accordance with the district fiscal year, as described in RCW 28A.505.030.

(b) For all groups of district employees enrolling in authority plans for the first time after September 1, 2003, the authority shall collect from each participating school district an amount equal to the composite rate charged to state agencies, plus an amount equal to the employee premiums by plan and by family size as would be charged to state employees,

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only if the authority determines that this method of billing the districts will not result in a material difference between revenues from districts and expenditures made by the authority on behalf of districts and their employees. The authority may collect these amounts in accordance with the district fiscal year, as described in RCW 28A.505.030.

(c) If the authority determines at any time that the conditions in (b) of this subsection cannot be met, the authority shall offer enrollment to additional groups of district employees on a tiered rate structure until such time as the authority determines there would be no material difference between revenues and expenditures under a composite rate structure for all district employees enrolled in authority plans.

(d) The authority may charge districts a one-time set-up fee for employee groups enrolling in authority plans for the first time.

(e) For the purposes of this subsection:

(i) "District" means school district and educational service district; and

(ii) "Tiered rates" means the amounts the authority must pay to insuring entities by plan and by family size.

(f) Notwithstanding this subsection and RCW 41.05.065(4), the authority may allow districts enrolled on a tiered rate structure prior to September 1, 2002, to continue participation based on the same rate structure and under the same conditions and eligibility criteria.

(5) The authority shall transmit a recommendation for the amount of the employer contribution to the governor and the director of financial management for inclusion in the proposed budgets submitted to the legislature. [2009 c 537 § 5; 2007 c 114 § 4; 2005 c 518 § 919; 2003 c 158 § 1. Prior: 2002 c 319 § 4; 2002 c 142 § 2; prior: 1995 1st sp.s. c 6 § 22; 1994 c 309 § 2; 1994 c 153 § 4; prior: 1993 c 492 § 216; 1993 c 386 § 7; 1988 c 107 § 18; 1987 c 122 § 4; 1984 c 107 § 1; 1983 c 15 § 20; 1983 c 2 § 9; prior: 1982 1st ex.s. c 34 § 2; 1981 c 344 § 6; 1979 c 151 § 55; 1977 ex.s. c 136 § 4; 1975-'76 2nd ex.s. c 106 § 4; 1975 1st ex.s. c 38 § 2; 1973 1st ex.s. c 147 § 3; 1970 ex.s. c 39 § 5.]

Effective date—2009 c 537: See note following RCW 41.05.008.

Intent—Effective date—2007 c 114: See notes following RCW 41.05.011.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Intent—2002 c 319: See note following RCW 41.04.208.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.05.055 Public employees' benefits board—Members. (1) The public employees' benefits board is created within the authority. The function of the board is to design and approve insurance benefit plans for employees and to establish eligibility criteria for participation in insurance benefit plans.

(2) The board shall be composed of nine members appointed by the governor as follows:

(a) Two representatives of state employees, one of whom shall represent an employee union certified as exclusive representative of at least one bargaining unit of classified

employees, and one of whom is retired, is covered by a program under the jurisdiction of the board, and represents an organized group of retired public employees;

(b) Two representatives of school district employees, one of whom shall represent an association of school employees and one of whom is retired, and represents an organized group of retired school employees;

(c) Four members with experience in health benefit management and cost containment; and

(d) The administrator.

(3) The member who represents an association of school employees and one member appointed pursuant to subsection (2)(c) of this section shall be nonvoting members until such time that there are no less than twelve thousand school district employee subscribers enrolled with the authority for health care coverage.

(4) The governor shall appoint the initial members of the board to staggered terms not to exceed four years. Members appointed thereafter shall serve two-year terms. Members of the board shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for their travel expenses while on official business in accordance with RCW 43.03.050 and 43.03.060. The board shall prescribe rules for the conduct of its business. The administrator shall serve as chair of the board. Meetings of the board shall be at the call of the chair. [2009 c 537 § 6; 1995 1st sp.s. c 6 § 4; 1994 c 36 § 1; 1993 c 492 § 217; 1989 c 324 § 1; 1988 c 107 § 7.]

Effective date—2009 c 537: See note following RCW 41.05.008.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

41.05.065 Public employees' benefits board—Duties—Eligibility—Definitions—Penalties. (1) The board shall study all matters connected with the provision of health care coverage, life insurance, liability insurance, accidental death and dismemberment insurance, and disability income insurance or any of, or a combination of, the enumerated types of insurance for employees and their dependents on the best basis possible with relation both to the welfare of the employees and to the state. However, liability insurance shall not be made available to dependents.

(2) The board shall develop employee benefit plans that include comprehensive health care benefits for employees. In developing these plans, the board shall consider the following elements:

(a) Methods of maximizing cost containment while ensuring access to quality health care;

(b) Development of provider arrangements that encourage cost containment and ensure access to quality care, including but not limited to prepaid delivery systems and prospective payment methods;

(c) Wellness incentives that focus on proven strategies, such as smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education;

(d) Utilization review procedures including, but not limited to a cost-efficient method for prior authorization of services, hospital inpatient length of stay review, requirements for use of outpatient surgeries and second opinions for sur-

geries, review of invoices or claims submitted by service providers, and performance audit of providers;

(e) Effective coordination of benefits; and

(f) Minimum standards for insuring entities.

(3) To maintain the comprehensive nature of employee health care benefits, benefits provided to employees shall be substantially equivalent to the state employees' health benefits plan in effect on January 1, 1993. Nothing in this subsection shall prohibit changes or increases in employee point-of-service payments or employee premium payments for benefits or the administration of a high deductible health plan in conjunction with a health savings account. The board may establish employee eligibility criteria which are not substantially equivalent to employee eligibility criteria in effect on January 1, 1993.

(4) Except if bargained for under chapter 41.80 RCW, the board shall design benefits and determine the terms and conditions of employee and retired employee participation and coverage, including establishment of eligibility criteria subject to the requirements of this chapter. Employer groups obtaining benefits through contractual agreement with the authority for employees defined in RCW 41.05.011(6) (a) through (d) may contractually agree with the authority to benefits eligibility criteria which differs from that determined by the board. The eligibility criteria established by the board shall be no more restrictive than the following:

(a) Except as provided in (b) through (e) of this subsection, an employee is eligible for benefits from the date of employment if the employing agency anticipates he or she will work an average of at least eighty hours per month and for at least eight hours in each month for more than six consecutive months. An employee determined ineligible for benefits at the beginning of his or her employment shall become eligible in the following circumstances:

(i) An employee who works an average of at least eighty hours per month and for at least eight hours in each month and whose anticipated duration of employment is revised from less than or equal to six consecutive months to more than six consecutive months becomes eligible when the revision is made.

(ii) An employee who works an average of at least eighty hours per month over a period of six consecutive months and for at least eight hours in each of those six consecutive months becomes eligible at the first of the month following the six-month averaging period.

(b) A seasonal employee is eligible for benefits from the date of employment if the employing agency anticipates that he or she will work an average of at least eighty hours per month and for at least eight hours in each month of the season. A seasonal employee determined ineligible at the beginning of his or her employment who works an average of at least half-time, as defined by the board, per month over a period of six consecutive months and at least eight hours in each of those six consecutive months becomes eligible at the first of the month following the six-month averaging period. A benefits-eligible seasonal employee who works a season of less than nine months shall not be eligible for the employer contribution during the off season, but may continue enrollment in benefits during the off season by self-paying for the benefits. A benefits-eligible seasonal employee who works a season of nine months or more is eligible for the employer

contribution through the off season following each season worked.

(c) Faculty are eligible as follows:

(i) Faculty who the employing agency anticipates will work half-time or more for the entire instructional year or equivalent nine-month period are eligible for benefits from the date of employment. Eligibility shall continue until the beginning of the first full month of the next instructional year, unless the employment relationship is terminated, in which case eligibility shall cease the first month following the notice of termination or the effective date of the termination, whichever is later.

(ii) Faculty who the employing agency anticipates will not work for the entire instructional year or equivalent nine-month period are eligible for benefits at the beginning of the second consecutive quarter or semester of employment in which he or she is anticipated to work, or has actually worked, half-time or more. Such an employee shall continue to receive uninterrupted employer contributions for benefits if the employee works at least half-time in a quarter or semester. Faculty who the employing agency anticipates will not work for the entire instructional year or equivalent nine-month period, but who actually work half-time or more throughout the entire instructional year, are eligible for summer or off-quarter coverage. Faculty who have met the criteria of this subsection (4)(c)(ii), who work at least two quarters of the academic year with an average academic year workload of half-time or more for three quarters of the academic year, and who have worked an average of half-time or more in each of the two preceding academic years shall continue to receive uninterrupted employer contributions for benefits if he or she works at least half-time in a quarter or semester or works two quarters of the academic year with an average academic workload each academic year of half-time or more for three quarters. Eligibility under this section ceases immediately if this criteria is not met.

(iii) Faculty may establish or maintain eligibility for benefits by working for more than one institution of higher education. When faculty work for more than one institution of higher education, those institutions shall prorate the employer contribution costs, or if eligibility is reached through one institution, that institution will pay the full employer contribution. Faculty working for more than one institution must alert his or her employers to his or her potential eligibility in order to establish eligibility.

(iv) The employing agency must provide written notice to faculty who are potentially eligible for benefits under this subsection (4)(c) of their potential eligibility.

(v) To be eligible for maintenance of benefits through averaging under (c)(ii) of this subsection, faculty must provide written notification to his or her employing agency or agencies of his or her potential eligibility.

(d) A legislator is eligible for benefits on the date his or her term begins. All other elected and full-time appointed officials of the legislative and executive branches of state government are eligible for benefits on the date his or her term begins or they take the oath of office, whichever occurs first.

(e) A justice of the supreme court and judges of the court of appeals and the superior courts become eligible for benefits on the date he or she takes the oath of office.

(f) Except as provided in (c)(i) and (ii) of this subsection, eligibility ceases for any employee the first of the month following termination of the employment relationship.

(g) In determining eligibility under this section, the employing agency may disregard training hours, standby hours, or temporary changes in work hours as determined by the authority under this section.

(h) Insurance coverage for all eligible employees begins on the first day of the month following the date when eligibility for benefits is established. If the date eligibility is established is the first working day of a month, insurance coverage begins on that date.

(i) Eligibility for an employee whose work circumstances are described by more than one of the eligibility categories in (a) through (e) of this subsection shall be determined solely by the criteria of the category that most closely describes the employee's work circumstances.

(j) Except for an employee eligible for benefits under (b) or (c)(ii) of this subsection, an employee who has established eligibility for benefits under this section shall remain eligible for benefits each month in which he or she is in pay status for eight or more hours, if (i) he or she remains in a benefits-eligible position and (ii) leave from the benefits-eligible position is approved by the employing agency. A benefits-eligible seasonal employee is eligible for the employer contribution in any month of his or her season in which he or she is in pay status eight or more hours during that month. Eligibility ends if these conditions are not met, the employment relationship is terminated, or the employee voluntarily transfers to a non-eligible position.

(k) For the purposes of this subsection:

(i) "Academic year" means summer, fall, winter, and spring quarters or semesters;

(ii) "Half-time" means one-half of the full-time academic workload as determined by each institution, except that half-time for community and technical college faculty employees shall have the same meaning as "part-time" under RCW 28B.50.489;

(iii) "Benefits-eligible position" shall be defined by the board.

(5) The board may authorize premium contributions for an employee and the employee's dependents in a manner that encourages the use of cost-efficient managed health care systems.

(6)(a) For any open enrollment period following August 24, 2011, the board shall offer a health savings account option for employees that conforms to section 223, Part VII of subchapter B of chapter 1 of the internal revenue code of 1986. The board shall comply with all applicable federal standards related to the establishment of health savings accounts.

(b) By November 30, 2015, and each year thereafter, the authority shall submit a report to the relevant legislative policy and fiscal committees that includes the following:

(i) Public employees' benefits board health plan cost and service utilization trends for the previous three years, in total and for each health plan offered to employees;

(ii) For each health plan offered to employees, the number and percentage of employees and dependents enrolled in the plan, and the age and gender demographics of enrollees in each plan;

(iii) Any impact of enrollment in alternatives to the most comprehensive plan, including the high deductible health plan with a health savings account, upon the cost of health benefits for those employees who have chosen to remain enrolled in the most comprehensive plan.

(7) Notwithstanding any other provision of this chapter, for any open enrollment period following August 24, 2011, the board shall offer a high deductible health plan in conjunction with a health savings account developed under subsection (6) of this section.

(8) Employees shall choose participation in one of the health care benefit plans developed by the board and may be permitted to waive coverage under terms and conditions established by the board.

(9) The board shall review plans proposed by insuring entities that desire to offer property insurance and/or accident and casualty insurance to state employees through payroll deduction. The board may approve any such plan for payroll deduction by insuring entities holding a valid certificate of authority in the state of Washington and which the board determines to be in the best interests of employees and the state. The board shall adopt rules setting forth criteria by which it shall evaluate the plans.

(10) Before January 1, 1998, the public employees' benefits board shall make available one or more fully insured long-term care insurance plans that comply with the requirements of chapter 48.84 RCW. Such programs shall be made available to eligible employees, retired employees, and retired school employees as well as eligible dependents which, for the purpose of this section, includes the parents of the employee or retiree and the parents of the spouse of the employee or retiree. Employees of local governments, political subdivisions, and tribal governments not otherwise enrolled in the public employees' benefits board sponsored medical programs may enroll under terms and conditions established by the administrator, if it does not jeopardize the financial viability of the public employees' benefits board's long-term care offering.

(a) Participation of eligible employees or retired employees and retired school employees in any long-term care insurance plan made available by the public employees' benefits board is voluntary and shall not be subject to binding arbitration under chapter 41.56 RCW. Participation is subject to reasonable underwriting guidelines and eligibility rules established by the public employees' benefits board and the health care authority.

(b) The employee, retired employee, and retired school employee are solely responsible for the payment of the premium rates developed by the health care authority. The health care authority is authorized to charge a reasonable administrative fee in addition to the premium charged by the long-term care insurer, which shall include the health care authority's cost of administration, marketing, and consumer education materials prepared by the health care authority and the office of the insurance commissioner.

(c) To the extent administratively possible, the state shall establish an automatic payroll or pension deduction system for the payment of the long-term care insurance premiums.

(d) The public employees' benefits board and the health care authority shall establish a technical advisory committee to provide advice in the development of the benefit design

and establishment of underwriting guidelines and eligibility rules. The committee shall also advise the board and authority on effective and cost-effective ways to market and distribute the long-term care product. The technical advisory committee shall be comprised, at a minimum, of representatives of the office of the insurance commissioner, providers of long-term care services, licensed insurance agents with expertise in long-term care insurance, employees, retired employees, retired school employees, and other interested parties determined to be appropriate by the board.

(e) The health care authority shall offer employees, retired employees, and retired school employees the option of purchasing long-term care insurance through licensed agents or brokers appointed by the long-term care insurer. The authority, in consultation with the public employees' benefits board, shall establish marketing procedures and may consider all premium components as a part of the contract negotiations with the long-term care insurer.

(f) In developing the long-term care insurance benefit designs, the public employees' benefits board shall include an alternative plan of care benefit, including adult day services, as approved by the office of the insurance commissioner.

(g) The health care authority, with the cooperation of the office of the insurance commissioner, shall develop a consumer education program for the eligible employees, retired employees, and retired school employees designed to provide education on the potential need for long-term care, methods of financing long-term care, and the availability of long-term care insurance products including the products offered by the board.

(11) The board may establish penalties to be imposed by the authority when the eligibility determinations of an employing agency fail to comply with the criteria under this chapter. [2011 1st sp.s. c 8 § 1; 2009 c 537 § 7. Prior: 2007 c 156 § 10; 2007 c 114 § 5; 2006 c 299 § 2; prior: 2005 c 518 § 920; 2005 c 195 § 1; 2003 c 158 § 2; 2002 c 142 § 3; 1996 c 140 § 1; 1995 1st sp.s. c 6 § 5; 1994 c 153 § 5; prior: 1993 c 492 § 218; 1993 c 386 § 9; 1988 c 107 § 8.]

Effective date—2009 c 537: See note following RCW 41.05.008.

Intent—Effective date—2007 c 114: See notes following RCW 41.05.011.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Effective date—2005 c 195: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 195 § 4.]

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.05.066 Same sex domestic partner benefits. A certificate of domestic partnership issued to a couple of the same sex under the provisions of RCW 26.60.030 shall be recognized as evidence of a qualified same sex domestic partnership fulfilling all necessary eligibility criteria for the partner of the employee to receive benefits. Nothing in this section affects the requirements of same sex domestic partners to complete documentation related to federal tax status that may

currently be required by the board for employees choosing to make premium payments on a pretax basis. [2007 c 156 § 9.]

41.05.068 Federal employer incentive program—Authority to participate. The authority may participate as an employer-sponsored program established in section 1860D-22 of the medicare prescription drug, improvement, and modernization act of 2003, P.L. 108-173 et seq., to receive federal employer subsidy funds for continuing to provide retired employee health coverage, including a pharmacy benefit. The administrator, in consultation with the office of financial management, shall evaluate participation in the employer incentive program, including but not limited to any necessary program changes to meet the eligibility requirements that employer-sponsored retiree health coverage provide prescription drug coverage at least equal to the actuarial value of standard prescription drug coverage under medicare part D. Any employer subsidy moneys received from participation in the federal employer incentive program shall be deposited in the state general fund. [2009 c 479 § 25; 2005 c 195 § 2.]

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

Effective date—2005 c 195: See note following RCW 41.05.065.

41.05.075 Employee benefit plans—Contracts with insuring entities—Performance measures—Financial incentives—Health information technology. (1) The administrator shall provide benefit plans designed by the board through a contract or contracts with insuring entities, through self-funding, self-insurance, or other methods of providing insurance coverage authorized by RCW 41.05.140.

(2) The administrator shall establish a contract bidding process that:

- (a) Encourages competition among insuring entities;
- (b) Maintains an equitable relationship between premiums charged for similar benefits and between risk pools including premiums charged for retired state and school district employees under the separate risk pools established by RCW 41.05.022 and 41.05.080 such that insuring entities may not avoid risk when establishing the premium rates for retirees eligible for medicare;
- (c) Is timely to the state budgetary process; and
- (d) Sets conditions for awarding contracts to any insuring entity.

(3) The administrator shall establish a requirement for review of utilization and financial data from participating insuring entities on a quarterly basis.

(4) The administrator shall centralize the enrollment files for all employee and retired or disabled school employee health plans offered under chapter 41.05 RCW and develop enrollment demographics on a plan-specific basis.

(5) All claims data shall be the property of the state. The administrator may require of any insuring entity that submits a bid to contract for coverage all information deemed necessary including:

- (a) Subscriber or member demographic and claims data necessary for risk assessment and adjustment calculations in order to fulfill the administrator's duties as set forth in this chapter; and
- (b) Subscriber or member demographic and claims data necessary to implement performance measures or financial

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incentives related to performance under subsection (7) of this section.

(6) All contracts with insuring entities for the provision of health care benefits shall provide that the beneficiaries of such benefit plans may use on an equal participation basis the services of practitioners licensed pursuant to chapters 18.22, 18.25, 18.32, 18.53, 18.57, 18.71, 18.74, 18.83, and 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners. However, nothing in this subsection may preclude the administrator from establishing appropriate utilization controls approved pursuant to RCW 41.05.065(2) (a), (b), and (d).

(7) The administrator shall, in collaboration with other state agencies that administer state purchased health care programs, private health care purchasers, health care facilities, providers, and carriers:

(a) Use evidence-based medicine principles to develop common performance measures and implement financial incentives in contracts with insuring entities, health care facilities, and providers that:

(i) Reward improvements in health outcomes for individuals with chronic diseases, increased utilization of appropriate preventive health services, and reductions in medical errors; and

(ii) Increase, through appropriate incentives to insuring entities, health care facilities, and providers, the adoption and use of information technology that contributes to improved health outcomes, better coordination of care, and decreased medical errors;

(b) Through state health purchasing, reimbursement, or pilot strategies, promote and increase the adoption of health information technology systems, including electronic medical records, by hospitals as defined in RCW 70.41.020(4), integrated delivery systems, and providers that:

- (i) Facilitate diagnosis or treatment;
- (ii) Reduce unnecessary duplication of medical tests;
- (iii) Promote efficient electronic physician order entry;
- (iv) Increase access to health information for consumers and their providers; and
- (v) Improve health outcomes;

(c) Coordinate a strategy for the adoption of health information technology systems using the final health information technology report and recommendations developed under chapter 261, Laws of 2005.

(8) The administrator may permit the Washington state health insurance pool to contract to utilize any network maintained by the authority or any network under contract with the authority. [2007 c 259 § 34; 2006 c 103 § 3; 2005 c 446 § 2; 2002 c 142 § 4. Prior: 1994 sp.s. c 9 § 724; 1994 c 309 § 3; 1994 c 153 § 6; 1993 c 386 § 10; 1988 c 107 § 9.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Intent—2006 c 103: See note following RCW 41.05.021.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.05.080 Participation in insurance plans and contracts—Retired, disabled, or separated employees—Certain surviving spouses or surviving domestic partners and dependent children (as amended by

2009 c 522. (1) Under the qualifications, terms, conditions, and benefits set by the board:

(a) Retired or disabled state employees, retired or disabled school employees, retired or disabled employees of county, municipal, or other political subdivisions, or retired or disabled employees of tribal governments covered by this chapter may continue their participation in insurance plans and contracts after retirement or disablement;

(b) Separated employees may continue their participation in insurance plans and contracts if participation is selected immediately upon separation from employment;

(c) Surviving spouses, surviving spouses or surviving domestic partners in the case of members of the Washington state patrol retirement system, and dependent children of emergency service personnel killed in the line of duty may participate in insurance plans and contracts.

(2) Rates charged surviving spouses, or surviving spouses or surviving domestic partners in the case of members of the Washington state patrol retirement system, of emergency service personnel killed in the line of duty, retired or disabled employees, separated employees, spouses, or dependent children who are not eligible for parts A and B of medicare shall be based on the experience of the community rated risk pool established under RCW 41.05.022.

(3) Rates charged to surviving spouses, or surviving spouses or surviving domestic partners in the case of members of the Washington state patrol retirement system, of emergency service personnel killed in the line of duty, retired or disabled employees, separated employees, spouses, or children who are eligible for parts A and B of medicare shall be calculated from a separate experience risk pool comprised only of individuals eligible for parts A and B of medicare; however, the premiums charged to medicare-eligible retirees and disabled employees shall be reduced by the amount of the subsidy provided under RCW 41.05.085.

(4) Surviving spouses, surviving spouses or surviving domestic partners in the case of members of the Washington state patrol retirement system, and dependent children of emergency service personnel killed in the line of duty and retired or disabled and separated employees shall be responsible for payment of premium rates developed by the authority which shall include the cost to the authority of providing insurance coverage including any amounts necessary for reserves and administration in accordance with this chapter. These self pay rates will be established based on a separate rate for the employee, the spouse, the spouse or domestic partner in the case of members of the Washington state patrol retirement system, and the children.

(5) The term "retired state employees" for the purpose of this section shall include but not be limited to members of the legislature whether voluntarily or involuntarily leaving state office. [2009 c 522 § 9; 2007 c 114 § 6; 2001 c 165 § 3; 1996 c 39 § 22; 1994 c 153 § 7; 1993 c 386 § 11; 1977 ex.s. c 136 § 6; 1975-'76 2nd ex.s. c 106 § 6; 1973 1st ex.s. c 147 § 7; 1970 ex.s. c 39 § 8.]

41.05.080 Participation in insurance plans and contracts—Retired, disabled, or separated employees—Certain surviving spouses, domestic partners, and dependent children (as amended by 2009 c 523).

(1) Under the qualifications, terms, conditions, and benefits set by the board:

(a) Retired or disabled state employees, retired or disabled school employees, retired or disabled employees of county, municipal, or other political subdivisions, or retired or disabled employees of tribal governments covered by this chapter may continue their participation in insurance plans and contracts after retirement or disablement;

(b) Separated employees may continue their participation in insurance plans and contracts if participation is selected immediately upon separation from employment;

(c) Surviving spouses, domestic partners, and dependent children of emergency service personnel killed in the line of duty may participate in insurance plans and contracts.

(2) Rates charged surviving spouses and domestic partners of emergency service personnel killed in the line of duty, retired or disabled employees, separated employees, spouses, or dependent children who are not eligible for parts A and B of medicare shall be based on the experience of the community rated risk pool established under RCW 41.05.022.

(3) Rates charged to surviving spouses and domestic partners of emergency service personnel killed in the line of duty, retired or disabled employees, separated employees, spouses, or children who are eligible for parts A and B of medicare shall be calculated from a separate experience risk pool comprised only of individuals eligible for parts A and B of medicare; however, the premiums charged to medicare-eligible retirees and disabled employees shall be reduced by the amount of the subsidy provided under RCW 41.05.085.

(4) Surviving spouses, domestic partners, and dependent children of emergency service personnel killed in the line of duty and retired or disabled and separated employees shall be responsible for payment of premium rates developed by the authority which shall include the cost to the authority of providing insurance coverage including any amounts necessary for reserves and administration in accordance with this chapter. These self pay rates will be established based on a separate rate for the employee, the spouse, and the children.

(5) The term "retired state employees" for the purpose of this section shall include but not be limited to members of the legislature whether voluntarily or involuntarily leaving state office. [2009 c 523 § 1; 2007 c 114 § 6; 2001 c 165 § 3; 1996 c 39 § 22; 1994 c 153 § 7; 1993 c 386 § 11; 1977 ex.s. c 136 § 6; 1975-'76 2nd ex.s. c 106 § 6; 1973 1st ex.s. c 147 § 7; 1970 ex.s. c 39 § 8.]

Reviser's note: RCW 41.05.080 was amended twice during the 2009 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Intent—Effective date—2007 c 114: See notes following RCW 41.05.011.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.05.085 Retired or disabled school employee health insurance subsidy. (1) Beginning with the appropriations act for the 2005-2007 biennium, the legislature shall establish as part of both the state employees' and the school and educational service district employees' insurance benefit allocation the portion of the allocation to be used to provide a prescription drug subsidy to reduce the health care insurance premiums charged to retired or disabled school district and educational service district employees, or retired state employees, who are eligible for parts A and B of medicare. The legislature may also establish a separate health care subsidy to reduce insurance premiums charged to individuals who select a medicare supplemental insurance policy option established in RCW 41.05.195.

(2) The amount of any premium reduction shall be established by the board. The amount established shall not result in a premium reduction of more than fifty percent, except as provided in subsection (3) of this section. The board may also determine the amount of any subsidy to be available to spouses and dependents.

(3) The amount of the premium reduction in subsection (2) of this section may exceed fifty percent, if the administrator, in consultation with the office of financial management, determines that it is necessary in order to meet eligibility requirements to participate in the federal employer incentive program as provided in RCW 41.05.068. [2005 c 195 § 3; 1994 c 153 § 8.]

Effective date—2005 c 195: See note following RCW 41.05.065.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

41.05.090 Continuation of coverage of employee, spouse, or covered dependent ineligible under state plan—Exceptions. (1) When an employee, spouse, or covered dependent becomes ineligible under the state plan and wishes to continue coverage on an individual basis with the same provider under the state plan, such employee, spouse, or covered dependent shall be entitled to immediately transfer and shall not be required to undergo any waiting period before obtaining individual coverage.

(2) Entitlement to a conversion contract under the terms of this section shall not apply to any employee, spouse, or covered dependent who is:

(a) Eligible for federal medicare coverage; or

(b) Covered under another group plan, policy, contract, or agreement providing benefits for hospital or medical care.

(3) Entitlement to conversion under the terms of this section shall not apply to any employee terminated for misconduct, except that conversion shall be offered to the spouse and covered dependents of the terminated employee. [1990 c 222 § 5; 1979 c 125 § 3.]

41.05.095 Unmarried dependents under the age of twenty-five. (1) Any plan offered to employees under this chapter must offer each employee the option of covering any unmarried dependent of the employee under the age of twenty-five.

(2) Any employee choosing under subsection (1) of this section to cover a dependent who is: (a) Age twenty through twenty-three and not a registered student at an accredited secondary school, college, university, vocational school, or school of nursing; or (b) age twenty-four, shall be required to pay the full cost of such coverage.

(3) Any employee choosing under subsection (1) of this section to cover a dependent with disabilities, mental illness, or intellectual or other developmental disabilities, who is incapable of self-support, may continue covering that dependent under the same premium and payment structure as for dependents under the age of twenty, irrespective of age. [2010 c 94 § 11; 2007 c 259 § 18.]

Purpose—2010 c 94: See note following RCW 44.04.280.

Effective date—2007 c 259 §§ 18-22: "Sections 18 through 22 of this act take effect January 1, 2009." [2007 c 259 § 72.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

41.05.100 Chapter not applicable to certain employees of Cooperative Extension Service. The provisions of this chapter shall not be applicable to any employee of the Washington State University Cooperative Extension Service who holds a federal civil service appointment and is thereby eligible for insurance coverage under the regulations of the United States Department of Agriculture and the United States Civil Service Commission, and which employee elects participation in the federal programs in lieu of the programs established pursuant to this chapter. Such election may be made only once. [1979 ex.s. c 9 § 1.]

41.05.110 Chapter not applicable to officers and employees of state convention and trade center. The provisions of this chapter shall not be applicable to the officers and employees of the nonprofit corporation formed under *chapter 67.40 RCW. [1984 c 210 § 3.]

***Reviser's note:** A majority of chapter 67.40 RCW was repealed by 2010 1st sp.s. c 15 § 14, effective November 30, 2010. RCW 67.40.020 was repealed by 2010 1st sp.s. c 15 § 15, effective December 30, 2010.

Additional notes found at www.leg.wa.gov

41.05.120 Public employees' and retirees' insurance account. (1) The public employees' and retirees' insurance account is hereby established in the custody of the state treasurer, to be used by the administrator for the deposit of con-

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tributions, the remittance paid by school districts and educational service districts under RCW 28A.400.410, reserves, dividends, and refunds, for payment of premiums for employee and retiree insurance benefit contracts and subsidy amounts provided under RCW 41.05.085, and transfers from the *medical flexible spending account as authorized in RCW 41.05.123. Moneys from the account shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the administrator. Moneys from the account may be transferred to the *medical flexible spending account to provide reserves and start-up costs for the operation of the *medical flexible spending account program.

(2) The state treasurer and the state investment board may invest moneys in the public employees' and retirees' insurance account. All such investments shall be in accordance with RCW 43.84.080 or 43.84.150, whichever is applicable. The administrator shall determine whether the state treasurer or the state investment board or both shall invest moneys in the public employees' [and retirees'] insurance account.

(3) During the 2005-07 fiscal biennium, the legislature may transfer from the public employees' and retirees' insurance account such amounts as reflect the excess fund balance of the fund. [2005 c 518 § 921; 2005 c 143 § 3; 1994 c 153 § 9; 1993 c 492 § 219; 1991 sp.s. c 13 § 100; 1988 c 107 § 10.]

Reviser's note: *(1) The "medical flexible spending account" was renamed the "flexible spending administrative account" by 2008 c 229 § 6.

(2) This section was amended by 2005 c 143 § 3 and by 2005 c 518 § 921, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

41.05.123 Flexible spending administrative account—Salary reduction account. (1) The flexible spending administrative account is created in the custody of the state treasurer. All receipts from the following must be deposited in the account: (a) Revenues from employing agencies for costs associated with operating the medical flexible spending arrangement program and the dependent care assistance program provided through the salary reduction plan authorized under this chapter; (b) funds transferred from the dependent care administrative account; and (c) unclaimed moneys at the end of the plan year after all timely submitted claims for that plan year have been processed. Expenditures from the account may be used only for administrative and other expenses related to operating the medical flexible spending arrangement program and the dependent care assistance program provided through the salary reduction plan authorized under this chapter. Only the administrator or the administrator's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) The salary reduction account is established in the state treasury. Employee salary reductions paid to reimburse participants or service providers for benefits provided by the

medical flexible spending arrangement program and the dependent care assistance program provided through the salary reduction plan authorized under this chapter shall be paid from the salary reduction account. The funds held by the state to pay for benefits provided by the medical flexible spending arrangement program and the dependent care assistance program provided through the salary reduction plan authorized under this chapter shall be deposited in the salary reduction account. Unclaimed moneys remaining in the salary reduction account at the end of a plan year after all timely submitted claims for that plan year have been processed shall become a part of the flexible spending administrative account. Only the administrator or the administrator's designee may authorize expenditures from the account. The account is not subject to allotment procedures under chapter 43.88 RCW and an appropriation is not required for expenditures.

(3) Program claims reserves and money necessary for start-up costs transferred from the public employees' and retirees' insurance account established in RCW 41.05.120 may be deposited in the flexible spending administrative account. Moneys in excess of the amount necessary for administrative and operating expenses of the medical flexible spending arrangement program may be transferred to the public employees' and retirees' insurance account.

(4) The authority may periodically bill employing agencies for costs associated with operating the medical flexible spending arrangement program and the dependent care assistance program provided through the salary reduction plan authorized under this chapter. [2008 c 229 § 6; 2005 c 143 § 2.]

Effective date—2008 c 229: See note following RCW 41.05.295.

41.05.130 State health care authority administrative account. The state health care authority administrative account is hereby created in the state treasury. Moneys in the account, including unanticipated revenues under RCW 43.79.270, may be spent only after appropriation by statute, and may be used only for operating expenses of the authority, and during the 2013-2015 fiscal biennium, for health care related analysis provided to the legislature by the office of the state actuary. [2014 c 221 § 914; 1988 c 107 § 11.]

Effective date—2014 c 221: See note following RCW 28A.710.260.

41.05.140 Payment of claims—Self-insurance—Insurance reserve fund created. (1) Except for property and casualty insurance, the authority may self-fund, self-insure, or enter into other methods of providing insurance coverage for insurance programs under its jurisdiction, including the basic health plan as provided in chapter 70.47 RCW. The authority shall contract for payment of claims or other administrative services for programs under its jurisdiction. If a program does not require the prepayment of reserves, the authority shall establish such reserves within a reasonable period of time for the payment of claims as are normally required for that type of insurance under an insured program. The authority shall endeavor to reimburse basic health plan health care providers under this section at rates similar to the average reimbursement rates offered by the statewide benchmark plan determined through the request for proposal process.

(2) Reserves established by the authority for employee and retiree benefit programs shall be held in a separate account in the custody of the state treasurer and shall be known as the public employees' and retirees' insurance reserve fund. The state treasurer may invest the moneys in the reserve fund pursuant to RCW 43.79A.040.

(3) Any savings realized as a result of a program created for employees and retirees under this section shall not be used to increase benefits unless such use is authorized by statute.

(4) Any program created under this section shall be subject to the examination requirements of chapter 48.03 RCW as if the program were a domestic insurer. In conducting an examination, the commissioner shall determine the adequacy of the reserves established for the program.

(5) The authority shall keep full and adequate accounts and records of the assets, obligations, transactions, and affairs of any program created under this section.

(6) The authority shall file a quarterly statement of the financial condition, transactions, and affairs of any program created under this section in a form and manner prescribed by the insurance commissioner. The statement shall contain information as required by the commissioner for the type of insurance being offered under the program. A copy of the annual statement shall be filed with the speaker of the house of representatives and the president of the senate.

(7) The provisions of this section do not apply to the administration of chapter 74.09 RCW. [2013 c 251 § 10; 2012 c 187 § 10; 2011 1st sp.s. c 15 § 59; 2000 c 80 § 5; 2000 c 79 § 44; 1994 c 153 § 10. Prior: 1993 c 492 § 220; 1993 c 386 § 12; 1988 c 107 § 12.]

Residual balance of funds—Effective date—2013 c 251: See notes following RCW 41.06.280.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.05.143 Uniform medical plan benefits administration account—Uniform dental plan benefits administration account—Public employees' benefits board medical benefits administration account. (1) The uniform medical plan benefits administration account is created in the custody of the state treasurer. Only the administrator or the administrator's designee may authorize expenditures from the account. Moneys in the account shall be used exclusively for contracted expenditures for uniform medical plan claims administration, data analysis, utilization management, preferred provider administration, and activities related to benefits administration where the level of services provided pursuant to a contract fluctuate as a direct result of changes in uniform medical plan enrollment. Moneys in the account may also be used for administrative activities required to respond to new and unforeseen conditions that impact the uniform medical plan, but only when the authority and the office of financial management jointly agree that such activities must be initiated prior to the next legislative session.

(2) Receipts from amounts due from or on behalf of uniform medical plan enrollees for expenditures related to benefits administration, including moneys disbursed from the public employees' and retirees' insurance account, shall be deposited into the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. All proposals for allotment increases shall be provided to the house of representatives appropriations committee and to the senate ways and means committee at the same time as they are provided to the office of financial management.

(3) The uniform dental plan benefits administration account is created in the custody of the state treasurer. Only the administrator or the administrator's designee may authorize expenditures from the account. Moneys in the account shall be used exclusively for contracted expenditures related to benefits administration for the uniform dental plan as established under RCW 41.05.140. Receipts from amounts due from or on behalf of uniform dental plan enrollees for expenditures related to benefits administration, including moneys disbursed from the public employees' and retirees' insurance account, shall be deposited into the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(4) The public employees' benefits board medical benefits administration account is created in the custody of the state treasurer. Only the administrator or the administrator's designee may authorize expenditures from the account. Moneys in the account shall be used exclusively for contracted expenditures related to claims administration, data analysis, utilization management, preferred provider administration, and other activities related to benefits administration for self-insured medical plans other than the uniform medical plan. Receipts from amounts due from or on behalf of enrollees for expenditures related to benefits administration, including moneys disbursed from the public employees' and retirees' insurance account, shall be deposited into the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2007 c 507 § 1; 2000 2nd sp.s. c 1 § 901.]

Additional notes found at www.leg.wa.gov

41.05.160 Rules. The administrator may promulgate and adopt rules consistent with this chapter to carry out the purposes of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. [1988 c 107 § 15.]

41.05.165 Rules—Insurance benefit reimbursement. The authority shall adopt rules that provide for members of the legislature who choose reimbursement under RCW 44.04.230 in lieu of insurance benefits under this chapter. [1998 c 62 § 2.]

Additional notes found at www.leg.wa.gov

41.05.170 Neurodevelopmental therapies—Employer-sponsored group contracts. (1) Each health plan offered to public employees and their covered dependents under this chapter which is not subject to the provisions of Title 48 RCW and is established or renewed on or after twelve months after July 23, 1989, shall include coverage for

neurodevelopmental therapies for covered individuals age six and under.

(2) Benefits provided under this section shall cover the services of those authorized to deliver occupational therapy, speech therapy, and physical therapy. Benefits shall be payable only where the services have been delivered pursuant to the referral and periodic review of a holder of a license issued pursuant to chapter 18.71 or 18.57 RCW or where covered services have been rendered by such licensee. Nothing in this section shall preclude a self-funded plan authorized under this chapter from negotiating rates with qualified providers.

(3) Benefits provided under this section shall be for medically necessary services as determined by the self-funded plan authorized under this chapter. Benefits shall be payable for services for the maintenance of a covered individual in cases where significant deterioration in the patient's condition would result without the service. Benefits shall be payable to restore and improve function.

(4) It is the intent of this section that the state, as an employer providing comprehensive health coverage including the benefits required by this section, retains the authority to design and employ utilization and cost controls. Therefore, benefits delivered under this section may be subject to contractual provisions regarding deductible amounts and/or copayments established by the self-funded plan authorized under this chapter. Benefits provided under this section may be subject to standard waiting periods for preexisting conditions, and may be subject to the submission of written treatment plans.

(5) In recognition of the intent expressed in subsection (4) of this section, benefits provided under this section may be subject to contractual provisions establishing annual and/or lifetime benefit limits. Such limits may define the total dollar benefits available, or may limit the number of services delivered as established by the self-funded plan authorized under this chapter. [1989 c 345 § 4.]

41.05.175 Prescribed, self-administered anticancer medication. (1) Each health plan offered to public employees and their covered dependents under this chapter, including those subject to the provision of Title 48 RCW, and is issued or renewed beginning January 1, 2012, and provides coverage for cancer chemotherapy treatment must provide coverage for prescribed, self-administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis at least comparable to cancer chemotherapy medications administered by a health care provider or facility as defined in *RCW 48.43.005 (15) and (16).

(2) Nothing in this section may be interpreted to prohibit a health plan from administering a formulary or preferred drug list, requiring prior authorization, or imposing other appropriate utilization controls in approving coverage for any chemotherapy. [2011 c 159 § 2.]

***Reviser's note:** RCW 48.43.005 was amended by 2011 c 314 § 3 and by 2011 c 315 § 2, changing subsections (15) and (16) to subsections (20) and (21). RCW 48.43.005 was subsequently amended by 2012 c 87 § 1, changing subsections (20) and (21) to subsections (22) and (23).

Findings—2011 c 159: "The Washington state legislature finds that for cancer patients, there is an inequity in how much they have to pay toward the cost of a self-administered oral medication and how much they have to pay for an intravenous product that is administered in a physician's office or clinic. The legislature further finds that when these inequities exist, patients'

access to medically necessary, appropriate treatment is often unfairly restricted. The legislature also acknowledges that self-administered chemotherapy is the only treatment for some types of cancer where there is no intravenous alternative. The legislature declares that in order to reduce the out-of-pocket costs for cancer patients whose diagnosis requires treatment through self-administered anticancer medication, the cost-sharing responsibilities for these patients must be on a basis at least comparable to those of patients receiving intravenously administered anticancer medication." [2011 c 159 § 1.]

41.05.177 Prostate cancer screening—Required coverage. (1) Each plan offered to public employees and their covered dependents under this chapter that is not subject to the provisions of Title 48 RCW and is issued or renewed after December 31, 2006, shall provide coverage for prostate cancer screening, provided that the screening is delivered upon the recommendation of the patient's physician, advanced registered nurse practitioner, or physician assistant.

(2) This section shall not be construed to prevent the application of standard policy provisions applicable to other benefits, such as deductible or copayment provisions. This section does not limit the authority of the health care authority to negotiate rates and contract with specific providers for the delivery of prostate cancer screening services. This section shall not apply to medicare supplemental policies or supplemental contracts covering a specified disease or other limited benefits. [2006 c 367 § 1.]

41.05.180 Mammograms—Insurance coverage. Each health plan offered to public employees and their covered dependents under this chapter that is not subject to the provisions of Title 48 RCW and is established or renewed after January 1, 1990, and that provides benefits for hospital or medical care shall provide benefits for screening or diagnostic mammography services, provided that such services are delivered upon the recommendation of the patient's physician or advanced registered nurse practitioner as authorized by the nursing care quality assurance commission pursuant to chapter 18.79 RCW or physician assistant pursuant to chapter 18.71A RCW.

This section shall not be construed to prevent the application of standard health plan provisions applicable to other benefits such as deductible or copayment provisions. This section does not limit the authority of the state health care authority to negotiate rates and contract with specific providers for the delivery of mammography services. This section shall not apply to medicare supplement policies or supplemental contracts covering a specified disease or other limited benefits. [1994 sp.s. c 9 § 725; 1989 c 338 § 5.]

Additional notes found at www.leg.wa.gov

41.05.183 General anesthesia services for dental procedures—Public employee benefit plans. (1) Each employee benefit plan offered to public employees that provides coverage for hospital, medical, or ambulatory surgery center services must cover general anesthesia services and related facility charges in conjunction with any dental procedure performed in a hospital or ambulatory surgical center if such anesthesia services and related facility charges are medically necessary because the covered person:

(a) Is under the age of seven, or physically or developmentally disabled, with a dental condition that cannot be safely and effectively treated in a dental office; or

(b) Has a medical condition that the person's physician determines would place the person at undue risk if the dental procedure were performed in a dental office. The procedure must be approved by the person's physician.

(2) Each employee benefit plan offered to public employees that provides coverage for dental services must cover general anesthesia services in conjunction with any covered dental procedure performed in a dental office if the general anesthesia services are medically necessary because the covered person is under the age of seven or physically or developmentally disabled.

(3) This section does not prohibit an employee benefit plan from:

(a) Applying cost-sharing requirements, maximum annual benefit limitations, and prior authorization requirements to the services required under this section; or

(b) Covering only those services performed by a health care provider, or in a health care facility, that is part of its provider network; nor does it limit the authority in negotiating rates and contracts with specific providers.

(4) This section does not apply to medicare supplement policies, or supplemental contracts covering a specified disease or other limited benefits.

(5) For the purpose of this section, "general anesthesia services" means services to induce a state of unconsciousness accompanied by a loss of protective reflexes, including the ability to maintain an airway independently and respond purposefully to physical stimulation or verbal command.

(6) This section applies to employee benefit plans issued or renewed on or after January 1, 2002. [2001 c 321 § 1.]

41.05.185 Diabetes benefits—State purchased health care. The legislature finds that diabetes imposes a significant health risk and tremendous financial burden on the citizens and government of the state of Washington, and that access to the medically accepted standards of care for diabetes, its treatment and supplies, and self-management training and education is crucial to prevent or delay the short and long-term complications of diabetes and its attendant costs.

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Person with diabetes" means a person diagnosed by a health care provider as having insulin using diabetes, non-insulin using diabetes, or elevated blood glucose levels induced by pregnancy; and

(b) "Health care provider" means a health care provider as defined in RCW 48.43.005.

(2) All state purchased health care purchased or renewed after January 1, 1998, except the basic health plan described in chapter 70.47 RCW, shall provide benefits for at least the following services and supplies for persons with diabetes:

(a) For state purchased health care that includes coverage for pharmacy services, appropriate and medically necessary equipment and supplies, as prescribed by a health care provider, that includes but is not limited to insulin, syringes, injection aids, blood glucose monitors, test strips for blood glucose monitors, visual reading and urine test strips, insulin pumps and accessories to the pumps, insulin infusion devices, prescriptive oral agents for controlling blood sugar levels, foot care appliances for prevention of complications associated with diabetes, and glucagon emergency kits; and

(b) For all state purchased health care, outpatient self-management training and education, including medical nutrition therapy, as ordered by the health care provider. Diabetes outpatient self-management training and education may be provided only by health care providers with expertise in diabetes. Nothing in this section prevents any state agency purchasing health care according to this section from restricting patients to seeing only health care providers who have signed participating provider agreements with that state agency or an insuring entity under contract with that state agency.

(3) Coverage required under this section may be subject to customary cost-sharing provisions established for all other similar services or supplies within a policy.

(4) Health care coverage may not be reduced or eliminated due to this section.

(5) Services required under this section shall be covered when deemed medically necessary by the medical director, or his or her designee, subject to any referral and formulary requirements. [1997 c 276 § 1.]

Additional notes found at www.leg.wa.gov

41.05.188 Eosinophilic gastrointestinal associated disorder—Elemental formula. (1) Each health benefit plan offered to public employees and their covered dependents under this chapter that is not subject to chapter 48.43 RCW and that is issued or renewed after December 31, 2015, must offer benefits or coverage for medically necessary elemental formula, regardless of delivery method, when a licensed physician or other health care provider with prescriptive authority:

(a) Diagnoses a patient with an eosinophilic gastrointestinal associated disorder; and

(b) Orders and supervises the use of the elemental formula.

(2) Nothing in this section prohibits a health benefit plan from requiring prior authorization or imposing other appropriate utilization controls in approving coverage for medically necessary elemental formula. [2014 c 115 § 1.]

41.05.195 Medicare supplemental insurance policies. Notwithstanding any other provisions of this chapter or rules or procedures adopted by the authority, the authority shall make available to retired or disabled employees who are enrolled in parts A and B of medicare one or more medicare supplemental insurance policies that conform to the requirements of chapter 48.66 RCW. The policies shall be chosen in consultation with the public employees' benefits board. These policies shall be made available to retired or disabled state employees; retired or disabled school district employees; retired employees of county, municipal, or other political subdivisions or retired employees of tribal governments eligible for coverage available under the authority; or surviving spouses or domestic partners of emergency service personnel killed in the line of duty. [2009 c 523 § 2; 2007 c 114 § 7; 2005 c 47 § 1; 1993 c 492 § 222.]

Intent—Effective date—2007 c 114: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

(2014 Ed.)

41.05.197 Medicare supplemental insurance policies. The medicare supplemental insurance policies authorized under RCW 41.05.195 shall be made available to any resident of the state who:

(1) Is enrolled in parts A and B of medicare; and

(2) Is not eligible to purchase coverage as a retired or disabled employee under RCW 41.05.195. State residents purchasing a medicare supplemental insurance policy under this section shall be required to pay the full cost of any such policy. [2005 c 47 § 2; 1993 c 492 § 223.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

41.05.205 Tricare supplemental insurance policy—Authority to offer—Rules. (1) Notwithstanding any other provisions of this chapter or rules or procedures adopted by the authority under this chapter, the authority may make available a tricare supplemental insurance policy, 32 C.F.R. Sec. 199.17 (2004), to employees who are eligible. This supplemental policy may be offered as one of the board's health coverage options. Employee selection of this supplemental policy is exclusive of selecting any other medical coverage offered through the board. If offered by the board, this supplemental policy shall be made available to employees, and retired or disabled employees, eligible for coverage available under the authority, but not eligible for medicare parts A and B.

(2) The administrator may adopt rules to carry out the purposes of this section. [2005 c 46 § 1.]

41.05.220 Community and migrant health centers—Maternity health care centers—People of color—Underserved populations. (1) State general funds appropriated to the department of health for the purposes of funding community health centers to provide primary health and dental care services, migrant health services, and maternity health care services shall be transferred to the state health care authority. Any related administrative funds expended by the department of health for this purpose shall also be transferred to the health care authority. The health care authority shall exclusively expend these funds through contracts with community health centers to provide primary health and dental care services, migrant health services, and maternity health care services. The administrator of the health care authority shall establish requirements necessary to assure community health centers provide quality health care services that are appropriate and effective and are delivered in a cost-efficient manner. The administrator shall further assure that community health centers have appropriate referral arrangements for acute care and medical specialty services not provided by the community health centers.

(2) The authority, in consultation with the department of health, shall work with community and migrant health clinics and other providers of care to underserved populations, to ensure that the number of people of color and underserved people receiving access to managed care is expanded in proportion to need, based upon demographic data. [1998 c 245 § 38; 1993 c 492 § 232.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

[Title 41 RCW—page 45]

41.05.225 Blind licensees in the business enterprises program—Plan of health insurance. (1) The board shall offer a plan of health insurance to blind licensees who are actively operating facilities and participating in the business enterprises program established in RCW 74.18.200 through 74.18.230, and maintained by the department of services for the blind. The plan of health insurance benefits must be the same or substantially similar to the plan of health insurance benefits offered to state employees under this chapter. Enrollment will be at the option of each individual licensee or vendor, under rules established by the board.

(2) All costs incurred by the state or the board for providing health insurance coverage to active blind vendors, excluding family participation, under subsection (1) of this section may be paid for from net proceeds from vending machine operations in public buildings under RCW 74.18.230.

(3) Money from the business enterprises program under the federal Randolph-Sheppard Act may not be used for family participation in the health insurance benefits provided under this section. Family insurance benefits are the sole responsibility of the individual blind vendors. [2002 c 71 § 1.]

41.05.230 Multicultural health care technical assistance program. (1) Consistent with funds appropriated specifically for this purpose, the authority shall provide matching grants to support community-based multicultural health care technical assistance programs. The purpose of the programs shall be to promote technical assistance through community and migrant health clinics and other appropriate health care providers who serve underserved populations and persons of color.

The technical assistance provided shall include, but is not limited to: (a) Collaborative research and data analysis on health care outcomes that disproportionately affect persons of color; (b) design and development of model health education and promotion strategies aimed at modifying unhealthy health behaviors or enhancing the use of the health care delivery system by persons of color; (c) provision of technical information and assistance on program planning and financial management; (d) administration, public policy development, and analysis in health care issues affecting people of color; and (e) enhancement and promotion of health care career opportunities for persons of color.

(2) Consistent with appropriated funds, the programs shall be available on a statewide basis. [1993 c 492 § 272.]

Finding—1993 c 492: See note following RCW 28B.115.080.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

41.05.240 American Indian health care delivery plan. [1993 c 492 § 468.] Recodified as RCW 43.70.590 pursuant to 1995 c 43 § 5; and also repealed by 1995 1st sp.s. c 6 § 9.

Reviser's note: RCW 41.05.240 was recodified as RCW 43.70.590 pursuant to 1995 c 43 § 5 and amended by 1995 c 43 § 4, without cognizance of its repeal by 1995 1st sp.s. c 6 § 9. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

41.05.280 Department of corrections—Inmate health care. The department of corrections shall consult with the

state health care authority to identify how the department of corrections shall develop a working plan to correspond to the health care reform measures that require all departments to place all state purchased health services in a community-rated, single risk pool under the direct administrative authority of the state purchasing agent by July 1, 1997. [1998 c 245 § 39; 1993 c 504 § 3.]

Findings—1993 c 504: "The legislature finds that Washington state government purchases approximately one-fourth of all the health care statewide. In addition to this huge expenditure, the state also faces health care inflation rates, far exceeding the growth rate of the economy as a whole and the general inflationary rate. Together these factors are straining state resources beyond our capability to pay.

The legislature finds that the department of corrections is responsible for providing health care to a large and growing number of offenders. It is also facing rapidly escalating medical, dental, and mental health care expenditures. As a result of this, the department must review its entire inmate health care system and take steps to reduce health care expenditures.

The legislature further finds that efforts to achieve statewide health care reform should also include the department of correction's health care facilities. In this light, the department must develop an appropriate plan that will correspond to the changing health care environment." [1993 c 504 § 1.]

Additional notes found at www.leg.wa.gov

41.05.295 Dependent care assistance program—Health care authority—Powers, duties, and functions. (1) All powers, duties, and functions of the department of retirement systems pertaining to the dependent care assistance program are transferred to the health care authority.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of retirement systems pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the health care authority. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the health care authority.

(b) Whenever any question arises as to the transfer of any funds, books, documents, records, papers, files, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All rules and all pending business before the department of retirement systems pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the health care authority. All existing contracts and obligations shall remain in full force and shall be performed by the health care authority.

(4) The transfer of the powers, duties, and functions of the department of retirement systems shall not affect the validity of any act performed before January 1, 2009.

(5) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the public employment relations commission as provided by law. [2008 c 229 § 1.]

Effective date—2008 c 229: "This act takes effect January 1, 2009." [2008 c 229 § 15.]

41.05.300 Salary reduction agreements—Authorized. (1) The state of Washington may enter into salary

reduction agreements with employees of the state pursuant to the internal revenue code, for the purpose of making it possible for employees of the state to select on a "before-tax basis" certain taxable and nontaxable benefits. The purpose of the salary reduction plan established in this chapter is to attract and retain individuals in governmental service by permitting them to enter into agreements with the state to provide for benefits pursuant to 26 U.S.C. Sec. 125, 26 U.S.C. Sec. 129, and other applicable sections of the internal revenue code.

(2) Nothing in the salary reduction plan constitutes an employment agreement between the participant and the state, and nothing contained in the participant's salary reduction agreement, the plan, this section, or RCW 41.05.123, 41.05.310 through 41.05.360, and 41.05.295 gives a participant any right to be retained in state employment. [2008 c 229 § 3; 1995 1st sp.s. c 6 § 11.]

Effective date—2008 c 229: See note following RCW 41.05.295.

Additional notes found at www.leg.wa.gov

41.05.310 Salary reduction plan—Policies and procedures—Plan document. The authority shall have responsibility for the formulation and adoption of a plan, policies, and procedures designed to guide, direct, and administer the salary reduction plan. For the plan year beginning January 1, 1996, the administrator may establish a premium only plan. Expansion of the salary reduction plan or cafeteria plan during subsequent plan years shall be subject to approval by the director of the office of financial management.

(1) A plan document describing the benefits offered under the salary reduction plan shall be adopted and administered by the authority. The authority shall represent the state in all matters concerning the administration of the plan. The state, through the authority, may engage the services of a professional consultant or administrator on a contractual basis to serve as an agent to assist the authority or perform the administrative functions necessary in carrying out the purposes of RCW 41.05.123, 41.05.300 through 41.05.350, and 41.05.295.

(2) The authority shall formulate and establish policies and procedures for the administration of the salary reduction plan that are consistent with existing state law, the internal revenue code, and the regulations adopted by the internal revenue service as they may apply to the benefits offered to participants under the plan.

(3) Every action taken by the authority in administering RCW 41.05.123, 41.05.300 through 41.05.350, and 41.05.295 shall be presumed to be a fair and reasonable exercise of the authority vested in or the duties imposed upon it. The authority shall be presumed to have exercised reasonable care, diligence, and prudence and to have acted impartially as to all persons interested unless the contrary be proved by clear and convincing affirmative evidence. [2008 c 229 § 4; 1995 1st sp.s. c 6 § 12.]

Effective date—2008 c 229: See note following RCW 41.05.295.

Additional notes found at www.leg.wa.gov

41.05.320 Salary reduction plan—Eligibility—Participation, withdrawal. (1) Elected officials and permanent employees of the state are eligible to participate in the salary reduction plan and reduce their salary by agreement with the authority. The authority may adopt rules to: (a) Limit the par-

ticipation of employing agencies and their employees in the plan; and (b) permit participation in the plan by temporary employees of the state.

(2) Persons eligible under subsection (1) of this section may enter into salary reduction agreements with the state.

(3)(a) An eligible person may become a participant of the salary reduction plan for a full plan year with annual benefit plan selection for each new plan year made before the beginning of the plan year, as determined by the authority, or upon becoming eligible.

(b) Once an eligible person elects to participate in the salary reduction plan and determines the amount his or her gross salary shall be reduced and the benefit plan for which the funds are to be used during the plan year, the agreement shall be irrevocable and may not be amended during the plan year except as provided in (c) of this subsection. Prior to making an election to participate in the salary reduction plan, the eligible person shall be informed in writing of all the benefits and reductions that will occur as a result of such election.

(c) The authority shall provide in the salary reduction plan that a participant may enroll, terminate, or change his or her election after the plan year has begun if there is a significant change in a participant's status, as provided by 26 U.S.C. Sec. 125 and the regulations adopted under that section and defined by the authority.

(4) The authority shall establish as part of the salary reduction plan the procedures for and effect of withdrawal from the plan by reason of retirement, death, leave of absence, or termination of employment. To the extent possible under federal law, the authority shall protect participants from forfeiture of rights under the plan.

(5) Any reduction of salary under the salary reduction plan shall not reduce the reportable compensation for the purpose of computing the state retirement and pension benefits earned by the employee pursuant to chapters 41.26, 41.32, 41.35, 41.37, 41.40, and 43.43 RCW. [2008 c 229 § 5; 2007 c 492 § 6; 1995 1st sp.s. c 6 § 13.]

Effective date—2008 c 229: See note following RCW 41.05.295.

Additional notes found at www.leg.wa.gov

41.05.330 Salary reduction plan—Accounts and records. The authority shall keep or cause to be kept full and adequate accounts and records of the assets, obligations, transactions, and affairs of a salary reduction plan created under RCW 41.05.300. [2008 c 229 § 7; 1995 1st sp.s. c 6 § 14.]

Effective date—2008 c 229: See note following RCW 41.05.295.

Additional notes found at www.leg.wa.gov

41.05.340 Salary reduction plan—Termination—Amendment. (1) The state may terminate the salary reduction plan at the end of the plan year or upon notification of federal action affecting the status of the plan.

(2) The authority may amend the salary reduction plan at any time if the amendment does not affect the rights of the participants to receive eligible reimbursement from the participants' accounts. [2008 c 229 § 8; 1995 1st sp.s. c 6 § 15.]

Effective date—2008 c 229: See note following RCW 41.05.295.

Additional notes found at www.leg.wa.gov

41.05.350 Salary reduction plan—Rules. The authority shall adopt rules necessary to implement RCW 41.05.123, 41.05.300 through 41.05.340, and 41.05.295. [2008 c 229 § 9; 1995 1st sp.s. c 6 § 16.]

Effective date—2008 c 229: See note following RCW 41.05.295.

Additional notes found at www.leg.wa.gov

41.05.360 Salary reduction plan—Construction. RCW 41.05.123, 41.05.300 through 41.05.350, and 41.05.295 shall be construed to effectuate the purposes of 26 U.S.C. Sec. 125 and other applicable sections of the internal revenue code as required. [2008 c 229 § 10; 1995 1st sp.s. c 6 § 17.]

Effective date—2008 c 229: See note following RCW 41.05.295.

Additional notes found at www.leg.wa.gov

41.05.400 Plan of health care coverage—Available funds—Components—Eligibility—Administrator's duties. (1) The administrator shall design and offer a plan of health care coverage as described in subsection (2) of this section, for any person eligible under subsection (3) of this section. The health care coverage shall be designed and offered only to the extent that state funds are specifically appropriated for this purpose.

(2) The plan of health care coverage shall have the following components:

(a) Services covered more limited in scope than those contained in RCW 48.41.110(3);

(b) Enrollee cost-sharing that may include but not be limited to point-of-service cost-sharing for covered services;

(c) Deductibles of three thousand dollars on a per person per calendar year basis, and four thousand dollars on a per family per calendar year basis. The deductible shall be applied to the first three thousand dollars, or four thousand dollars, of eligible expenses incurred by the covered person or family, respectively, except that the deductible shall not be applied to clinical preventive services as recommended by the United States public health service. Enrollee out-of-pocket expenses required to be paid under the plan for cost-sharing and deductibles shall not exceed five thousand dollars per person, or six thousand dollars per family;

(d) Payment methodologies for network providers may include but are not limited to resource-based relative value fee schedules, capitation payments, diagnostic related group fee schedules, and other similar strategies including risk-sharing arrangements; and

(e) Other appropriate care management and cost-containment measures determined appropriate by the administrator, including but not limited to care coordination, provider network limitations, preadmission certification, and utilization review.

(3) Any person is eligible for coverage in the plan who resides in a county of the state where no carrier, as defined in RCW 48.43.005, or insurer regulated under chapter 48.15 RCW offers to the public an individual health benefit plan as defined in RCW 48.43.005 other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the administrator. Such eligibility may terminate pursuant to subsection (8) of this section.

(4) The administrator may not reject an individual for coverage based upon preexisting conditions of the individual

or deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions; except that it shall impose a nine-month benefit waiting period for preexisting conditions for which medical advice was given, or for which a health care provider recommended or provided treatment, or for which a prudent layperson would have sought advice or treatment, within six months before the effective date of coverage. The preexisting condition waiting period shall not apply to prenatal care services. Credit against the waiting period shall be provided pursuant to subsections (5) and (6) of this section.

(5) Except for persons to whom subsection (6) of this section applies, the administrator shall credit any preexisting condition waiting period in the plan for a person who was enrolled at any time during the sixty-three day period immediately preceding the date of application for the plan in a group health benefit plan or an individual health benefit plan other than a catastrophic health plan. The administrator must credit the period of coverage the person was continuously covered under the immediately preceding health plan toward the waiting period of the new health plan. For the purposes of this subsection, a preceding health plan includes an employer-provided self-funded health plan.

(6) The administrator shall waive any preexisting condition waiting period in the plan for a person who is an eligible individual as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. 300gg-41(b)).

(7) The administrator shall set the rates to be charged plan enrollees.

(8) When a carrier, as defined in RCW 48.43.005, or an insurer regulated under chapter 48.15 RCW, begins to offer an individual health benefit plan as defined in RCW 48.43.005 in a county where no carrier or insurer had been offering an individual health benefit plan:

(a) If the health benefit plan offered is other than a catastrophic health plan as defined in RCW 48.43.005, any person enrolled in the plan under subsection (3) of this section in that county shall no longer be eligible;

(b) The administrator shall provide written notice to any person who is no longer eligible for coverage under the plan within thirty days of the administrator's determination that the person is no longer eligible. The notice shall: (i) Indicate that coverage under the plan will cease ninety days from the date that the notice is dated; (ii) describe any other coverage options available to the person; and (iii) describe the enrollment process for the available options. [2000 c 80 § 7; 2000 c 79 § 46.]

Additional notes found at www.leg.wa.gov

41.05.520 Pharmacy connection program—Notice.

(1) The administrator shall establish and advertise a pharmacy connection program through which health care providers and members of the public can obtain information about manufacturer-sponsored prescription drug assistance programs. The administrator shall ensure that the program has staff available who can assist persons in procuring free or discounted medications from manufacturer-sponsored prescription drug assistance programs by:

(a) Determining whether an assistance program is offered for the needed drug or drugs;

(b) Evaluating the likelihood of a person obtaining drugs from an assistance program under the guidelines formulated;

(c) Assisting persons with the application and enrollment in an assistance program;

(d) Coordinating and assisting physicians and others authorized to prescribe medications with communications, including applications, made on behalf of a person to a participating manufacturer to obtain approval of the person in an assistance program; and

(e) Working with participating manufacturers to simplify the system whereby eligible persons access drug assistance programs, including development of a single application form and uniform enrollment process.

(2) Notice regarding the pharmacy connection program shall initially target senior citizens, but the program shall be available to anyone, and shall include a toll-free telephone number, available during regular business hours, that may be used to obtain information.

(3) The administrator may apply for and accept grants or gifts and may enter into interagency agreements or contracts with other state agencies or private organizations to assist with the implementation of this program including, but not limited to, contracts, gifts, or grants from pharmaceutical manufacturers to assist with the direct costs of the program.

(4) The administrator shall notify pharmaceutical companies doing business in Washington of the pharmacy connection program. Any pharmaceutical company that does business in this state and that offers a pharmaceutical assistance program shall notify the administrator of the existence of the program, the drugs covered by the program, and all information necessary to apply for assistance under the program.

(5) For purposes of this section, "manufacturer-sponsored prescription drug assistance program" means a program offered by a pharmaceutical company through which the company provides a drug or drugs to eligible persons at no charge or at a reduced cost. The term does not include the provision of a drug as part of a clinical trial. [2003 1st sp.s. c 29 § 7.]

Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29: See notes following RCW 74.09.650.

41.05.530 Prescription drug assistance, education—Rules. The authority may adopt rules to implement chapter 29, Laws of 2003 1st sp. sess. [2003 1st sp.s. c 29 § 10.]

Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29: See notes following RCW 74.09.650.

41.05.540 State employee health program—Requirements—Report. (1) The health care authority, in coordination with the department of health, health plans participating in public employees' benefits board programs, and the University of Washington's center for health promotion, shall establish and maintain a state employee health program focused on reducing the health risks and improving the health status of state employees, dependents, and retirees enrolled in the public employees' benefits board. The program shall use public and private sector best practices to achieve goals of measurable health outcomes, measurable productivity

improvements, positive impact on the cost of medical care, and positive return on investment. The program shall establish standards for health promotion and disease prevention activities, and develop a mechanism to update standards as evidence-based research brings new information and best practices forward.

(2) The state employee health program shall:

(a) Provide technical assistance and other services as needed to wellness staff in all state agencies and institutions of higher education;

(b) Develop effective communication tools and ongoing training for wellness staff;

(c) Contract with outside vendors for evaluation of program goals;

(d) Strongly encourage the widespread completion of online health assessment tools for all state employees, dependents, and retirees. The health assessment tool must be voluntary and confidential. Health assessment data and claims data shall be used to:

(i) Engage state agencies and institutions of higher education in providing evidence-based programs targeted at reducing identified health risks;

(ii) Guide contracting with third-party vendors to implement behavior change tools for targeted high-risk populations; and

(iii) Guide the benefit structure for state employees, dependents, and retirees to include covered services and medications known to manage and reduce health risks.

(3) The health care authority shall report to the legislature in December 2008 and December 2010 on outcome goals for the employee health program. [2007 c 259 § 40; 2005 c 360 § 8.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Findings—Intent—2005 c 360: See note following RCW 36.70A.070.

41.05.550 Prescription drug assistance foundation—Nonprofit and tax-exempt corporation—Liability. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Federal poverty level" means the official poverty level based on family size established and adjusted under section 673(2) of the omnibus budget reconciliation act of 1981 (P.L. 97-35; 42 U.S.C. Sec. 9902(2), as amended).

(b) "Foundation" means the prescription drug assistance foundation established in this section, a nonprofit corporation organized under the laws of this state to provide assistance in accessing prescription drugs to qualified uninsured individuals.

(c) "Health insurance coverage including prescription drugs" means prescription drug coverage under a private insurance plan, the medicaid program, the state children's health insurance program ("SCHIP"), the medicare program, the basic health plan, or any employer-sponsored health plan that includes a prescription drug benefit.

(d) "Qualified uninsured individual" means an uninsured person who is a resident of this state and has an income below three hundred percent of the federal poverty level.

(e) "Uninsured" means an individual who lacks health insurance coverage including prescription drugs.

(2)(a) The administrator shall establish the foundation as a nonprofit corporation, organized under the laws of this state. The foundation shall assist qualified uninsured individuals in obtaining prescription drugs at little or no cost.

(b) The foundation shall be administered in a manner that:

(i) Begins providing assistance to qualified uninsured individuals by January 1, 2006;

(ii) Defines the population that may receive assistance in accordance with this section; and

(iii) Complies with the eligibility requirements necessary to obtain and maintain tax-exempt status under federal law.

(c) The board of directors of the foundation consists of up to eleven with a minimum of five members appointed by the governor to staggered terms of three years. The governor shall select as members of the board individuals who (i) will represent the interests of persons who lack prescription drug coverage; and (ii) have demonstrated expertise in business management and in the administration of a not-for-profit organization.

(d) The foundation shall apply for and comply with all federal requirements necessary to obtain and maintain tax-exempt status with respect to the federal tax obligations of the foundation's donors.

(e) The foundation is authorized, subject to the direction and ratification of the board, to receive, solicit, contract for, collect, and hold in trust for the purposes of this section, donations, gifts, grants, and bequests in the form of money paid or promised, services, materials, equipment, or other things tangible or intangible that may be useful for helping the foundation to achieve its purpose. The foundation may use all sources of public and private financing to support foundation activities. No general fund-state funds shall be used for the ongoing operation of the foundation.

(f) No liability on the part of, and no cause of action of any nature, shall arise against any member of the board of directors of the foundation or against an employee or agent of the foundation for any lawful action taken by them in the performance of their administrative powers and duties under this section. [2008 c 87 § 1; 2005 c 267 § 1.]

41.05.600 Mental health services—Definition—Coverage required, when. (1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on July 24, 2005, or such subsequent date as may be provided by the administrator by rule, consistent with the purposes of chapter 6, Laws of 2005, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court ordered treatment unless the authority's or contracted insuring entity's medical director determines the treatment to be medically necessary.

(2) All health benefit plans offered to public employees and their covered dependents under this chapter that provide coverage for medical and surgical services shall provide:

(a) For all health benefit plans established or renewed on or after January 1, 2006, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(b) For all health benefit plans established or renewed on or after January 1, 2008, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(c) For all health benefit plans established or renewed on or after July 1, 2010, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the health benefit plan imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(3) In meeting the requirements of subsection (2)(a) and (b) of this section, health benefit plans may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(4) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(5) Nothing in this section shall be construed to prevent the management of mental health services.

(6) The administrator will consider care management techniques for mental health services, including but not limited to: (a) Authorized treatment plans; (b) preauthorization requirements based on the type of service; (c) concurrent and retrospective utilization review; (d) utilization management practices; (e) discharge coordination and planning; and (f) contracting with and using a network of participating providers. [2005 c 6 § 2.]

Findings—Intent—2005 c 6: "The legislature finds that the costs of leaving mental disorders untreated or undertreated are significant, and often include: Decreased job productivity, loss of employment, increased disability costs, deteriorating school performance, increased use of other health services, treatment delays leading to more costly treatments, suicide, family breakdown and impoverishment, and institutionalization, whether in hospitals, juvenile detention, jails, or prisons.

Treatable mental disorders are prevalent and often have a high impact on health and productive life. The legislature finds that the potential benefits of improved access to mental health services are significant. Additionally, the legislature declares that it is not cost-effective to treat persons with mental disorders differently than persons with medical and surgical disorders.

Therefore, the legislature intends to require that insurance coverage be at parity for mental health services, which means this coverage be delivered under the same terms and conditions as medical and surgical services." [2005 c 6 § 1.]

Severability—2005 c 6: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 6 § 13.]

41.05.601 Mental health services—Rules. The administrator may adopt rules to implement RCW 41.05.600. [2005 c 6 § 12.]

Findings—Intent—Severability—2005 c 6: See notes following RCW 41.05.600.

41.05.630 Annual report of customer service complaints and appeals. Beginning in 2011, the state health care authority must process as a complaint an enrollee's expression of dissatisfaction about customer service or the quality or availability of a health service. The agency must require that each health plan that provides medical insurance offered under this chapter, including plans created by insuring entities, plans not subject to the provisions of Title 48 RCW, and plans created under RCW 41.05.140 must submit a summary of customer service complaints and appeals to the agency to be included in an annual report to the legislature. Each annual report must summarize the complaints and appeals processed by the state health care authority and contracted carriers in the preceding twelve months, and include an analysis of any trends identified. The report must be complete by September 30th of each year. [2010 c 293 § 1.]

41.05.650 Community health care collaborative grant program—Grants—Administrative support—Eligibility. (1) The community health care collaborative grant program is established to further the efforts of community-based coalitions to increase access to appropriate, affordable health care for Washington residents, particularly employed

low-income persons and children in school who are uninsured and underinsured, through local programs addressing one or more of the following: (a) Access to medical treatment; (b) the efficient use of health care resources; and (c) quality of care.

(2) Consistent with funds appropriated for community health care collaborative grants specifically for this purpose, two-year grants may be awarded pursuant to RCW 41.05.660 by the administrator of the health care authority.

(3) The health care authority shall provide administrative support for the program. Administrative support activities may include health care authority facilitation of statewide discussions regarding best practices and standardized performance measures among grantees, or subcontracting for such discussions.

(4) Eligibility for community health care collaborative grants shall be limited to nonprofit organizations established to serve a defined geographic region or organizations with public agency status under the jurisdiction of a local, county, or tribal government. To be eligible, such entities must have a formal collaborative governance structure and decision-making process that includes representation by the following health care providers: Hospitals, public health, behavioral health, community health centers, rural health clinics, and private practitioners that serve low-income persons in the region, unless there are no such providers within the region, or providers decline or refuse to participate or place unreasonable conditions on their participation. The nature and format of the application, and the application procedure, shall be determined by the administrator of the health care authority. At a minimum, each application shall: (a) Identify the geographic region served by the organization; (b) show how the structure and operation of the organization reflects the interests of, and is accountable to, this region and members providing care within this region; (c) indicate the size of the grant being requested, and how the money will be spent; and (d) include sufficient information for an evaluation of the application based on the criteria established in RCW 41.05.660. [2009 c 299 § 1.]

41.05.651 Rules—2009 c 299. The health care authority may adopt rules to implement chapter 299, Laws of 2009. [2009 c 299 § 4.]

41.05.655 School district health benefits—Reports. By June 1, 2015, the health care authority must report to the governor, legislature, and joint legislative audit and review committee the following duties and analyses, based on two years of reports on school district health benefits submitted to it by the office of the insurance commissioner:

(1) The director shall establish a specific target to realize the goal of greater equity between premium costs for full family coverage and employee only coverage for the same health benefit plan. In developing this target, the director shall consider the appropriateness of the three-to-one ratio of employee premium costs between full family coverage and employee only coverage, and consider alternatives based on the data and information received from the office of the insurance commissioner.

(2) The director shall also study and report the advantages and disadvantages to the state, local school districts, and district employees:

(a) Whether better progress on the legislative goals could be achieved through consolidation of school district health insurance purchasing through a single consolidated school employee health benefits purchasing plan;

(b) Whether better progress on the legislative goals could be achieved by consolidating K-12 health insurance purchasing through the public employees' benefits board program, and whether consolidation into the public employees' benefits board program would be preferable to the creation of a consolidated school employee health benefits purchasing plan;

(c) Whether certificated or classified employees, as separate groups, would be better served by purchasing health insurance through a single consolidated school employee health benefits purchasing plan or through participation in the public employees' benefits board program; and

(d) Analyses shall include implications of taking any of the actions described in (a) through (c) of this subsection to include, at a minimum, the following: The costs for the state and school employees, impacts for existing purchasing programs, a proposed timeline for the implementation of any recommended actions. [2012 2nd sp.s. c 3 § 6.]

Findings—Goals—Intent—2012 2nd sp.s. c 3: See note following RCW 28A.400.275.

41.05.660 Community health care collaborative grant program—Award and disbursement of grants. (1) The community health care collaborative grants shall be awarded on a competitive basis based on a determination of which applicant organization will best serve the purposes of the grant program established in RCW 41.05.650. In making this determination, priority for funding shall be given to the applicants that demonstrate:

(a) The initiatives to be supported by the community health care collaborative grant are likely to address, in a measurable fashion, documented health care access and quality improvement goals aligned with state health policy priorities and needs within the region to be served;

(b) The applicant organization must document formal, active collaboration among key community partners that includes local governments, school districts, large and small businesses, nonprofit organizations, tribal governments, carriers, private health care providers, public health agencies, and community public health and safety networks, as defined in *RCW 70.190.010;

(c) The applicant organization will match the community health care collaborative grant with funds from other sources. The health care authority may award grants solely to organizations providing at least two dollars in matching funds for each community health care collaborative grant dollar awarded;

(d) The community health care collaborative grant will enhance the long-term capacity of the applicant organization and its members to serve the region's documented health care access needs, including the sustainability of the programs to be supported by the community health care collaborative grant;

(e) The initiatives to be supported by the community health care collaborative grant reflect creative, innovative approaches which complement and enhance existing efforts to address the needs of the uninsured and underinsured and, if successful, could be replicated in other areas of the state; and

(f) The programs to be supported by the community health care collaborative grant make efficient and cost-effective use of available funds through administrative simplification and improvements in the structure and operation of the health care delivery system.

(2) The administrator of the health care authority shall endeavor to disburse community health care collaborative grant funds throughout the state, supporting collaborative initiatives of differing sizes and scales, serving at-risk populations.

(3) Grants shall be disbursed over a two-year cycle, provided the grant recipient consistently provides timely reports that demonstrate the program is satisfactorily meeting the purposes of the grant and the objectives identified in the organization's application. The requirements for the performance reports shall be determined by the health care authority administrator. The performance measures shall be aligned with the community health care collaborative grant program goals and, where possible, shall be consistent with statewide policy trends and outcome measures required by other public and private grant funders. [2009 c 299 § 2.]

*Reviser's note: RCW 70.190.010 was repealed by 2011 1st sp.s. c 32 § 13, effective June 30, 2012.

41.05.670 Chronic care management incentives—Provider reimbursement methods. (1) Effective January 1, 2013, the authority must contract with all of the public employees' benefits board managed care plans and the self-insured plan or plans to include provider reimbursement methods that incentivize chronic care management within health homes resulting in reduced emergency department and inpatient use.

(2) Health home services contracted for under this section may be prioritized to enrollees with complex, high cost, or multiple chronic conditions.

(3) For the purposes of this section, "chronic care management," and "health home" have the same meaning as in RCW 74.09.010.

(4) Contracts with fully insured plans and with any third-party administrator for the self-funded plan that include the items in subsection (1) of this section must be funded within the resources provided by employer funding rates provided for employee health benefits in the omnibus appropriations act.

(5) Nothing in this section shall require contracted third-party health plans administering the self-insured contract to expend resources to implement items in subsection (1) of this section beyond the resources provided by employer funding rates provided for employee health benefits in the omnibus appropriations act or from other sources in the absence of these provisions. [2011 c 316 § 6.]

41.05.680 Report—Chronic care management. The authority shall coordinate a discussion with carriers to learn from successful chronic care management models and develop principles for effective reimbursement methods to

align incentives in support of patient centered chronic care health homes. The authority shall submit a report to the appropriate committees of the legislature by December 1, 2012, describing the principles developed from the discussion and any steps taken by the public employees' benefits board or carriers in Washington state to implement the principles through their payment methodologies. [2011 c 316 § 7.]

41.05.690 Performance measures committee—Membership—Selection of performance measures—Benchmarks for purchasing decisions—Public process for evaluation of measures. (1) There is created a performance measures committee, the purpose of which is to identify and recommend standard statewide measures of health performance to inform public and private health care purchasers and to propose benchmarks to track costs and improvements in health outcomes.

(2) Members of the committee must include representation from state agencies, small and large employers, health plans, patient groups, federally recognized tribes, consumers, academic experts on health care measurement, hospitals, physicians, and other providers. The governor shall appoint the members of the committee, except that a statewide association representing hospitals may appoint a member representing hospitals, and a statewide association representing physicians may appoint a member representing physicians. The governor shall ensure that members represent diverse geographic locations and both rural and urban communities. The chief executive officer of the lead organization must also serve on the committee. The committee must be chaired by the director of the authority.

(3) The committee shall develop a transparent process for selecting performance measures, and the process must include opportunities for public comment.

(4) By January 1, 2015, the committee shall submit the performance measures to the authority. The measures must include dimensions of:

- (a) Prevention and screening;
- (b) Effective management of chronic conditions;
- (c) Key health outcomes;
- (d) Care coordination and patient safety; and
- (e) Use of the lowest cost, highest quality care for preventive care and acute and chronic conditions.

(5) The committee shall develop a measure set that:

- (a) Is of manageable size;
- (b) Is based on readily available claims and clinical data;
- (c) Gives preference to nationally reported measures and, where nationally reported measures may not be appropriate, measures used by state agencies that purchase health care or commercial health plans;
- (d) Focuses on the overall performance of the system, including outcomes and total cost;
- (e) Is aligned with the governor's performance management system measures and common measure requirements specific to medicaid delivery systems under RCW 70.320.020 and 43.20A.895;

(f) Considers the needs of different stakeholders and the populations served; and

(g) Is usable by multiple payers, providers, hospitals, purchasers, public health, and communities as part of health

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improvement, care improvement, provider payment systems, benefit design, and administrative simplification for providers and hospitals.

(6) State agencies shall use the measure set developed under this section to inform and set benchmarks for purchasing decisions.

(7) The committee shall establish a public process to periodically evaluate the measure set and make additions or changes to the measure set as needed. [2014 c 223 § 6.]

Finding—2014 c 223: See note following RCW 41.05.800.

41.05.800 Community of health pilot projects—Designation—Grants—Rules. (Expires July 1, 2020.) (1) The authority shall, subject to the availability of amounts appropriated or grants received for this specific purpose, award grants to support the development of two pilot projects for a community of health. A community of health is a regionally based, voluntary collaborative. The purpose of the collaborative is to align actions to achieve healthy communities and populations, improve health care quality, and lower costs. Grants may only be used for start-up costs.

(2) The authority shall develop a process for designating an entity as a community of health. An entity seeking designation is eligible if:

(a) It is a nonprofit or public-private partnership, including those led by local public health agencies;

(b) Its membership is broad and incorporates key stakeholders, such as the long-term care system, the health care delivery system, behavioral health, social supports and services, primary care and specialty providers, hospitals, consumers, small and large employers, health plans, and public health, with no single entity or organizational cohort serving in a majority capacity; and

(c) It demonstrates an ongoing capacity to:

(i) Lead health improvement activities within the region with other local systems to improve health outcomes and the overall health of the community, improve health care quality, and lower costs; and

(ii) Distribute tools and resources from the health extension program created in RCW 43.70.725.

(3) In awarding grants under this section, the authority shall consider the extent to which the applicant will:

(a) Base decisions on public input and an active collaboration among key community partners, which can include, but are not limited to, local governments, housing providers, school districts, early learning regional coalitions, large and small businesses, labor organizations, health and human service organizations, tribal governments, health carriers, providers, hospitals, public health agencies, and consumers;

(b) Match the grant funding with funds from other sources; and

(c) Demonstrate capability for sustainability without reliance on state general fund appropriations.

(4) The authority may prioritize applications that commit to providing at least one dollar in matching funds for each grant dollar awarded.

(5) Before grant funds are disbursed, the authority and the applicant must agree on performance requirements.

(6) The authority may adopt rules necessary to implement this section, but may not adopt rules, policies, or proce-

dures beyond the scope of the authority granted in this section. [2014 c 223 § 4.]

Expiration date—2014 c 223 § 4: "Section 4 of this act expires July 1, 2020." [2014 c 223 § 21.]

Finding—2014 c 223: "(1) The legislature finds that the state of Washington has an opportunity to transform its health care delivery system.

(2) The state health care innovation plan establishes the following primary drivers of health transformation, each with individual key actions that are necessary to achieve the objective:

(a) Improve health overall by stressing prevention and early detection of disease and integration of behavioral health;

(b) Developing linkages between the health care delivery system and community; and

(c) Supporting regional collaboratives for communities and populations, improve health care quality, and lower costs." [2014 c 223 § 1.]

41.05.900 Short title. This chapter shall be known as the Washington state health care reform act of 1988. [1988 c 107 § 1.]

41.05.901 Implementation—Effective dates—1988 c 107. (1) The state health care authority shall be established and shall take such steps as are necessary to ensure that this act is fully implemented on October 1, 1988.

There is hereby appropriated for the biennium ending June 30, 1989, the sum of one million three hundred thousand dollars, or as much thereof as is necessary, to the office of the governor from the state employees' insurance administrative account, for the purposes of implementing this subsection.

(2) Subsection (1) of this section, RCW 48.14.027 and 82.04.4331, and sections 13 and 31, chapter 107, Laws of 1988 are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect March 16, 1988.

(3) The remainder of this act shall take effect on October 1, 1988. [1988 c 107 § 36.]

Chapter 41.05A RCW

OVERPAYMENTS OF ASSISTANCE AND COORDINATION OF BENEFITS

Sections

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41.05A.270	Application—Benefits under Title 51 RCW.
41.05A.280	Recording of notice of transfer or encumbrance of real property.

41.05A.005 Purpose—Collaboration with other agencies—Construction. The purpose of this chapter is to provide the health care authority with the powers, duties, and authority with respect to the collection of overpayments and the coordination of benefits that are currently provided to the department of social and health services in chapter 43.20B RCW. Providing the health care authority with these powers is necessary for the authority to administer medical services programs established under chapter 74.09 RCW currently administered by the department of social and health services programs but transferred to the authority under chapter 15, Laws of 2011 1st sp. sess. The authority is authorized to collaborate with other state agencies in carrying out its duties under this chapter and, to the extent appropriate, may enter into agreements with such other agencies. Nothing in this chapter may be construed as diminishing the powers, duties, and authority granted to the department of social and health services in chapter 43.20B RCW with respect to the programs that will remain under its jurisdiction following enactment of chapter 15, Laws of 2011 1st sp. sess. [2011 1st sp.s. c 15 § 88.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Assistance" means all programs administered by the authority.

(2) "Authority" means the Washington state health care authority.

(3) "Director" means the director of the Washington state health care authority.

(4) "Overpayment" means any payment or benefit to a recipient or to a vendor in excess of that to which is entitled by law, rule, or contract, including amounts in dispute.

(5) "Vendor" means a person or entity that provides goods or services to or for clientele of the authority and that controls operational decisions. [2011 1st sp.s. c 15 § 89.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.030 Fees for services—Reimbursement collection. The authority is authorized to charge fees for services provided unless otherwise prohibited by law. The fees may be sufficient to cover the full cost of the service provided if practical or may be charged on an ability-to-pay basis if practical. This section does not supersede other statutory authority enabling the assessment of fees by the authority. Whenever the authority is authorized by law to collect total or partial reimbursement for the cost of its providing care of or exercising custody over any person, the authority shall collect

the reimbursement to the extent practical. [2011 1st sp.s. c 15 § 90.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.040 Time limit for collection of overpayments or other debts—Write-offs of debts. (1) Except as otherwise provided by law, including subsection (2) of this section, there may be no collection of overpayments and other debts due the authority after the expiration of six years from the date of notice of such overpayment or other debt unless the authority has commenced recovery action in a court of law or unless an administrative remedy authorized by statute is in place. However, any amount due in a case thus extended ceases to be a debt due the authority at the expiration of ten years from the date of the notice of the overpayment or other debt unless a court-ordered remedy would be in effect for a longer period.

(2) There may be no collection of debts due the authority after the expiration of twenty years from the date a lien is recorded pursuant to RCW 41.05A.090.

(3) The authority, at any time, may accept offers of compromise of disputed claims or may grant partial or total write-off of any debt due the authority if it is no longer cost-effective to pursue. The authority shall adopt rules establishing the considerations to be made in the granting or denial of a partial or total write-off of debts. [2011 1st sp.s. c 15 § 91.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.050 Form of lien. The form of the lien in RCW 41.05A.070 must be substantially as follows:

STATEMENT OF LIEN

Notice is hereby given that the State of Washington, Health Care Authority, has rendered assistance to, a person who was injured on or about the day of in the county of state of, and the said authority hereby asserts a lien, to the extent provided in RCW 41.05A.070, for the amount of such assistance, upon any sum due and owing (name of injured person) from, alleged to have caused the injury, and/or his or her insurer and from any other person or insurer liable for the injury or obligated to compensate the injured person on account of such injuries by contract or otherwise.

STATE OF WASHINGTON, HEALTH CARE AUTHORITY

By: (Title)

STATE OF WASHINGTON

COUNTY OF

} ss.

I,, being first duly sworn, on oath state: That I am (title); that I have read the foregoing Statement of Lien, know the contents thereof, and believe the same to be true.

Signed and sworn to or affirmed before me this day of,

by (name of person making statement).

(Seal or stamp)

Notary Public in and for the State of Washington

My appointment expires:

[2011 1st sp.s. c 15 § 92.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.060 Authorization to discharge or compromise lien. (1) No settlement made by and between a recipient and either the tortfeasor or insurer, or both, discharges or otherwise compromises the lien created in RCW 41.05A.070 without the express written consent of the director or the director's designee. Discretion to compromise such liens rests solely with the director or the director's designee.

(2) No settlement or judgment may be entered purporting to compromise the lien created by RCW 41.05A.070 without the express written consent of the director or the director's designee. [2011 1st sp.s. c 15 § 93.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.070 Filing of lien. (1) To secure reimbursement of any assistance paid as a result of injuries to or illness of a recipient caused by the negligence or wrong of another, the authority is subrogated to the recipient's rights against a tortfeasor or the tortfeasor's insurer, or both.

(2) The authority has the right to file a lien upon any recovery by or on behalf of the recipient from such tortfeasor or the tortfeasor's insurer, or both, to the extent of the value of the assistance paid by the authority: PROVIDED, That such lien is not effective against recoveries subject to wrongful death when there are surviving dependents of the deceased. The lien becomes effective upon filing with the county auditor in the county where the assistance was authorized or where any action is brought against the tortfeasor or insurer. The lien may also be filed in any other county or served upon the recipient in the same manner as a civil summons if, in the authority's discretion, such alternate filing or service is necessary to secure the authority's interest. The additional lien is effective upon filing or service.

(3) The lien of the authority may be against any claim, right of action, settlement proceeds, money, or benefits arising from an insurance program to which the recipient might be entitled (a) against the tortfeasor or insurer of the tortfeasor, or both, and (b) under any contract of insurance purchased by the recipient or by any other person providing coverage for the illness or injuries for which the assistance is paid or provided by the authority.

(4) If recovery is made by the authority under this section and the subrogation is fully or partially satisfied through an action brought by or on behalf of the recipient, the amount

paid to the authority must bear its proportionate share of attorneys' fees and costs.

(a) The determination of the proportionate share to be borne by the authority must be based upon:

(i) The fees and costs approved by the court in which the action was initiated; or

(ii) The written agreement between the attorney and client which establishes fees and costs when fees and costs are not addressed by the court.

(b) When fees and costs have been approved by a court, after notice to the authority, the authority has the right to be heard on the matter of attorneys' fees and costs or its proportionate share.

(c) When fees and costs have not been addressed by the court, the authority shall receive at the time of settlement a copy of the written agreement between the attorney and client which establishes fees and costs and may request and examine documentation of fees and costs associated with the case. The authority may bring an action in superior court to void a settlement if it believes the attorneys' calculation of its proportionate share of fees and costs is inconsistent with the written agreement between the attorney and client which establishes fees and costs or if the fees and costs associated with the case are exorbitant in relation to cases of a similar nature.

(5) The rights and remedies provided to the authority in this section to secure reimbursement for assistance, including the authority's lien and subrogation rights, may be delegated to a managed health care system by contract entered into pursuant to RCW 74.09.522. A managed health care system may enforce all rights and remedies delegated to it by the authority to secure and recover assistance provided under a managed health care system consistent with its agreement with the authority. [2011 1st sp.s. c 15 § 94.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.080 Attorney representing recipient—Duties.

(1) An attorney representing a person who, as a result of injuries or illness sustained through the negligence or wrong of another, has received, is receiving, or has applied to receive shall:

(a) Notify the authority at the time of filing any claim against a third party, commencing an action at law, negotiating a settlement, or accepting a settlement offer from the tortfeasor or the tortfeasor's insurer, or both; and

(b) Give the authority thirty days' notice before any judgment, award, or settlement may be satisfied in any action or any claim by the applicant or recipient to recover damages for such injuries or illness.

(2) The proceeds from any recovery made pursuant to any action or claim described in RCW 41.05A.070 that is necessary to fully satisfy the authority's lien against recovery must be placed in a trust account or in the registry of the court until the authority's lien is satisfied. [2011 1st sp.s. c 15 § 95.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.090 Recovery for assistance by authority—Federal law—Foreclosure—Recipient's death. (1) The authority shall file liens, seek adjustment, or otherwise effect recovery for assistance correctly paid on behalf of an individual consistent with 42 U.S.C. Sec. 1396p. The authority shall adopt a rule providing for prior notice and hearing rights to the record title holder or purchaser under a land sale contract.

(2) Liens may be adjusted by foreclosure in accordance with chapter 61.12 RCW.

(3) In the case of an individual who was fifty-five years of age or older when the individual received assistance, the authority shall seek adjustment or recovery from the individual's estate, and from nonprobate assets of the individual as defined by RCW 11.02.005, but only for assistance consisting of services that the authority determines to be appropriate, and related hospital and prescription drug services. Recovery from the individual's estate, including foreclosure of liens imposed under this section, must be undertaken as soon as practicable, consistent with 42 U.S.C. Sec. 1396p.

(4) The authority shall apply the assistance estate recovery law as it existed on the date that benefits were received when calculating an estate's liability to reimburse the authority for those benefits.

(5)(a) The authority shall establish procedures consistent with standards established by the federal department of health and human services and pursuant to 42 U.S.C. Sec. 1396p to waive recovery when such recovery would work an undue hardship. The authority shall recognize an undue hardship for a surviving domestic partner whenever recovery would not have been permitted if he or she had been a surviving spouse. The authority is not authorized to pursue recovery under such circumstances.

(b) Recovery of assistance from a recipient's estate may not include property made exempt from claims by federal law or treaty, including exemption for tribal artifacts that may be held by individual Native Americans.

(6) A lien authorized under this section relates back to attach to any real property that the decedent had an ownership interest in immediately before death and is effective as of that date or date of recording, whichever is earlier.

(7) The authority may enforce a lien authorized under this section against a decedent's life estate or joint tenancy interest in real property held by the decedent immediately prior to his or her death. Such a lien enforced under this subsection may not end and must continue as provided in this subsection until the authority's lien has been satisfied.

(a) The value of the life estate subject to the lien is the value of the decedent's interest in the property subject to the life estate immediately prior to the decedent's death.

(b) The value of the joint tenancy interest subject to the lien is the value of the decedent's fractional interest the recipient would have owned in the jointly held interest in the property had the recipient and the surviving joint tenants held title to the property as tenants in common on the date of the recipient's death.

(c) The authority may not enforce the lien provided by this subsection against a bona fide purchaser or encumbrancer that obtains an interest in the property after the death of the recipient and before the authority records either its lien or the request for notice of transfer or encumbrance as provided by RCW 41.05A.280.

(d) The authority may not enforce a lien provided by this subsection against any property right that vested prior to July 1, 2005.

(8)(a) Subject to the requirements of 42 U.S.C. Sec. 1396p(a) and the conditions of this subsection (8), the authority is authorized to file a lien against the property of an individual prior to his or her death, and to seek adjustment and recovery from the individual's estate or sale of the property subject to the lien, if:

(i) The individual is an inpatient in a nursing facility, intermediate care facility for persons with intellectual disabilities, or other medical institution; and

(ii) The authority has determined after notice and opportunity for a hearing that the individual cannot reasonably be expected to be discharged from the medical institution and to return home.

(b) If the individual is discharged from the medical facility and returns home, the authority shall dissolve the lien.

(9) The authority is authorized to adopt rules to effect recovery under this section. The authority may adopt by rule later enactments of the federal laws referenced in this section.

(10) It is the responsibility of the authority to fully disclose in advance verbally and in writing, in easy to understand language, the terms and conditions of estate recovery to all persons offered care subject to recovery of payments.

(11) In disclosing estate recovery costs to potential clients, and to family members at the consent of the client, the authority shall provide a written description of the community service options. [2011 1st sp.s. c 15 § 96.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.100 Lien against real and personal property—Lien priority—Recovery by deduction or withholding of payments—Civil action. (1) Overpayments of assistance become a lien against the real and personal property of the recipient from the time of filing by the authority with the county auditor of the county in which the recipient resides or owns property, and the lien claim has preference over the claims of all unsecured creditors.

(2) Debts due the state for overpayments of assistance may be recovered by the state by deduction from the subsequent assistance payments to such persons, lien and foreclosure, or order to withhold and deliver, or may be recovered by civil action. [2011 1st sp.s. c 15 § 97.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.110 Notice of overpayment of assistance. (1) Any person who owes a debt to the state for an overpayment of assistance must be notified of that debt by either personal service or certified mail, return receipt requested. Personal service, return of the requested receipt, or refusal by the debtor of such notice is proof of notice to the debtor of the debt owed. Service of the notice must be in the manner prescribed for the service of a summons in a civil action. The notice must include a statement of the debt owed; a statement that the property of the debtor will be subject to collection action after the debtor terminates from assistance; a statement

that the property will be subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver; and a statement that the net proceeds will be applied to the satisfaction of the overpayment debt. Action to collect the debt by lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver, is lawful after ninety days from the debtor's termination from assistance or the receipt of the notice of debt, whichever is later. This does not preclude the authority from recovering overpayments by deduction from subsequent assistance payments, not exceeding deductions as authorized under federal law with regard to financial assistance programs: PROVIDED, That subject to federal legal requirement, deductions may not exceed five percent of the grant payment standard if the overpayment resulted from error on the part of the authority or error on the part of the recipient without willful or knowing intent of the recipient in obtaining or retaining the overpayment.

(2) A current or former recipient who is aggrieved by a claim that he or she owes a debt for an overpayment of assistance has the right to an adjudicative proceeding pursuant to RCW 74.09.741. If no application is filed, the debt is subject to collection action as authorized under this chapter. If a timely application is filed, the execution of collection action on the debt is stayed pending the final adjudicative order or termination of the debtor from assistance, whichever occurs later. [2011 1st sp.s. c 15 § 98.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.120 Order to withhold and deliver. (1) After service of a notice of debt for an overpayment as provided for in RCW 41.05A.110, stating the debt accrued, the director may issue to any person, firm, corporation, association, political subdivision, or department of the state an order to withhold and deliver property of any kind including, but not restricted to, earnings which are due, owing, or belonging to the debtor, when the director has reason to believe that there is in the possession of such person, firm, corporation, association, political subdivision, or department of the state property which is due, owing, or belonging to the debtor. The order to withhold and deliver must state the amount of the debt, and must state in summary the terms of this section, RCW 6.27.150 and 6.27.160, chapters 6.13 and 6.15 RCW, 15 U.S.C. Sec. 1673, and other state or federal exemption laws applicable generally to debtors. The order to withhold and deliver must be served in the manner prescribed for the service of a summons in a civil action or by certified mail, return receipt requested. Any person, firm, corporation, association, political subdivision, or department of the state upon whom service has been made shall answer the order to withhold and deliver within twenty days, exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of therein. The director may require further and additional answers to be completed by the person, firm, corporation, association, political subdivision, or department of the state. If any such person, firm, corporation, association, political subdivision, or department of the state possesses any property which may be subject to the claim of the authority, such property must be withheld immediately upon receipt of the order to withhold and deliver and

must, after the twenty-day period, upon demand, be delivered forthwith to the director. The director shall hold the property in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability. In the alternative, there may be furnished to the director a good and sufficient bond, satisfactory to the director, conditioned upon final determination of liability. Where money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, association, political subdivision, or department of the state subject to withdrawal by the debtor, such money must be delivered by remittance payable to the order of the director. Delivery to the director, subject to the exemptions under RCW 6.27.150 and 6.27.160, chapters 6.13 and 6.15 RCW, 15 U.S.C. Sec. 1673, and other state or federal law applicable generally to debtors, of the money or other property held or claimed satisfies the requirement of the order to withhold and deliver. Delivery to the director serves as full acquittance, and the state warrants and represents that it shall defend and hold harmless for such actions persons delivering money or property to the director pursuant to this chapter. The state also warrants and represents that it shall defend and hold harmless for such actions persons withholding money or property pursuant to this chapter.

(2) The director shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed by certified mail a copy of the order to withhold and deliver to the debtor at the debtor's last known post office address or, in the alternative, a copy of the order to withhold and deliver must be served on the debtor in the same manner as a summons in a civil action on or before the date of service of the order or within two days thereafter. The copy of the order must be mailed or served together with a concise explanation of the right to petition for a hearing on any issue related to the collection. This requirement is not jurisdictional, but, if the copy is not mailed or served as provided in this section, or if any irregularity appears with respect to the mailing or service, the superior court, on its discretion on motion of the debtor promptly made and supported by affidavit showing that the debtor has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver and award to the debtor an amount equal to the damages resulting from the director's failure to serve on or mail to the debtor the copy. [2011 1st sp.s. c 15 § 99.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.130 Liability for failure to answer or comply with order to withhold and deliver or other violation. If any person, firm, corporation, association, political subdivision, or department of the state fails to answer an order to withhold and deliver within the time prescribed in RCW 41.05A.120, or fails or refuses to deliver property pursuant to the order, or after actual notice of filing of a lien as provided for in this chapter, pays over, releases, sells, transfers, or conveys real or personal property subject to such lien to or for the benefit of the debtor or any other person, or fails or refuses to surrender upon demand property distrained under RCW 41.05A.120, or fails or refuses to honor an assignment of wages presented by the director, such person, firm, corpora-

tion, association, political subdivision, or department of the state is liable to the authority in an amount equal to one hundred percent of the value of the debt which is the basis of the lien, order to withhold and deliver, distraint, or assignment of wages, together with costs, interest, and reasonable attorneys' fees. [2011 1st sp.s. c 15 § 100.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.140 Employer required to honor assignment of earnings. Any person, firm, corporation, association, political subdivision, or department employing a person owing a debt for overpayment of assistance received shall honor, according to its terms, a duly executed assignment of earnings presented to the employer by the director as a plan to satisfy or retire an overpayment debt. This requirement to honor the assignment of earnings is applicable whether the earnings are to be paid presently or in the future and continues in force and effect until released in writing by the director. Payment of moneys pursuant to an assignment of earnings presented to the employer by the director serves as full acquittance under any contract of employment, and the state warrants and represents it shall defend and hold harmless such action taken pursuant to the assignment of earnings. The director is released from liability for improper receipt of moneys under assignment of earnings upon return of any moneys so received. [2011 1st sp.s. c 15 § 101.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.150 Improper real property transfers. If an improper real property transfer is made as defined in RCW 74.08.331 through 74.08.338, the authority may request the attorney general to file suit to rescind the transaction except as to subsequent bona fide purchasers for value. If it is established by judicial proceedings that a fraudulent conveyance occurred, the value of any assistance which has been furnished may be recovered in any proceedings from the recipient or the recipient's estate. [2011 1st sp.s. c 15 § 102.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.160 Lien against real property. When the authority provides assistance to persons who possess excess real property under *RCW 74.04.005(11)(g), the authority may file a lien against or otherwise perfect its interest in such real property as a condition of granting such assistance, and the authority has the status of a secured creditor. [2011 1st sp.s. c 15 § 103.]

***Reviser's note:** RCW 74.04.005 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (11)(g) to (13)(g).

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.170 Overpayment to vendor. (1) When the authority determines that a vendor was overpaid by the authority for either goods or services, or both, provided to authority clients, except nursing homes under chapter 74.46 RCW, the authority shall give written notice to the vendor.

The notice must include the amount of the overpayment, the basis for the claim, and the rights of the vendor under this section.

(2) The notice may be served upon the vendor in the manner prescribed for the service of a summons in civil action or be mailed to the vendor at the last known address by certified mail, return receipt requested, demanding payment within twenty days of the date of receipt.

(3) The vendor has the right to an adjudicative proceeding governed by the administrative procedure act, chapter 34.05 RCW, and the rules of the authority. The vendor's application for an adjudicative proceeding must be in writing, state the basis for contesting the overpayment notice, and include a copy of the authority's notice. The application must be served on and received by the authority within twenty-eight days of the vendor's receipt of the notice of overpayment. The vendor must serve the authority in a manner providing proof of receipt.

(4) Where an adjudicative proceeding has been requested, the presiding or reviewing officer [officer] shall determine the amount, if any, of the overpayment received by the vendor.

(5) If the vendor fails to attend or participate in the adjudicative proceeding, upon a showing of valid service, the presiding or reviewing officer may enter an administrative order declaring the amount claimed in the notice to be assessed against the vendor and subject to collection action by the authority.

(6) Failure to make an application for an adjudicative proceeding within twenty-eight days of the date of notice results in the establishment of a final debt against the vendor in the amount asserted by the authority and that amount is subject to collection action. The authority may also charge the vendor with any costs associated with the collection of any final overpayment or debt established against the vendor.

(7) The authority may enforce a final overpayment or debt through lien and foreclosure, distraint, seizure and sale, order to withhold and deliver, or other collection action available to the authority to satisfy the debt due.

(8) Debts determined under this chapter are subject to collection action without further necessity of action by a presiding or reviewing officer. The authority may collect the debt in accordance with RCW 41.05A.120, 41.05A.130, and 41.05A.180. In addition, a vendor lien may be subject to distraint and seizure and sale in the same manner as prescribed for support liens in RCW 74.20A.130.

(9) Chapter 66, Laws of 1998 applies to overpayments for goods or services provided on or after July 1, 1998.

(10) The authority may adopt rules consistent with this section. [2011 1st sp.s. c 15 § 104.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.180 Lien against real property of vendor or other form of security. (1) The authority may, at the director's discretion, secure the repayment of any outstanding overpayment, plus interest, if any, through the filing of a lien against the vendor's real property, or by requiring the posting of a bond, assignment of deposit, or some other form of security acceptable to the authority, or by doing both.

(2014 Ed.)

(a) Any lien is effective from the date of filing for record with the county auditor of the county in which the property is located and the lien claim has preference over the claims of all unsecured creditors.

(b) The authority shall review and determine the acceptability of all other forms of security.

(c) Any bond must be issued by a company licensed as a surety in the state of Washington.

(d) This subsection does not apply to nursing homes licensed under chapter 18.51 RCW or portions of hospitals licensed under chapter 70.41 RCW and operating as a nursing home, if those facilities are subject to chapter 74.46 RCW.

(2) The authority may recover any overpayment, plus interest, if any, by setoff or recoupment against subsequent payments to the vendor. [2011 1st sp.s. c 15 § 105.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.190 Time periods for liens against vendors. Liens created under RCW 41.05A.180 bind the affected property for a period of ten years after the lien has been recorded or ten years after the resolution of all good faith disputes as to the overpayment, whichever is later. Any civil action by the authority to enforce such lien must be timely commenced before the ten-year period expires or the lien is released. A civil action to enforce such lien is not timely commenced unless the summons and complaint are filed within the ten-year period in a court having jurisdiction and service of the summons and complaint is made upon all parties in the manner prescribed by appropriate civil court rules. [2011 1st sp.s. c 15 § 106.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.200 Time limit for action to enforce vendor overpayment debt. Any action to enforce a vendor overpayment debt must be commenced within six years from the date of the authority's notice to the vendor. [2011 1st sp.s. c 15 § 107.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.210 Remedies against vendors nonexclusive. The remedies under RCW 41.05A.180 and 41.05A.190 are nonexclusive and nothing contained in this chapter may be construed to impair or affect the right of the authority to maintain a civil action or to pursue any other remedies available to it under the laws of this state to recover such debt. [2011 1st sp.s. c 15 § 108.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.220 Interest on overpayments to vendors. (1) Except as provided in subsection (4) of this section, vendors shall pay interest on overpayments at the rate of one percent per month or portion thereof. Where partial repayment of an overpayment is made, interest accrues on the remaining bal-

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ance. Interest must not accrue when the overpayment occurred due to authority error.

(2) If the overpayment is discovered by the vendor prior to discovery and notice by the authority, the interest begins accruing ninety days after the vendor notifies the authority of such overpayment.

(3) If the overpayment is discovered by the authority prior to discovery and notice by the vendor, the interest begins accruing thirty days after the date of notice by the authority to the vendor.

(4) This section does not apply to:

- (a) Interagency or intergovernmental transactions; and
- (b) Contracts for public works, goods and services procured for the exclusive use of the authority, equipment, or travel. [2011 1st sp.s. c 15 § 109.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.230 Recovery of temporary total disability compensation. (1) To avoid a duplicate payment of benefits, a recipient of assistance from the authority is deemed to have subrogated the authority to the recipient's right to recover temporary total disability compensation due to the recipient and the recipient's dependents under Title 51 RCW, to the extent of such assistance or compensation, whichever is less. However, the amount to be repaid to the authority must bear its proportionate share of attorneys' fees and costs, if any, incurred under Title 51 RCW by the recipient or the recipient's dependents.

(2) The authority may assert and enforce a lien and notice to withhold and deliver to secure reimbursement. The authority shall identify in the lien and notice to withhold and deliver the recipient of assistance and temporary total disability compensation and the amount claimed by the authority. [2011 1st sp.s. c 15 § 110.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.240 Recovery of temporary total disability compensation—Service of lien and notice to withhold and deliver. The effective date of the lien and notice to withhold and deliver provided in RCW 41.05A.230 is the day that it is received by the department of labor and industries or a self-insurer as defined in chapter 51.08 RCW. Service of the lien and notice to withhold and deliver may be made personally, by regular mail with postage prepaid, or by electronic means. A statement of lien and notice to withhold and deliver must be mailed to the recipient at the recipient's last known address by certified mail, return receipt requested, no later than two business days after the authority mails, delivers, or transmits the lien and notice to withhold and deliver to the department of labor and industries or a self-insurer. [2011 1st sp.s. c 15 § 111.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.250 Duties of director of labor and industries. The director of labor and industries or the director's designee, or a self-insurer as defined in chapter 51.08 RCW, following

receipt of the lien and notice to withhold and deliver, shall deliver to the director of the authority or the director's designee any temporary total disability compensation payable to the recipient named in the lien and notice to withhold and deliver up to the amount claimed. The director of labor and industries or self-insurer shall withhold and deliver from funds currently in the director's or self-insurer's possession or from any funds that may at any time come into the director's or self-insurer's possession on account of temporary total disability compensation payable to the recipient named in the lien and notice to withhold and deliver. [2011 1st sp.s. c 15 § 112.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.260 Temporary total disability compensation recipients—Adjudicative proceeding. (1) A recipient feeling aggrieved by the action of the authority in recovering his or her temporary total disability compensation as provided in RCW 41.05A.230 through 41.05A.270 has the right to an adjudicative proceeding.

(2) A recipient seeking an adjudicative proceeding shall file an application with the director within twenty-eight days after the statement of lien and notice to withhold and deliver was mailed to the recipient. If the recipient files an application more than twenty-eight days after, but within one year of, the date the statement of lien and notice to withhold and deliver was mailed, the recipient is entitled to a hearing if the recipient shows good cause for the recipient's failure to file a timely application. The filing of a late application does not affect prior collection action pending the final adjudicative order. Until good cause for failure to file a timely application is decided, the authority may continue to collect under the lien and notice to withhold and deliver.

(3) The proceeding shall be governed by chapter 34.05 RCW, the administrative procedure act. [2011 1st sp.s. c 15 § 113.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.270 Application—Benefits under Title 51 RCW. RCW 41.05A.230 through 41.05A.260 and this section do not apply to persons whose eligibility for benefits under Title 51 RCW is based upon an injury or illness occurring prior to July 1, 1972. [2011 1st sp.s. c 15 § 114.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.280 Recording of notice of transfer or encumbrance of real property. (1) When an individual receives assistance subject to recovery under this chapter and the individual is the holder of record title to real property or the purchaser under a land sale contract, the authority may present to the county auditor for recording in the deed and mortgage records of a county a request for notice of transfer or encumbrance of the real property. The authority shall adopt a rule providing prior notice and hearing rights to the record title holder or purchaser under a land sale contract.

(2) The authority shall present to the county auditor for recording a termination of request for notice of transfer or encumbrance when, in the judgment of the authority, it is no longer necessary or appropriate for the authority to monitor transfers or encumbrances related to the real property.

(3) The authority shall adopt by rule a form for the request for notice of transfer or encumbrance and the termination of request for notice of transfer or encumbrance that, at a minimum:

(a) Contains the name of the assistance recipient and a case identifier or other appropriate information that links the individual who is the holder of record title to real property or the purchaser under a land sale contract to the individual's assistance records;

(b) Contains the legal description of the real property;

(c) Contains a mailing address for the authority to receive the notice of transfer or encumbrance; and

(d) Complies with the requirements for recording in RCW 36.18.010 for those forms intended to be recorded.

(4) The authority shall pay the recording fee required by the county clerk under RCW 36.18.010.

(5) The request for notice of transfer or encumbrance described in this section does not affect title to real property and is not a lien on, encumbrance of, or other interest in the real property. [2011 1st sp.s. c 15 § 115.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

**Chapter 41.06 RCW
STATE CIVIL SERVICE LAW**

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Qualifications for persons assessing real property—Examination: RCW 36.21.015.

Sexual misconduct by state employees: RCW 13.40.570 and 72.09.225.

41.06.010 Declaration of purpose. The general purpose of this chapter is to establish for the state a system of personnel administration based on merit principles and scientific methods governing the appointment, promotion, transfer, layoff, recruitment, retention, classification and pay plan, removal, discipline, training and career development, and welfare of its civil employees, and other incidents of state employment. All appointments and promotions to positions, and retention therein, in the state service, shall be made on the basis of policies hereinafter specified. [1980 c 118 § 1; 1961 c 1 § 1 (Initiative Measure No. 207, approved November 8, 1960).]

Additional notes found at www.leg.wa.gov

41.06.020 Definitions. Unless the context clearly indicates otherwise, the words used in this chapter have the meaning given in this section.

(1) "Affirmative action" means a procedure by which racial minorities, women, persons in the protected age category, persons with disabilities, Vietnam-era veterans, and disabled veterans are provided with increased employment opportunities. It shall not mean any sort of quota system.

(2) "Agency" means an office, department, board, commission, or other separate unit or division, however designated, of the state government and all personnel thereof; it includes any unit of state government established by law, the executive officer or members of which are either elected or appointed, upon which the statutes confer powers and impose duties in connection with operations of either a governmental or proprietary nature.

(3) "Board" means the Washington personnel resources board established under the provisions of RCW 41.06.110, except that this definition does not apply to the words "board" or "boards" when used in RCW 41.06.070.

(4) "Career development" means the progressive development of employee capabilities to facilitate productivity, job satisfaction, and upward mobility through work assignments as well as education and training that are both state-sponsored and are achieved by individual employee efforts, all of which shall be consistent with the needs and obligations of the state and its agencies.

(5) "Classified service" means all positions in the state service subject to the provisions of this chapter.

(6) "Comparable worth" means the provision of similar salaries for positions that require or impose similar responsibilities, judgments, knowledge, skills, and working conditions.

(7) "Competitive service" means all positions in the classified service for which a competitive examination is required as a condition precedent to appointment.

(8) "Department" means an agency of government that has as its governing officer a person, or combination of persons such as a commission, board, or council, by law empowered to operate the agency responsible either to (a) no other public officer or (b) the governor.

(9) "Director" means the human resources director within the office of financial management and appointed under RCW 43.41.113.

(10) "Institutions of higher education" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges.

(11) "Noncompetitive service" means all positions in the classified service for which a competitive examination is not required.

(12) "Related boards" means the state board for community and technical colleges; and such other boards, councils, and commissions related to higher education as may be established.

(13) "Training" means activities designed to develop job-related knowledge and skills of employees. [2011 1st sp.s. c 43 § 401; 1993 c 281 § 19. Prior: 1985 c 461 § 1; 1985 c 365 § 3; 1983 1st ex.s. c 75 § 4; 1982 1st ex.s. c 53 § 1; 1980 c 118 § 2; 1970 ex.s. c 12 § 1; prior: 1969 ex.s. c 36 § 21; 1969 c 45 § 6; 1967 ex.s. c 8 § 48; 1961 c 1 § 2 (Initiative Measure No. 207, approved November 8, 1960).]

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

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.022 "Manager"—Definition. For purposes of this chapter, "manager" means any employee who:

(1) Formulates statewide policy or directs the work of an agency or agency subdivision;

(2) Is responsible to administer one or more statewide policies or programs of an agency or agency subdivision;

(3) Manages, administers, and controls a local branch office of an agency or agency subdivision, including the physical, financial, or personnel resources;

(4) Has substantial responsibility in personnel administration, legislative relations, public information, or the preparation and administration of budgets; or

(5) Functionally is above the first level of supervision and exercises authority that is not merely routine or clerical in nature and requires the consistent use of independent judgment.

No employee who is a member of the Washington management service may be included in a collective bargaining unit established under RCW 41.80.001 and 41.80.010 through 41.80.130. [2002 c 354 § 207; 1993 c 281 § 8.]

Additional notes found at www.leg.wa.gov

41.06.040 Scope of chapter. The provisions of this chapter apply to:

(1) Each board, commission or other multimember body, including, but not limited to, those consisting in whole or in part of elective officers;

(2) Each agency, and each employee and position therein, not expressly excluded or exempted under the provisions of RCW 41.06.070. [1969 ex.s. c 36 § 22; 1961 c 1 § 4 (Initiative Measure No. 207, approved November 8, 1960).]

41.06.070 Exemptions—Right of reversion to civil service status—Exception. (1) The provisions of this chapter do not apply to:

(a) The members of the legislature or to any employee of, or position in, the legislative branch of the state government including members, officers, and employees of the legislative council, joint legislative audit and review committee, statute law committee, and any interim committee of the legislature;

(b) The justices of the supreme court, judges of the court of appeals, judges of the superior courts or of the inferior courts, or to any employee of, or position in the judicial branch of state government;

(c) Officers, academic personnel, and employees of technical colleges;

(d) The officers of the Washington state patrol;

(e) Elective officers of the state;

(f) The chief executive officer of each agency;

(g) In the departments of employment security and social and health services, the director and the director's confidential secretary; in all other departments, the executive head of which is an individual appointed by the governor, the director, his or her confidential secretary, and his or her statutory assistant directors;

(h) In the case of a multimember board, commission, or committee, whether the members thereof are elected, appointed by the governor or other authority, serve ex officio, or are otherwise chosen:

(i) All members of such boards, commissions, or committees;

(ii) If the members of the board, commission, or committee serve on a part-time basis and there is a statutory executive officer: The secretary of the board, commission, or committee; the chief executive officer of the board, commission, or committee; and the confidential secretary of the chief executive officer of the board, commission, or committee;

(iii) If the members of the board, commission, or committee serve on a full-time basis: The chief executive officer or administrative officer as designated by the board, commission, or committee; and a confidential secretary to the chair of the board, commission, or committee;

(iv) If all members of the board, commission, or committee serve ex officio: The chief executive officer; and the confidential secretary of such chief executive officer;

(i) The confidential secretaries and administrative assistants in the immediate offices of the elective officers of the state;

(j) Assistant attorneys general;

(k) Commissioned and enlisted personnel in the military service of the state;

(l) Inmate, student, part-time, or temporary employees, and part-time professional consultants, as defined by the Washington personnel resources board;

(m) Officers and employees of the Washington state fruit commission;

(n) Officers and employees of the Washington apple commission;

(o) Officers and employees of the Washington state dairy products commission;

(p) Officers and employees of the Washington tree fruit research commission;

(q) Officers and employees of the Washington state beef commission;

(r) Officers and employees of the Washington grain commission;

(s) Officers and employees of any commission formed under chapter 15.66 RCW;

(t) Officers and employees of agricultural commissions formed under chapter 15.65 RCW;

(u) Executive assistants for personnel administration and labor relations in all state agencies employing such executive assistants including but not limited to all departments, offices, commissions, committees, boards, or other bodies subject to the provisions of this chapter and this subsection shall prevail over any provision of law inconsistent herewith unless specific exception is made in such law;

(v) In each agency with fifty or more employees: Deputy agency heads, assistant directors or division directors, and not more than three principal policy assistants who report directly to the agency head or deputy agency heads;

(w) Staff employed by the department of commerce to administer energy policy functions;

(x) The manager of the energy facility site evaluation council;

(y) A maximum of ten staff employed by the department of commerce to administer innovation and policy functions, including the three principal policy assistants exempted under (v) of this subsection;

(z) Staff employed by Washington State University to administer energy education, applied research, and technology transfer programs under RCW 43.21F.045 as provided in RCW 28B.30.900(5);

(aa) Officers and employees of the consolidated technology services agency created in RCW 43.105.006 that perform the following functions or duties: Systems integration; data center engineering and management; network systems engineering and management; information technology contracting; information technology customer relations management; and network and systems security.

(2) The following classifications, positions, and employees of institutions of higher education and related boards are hereby exempted from coverage of this chapter:

(a) Members of the governing board of each institution of higher education and related boards, all presidents, vice presidents, and their confidential secretaries, administrative, and personal assistants; deans, directors, and chairs; academic personnel; and executive heads of major administrative or academic divisions employed by institutions of higher education; principal assistants to executive heads of major administrative or academic divisions; other managerial or professional employees in an institution or related board having substantial responsibility for directing or controlling program operations and accountable for allocation of resources and program results, or for the formulation of institutional policy, or for carrying out personnel administration or labor relations functions, legislative relations, public information,

development, senior computer systems and network programming, or internal audits and investigations; and any employee of a community college district whose place of work is one which is physically located outside the state of Washington and who is employed pursuant to RCW 28B.50.092 and assigned to an educational program operating outside of the state of Washington;

(b) The governing board of each institution, and related boards, may also exempt from this chapter classifications involving research activities, counseling of students, extension or continuing education activities, graphic arts or publications activities requiring prescribed academic preparation or special training as determined by the board: PROVIDED, That no nonacademic employee engaged in office, clerical, maintenance, or food and trade services may be exempted by the board under this provision;

(c) Printing craft employees in the department of printing at the University of Washington.

(3) In addition to the exemptions specifically provided by this chapter, the director may provide for further exemptions pursuant to the following procedures. The governor or other appropriate elected official may submit requests for exemption to the office of financial management stating the reasons for requesting such exemptions. The director shall hold a public hearing, after proper notice, on requests submitted pursuant to this subsection. If the director determines that the position for which exemption is requested is one involving substantial responsibility for the formulation of basic agency or executive policy or one involving directing and controlling program operations of an agency or a major administrative division thereof, or is a senior expert in enterprise information technology infrastructure, engineering, or systems, the director shall grant the request. The total number of additional exemptions permitted under this subsection shall not exceed one percent of the number of employees in the classified service not including employees of institutions of higher education and related boards for those agencies not directly under the authority of any elected public official other than the governor, and shall not exceed a total of twenty-five for all agencies under the authority of elected public officials other than the governor.

The salary and fringe benefits of all positions presently or hereafter exempted except for the chief executive officer of each agency, full-time members of boards and commissions, administrative assistants and confidential secretaries in the immediate office of an elected state official, and the personnel listed in subsections (1)(j) through (t) and (2) of this section, shall be determined by the director. Changes to the classification plan affecting exempt salaries must meet the same provisions for classified salary increases resulting from adjustments to the classification plan as outlined in RCW 41.06.152.

From July 1, 2011, through June 29, 2013, salaries for all positions exempt from classification under this chapter are subject to RCW 41.04.820.

From February 18, 2009, through June 30, 2013, a salary or wage increase shall not be granted to any position exempt from classification under this chapter, except that a salary or wage increase may be granted to employees pursuant to collective bargaining agreements negotiated under chapter 28B.52, 41.56, 47.64, or 41.76 RCW, and except that

increases may be granted for positions for which the employer has demonstrated difficulty retaining qualified employees if the following conditions are met:

(a) The salary increase can be paid within existing resources;

(b) The salary increase will not adversely impact the provision of client services; and

(c) For any state agency of the executive branch, not including institutions of higher education, the salary increase is approved by the director of the office of financial management.

Any agency granting a salary increase from February 15, 2010, through June 30, 2011, to a position exempt from classification under this chapter shall submit a report to the fiscal committees of the legislature no later than July 31, 2011, detailing the positions for which salary increases were granted, the size of the increases, and the reasons for giving the increases.

Any agency granting a salary increase from July 1, 2011, through June 30, 2013, to a position exempt from classification under this chapter shall submit a report to the fiscal committees of the legislature by July 31, 2012, and July 31, 2013, detailing the positions for which salary increases were granted during the preceding fiscal year, the size of the increases, and the reasons for giving the increases.

Any person holding a classified position subject to the provisions of this chapter shall, when and if such position is subsequently exempted from the application of this chapter, be afforded the following rights: If such person previously held permanent status in another classified position, such person shall have a right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

Any classified employee having civil service status in a classified position who accepts an appointment in an exempt position shall have the right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

A person occupying an exempt position who is terminated from the position for gross misconduct or malfeasance does not have the right of reversion to a classified position as provided for in this section.

From February 15, 2010, until June 30, 2013, no monetary performance-based awards or incentives may be granted by the director or employers to employees covered by rules adopted under this section. This subsection does not prohibit the payment of awards provided for in chapter 41.60 RCW.

From July 1, 2011, until June 30, 2013, no performance-based awards or incentives may be granted by the director or employers to employees pursuant to a performance management confirmation granted by the department of personnel under WAC 357-37-055. [2011 1st sp.s. c 43 § 1010; 2011 1st sp.s. c 39 § 4; 2011 1st sp.s. c 16 § 22. Prior: 2010 c 271 § 801; 2010 c 2 § 2; 2010 c 1 § 1; prior: 2009 c 33 § 36; 2009 c 5 § 1; 2002 c 354 § 209; 1998 c 245 § 40; prior: 1996 c 319 § 3; 1996 c 288 § 33; 1996 c 186 § 109; 1995 c 163 § 1; 1994 c 264 § 13; prior: 1993 sp.s. c 2 § 15; 1993 c 379 § 306; 1993 c 281 § 21; 1990 c 60 § 101; 1989 c 96 § 8; 1987 c 389 § 2; 1985 c 221 § 1; 1984 c 210 § 2; 1983 c 15 § 21; 1982 1st ex.s. c 53 § 2; 1981 c 225 § 2; 1980 c 87 § 14; 1973 1st ex.s. c 133 § 1; 1972 ex.s. c 11 § 1; prior: 1971 ex.s. c 209 § 1; 1971 ex.s.

c 59 § 1; 1971 c 81 § 100; 1969 ex.s. c 36 § 23; 1967 ex.s. c 8 § 47; 1961 c 179 § 1; 1961 c 1 § 7 (Initiative Measure No. 207, approved November 8, 1960).]

Reviser's note: This section was amended by 2011 1st sp.s. c 16 § 22, 2011 1st sp.s. c 39 § 4, and by 2011 1st sp.s. c 43 § 1010, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2011 1st sp.s. c 39: See note following RCW 41.04.820.

Effective date—2011 1st sp.s. c 16 §§ 16-25: See note following RCW 41.58.060.

Transfer of powers, duties, and functions—2011 1st sp.s. c 16: See note following RCW 41.58.060.

Purpose—Effective date—2010 c 271: See notes following RCW 43.330.005.

Findings—2010 c 2: "The legislature finds that the current economic crisis is requiring sacrifices by citizens and businesses all across the state. The legislature acknowledges the sacrifices also being made by the many state employees who have volunteered for unpaid furlough days including those, such as our ferry workers, who volunteered for pay freezes. The recession requires us to continue to find every possible cost savings while striving to continue to deliver key services to our citizens. Therefore, the legislature finds it necessary to immediately suspend recognition awards given to state employees. Until the economic climate permits the resumption of appropriate cash awards, the legislature encourages supervisors throughout state agencies to look for nonmonetary ways to acknowledge outstanding contributions to Washington's citizens by our state's civil servants." [2010 c 2 § 1.]

Effective date—2010 c 2: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 15, 2010]." [2010 c 2 § 7.]

Effective date—2010 c 1: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 15, 2010]." [2010 c 1 § 9.]

Effective date—2009 c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 18, 2009]." [2009 c 5 § 13.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

County road administration board: RCW 36.78.060.

State agencies and departments—Certain personnel exempted from chapter basic health plan: RCW 70.47.040.

board of health: RCW 43.20.030.

caseload forecast supervisor and staff: RCW 41.06.087.

center for volunteerism and citizen service: RCW 43.150.040.

Columbia River Gorge commission: RCW 43.97.015.

commission on judicial conduct: RCW 2.64.050.

department of

agriculture: RCW 41.06.084.

corrections: RCW 41.06.071.

ecology: RCW 41.06.073, 43.21A.100.

enterprise services, supervisor of motor transport: RCW 43.19.585.

health: RCW 43.70.020.

information services: RCW 41.06.094.

retirement systems: RCW 41.50.070.

services for the blind: RCW 74.18.050.

social and health services: RCW 43.20A.090.

transportation: RCW 41.06.079, 47.01.081.

veterans affairs: RCW 41.06.077.

economic and revenue forecast supervisor and staff: RCW 41.06.087.

gambling commission: RCW 9.46.080.

law revision commission: RCW 41.06.083.

office of

administrative hearings: RCW 34.12.030.

financial management: RCW 41.06.075, 43.41.080.

minority and women's business enterprises: RCW 39.19.030.

state actuary: RCW 44.44.030.

state internship program: RCW 41.06.088.

state investment board: RCW 43.33A.100.

state lottery commission: RCW 67.70.050.

state school directors' association: RCW 41.06.086.

state treasurer: RCW 43.08.120.

state veterinarian: RCW 41.06.084.

superintendent of public instruction: RCW 28A.300.020.

Washington conservation corps: RCW 43.220.070.

Washington service corps: RCW 50.65.110.

Washington state patrol, drug control assistance unit: RCW 43.43.640.

world fair commission: RCW 41.06.085.

Additional notes found at www.leg.wa.gov

41.06.071 Department of corrections—Certain personnel exempted from chapter. In addition to the exemptions provided under RCW 41.06.070, the provisions of this chapter shall not apply in the department of corrections to the secretary, the secretary's personal secretary, the deputy secretaries and their personal secretaries, all assistant deputy secretaries and their personal secretaries, all regional administrators and program administrators, all facility superintendents and associate superintendents for facilities with a resident capacity of fifty or more, and all management and sales staff of correctional industries. [1999 c 122 § 1; 1989 c 185 § 1; 1983 c 175 § 1; 1981 c 136 § 28.]

Additional notes found at www.leg.wa.gov

41.06.072 Department of community, trade, and economic development—Certain personnel exempted from chapter. In addition to the exemptions set forth in this chapter, this chapter shall not apply within the *department of community, trade, and economic development to the director, one confidential secretary, the deputy directors, all assistant directors, the state historic preservation officer, and up to two professional staff members within the emergency management program. [1995 c 399 § 59; 1986 c 266 § 8.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Additional notes found at www.leg.wa.gov

41.06.073 Department of ecology—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the department of ecology to the director, his or her confidential secretary, his or her deputy director, and not to exceed six assistant directors. [2012 c 117 § 8; 1970 ex.s. c 62 § 11.]

Additional notes found at www.leg.wa.gov

41.06.074 Department of health—Certain personnel exempted from chapter. In addition to the exemptions under RCW 41.06.070, the provisions of this chapter shall not apply in the department of health to any deputy secretary, assistant secretary, or person who administers the necessary divisions, offices, bureaus, and programs and five additional positions involved in policy or program direction. [1989 1st ex.s. c 9 § 813.]

Additional notes found at www.leg.wa.gov

41.06.075 Office of financial management—Certain personnel exempted from chapter. In addition to the

exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the office of financial management to the director, his or her confidential secretary, not to exceed two deputy directors and not to exceed seven assistant directors. [2012 c 117 § 9; 1979 c 151 § 56; 1969 ex.s. c 239 § 7.]

Office of financial management: Chapter 43.41 RCW.

41.06.076 Department of social and health services—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the department of social and health services to the secretary; the secretary's executive assistant, if any; not to exceed six assistant secretaries, thirteen division directors, six regional directors; one confidential secretary for each of the above-named officers; not to exceed six bureau chiefs; and all superintendents of institutions of which the average daily population equals or exceeds one hundred residents. [2011 1st sp.s. c 43 § 402; 1997 c 386 § 1; 1993 c 281 § 22; 1980 c 73 § 1; 1970 ex.s. c 18 § 8.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.077 Department of veterans affairs—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the department of veterans affairs to the director, the deputy director, no more than two assistant directors, a confidential secretary for the deputy director, and a confidential secretary for each assistant director. [2001 c 84 § 1; 1975-'76 2nd ex.s. c 115 § 7.]

Additional notes found at www.leg.wa.gov

41.06.079 Department of transportation—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the department of transportation to the secretary, a deputy secretary, an administrative assistant to the secretary, if any, one assistant secretary for each division designated pursuant to RCW 47.01.081, one confidential secretary for each of the above-named officers, up to six transportation district administrators and one confidential secretary for each district administrator, up to six additional new administrators or confidential secretaries designated by the secretary of the department of transportation and approved by the Washington personnel resources board pursuant to the provisions of RCW 41.06.070, the legislative liaison for the department, the state construction engineer, the state aid engineer, the personnel manager, the state project development engineer, the state maintenance and operations engineer, one confidential secretary for each of the last-named five positions, and a confidential secretary for the public affairs administrator. The individuals appointed under this section shall be exempt from the provisions of the state civil service law, and shall be paid salaries to be fixed by the governor in accordance with the procedure established by law for the fixing of salaries for individuals exempt from the operation of the state civil service law. [2002 c 354 § 239; 1993 c 281 § 23; 1985 c 178 § 1; 1977 ex.s. c 151 § 13.]

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***Reviser's note:** "section 3 of this 1977 amendatory act" is codified as RCW 47.01.031.

Additional notes found at www.leg.wa.gov

41.06.080 Human resource services available on request to certain governmental entities—Reimbursement. Notwithstanding the provisions of this chapter, the office of financial management and the department of enterprise services may make their human resource services available on request, on a reimbursable basis, to:

- (1) Either the legislative or the judicial branch of the state government;
- (2) Any county, city, town, or other municipal subdivision of the state;
- (3) The institutions of higher learning;
- (4) Any agency, class, or position set forth in RCW 41.06.070. [2011 1st sp.s. c 43 § 403; 1970 ex.s. c 12 § 2. Prior: 1969 ex.s. c 152 § 2; 1969 c 45 § 5; 1961 c 1 § 8 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.082 Office of minority and women's business enterprises—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, this chapter shall not apply in the office of minority and women's business enterprises to the director, the director's confidential secretary, and the deputy director. [1983 c 120 § 14.]

Additional notes found at www.leg.wa.gov

41.06.083 Law revision commission—Personnel exempted from chapter. The provisions of this chapter do not apply to any position in or employee of the Washington law revision commission. [1982 c 183 § 10.]

41.06.084 Department of agriculture—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the department of agriculture to the director, the director's confidential secretary, the deputy director, not more than eight assistant directors, the state veterinarian, and the milk pooling administrator employed under RCW 15.35.100. [1992 c 58 § 3; 1990 c 37 § 2; 1983 c 248 § 11.]

41.06.085 World fair commission—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply to the executive director and one confidential secretary of the world fair commission created in chapter 177, Laws of 1983. [1983 c 177 § 6.]

41.06.086 Washington state school directors' association—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply to officers and employees of the Washington state school directors' association. [1983 c 187 § 5.]

Additional notes found at www.leg.wa.gov

41.06.087 Economic and revenue forecast supervisor and staff—Caseload forecast supervisor and staff—Exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, this chapter does not apply to the economic and revenue forecast supervisor and staff employed under RCW 82.33.010 or the caseload forecast supervisor and staff employed under RCW 43.88C.010. [1997 c 168 § 4; 1990 c 229 § 3; 1984 c 138 § 2.]

Additional notes found at www.leg.wa.gov

41.06.088 State internship program—Positions exempt from chapter. This chapter does not apply to positions under the state internship program established under RCW 43.06.410. [1985 c 442 § 8.]

Additional notes found at www.leg.wa.gov

41.06.093 Washington state patrol—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the Washington state patrol to confidential secretaries of agency bureau chiefs, or their functional equivalent, and a confidential secretary for the chief of staff. [2011 1st sp.s. c 43 § 404; 1993 c 281 § 24; 1990 c 14 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.094 Department of information services—Certain personnel exempted from chapter. In addition to the exemptions under RCW 41.06.070, the provisions of this chapter shall not apply in the *department of information services to up to twelve positions in the planning component involved in policy development and/or senior professionals. [1987 c 504 § 7.]

***Reviser's note:** The "department of information services" was renamed the "consolidated technology services agency" by 2011 1st sp.s. c 43 § 803.

Additional notes found at www.leg.wa.gov

41.06.095 Office of archaeology and historic preservation—Certain personnel exempted from chapter. In addition to the exemptions under RCW 41.06.070, this chapter does not apply in the department of archaeology and historic preservation to the director, the director's personal secretary, the deputy director, all division directors and assistant directors, and one confidential secretary for each of these officers. [2005 c 333 § 9.]

41.06.096 Life sciences discovery fund authority—Personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, this chapter does not apply to employees of the life sciences discovery fund authority under chapter 43.350 RCW. [2005 c 424 § 14.]

Captions not law—Liberal construction—Severability—Effective dates—2005 c 424: See RCW 43.350.900 through 43.350.903.

41.06.097 Department of early learning—Certain personnel exempted from chapter. In addition to the exemptions under RCW 41.06.070, the provisions of this chapter shall not apply in the department of early learning to the director, the director's personal secretary, and any other

exempt staff members provided for in RCW 43.215.030(2). [2006 c 265 § 110.]

Part headings not law—Effective date—Severability—2006 c 265: See RCW 43.215.904 through 43.215.906.

41.06.098 Puget Sound partnership—Certain personnel exempted from chapter. In addition to the exemptions under RCW 41.06.070, the provisions of this chapter shall not apply in the Puget Sound partnership to the executive director, to one confidential secretary, and to all professional staff. [2007 c 341 § 45.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

41.06.099 Department of enterprise services—Certain personnel exempted from chapter. In addition to the exemptions under RCW 41.06.070, this chapter does not apply in the department of enterprise services to the director, the director's confidential secretary, deputy and assistant directors, and any other exempt staff members provided for in RCW 43.19.008. [2011 1st sp.s. c 43 § 106.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.101 Office of the chief information officer—Certain personnel exempted from chapter. In addition to the exemptions under RCW 41.06.070, the provisions of this chapter do not apply in the office of the chief information officer to the chief information officer, the chief information officer's confidential secretary, assistant directors, and any other exempt staff members provided for in RCW 43.41A.015. [2011 1st sp.s. c 43 § 723.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.110 Washington personnel resources board—Created—Term—Qualifications, conditions—Compensation, travel expenses—Officers, quorum, records. (1) There is hereby created a Washington personnel resources board composed of three members appointed by the governor, subject to confirmation by the senate. The members of the personnel board serving June 30, 1993, shall be the members of the Washington personnel resources board, and they shall complete their terms as under the personnel board. Each odd-numbered year thereafter the governor shall appoint a member for a six-year term. Each member shall continue to hold office after the expiration of the member's term until a successor has been appointed. Persons so appointed shall have clearly demonstrated an interest and belief in the merit principle, shall not hold any other employment with the state, shall not have been an officer of a political party for a period of one year immediately prior to such appointment, and shall not be or become a candidate for partisan elective public office during the term to which they are appointed;

(2) Each member of the board shall be compensated in accordance with RCW 43.03.250. The members of the board may receive any number of daily payments for official meetings of the board actually attended. Members of the board shall also be reimbursed for travel expenses incurred in the discharge of their official duties in accordance with RCW 43.03.050 and 43.03.060.

(3) At its first meeting following the appointment of all of its members, and annually thereafter, the board shall elect a chair and vice chair from among its members to serve one year. The presence of at least two members of the board shall constitute a quorum to transact business. A written public record shall be kept by the board of all actions of the board. The director shall serve as secretary.

(4) The board may appoint and compensate hearing officers to hear and conduct appeals. Such compensation shall be paid on a contractual basis for each hearing, in accordance with the provisions of chapter 43.88 RCW and rules adopted pursuant thereto, as they relate to personal service contracts. [2011 1st sp.s. c 43 § 405; 2002 c 354 § 210; 1993 c 281 § 25; 1984 c 287 § 69; 1982 c 10 § 8. Prior: 1981 c 338 § 20; 1981 c 311 § 16; 1977 c 6 § 2; prior: 1975-'76 2nd ex.s. c 43 § 1; 1975-'76 2nd ex.s. c 34 § 86; 1961 c 1 § 11 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Adoption of rules for leave sharing program: RCW 41.04.670.

Appointment and compensation of institutional chaplains: RCW 72.01.210.

Additional notes found at www.leg.wa.gov

41.06.120 Meetings of board—Hearings authorized, notice—Majority to approve release of findings—Administration of oaths. (1) In the necessary conduct of its work, the board shall meet monthly unless there is no pending business requiring board action and may hold hearings, such hearings to be called by (a) the chair of the board, or (b) a majority of the members of the board. An official notice of the calling of the hearing shall be filed with the secretary, and all members shall be notified of the hearing within a reasonable period of time prior to its convening.

(2) No release of material or statement of findings shall be made except with the approval of a majority of the board.

(3) In the conduct of hearings or investigations, a member of the board or the director, or the hearing officer, may administer oaths. [2012 c 117 § 10; 2011 1st sp.s. c 43 § 406; 1981 c 311 § 17; 1975-'76 2nd ex.s. c 43 § 2; 1961 c 1 § 12 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.133 Rules of director—Personnel administration—Required agency report. (1) The director shall adopt rules, consistent with the purposes and provisions of this chapter and with the best standards of personnel administration, regarding the basis and procedures to be followed for:

(a) The reduction, dismissal, suspension, or demotion of an employee;

(b) Training and career development;

(c) Probationary periods of six to twelve months and rejections of probationary employees, depending on the job requirements of the class, except as follows:

(i) Entry-level state park rangers shall serve a probationary period of twelve months; and

(ii) The probationary period of campus police officer appointees who are required to attend the Washington state criminal justice training commission basic law enforcement

academy shall extend from the date of appointment until twelve months from the date of successful completion of the basic law enforcement academy, or twelve months from the date of appointment if academy training is not required. The director shall adopt rules to ensure that employees promoting to campus police officer who are required to attend the Washington state criminal justice training commission basic law enforcement academy shall have the trial service period extend from the date of appointment until twelve months from the date of successful completion of the basic law enforcement academy, or twelve months from the date of appointment if academy training is not required;

(d) Transfers;

(e) Promotional preferences;

(f) Sick leaves and vacations;

(g) Hours of work;

(h) Layoffs when necessary and subsequent reemployment, except for the financial basis for layoffs;

(i) The number of names to be certified for vacancies;

(j) Subject to RCW 41.04.820, adoption and revision of a state salary schedule to reflect the prevailing rates in Washington state private industries and other governmental units. The rates in the salary schedules or plans shall be increased if necessary to attain comparable worth under an implementation plan under RCW 41.06.155 and, for institutions of higher education and related boards, shall be competitive for positions of a similar nature in the state or the locality in which an institution of higher education or related board is located. Such adoption and revision is subject to approval by the director of financial management in accordance with chapter 43.88 RCW;

(k) Increment increases within the series of steps for each pay grade based on length of service for all employees whose standards of performance are such as to permit them to retain job status in the classified service. From February 18, 2009, through June 30, 2013, a salary or wage increase shall not be granted to any exempt position under this chapter, except that a salary or wage increase may be granted to employees pursuant to collective bargaining agreements negotiated under chapter 28B.52, 41.56, 47.64, or 41.76 RCW, and except that increases may be granted for positions for which the employer has demonstrated difficulty retaining qualified employees if the following conditions are met:

(i) The salary increase can be paid within existing resources;

(ii) The salary increase will not adversely impact the provision of client services; and

(iii) For any state agency of the executive branch, not including institutions of higher education, the salary increase is approved by the director of the office of financial management;

Any agency granting a salary increase from February 15, 2010, through June 30, 2011, to a position exempt under this chapter shall submit a report to the fiscal committees of the legislature no later than July 31, 2011, detailing the positions for which salary increases were granted, the size of the increases, and the reasons for giving the increases;

Any agency granting a salary increase from July 1, 2011, through June 30, 2013, to a position exempt under this chapter shall submit a report to the fiscal committees of the legislature by July 31, 2012, and July 31, 2013, detailing the posi-

tions for which salary increases were granted during the preceding fiscal year, the size of the increases, and the reasons for giving the increases;

(l) Optional lump sum relocation compensation approved by the agency director, whenever it is reasonably necessary that a person make a domiciliary move in accepting a transfer or other employment with the state. An agency must provide lump sum compensation within existing resources. If the person receiving the relocation payment terminates or causes termination with the state, for reasons other than layoff, disability separation, or other good cause as determined by an agency director, within one year of the date of the employment, the state is entitled to reimbursement of the lump sum compensation from the person;

(m) Providing for veteran's preference as required by existing statutes, with recognition of preference in regard to layoffs and subsequent reemployment for veterans and their surviving spouses by giving such eligible veterans and their surviving spouses additional credit in computing their seniority by adding to their unbroken state service, as defined by the director, the veteran's service in the military not to exceed five years. For the purposes of this section, "veteran" means any person who has one or more years of active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government and who, upon termination of such service, has received an honorable discharge, a discharge for physical reasons with an honorable record, or a release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge shall be given. However, the surviving spouse of a veteran is entitled to the benefits of this section regardless of the veteran's length of active military service. For the purposes of this section, "veteran" does not include any person who has voluntarily retired with twenty or more years of active military service and whose military retirement pay is in excess of five hundred dollars per month.

(2) Rules adopted under this section by the director shall provide for local administration and management by the institutions of higher education and related boards, subject to periodic audit and review by the director.

(3) Rules adopted by the director under this section may be superseded by the provisions of a collective bargaining agreement negotiated under RCW 41.80.001 and 41.80.010 through 41.80.130. The supersession of such rules shall only affect employees in the respective collective bargaining units.

(4)(a) The director shall require that each state agency report annually the following data:

(i) The number of classified, Washington management service, and exempt employees in the agency and the change compared to the previous report;

(ii) The number of bonuses and performance-based incentives awarded to agency staff and the base wages of such employees; and

(iii) The cost of each bonus or incentive awarded.

(b) A report that compiles the data in (a) of this subsection for all agencies will be provided annually to the governor and the appropriate committees of the legislature and must be

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posted for the public on the office of financial management's agency web site.

(5) From February 15, 2010, until June 30, 2013, no monetary performance-based awards or incentives may be granted by the director or employers to employees covered by rules adopted under this section. This subsection does not prohibit the payment of awards provided for in chapter 41.60 RCW.

From July 1, 2011, until June 30, 2013, no performance-based awards or incentives may be granted by the director or employers to employees pursuant to a performance management confirmation granted by the department of personnel under WAC 357-37-055. [2011 1st sp.s. c 43 § 407; 2011 1st sp.s. c 39 § 5. Prior: 2010 c 2 § 3; 2010 c 1 § 2; prior: 2009 c 534 § 2; 2009 c 5 § 2; 2002 c 354 § 204.]

Reviser's note: This section was amended by 2011 1st sp.s. c 39 § 5 and by 2011 1st sp.s. c 43 § 407, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2011 1st sp.s. c 39: See note following RCW 41.04.820.

Findings—Effective date—2010 c 2: See notes following RCW 41.06.070.

Effective date—2010 c 1: See note following RCW 41.06.070.

Finding—Intent—2009 c 534: "The legislature finds that information technologies have substantially altered the roles and responsibilities of employees in many state agencies since the creation of the Washington management service. With the understanding that the current economic crisis dictates finding every possible efficiency, the legislature intends to review the state's senior management and exempt services and understands that possible refinements in the service are needed. A review, in consultation with the various stakeholders and in light of current best practices, is warranted." [2009 c 534 § 1.]

Effective date—2009 c 5: See note following RCW 41.06.070.

Additional notes found at www.leg.wa.gov

41.06.142 Purchasing services by contract—Effect on employees in the classified service—Criteria to be met—Bidding—Definitions. (1) Any department, agency, or institution of higher education may purchase services, including services that have been customarily and historically provided by employees in the classified service under this chapter, by contracting with individuals, nonprofit organizations, businesses, employee business units, or other entities if the following criteria are met:

(a) The invitation for bid or request for proposal contains measurable standards for the performance of the contract;

(b) Employees in the classified service whose positions or work would be displaced by the contract are provided an opportunity to offer alternatives to purchasing services by contract and, if these alternatives are not accepted, compete for the contract under competitive contracting procedures in subsection (4) of this section;

(c) The contract with an entity other than an employee business unit includes a provision requiring the entity to consider employment of state employees who may be displaced by the contract;

(d) The department, agency, or institution of higher education has established a contract monitoring process to measure contract performance, costs, service delivery quality,

and other contract standards, and to cancel contracts that do not meet those standards; and

(e) The department, agency, or institution of higher education has determined that the contract results in savings or efficiency improvements. The contracting agency must consider the consequences and potential mitigation of improper or failed performance by the contractor.

(2) Any provision contrary to or in conflict with this section in any collective bargaining agreement in effect on July 1, 2005, is not effective beyond the expiration date of the agreement.

(3) Contracting for services that is expressly mandated by the legislature or was authorized by law prior to July 1, 2005, including contracts and agreements between public entities, shall not be subject to the processes set forth in subsections (1), (4), and (5) of this section.

(4) Competitive contracting shall be implemented as follows:

(a) At least ninety days prior to the date the contracting agency requests bids from private entities for a contract for services provided by classified employees, the contracting agency shall notify the classified employees whose positions or work would be displaced by the contract. The employees shall have sixty days from the date of notification to offer alternatives to purchasing services by contract, and the agency shall consider the alternatives before requesting bids.

(b) If the employees decide to compete for the contract, they shall notify the contracting agency of their decision. Employees must form one or more employee business units for the purpose of submitting a bid or bids to perform the services.

(c) The department of enterprise services, with the advice and assistance of the office of financial management, shall develop and make available to employee business units training in the bidding process and general bid preparation.

(d) The director of enterprise services, with the advice and assistance of the office of financial management, shall, by rule, establish procedures to ensure that bids are submitted and evaluated in a fair and objective manner and that there exists a competitive market for the service. Such rules shall include, but not be limited to: (i) Prohibitions against participation in the bid evaluation process by employees who prepared the business unit's bid or who perform any of the services to be contracted; (ii) provisions to ensure no bidder receives an advantage over other bidders and that bid requirements are applied equitably to all parties; and (iii) procedures that require the contracting agency to receive complaints regarding the bidding process and to consider them before awarding the contract. Appeal of an agency's actions under this subsection is an adjudicative proceeding and subject to the applicable provisions of chapter 34.05 RCW, the administrative procedure act, with the final decision to be rendered by an administrative law judge assigned under chapter 34.12 RCW.

(e) An employee business unit's bid must include the fully allocated costs of the service, including the cost of the employees' salaries and benefits, space, equipment, materials, and other costs necessary to perform the function. An employee business unit's cost shall not include the state's indirect overhead costs unless those costs can be attributed

directly to the function in question and would not exist if that function were not performed in state service.

(f) A department, agency, or institution of higher education may contract with the department of enterprise services to conduct the bidding process.

(5) As used in this section:

(a) "Employee business unit" means a group of employees who perform services to be contracted under this section and who submit a bid for the performance of those services under subsection (4) of this section.

(b) "Indirect overhead costs" means the pro rata share of existing agency administrative salaries and benefits, and rent, equipment costs, utilities, and materials associated with those administrative functions.

(c) "Competitive contracting" means the process by which classified employees of a department, agency, or institution of higher education compete with businesses, individuals, nonprofit organizations, or other entities for contracts authorized by subsection (1) of this section.

(6) The processes set forth in subsections (1), (4), and (5) of this section do not apply to:

(a) *RCW 74.13.031(5);

(b) The acquisition of printing services by a state agency; and

(c) Contracting for services or activities by the department of enterprise services under RCW 43.19.008 and the department may continue to contract for such services and activities after June 30, 2018.

(7) The processes set forth in subsections (1), (4), and (5) of this section do not apply to the consolidated technology services agency when contracting for services or activities as follows:

(a) Contracting for services and activities that are necessary to establish, operate, or manage the state data center, including architecture, design, engineering, installation, and operation of the facility that are approved by the technology services board created in RCW 43.41A.070.

(b) Contracting for services and activities recommended by the chief information officer through a business plan and approved by the technology services board created in RCW 43.41A.070. [2011 1st sp.s. c 43 § 408; 2008 c 267 § 9; 2002 c 354 § 208.]

*Reviser's note: RCW 74.13.031 was amended by 2012 c 259 § 8, changing subsection (5) to subsection (6), effective December 1, 2013.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.150 Rules of director—Mandatory subjects—Personnel administration. The director shall adopt rules, consistent with the purposes and provisions of this chapter and with the best standards of personnel administration, regarding the basis and procedures to be followed for:

(1) Certification of names for vacancies;

(2) Examinations for all positions in the competitive and noncompetitive service;

(3) Appointments;

(4) Permitting agency heads to delegate the authority to appoint, reduce, dismiss, suspend, or demote employees within their agencies if such agency heads do not have specific statutory authority to so delegate: PROVIDED, That the

director may not authorize such delegation to any position lower than the head of a major subdivision of the agency;

(5) Assuring persons who are or have been employed in classified positions before July 1, 1993, will be eligible for employment, reemployment, transfer, and promotion in respect to classified positions covered by this chapter;

(6) Affirmative action in appointment, promotion, transfer, recruitment, training, and career development; development and implementation of affirmative action goals and timetables; and monitoring of progress against those goals and timetables.

The director shall consult with the human rights commission in the development of rules pertaining to affirmative action.

Rules adopted under this section by the director shall provide for local administration and management by the institutions of higher education and related boards, subject to periodic audit and review by the director. [2011 1st sp.s. c 43 § 409. Prior: 2002 c 371 § 906; 2002 c 354 § 203; 2002 c 354 § 202; 2002 c 110 § 1; 1999 c 297 § 3; 1996 c 319 § 2; 1995 2nd sp.s. c 18 § 911; prior: 1993 sp.s. c 24 § 913; 1993 c 281 § 27; 1990 c 60 § 103; prior: 1985 c 461 § 2; 1985 c 365 § 5; 1983 1st ex.s. c 75 § 5; 1982 1st ex.s. c 53 § 4; prior: 1982 c 79 § 1; 1981 c 311 § 18; 1980 c 118 § 3; 1979 c 151 § 57; 1977 ex.s. c 152 § 1; 1973 1st ex.s. c 75 § 1; 1973 c 154 § 1; 1971 ex.s. c 19 § 2; 1967 ex.s. c 108 § 13; 1961 c 1 § 15 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—1999 c 297: See note following RCW 43.03.125.

Leave for public employees
military: RCW 38.40.060.
vacation: RCW 43.01.040.

Public employees' collective bargaining: Chapter 41.56 RCW.

Additional notes found at www.leg.wa.gov

41.06.152 Job classification revisions, class studies, salary adjustments—Limitations. (1) The director shall adopt only those job classification revisions, class studies, and salary adjustments under RCW 41.06.157 that:

(a) As defined by the director, are due to documented recruitment or retention difficulties, salary compression or inversion, classification plan maintenance, higher level duties and responsibilities, or inequities; and

(b) Are such that the office of financial management has reviewed the affected agency's fiscal impact statement and has concurred that the affected agency can absorb the biennialized cost of the reclassification, class study, or salary adjustment within the agency's current authorized level of funding for the current fiscal biennium and subsequent fiscal biennia.

(2) This section does not apply to the higher education hospital special pay plan or to any adjustments to the classification plan under RCW 41.06.157 that are due to emergent conditions. Emergent conditions are defined as emergency conditions requiring the establishment of positions necessary for the preservation of the public health, safety, or general welfare. [2011 1st sp.s. c 43 § 410; 2007 c 489 § 1; 2002 c 354 § 241; 2002 c 354 § 240; 1999 c 309 § 914; 1996 c 319 § 1.]

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Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.155 Salaries—Implementation of changes to achieve comparable worth. Salary changes necessary to achieve comparable worth shall be implemented during the 1983-85 biennium under a schedule developed by the department. Increases in salaries and compensation solely for the purpose of achieving comparable worth shall be made at least annually. Comparable worth for the jobs of all employees under this chapter shall be fully achieved not later than June 30, 1993. [1993 c 281 § 28; 1983 1st ex.s. c 75 § 6.]

Additional notes found at www.leg.wa.gov

41.06.157 Comprehensive classification plan for classified positions—Contents—Salary surveys. (1) To promote the most effective use of the state's workforce and improve the effectiveness and efficiency of the delivery of services to the citizens of the state, the director shall adopt and maintain a comprehensive classification plan for all positions in the classified service. The classification plan must:

(a) Be simple and streamlined;

(b) Support state agencies in responding to changing technologies, economic and social conditions, and the needs of its citizens;

(c) Value workplace diversity;

(d) Facilitate the reorganization and decentralization of governmental services;

(e) Enhance mobility and career advancement opportunities; and

(f) Consider rates in other public employment and private employment in the state.

(2) An appointing authority and an employee organization representing classified employees of the appointing authority for collective bargaining purposes may jointly request the human resources director to initiate a classification study.

(3) For institutions of higher education and related boards, the director may adopt special salary ranges to be competitive with positions of a similar nature in the state or the locality in which the institution of higher education or related board is located.

(4) The director may undertake salary surveys of positions in other public and private employment to establish market rates. Any salary survey information collected from private employers which identifies a specific employer with salary rates which the employer pays to its employees shall not be subject to public disclosure under chapter 42.56 RCW. [2011 1st sp.s. c 43 § 411.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.160 Classification and salary schedules to consider rates in other public and private employment—Wage and fringe benefits surveys—Limited public disclosure exemption. In preparing classification and salary schedules as set forth in RCW 41.06.150 the department of personnel shall give full consideration to prevailing rates in other public employment and in private employment in this

state. For this purpose the department shall undertake comprehensive salary and fringe benefit surveys.

Salary and fringe benefit survey information collected from private employers which identifies a specific employer with the salary and fringe benefit rates which that employer pays to its employees shall not be subject to public disclosure under chapter 42.56 RCW. [2005 c 274 § 278; 2002 c 354 § 211; 1993 c 281 § 29; 1985 c 94 § 2; 1980 c 11 § 1; 1979 c 151 § 58; 1977 ex.s. c 152 § 2; 1961 c 1 § 16 (Initiative Measure No. 207, approved November 8, 1960).]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Additional notes found at www.leg.wa.gov

41.06.162 State salary schedule. The director of financial management shall adopt and maintain a state salary schedule. Such adoption and revision is subject to approval by the director in accordance with chapter 43.88 RCW. [2011 1st sp.s. c 43 § 412.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.167 Compensation surveys required for officers and officer candidates of the Washington state patrol—Limited public disclosure exemption. The human resources director shall undertake comprehensive compensation surveys for officers and entry-level officer candidates of the Washington state patrol, with such surveys to be conducted in the year prior to the convening of every other one hundred five day regular session of the state legislature. Salary and fringe benefit survey information collected from private employers which identifies a specific employer with the salary and fringe benefit rates which that employer pays to its employees shall not be subject to public disclosure under chapter 42.56 RCW. [2011 1st sp.s. c 43 § 413; 2005 c 274 § 279; 2002 c 354 § 212; 1991 c 196 § 1; 1986 c 158 § 7; 1985 c 94 § 3; 1980 c 11 § 2; 1979 c 151 § 60; 1977 ex.s. c 152 § 5.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Additional notes found at www.leg.wa.gov

41.06.169 Employee performance evaluations—Standardized procedures and forms required to be developed. After consultation with state agency heads, employee organizations, and other interested parties, the director shall develop standardized employee performance evaluation procedures and forms which shall be used by state agencies for the appraisal of employee job performance at least annually. These procedures shall include means whereby individual agencies may supplement the standardized evaluation process with special performance factors peculiar to specific organizational needs. Performance evaluation procedures shall place primary emphasis on recording how well the employee has contributed to efficiency, effectiveness, and economy in fulfilling state agency and job objectives. [2011 1st sp.s. c 43 § 414; 1985 c 461 § 3; 1982 1st ex.s. c 53 § 5; 1977 ex.s. c 152 § 6.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

[Title 41 RCW—page 72]

Additional notes found at www.leg.wa.gov

41.06.170 Reduction, suspension, dismissal, demotion of employee—Right to appeal. (1) The director, in the adoption of rules governing suspensions for cause, shall not authorize an appointing authority to suspend an employee for more than fifteen calendar days as a single penalty or more than thirty calendar days in any one calendar year as an accumulation of several penalties. The director shall require that the appointing authority give written notice to the employee not later than one day after the suspension takes effect, stating the reasons for and the duration thereof.

(2) Any employee who is reduced, dismissed, suspended, or demoted, after completing his or her probationary period of service as provided by the rules of the director, or any employee who is adversely affected by a violation of the state civil service law, chapter 41.06 RCW, or rules adopted under it, shall have the right to appeal, either individually or through his or her authorized representative, not later than thirty days after the effective date of such action to the Washington personnel resources board. The employee shall be furnished with specified charges in writing when a reduction, dismissal, suspension, or demotion action is taken. Such appeal shall be in writing. Decisions of the Washington personnel resources board on appeals filed after June 30, 2005, shall be final and not subject to further appeal.

(3) Any employee whose position has been exempted after July 1, 1993, shall have the right to appeal, either individually or through his or her authorized representative, not later than thirty days after the effective date of such action to the Washington personnel resources board. If the position being exempted is vacant, the exclusive bargaining unit representative may act in lieu of an employee for the purposes of appeal.

(4) An employee incumbent in a position at the time of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or reallocation to the Washington personnel resources board. Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken.

(5) Subsections (1) and (2) of this section do not apply to any employee who is subject to the provisions of a collective bargaining agreement negotiated under RCW 41.80.001 and 41.80.010 through 41.80.130. [2011 1st sp.s. c 43 § 415; 2009 c 534 § 3; 2002 c 354 § 213; 1993 c 281 § 31; 1981 c 311 § 19; 1975-'76 2nd ex.s. c 43 § 3; 1961 c 1 § 17 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Finding—Intent—2009 c 534: See note following RCW 41.06.133.

***Reviser's note:** RCW 41.06.111 was repealed by 2011 1st sp.s. c 43 § 478.

Additional notes found at www.leg.wa.gov

41.06.176 Employee performance evaluations—Written notification of deficiencies. Each employee whose work is judged unsatisfactory shall be notified in writing of the areas in which the work is considered deficient. Unless the deficiency is extreme, the employee shall be given an opportunity to demonstrate improvement. [1985 c 461 § 4.]

Additional notes found at www.leg.wa.gov

41.06.186 Employee performance evaluations—Termination of employment—Rules. The director shall adopt rules designed to terminate the state employment of any employee whose performance is so inadequate as to warrant termination. [2002 c 354 § 215; 1993 c 281 § 32; 1985 c 461 § 5.]

Additional notes found at www.leg.wa.gov

41.06.196 Employee performance evaluations—Termination of supervisors tolerating inadequate employee performance. The director shall adopt rules designed to remove from supervisory positions those supervisors who in violation of the rules adopted under RCW 41.06.186 have tolerated the continued employment of employees under their supervision whose performance has warranted termination from state employment. [2002 c 354 § 216; 1993 c 281 § 33; 1985 c 461 § 6.]

Duty of state officers to identify employees whose performance warrants termination from state employment: RCW 43.01.125.

Additional notes found at www.leg.wa.gov

41.06.204 Use of false academic credentials—Penalties. A person who issues or uses a false academic credential is subject to RCW 28B.85.220 and 9A.60.070. [2006 c 234 § 7.]

41.06.220 Reinstatement after appeal, guaranteed rights and benefits. Any employee, when fully reinstated after appeal, shall be guaranteed all employee rights and benefits, including back pay, sick leave, vacation accrual, retirement and OASDI credits. [2011 1st sp.s. c 43 § 416; 1961 c 1 § 22 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.250 Political activities. (1) Solicitation for or payment to any partisan, political organization or for any partisan, political purpose of any compulsory assessment or involuntary contribution is prohibited: PROVIDED, HOWEVER, That officers of employee associations shall not be prohibited from soliciting dues or contributions from members of their associations. No person shall solicit on state property or property of a political subdivision of this state any contribution to be used for partisan, political purposes.

(2) Employees of the state or any political subdivision thereof shall have the right to vote and to express their opinions on all political subjects and candidates and to hold any political party office or participate in the management of a partisan, political campaign. Nothing in this section shall prohibit an employee of the state or any political subdivision thereof from participating fully in campaigns relating to constitutional amendments, referendums, initiatives, and issues of a similar character, and for nonpartisan offices.

(3) A classified civil service employee shall not hold a part time public office in a political subdivision of the state when the holding of such office is incompatible with, or substantially interferes with, the discharge of official duties in state employment.

(4) For persons employed in state agencies or agencies of any political subdivision of the state the operation of which is

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financed in total or primarily by federal grant-in-aid funds political activity will be regulated by the rules and regulations of the United States civil service commission.

(5) The provisions of this section shall supersede all statutes, charter provisions, ordinances, resolutions, regulations, and requirements promulgated by the state or any subdivision thereof, including any provision of any county charter, insofar as they may be in conflict with the provisions of this section. [1974 ex.s. c 136 § 1; 1961 c 1 § 25 (Initiative Measure No. 207, approved November 8, 1960).]

41.06.260 Conflict with federal requirements—Effect—Rules to conform chapter. If any part of this chapter shall be found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, such conflicting part of this chapter is hereby declared to be inoperative solely to the extent of such conflict and with respect to the agencies directly affected, and such findings or determination shall not affect the operation of the remainder of this chapter in its application to the agencies concerned. The office of financial management and the department of enterprise services, as appropriate, shall make such rules and regulations as may be necessary to meet federal requirements which are a condition precedent to the receipt of federal funds by the state. [2011 1st sp.s. c 43 § 417; 1961 c 1 § 26 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.270 Salary withheld unless employment is in accord with chapter—Certification of payrolls, procedures. A disbursing officer shall not pay any employee holding a position covered by this chapter unless the employment is in accordance with this chapter or the rules, regulations and orders issued hereunder. The directors of enterprise services and financial management shall jointly establish procedures for the certification of payrolls. [2011 1st sp.s. c 43 § 418; 2002 c 354 § 217; 1979 c 151 § 61; 1961 c 1 § 27 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.280 Personnel service fund—Created—Charges to agencies, payment—Use, disbursement. There is hereby created a fund within the state treasury, designated as the "personnel service fund," to be used by the office of financial management as a revolving fund for the payment of salaries, wages, and operations required for the administration of the provisions of this chapter, applicable provisions of chapter 41.04 RCW, and chapter 41.60 RCW. An amount not to exceed one and one-half percent of the salaries and wages for all positions in the classified service in each of the agencies subject to this chapter, except the institutions of higher education, shall be charged to the operations appropriations of each agency and credited to the personnel service fund as the allotments are approved pursuant to chapter 43.88 RCW. Subject to the above limitations, the amount shall be charged against the allotments pro rata, at a rate to be fixed by the director from time to time which, together with income

derived from services rendered under RCW 41.06.080, will provide the office of financial management with funds to meet its anticipated expenditures during the allotment period, including the training requirements in RCW 41.06.500 and 41.06.530. All revenues, net of expenditures, previously derived from services provided by the department of enterprise services under RCW 41.06.080 must be transferred to the enterprise services account.

The director shall fix the terms and charges for services rendered by the office of financial management pursuant to RCW 41.06.080, which amounts shall be credited to the personnel service fund and charged against the proper fund or appropriation of the recipient of such services on a monthly basis. Payment for services so rendered under RCW 41.06.080 shall be made on a monthly basis to the state treasurer and deposited in the personnel service fund.

Moneys from the personnel service fund shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the office of financial management.

During the 2013-2015 fiscal biennium, the legislature may transfer from the personnel service fund to the state general fund such amounts as reflect the excess fund balance of the account. [2013 2nd sp.s. c 4 § 968; 2013 2nd sp.s. c 4 § 967; 2013 c 251 § 1; 2011 1st sp.s. c 43 § 419; 1993 c 379 § 309; 1993 c 281 § 34; 1987 c 248 § 4; 1984 c 7 § 45; 1982 c 167 § 13; 1963 c 215 § 1; 1961 c 1 § 28 (Initiative Measure No. 207, approved November 8, 1960).]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Residual balance of funds—2013 c 251: "Any residual balance of funds remaining in the public printing revolving account repealed by section 13 of this act on June 30, 2013, shall be transferred to the enterprise services account. Any residual balance of funds remaining in the Puyallup tribal settlement account repealed by section 13 of this act on June 30, 2013, shall be transferred to the motor vehicle fund. Any residual balance of funds remaining in any other account abolished in this act on June 30, 2013, shall be transferred by the state treasurer to the state general fund." [2013 c 251 § 17.]

Effective date—2013 c 251: "Except for section 4 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2013." [2013 c 251 § 18.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

Legislative findings—Purpose—1987 c 248: See note following RCW 41.04.362.

Additional notes found at www.leg.wa.gov

41.06.285 Higher education personnel service fund.

(1) There is hereby created a fund within the state treasury, designated as the "higher education personnel service fund," to be used by the office of financial management as a revolving fund for the payment of salaries, wages, and operations required for the administration of the provisions of chapter 41.06 RCW and applicable provisions of chapters 41.04 and 41.60 RCW. Subject to the requirements of subsection (2) of this section, an amount not to exceed one-half of one percent of the salaries and wages for all positions in the classified service shall be contributed from the operations appropriations of each institution and the state board for community and technical colleges and credited to the higher education personnel service fund as such allotments are approved pursuant

to chapter 43.88 RCW. Subject to the above limitations, such amount shall be charged against the allotments pro rata, at a rate to be fixed by the director of financial management from time to time, which will provide the office of financial management with funds to meet its anticipated expenditures during the allotment period.

(2) If employees of institutions of higher education cease to be classified under this chapter pursuant to an agreement authorized by *RCW 41.56.201, each institution of higher education and the state board for community and technical colleges shall continue, for six months after the effective date of the agreement, to make contributions to the higher education personnel service fund based on employee salaries and wages that includes the employees under the agreement. At the expiration of the six-month period, the director of financial management shall make across-the-board reductions in allotments of the higher education personnel service fund for the remainder of the biennium so that the charge to the institutions of higher education and state board for community and technical colleges based on the salaries and wages of the remaining employees of institutions of higher education and related boards classified under this chapter does not increase during the biennium, unless an increase is authorized by the legislature.

(3) Moneys from the higher education personnel service fund shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the office of financial management. [2011 1st sp.s. c 43 § 420; 1998 c 245 § 41; 1993 c 379 § 308.]

***Reviser's note:** RCW 41.56.201 was repealed by 2002 c 354 § 403, effective July 1, 2005.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

41.06.290 Personnel subject to chapter 47.64 RCW not affected. Nothing in this chapter shall be interpreted as changing the provisions of or affecting the conditions of employment for personnel covered by chapter 47.64 RCW. [1961 c 1 § 29 (Initiative Measure No. 207, approved November 8, 1960).]

41.06.340 Determination of appropriate bargaining units—Unfair labor practices provisions applicable to chapter. (1) With respect to collective bargaining as authorized by RCW 41.80.001 and 41.80.010 through 41.80.130, the public employment relations commission created by chapter 41.58 RCW shall have authority to adopt rules, on and after June 13, 2002, relating to determination of appropriate bargaining units within any agency. In making such determination the commission shall consider the duties, skills, and working conditions of the employees, the history of collective bargaining by the employees and their bargaining representatives, the extent of organization among the employees, and the desires of the employees. The public employment relations commission created in chapter 41.58 RCW shall adopt rules and make determinations relating to the certification and decertification of exclusive bargaining representatives.

(2) Each and every provision of RCW 41.56.140 through 41.56.160 shall be applicable to this chapter as it relates to state civil service employees.

(3) A collective bargaining agreement entered into under RCW 41.06.150 before July 1, 2004, covering employees subject to RCW 41.80.001 and 41.80.010 through 41.80.130 that expires after July 1, 2004, shall remain in full force during its duration, or until superseded by a collective bargaining agreement entered into by the parties under RCW 41.80.001 and 41.80.010 through 41.80.130. However, an agreement entered into before July 1, 2004, may not be renewed or extended beyond July 1, 2005, or until superseded by a collective bargaining agreement entered into under RCW 41.80.001 and 41.80.010 through 41.80.130, whichever is later. [2002 c 354 § 232; 1993 c 281 § 35; 1969 ex.s. c 215 § 13.]

Additional notes found at www.leg.wa.gov

41.06.350 Acceptance of federal funds authorized.

The director is authorized to receive federal funds now available or hereafter made available for the assistance and improvement of public personnel administration, which may be expended in addition to the personnel service fund established by RCW 41.06.280. [2011 1st sp.s. c 43 § 421; 2002 c 354 § 218; 1993 c 281 § 36; 1969 ex.s. c 152 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.395 Training programs on sexual harassment.

The director shall adopt rules establishing guidelines for policies, procedures, and mandatory training programs on sexual harassment for state employees to be adopted by state agencies. The department of enterprise services shall establish reporting requirements for state agencies on compliance with RCW 43.01.135. [2011 1st sp.s. c 43 § 422; 2007 c 76 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.400 Training and career development programs—Powers and duties of department of enterprise services. (1) In addition to other powers and duties specified in this chapter, the department of enterprise services in consultation with the office of financial management shall:

(a) By rule, prescribe the purpose and minimum standards for training and career development programs and, in so doing, regularly consult with and consider the needs of individual agencies and employees;

(b) Provide training and career development programs which may be conducted more efficiently and economically on an interagency basis;

(c) Promote interagency sharing of resources for training and career development;

(d) Monitor and review the impact of training and career development programs to ensure that the responsibilities of the state to provide equal employment opportunities are diligently carried out.

(2) At an agency's request, the department of enterprise services may provide training and career development programs for an agency's internal use which may be conducted more efficiently and economically by the department of

enterprise services. [2011 1st sp.s. c 43 § 423; 2002 c 354 § 219; 1980 c 118 § 4.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.410 Agency training and career development plans—Budget. Each agency subject to the provisions of this chapter shall:

(1) Prepare an employee training and career development plan which shall at least meet minimum standards established by the department of enterprise services;

(2) Provide for training and career development for its employees in accordance with the agency plan;

(3) Budget for training and career development in accordance with procedures of the office of financial management. [2011 1st sp.s. c 43 § 424; 2002 c 354 § 220; 1980 c 118 § 5.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.420 Entry-level management training course—Rules—Requirements—Suspension—Waiver—Designation of supervisory or management positions. (1) The office of financial management, by rule, shall prescribe the conditions under which an employee appointed to a supervisory or management position after June 12, 1980, shall be required to successfully complete an entry-level management training course as approved by the director. Such training shall not be required of any employee who has completed a management training course prior to the employee's appointment which is, in the judgment of the director, at least equivalent to the entry-level course required by this section.

(2) The office of financial management, by rule, shall establish procedures for the suspension of the entry-level training requirement in cases where the ability of an agency to perform its responsibilities is adversely affected, or for the waiver of this requirement in cases where a person has demonstrated experience as a substitute for training.

(3) Agencies subject to the provisions of this chapter, in accordance with rules prescribed by the office of financial management, shall designate individual positions, or groups of positions, as being "supervisory" or "management" positions. Such designations shall be subject to review by the director. [2011 1st sp.s. c 43 § 425; 1980 c 118 § 6.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.450 Destruction or retention of information relating to employee misconduct. (1) The director shall adopt rules applicable to each agency to ensure that information relating to employee misconduct or alleged misconduct is destroyed or maintained as follows:

(a) All such information determined to be false and all such information in situations where the employee has been fully exonerated of wrongdoing, shall be promptly destroyed;

(b) All such information having no reasonable bearing on the employee's job performance or on the efficient and effective management of the agency, shall be promptly destroyed;

(c) All other information shall be retained only so long as it has a reasonable bearing on the employee's job performance or on the efficient and effective management of the agency.

(2) Notwithstanding subsection (1) of this section, an agency may retain information relating to employee misconduct or alleged misconduct if:

(a) The employee requests that the information be retained; or

(b) The information is related to pending legal action or legal action may be reasonably expected to result.

(3) In adopting rules under this section, the director shall consult with the public disclosure commission to ensure that the public policy of the state, as expressed in chapters *42.17 and 42.56 RCW, is adequately protected. [2005 c 274 § 280; 2002 c 354 § 221; 1993 c 281 § 37; 1982 c 208 § 10.]

*Reviser's note: Provisions in chapter 42.17 RCW relating to public disclosure were recodified in chapter 42.56 RCW by 2005 c 274.

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Legislative finding—Purpose—RCW 41.06.450: "The legislature finds that, under some circumstances, maintaining information relating to state employee misconduct or alleged misconduct is unfair to employees and serves no useful function to the state. The purpose of RCW 41.06.450 is to direct the personnel board to adopt rules governing maintenance of employee records so that the records are maintained in a manner which is fair to employees, which ensures proper management of state governmental affairs, and which adequately protects the public interest." [1982 c 208 § 9.]

Application of public disclosure law to information relating to employee misconduct: RCW 42.56.110.

Employee inspection of personnel file: RCW 49.12.240 through 49.12.260.

Additional notes found at www.leg.wa.gov

41.06.455 Destruction of employee records authorized if consistent with other laws. RCW 41.06.450 does not prohibit an agency from destroying identifying information in records relating to employee misconduct or alleged misconduct if the agency deems the action is consistent with the policy expressed in RCW 41.06.450 and in chapter 42.56 RCW. [2005 c 274 § 281; 1982 c 208 § 11.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Additional notes found at www.leg.wa.gov

41.06.460 Application of RCW 41.06.450 and 41.06.455 to classified and exempt employees. Notwithstanding RCW 41.06.040, 41.06.450 and 41.06.455 apply to all classified and exempt employees of the state, including employees of the institutions of higher education. [1982 c 208 § 12.]

Additional notes found at www.leg.wa.gov

41.06.475 Employees with unsupervised access to children—Rules for background investigation. The director shall adopt rules, in cooperation with the director of the department of early learning, for the background investigation of current employees and of persons being actively considered for positions with the department who will or may have unsupervised access to children. The director shall also adopt rules, in cooperation with the director of the department of early learning, for background investigation of positions otherwise required by federal law to meet employment standards. "Considered for positions" includes decisions

about (1) initial hiring, layoffs, reallocations, transfers, promotions, or demotions, or (2) other decisions that result in an individual being in a position that will or may have unsupervised access to children as an employee, an intern, or a volunteer. [2007 c 387 § 8; 2002 c 354 § 222; 1993 c 281 § 38; 1986 c 269 § 2.]

Children and vulnerable adults: RCW 43.43.830 through 43.43.842.

State hospitals: RCW 72.23.035.

Supervision, care, or treatment of children or individuals with developmental disabilities or other vulnerable persons—State employment—Investigation of conviction records or pending charges: RCW 43.20A.710.

Additional notes found at www.leg.wa.gov

41.06.476 Background investigation rules—Updating. (1) The office of financial management shall amend any existing rules established under RCW 41.06.475 and adopt rules developed in cooperation and agreement with the department of social and health services to implement the provisions of chapter 296, Laws of 2001.

(2) The legislature's delegation of authority to the agency under chapter 296, Laws of 2001 is strictly limited to:

(a) The minimum delegation necessary to administer the clear and unambiguous directives of chapter 296, Laws of 2001; and

(b) The administration of circumstances and behaviors foreseeable at *the time of enactment. [2011 1st sp.s. c 43 § 426; 2001 c 296 § 6.]

*Reviser's note: 2001 c 296 attained final passage by the legislature on April 20, 2001, was signed by the governor and filed with the secretary of state on May 14, 2001, and took effect July 22, 2001.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—2001 c 296: See note following RCW 9.96A.060.

41.06.490 State employee return-to-work program. In addition to the rules adopted under RCW 41.06.150, the director shall adopt rules establishing a state employee return-to-work program. The program shall, at a minimum:

(1) Direct each agency to adopt a return-to-work policy. The program shall allow each agency program to take into consideration the special nature of employment in the agency;

(2) Provide for eligibility in the return-to-work program, for a minimum of two years from the date the temporary disability commenced, for any permanent employee who is receiving compensation under RCW 51.32.090 and who is, by reason of his or her temporary disability, unable to return to his or her previous work, but who is physically capable of carrying out work of a lighter or modified nature;

(3) Require each agency to name an agency representative responsible for coordinating the return-to-work program of the agency;

(4) Provide that applicants receiving appointments for classified service receive an explanation of the return-to-work policy;

(5) Require training of supervisors on implementation of the return-to-work policy, including but not limited to assessment of the appropriateness of the return-to-work job for the employee; and

(6) Coordinate participation of applicable employee assistance programs, as appropriate. [2011 1st sp.s. c 43 § 427; 2002 c 354 § 223; 1990 c 204 § 3.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—Purpose—1990 c 204: See note following RCW 51.44.170.
Additional notes found at www.leg.wa.gov

41.06.500 Managers—Rules—Goals. (1) Except as provided in RCW 41.06.070 and subject to RCW 41.04.820, notwithstanding any other provisions of this chapter, the director is authorized to adopt, after consultation with state agencies and employee organizations, rules for managers as defined in RCW 41.06.022. These rules shall not apply to managers employed by institutions of higher education or related boards or whose positions are exempt. The rules shall govern recruitment, appointment, classification and allocation of positions, examination, training and career development, hours of work, probation, certification, compensation, transfer, affirmative action, promotion, layoff, reemployment, performance appraisals, discipline, and any and all other personnel practices for managers. These rules shall be separate from rules adopted for other employees, and to the extent that the rules adopted under this section apply only to managers shall take precedence over rules adopted for other employees, and are not subject to review by the board.

(2) In establishing rules for managers, the director shall adhere to the following goals:

(a) Development of a simplified classification system that facilitates movement of managers between agencies and promotes upward mobility;

(b) Creation of a compensation system that provides flexibility in setting and changing salaries, and shall require review and approval by the director in the case of any salary changes greater than five percent proposed for any group of employees;

(c) Establishment of a performance appraisal system that emphasizes individual accountability for program results and efficient management of resources; effective planning, organization, and communication skills; valuing and managing workplace diversity; development of leadership and interpersonal abilities; and employee development;

(d) Strengthening management training and career development programs that build critical management knowledge, skills, and abilities; focusing on managing and valuing workplace diversity; empowering employees by enabling them to share in workplace decision making and to be innovative, willing to take risks, and able to accept and deal with change; promoting a workplace where the overall focus is on the recipient of the government services and how these services can be improved; and enhancing mobility and career advancement opportunities;

(e) Permitting flexible recruitment and hiring procedures that enable agencies to compete effectively with other employers, both public and private, for managers with appropriate skills and training; allowing consideration of all qualified candidates for positions as managers; and achieving affirmative action goals and diversity in the workplace;

(f) Providing that managers may only be reduced, dismissed, suspended, or demoted for cause; and

(g) Facilitating decentralized and regional administration.

(3) From February 18, 2009, through June 30, 2013, a salary or wage increase shall not be granted to any position

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under this section, except that increases may be granted for positions for which the employer has demonstrated difficulty retaining qualified employees if the following conditions are met:

(a) The salary increase can be paid within existing resources;

(b) The salary increase will not adversely impact the provision of client services; and

(c) For any state agency of the executive branch, not including institutions of higher education, the salary increase is approved by the director of the office of financial management.

Any agency granting a salary increase from February 15, 2010, through June 30, 2011, to a position under this section shall submit a report to the fiscal committees of the legislature no later than July 31, 2011, detailing the positions for which salary increases were granted, the size of the increases, and the reasons for giving the increases.

Any agency granting a salary increase from July 1, 2011, through June 30, 2013, to a position under this section shall submit a report to the fiscal committees of the legislature by July 31, 2012, and July 31, 2013, detailing the positions for which salary increases were granted during the preceding fiscal year, the size of the increases, and the reasons for giving the increases.

(4) From February 15, 2010, until June 30, 2013, no monetary performance-based awards or growth and development progression adjustments may be granted by the director or employers to the Washington management service employees covered by the rules adopted under this section. This subsection does not prohibit the payment of awards provided for in chapter 41.60 RCW.

From July 1, 2011, until June 30, 2013, no performance-based awards or incentives may be granted by the director or employers to employees pursuant to a performance management confirmation granted by the department of personnel under WAC 357-37-055.

From July 1, 2011, through June 29, 2013, salaries for all positions under this section are subject to RCW 41.04.820. [2011 1st sp.s. c 39 § 6. Prior: 2010 c 2 § 4; 2010 c 1 § 3; 2009 c 5 § 3; 2002 c 354 § 243; 2002 c 354 § 242; 1996 c 319 § 4; 1993 c 281 § 9.]

Effective date—2011 1st sp.s. c 39: See note following RCW 41.04.820.

Findings—Effective date—2010 c 2: See notes following RCW 41.06.070.

Effective date—2010 c 1: See note following RCW 41.06.070.

Effective date—2009 c 5: See note following RCW 41.06.070.

Additional notes found at www.leg.wa.gov

41.06.510 Institutions of higher education—Designation of personnel officer. Each institution of higher education and each related board shall designate an officer who shall perform duties as personnel officer. The personnel officer at each institution or related board shall direct, supervise, and manage administrative and technical personnel activities for the classified service at the institution or related board consistent with policies established by the institution or related board and in accordance with the provisions of this chapter and the rules adopted under this chapter. Institutions may undertake jointly with one or more other institutions to

appoint a person qualified to perform the duties of personnel officer, provide staff and financial support and may engage consultants to assist in the performance of specific projects. The services of the department of enterprise services and the office of financial management may also be used by the institutions or related boards pursuant to RCW 41.06.080.

The state board for community and technical colleges shall have general supervision and control over activities undertaken by the various community colleges pursuant to this section. [2011 1st sp.s. c 43 § 428; 1993 c 281 § 10.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.530 Personnel resource and management policy—Implementation. (1) The legislature recognizes that:

(a) The labor market and the state government workforce are diverse in terms of gender, race, ethnicity, age, and the presence of disabilities.

(b) The state's personnel resource and management practices must be responsive to the diverse nature of its workforce composition.

(c) Managers in all agencies play a key role in the implementation of all critical personnel policies.

It is therefore the policy of the state to create an organizational culture in state government that respects and values individual differences and encourages the productive potential of every employee.

(2) To implement this policy:

(a) The office of financial management shall, in consultation with agencies, employee organizations, employees, institutions of higher education, and related boards, review civil service rules and related policies to ensure that they support the state's policy of valuing and managing diversity in the workplace; and

(b) The department of enterprise services, in consultation with agencies, employee organizations, and employees, institutions of higher education, and related boards, develop training programs for all managers to enhance their ability to implement diversity policies and to provide a thorough grounding in all aspects of the state civil service law and merit system rules, and how the proper implementation and application thereof can facilitate and further the mission of the agency.

(3) The department of enterprise services and the office of financial management shall coordinate implementation of this section with the institutions of higher education and related boards to reduce duplication of effort. [2011 1st sp.s. c 43 § 429; 1993 c 281 § 12.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.540 Joint employee-management committees. Meaningful and effective involvement of employees and their representatives is essential to the efficient and effective delivery of state government services. To accomplish this, agencies shall use joint employee-management committees to collaborate on the desired goals of streamlined organizational structures, continuous improvement in all systems and processes, empowerment of line level employees to solve

workplace and system delivery problems, managers functioning as coaches and facilitators, and employee training and development as an investment in the future. If employees are represented by an exclusive bargaining representative, the representative shall select the employee committee members and also be on the committee. In addition, the committees shall be used for improvement of the quality of work life for state employees resulting in more productive and efficient service delivery to the general public and customers of state government. Nothing in this section supplants any collective bargaining process or provision. [1993 c 281 § 13.]

Additional notes found at www.leg.wa.gov

41.06.550 Volunteer firefighters—Call to duty. An agency must allow an employee who is a volunteer firefighter to respond, without pay, to a fire, natural disaster, or medical emergency when called to duty. The agency may choose to grant leave with pay. [2007 c 112 § 1.]

41.06.560 Monetary performance-based awards or incentives—Restrictions. From February 15, 2010, until June 30, 2013, no monetary performance-based awards or incentives may be granted by the director or employers to employees covered by rules adopted under this section. This section does not prohibit the payment of awards provided for in chapter 41.60 RCW. For institutions of higher education, this section does not prohibit the payment of specific cash awards from private donations from individuals or businesses including, but not limited to, endowments.

From July 1, 2011, until June 30, 2013, no performance-based awards or incentives may be granted by the director or employers to employees pursuant to a performance management confirmation granted by the department of personnel under WAC 357-37-055. [2012 2nd sp.s. c 7 § 916; 2011 1st sp.s. c 39 § 11; 2010 c 2 § 6.]

Effective date—2012 2nd sp.s. c 7: See note following RCW 2.68.020.

Effective date—2011 1st sp.s. c 39: See note following RCW 41.04.820.

Findings—Effective date—2010 c 2: See notes following RCW 41.06.070.

41.06.900 Short title. This chapter shall be referred to as the state civil service law. [1961 c 1 § 34 (Initiative Measure No. 207, approved November 8, 1960).]

41.06.910 Severability—1961 c 1. If any provision of this act or the application thereof is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end any section, sentence, or word is declared to be severable. [1961 c 1 § 35 (Initiative Measure No. 207, approved November 8, 1960).]

41.06.911 Severability—1975-'76 2nd ex.s. c 43. If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975-'76 2nd ex.s. c 43 § 5.]

41.06.912 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 86.]

Chapter 41.07 RCW

CENTRAL PERSONNEL-PAYROLL SYSTEM

Sections

41.07.010	Definitions.
41.07.020	Administration, maintenance and operation of system—Intent.
41.07.030	Costs.
41.07.901	Effective date—1975 1st ex.s. c 239.

41.07.010 Definitions. (1) As used in this chapter "state agency" means all offices, departments, agencies, institutions, boards, and commissions of state government including those headed by an elected official and including institutions of higher education.

(2) As used in this chapter "central personnel-payroll system" means an automated data processing system capable of keeping records and processing necessary transactions in the process of employing persons, changing their employment status, and paying employees of any or all state agencies. Such system shall include production of reports and documents required or authorized by state or federal agencies. [1975 1st ex.s. c 239 § 1.]

41.07.020 Administration, maintenance and operation of system—Intent. The department of enterprise services is authorized to administer, maintain, and operate the central personnel-payroll system and to provide its services for any state agency designated jointly by the director of the department of enterprise services and the director of financial management.

The system shall be operated through state data processing centers. State agencies shall convert personnel and payroll processing to the central personnel-payroll system as soon as administratively and technically feasible as determined by the office of financial management and the department of enterprise services. It is the intent of the legislature to provide, through the central personnel-payroll system, for uniform reporting to the office of financial management and to the legislature regarding salaries and related costs, and to reduce present costs of manual procedures in personnel and payroll recordkeeping and reporting. [2011 1st sp.s. c 43 § 441; 1979 c 151 § 62; 1975 1st ex.s. c 239 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

(2014 Ed.)

41.07.030 Costs. The costs of administering, maintaining, and operating the central personnel-payroll system shall be distributed to the using state agencies. In order to insure proper and equitable distribution of costs the department of enterprise services shall utilize cost accounting procedures to identify all costs incurred in the administration, maintenance, and operation of the central personnel-payroll system. In order to facilitate proper and equitable distribution of costs to the using state agencies the department of enterprise services is authorized to utilize the data processing revolving fund created by RCW 43.19.791 and the personnel service fund created by RCW 41.06.280. [2011 1st sp.s. c 43 § 611; 2011 1st sp.s. c 43 § 442; 1975 1st ex.s. c 239 § 3.]

Reviser's note: This section was amended by 2011 1st sp.s. c 43 § 442 and by 2011 1st sp.s. c 43 § 611, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.07.901 Effective date—1975 1st ex.s. c 239. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975. [1975 1st ex.s. c 239 § 6.]

Chapter 41.08 RCW

CIVIL SERVICE FOR CITY FIREFIGHTERS

Sections

41.08.010	Application of chapter.
41.08.020	Excluded cities—Repeal of local law—Effect.
41.08.030	Civil service commission created—Appointment—Terms—Removal—Quorum.
41.08.040	Organization of commission—Secretary—Powers and duties of commission.
41.08.050	Persons included—Competitive examinations—Transfers, discharges, and reinstatements.
41.08.060	Existing firefighters blanketed under civil service.
41.08.070	Qualifications of applicants.
41.08.075	Residency as condition of employment—Discrimination because of lack of residency—Prohibited.
41.08.080	Tenure of employment—Grounds for discharge, reduction, or deprivation of privileges.
41.08.090	Procedure for removal, suspension, demotion or discharge—Investigation—Hearing—Appeal.
41.08.100	Filling of vacancies—Probationary period.
41.08.110	Power to create offices, make appointments and fix salaries not infringed.
41.08.120	Approval of payrolls.
41.08.130	Leaves of absence—Notice—Filling vacancy.
41.08.140	Enforcement by civil action—Legal counsel.
41.08.150	Deceptive practices, false marks, etc., prohibited.
41.08.160	Political contributions and services—Not required—Solicitation and coercion prohibited.
41.08.170	Local legislation required—Penalty.
41.08.180	Office and supplies to be furnished—Penalty for not providing.
41.08.183	Time limit for creation of commission—Penalty.
41.08.185	Duty of commission to organize and function—Penalty for violation.
41.08.190	Cooperation of city officers and employees enjoined.
41.08.200	Appropriation for expenses.
41.08.210	Penalty—Jurisdiction.
41.08.220	Definitions.
41.08.900	Severability—1935 c 31.
41.08.910	Repeal.

Civil service for employees of fire protection districts: RCW 52.30.040.

41.08.010 Application of chapter. The provisions of this chapter shall have no application to cities and towns which at the present time have provided for civil service in

the fire department or which shall subsequently provide for civil service in the fire department by local charter or other regulations which said local charter or regulations substantially accomplish the purpose of this chapter. [1935 c 31 § 1; RRS § 9558-1.]

41.08.020 Excluded cities—Repeal of local law—Effect. If any of the cities or towns referred to in RCW 41.08.010 shall at any time repeal the charter provisions or other local acts of said cities or towns providing for civil service for firefighters as referred to in RCW 41.08.010, in that event this chapter shall apply to all of such cities and towns which have at any time abolished civil service for members of the fire department. [2007 c 218 § 2; 1935 c 31 § 2; RRS § 9558-2.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.08.030 Civil service commission created—Appointment—Terms—Removal—Quorum. There is hereby created in every city, town or municipality except those referred to in RCW 41.08.010, having a full paid fire department a civil service commission which shall be composed of three persons.

The members of such commission shall be appointed by the person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, common council, commission, or otherwise, is or are vested by law with power and authority to select, appoint, or employ the chief of a fire department in any such city, prior to the enactment of this chapter. The members of such commission shall serve without compensation. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of such city for at least three years immediately preceding such appointment, and an elector of the county wherein he or she resides. The term of office of such commissioners shall be for six years, except that the first three members of such commission shall be appointed for different terms, as follows: One to serve for a period of two years, one to serve for a period of four years, and one to serve for a period of six years. Any member of such commission may be removed from office for incompetency, incompatibility or dereliction of duty, or malfeasance in office, or other good cause: PROVIDED, HOWEVER, That no member of the commission shall be removed until charges have been preferred, in writing, due notice and a full hearing had. The members of such commission shall devote due time and attention to the performance of the duties hereinafter specified and imposed upon them by this chapter. Two members of such commission shall constitute a quorum and the votes of any two members of such commission concurring shall be sufficient for the decision of all matters and the transaction of all business to be decided or transacted by the commission under or by virtue of the provisions of this chapter. Confirmation of said appointment or appointments of commissioners by any legislative body shall not be required. At the time of any appointment not more than two commissioners shall be adherents of the same political party. [2007 c 218 § 3; 1935 c 31 § 3; RRS § 9558-3.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.08.040 Organization of commission—Secretary—Powers and duties of commission. Immediately after appointment the commission shall organize by electing one of its members chair and hold regular meetings at least once a month, and such additional meetings as may be required for the proper discharge of their duties.

They shall appoint a secretary and chief examiner, who shall keep the records of the commission, preserve all reports made to it, superintend and keep a record of all examinations held under its direction, and perform such other duties as the commission may prescribe.

The secretary and chief examiner shall be appointed as a result of competitive examination which examination may be either original and open to all properly qualified citizens of the city, town or municipality, or promotional and limited to persons already in the service of the fire department or of the fire department and other departments of said city, town or municipality, as the commission may decide. The secretary and chief examiner may be subject to suspension, reduction or discharge in the same manner and subject to the same limitations as are provided in the case of members of the fire department. It shall be the duty of the civil service commission:

(1) To make suitable rules and regulations not inconsistent with the provisions of this chapter. Such rules and regulations shall provide in detail the manner in which examinations may be held, and appointments, promotions, transfers, reinstatements, demotions, suspensions and discharges shall be made, and may also provide for any other matters connected with the general subject of personnel administration, and which may be considered desirable to further carry out the general purposes of this chapter, or which may be found to be in the interest of good personnel administration. Such rules and regulations may be changed from time to time. The rules and regulations and any amendments thereof shall be printed, mimeographed or multigraphed for free public distribution. Such rules and regulations may be changed from time to time.

(2) All tests shall be practical, and shall consist only of subjects which will fairly determine the capacity of persons examined to perform duties of the position to which appointment is to be made, and may include tests of physical fitness and/or of manual skill.

(3) The rules and regulations adopted by the commission shall provide for a credit in accordance with RCW 41.04.010 in favor of all applicants for appointment under civil service, who, in time of war, or in any expedition of the armed forces of the United States, have served in and been honorably discharged from the armed forces of the United States, including the army, navy, and marine corps and the American Red Cross. These credits apply to entrance examinations only.

(4) The commission shall make investigations concerning and report upon all matters touching the enforcement and effect of the provisions of this chapter, and the rules and regulations prescribed hereunder; inspect all institutions, departments, offices, places, positions and employments affected by this chapter, and ascertain whether this chapter and all such rules and regulations are being obeyed. Such investigations may be made by the commission or by any commissioner designated by the commission for that purpose. Not only must these investigations be made by the commission as

aforesaid, but the commission must make like investigation on petition of a citizen, duly verified, stating that irregularities or abuses exist, or setting forth in concise language, in writing, the necessity for such investigation. In the course of such investigation the commission or designated commissioner, or chief examiner, shall have the power to administer oaths, subpoena and require the attendance of witnesses and the production by them of books, papers, documents and accounts appertaining to the investigation and also to cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior court; and the oaths administered hereunder and the subpoenas issued hereunder shall have the same force and effect as the oaths administered by a superior court judge in his or her judicial capacity; and the failure upon the part of any person so subpoenaed to comply with the provisions of this section shall be deemed a violation of this chapter, and punishable as such.

(5) All hearings and investigations before the commission, or designated commissioner, or chief examiner, shall be governed by this chapter and by rules of practice and procedure to be adopted by the commission, and in the conduct thereof neither the commission, nor designated commissioner shall be bound by the technical rules of evidence. No informality in any proceedings or hearing, or in the manner of taking testimony before the commission or designated commissioner, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission: PROVIDED, HOWEVER, That no order, decision, rule or regulation made by any designated commissioner conducting any hearing or investigation alone shall be of any force or effect whatsoever unless and until concurred in by at least one of the other two members.

(6) To hear and determine appeals or complaints respecting the administrative work of the personnel department; appeals upon the allocation of positions; the rejection of an examination, and such other matters as may be referred to the commission.

(7) Establish and maintain in card or other suitable form a roster of officers and employees.

(8) Provide for, formulate and hold competitive tests to determine the relative qualifications of persons who seek employment in any class or position and as a result thereof establish eligible lists for the various classes of positions, and to provide that persons laid off because of curtailment of expenditures, reduction in force, and for like causes, head the list in the order of their seniority, to the end that they shall be the first to be reemployed.

(9) When a vacant position is to be filled, to certify to the appointing authority, on written request, the name of the person highest on the eligible list for the class. If there are no such lists, to authorize provisional or temporary appointment list of such class. Such temporary or provisional appointment shall not continue for a period longer than four months; nor shall any person receive more than one provisional appointment or serve more than four months as a provisional appointee in any one fiscal year.

(10) Keep such records as may be necessary for the proper administration of this chapter. [1993 c 47 § 4; 1973 1st ex.s. c 154 § 60; 1935 c 31 § 5; RRS § 9558-5.]

Preferred rights in employment, examinations, appointments, etc., limited to actual members of armed forces: RCW 73.04.090.

Veterans' scoring criteria status in examinations: RCW 41.04.010.

Additional notes found at www.leg.wa.gov

41.08.050 Persons included—Competitive examinations—Transfers, discharges, and reinstatements. The classified civil service and provisions of this chapter shall include all full paid employees of the fire department of each city, town or municipality coming within its purview, except that individuals appointed as fire chief after July 1, 1987, may be excluded by the legislative body of the city, town, or municipality. All appointments to and promotions in said department shall be made solely on merit, efficiency and fitness, which shall be ascertained by open competitive examination and impartial investigation. No person shall be reinstated in, or transferred, suspended or discharged from any such place, position or employment contrary to the provisions of this chapter. [1987 c 339 § 1; 1935 c 31 § 4; RRS § 9558-4.]

Additional notes found at www.leg.wa.gov

41.08.060 Existing firefighters blanketed under civil service. For the benefit of the public service and to prevent delay, injury, or interruption therein by reason of the enactment of this chapter, all persons holding a position in the fire department of any such city, including the chief thereof, when this chapter takes effect, who shall have served in such position for a period of at least six months last past continuously, are hereby declared eligible for permanent appointment under civil service to the offices, places, positions or employments which they shall then hold, respectively, without examination or other act on their part, and not on probation; and every such person is hereby automatically adopted and inducted permanently into civil service, into such office, place, position or employment which such person then holds as completely and effectually to all intents and purposes as if such person had been permanently appointed thereto under civil service after examination and investigation. [1935 c 31 § 6; RRS § 9558-6.]

41.08.070 Qualifications of applicants. An applicant for a position of any kind under civil service, must be a citizen of the United States of America who can read and write the English language.

An applicant for a position of any kind under civil service must be of an age suitable for the position applied for, in ordinary good health, of good moral character and of temperate and industrious habits; these facts to be ascertained in such manner as the commission may deem advisable. [1972 ex.s. c 37 § 2; 1963 c 95 § 1; 1935 c 31 § 7; RRS § 9558-7.]

Purpose—1972 ex.s. c 37: "It is the purpose of this 1972 amendatory act to increase the availability of qualified applicants for employment in positions of public safety in municipal government; namely, firemen and policemen; and to eliminate present inequities that result from the application of residency requirements under existing statutes pertaining to such employment." [1972 ex.s. c 37 § 1.]

41.08.075 Residency as condition of employment—Discrimination because of lack of residency—Prohibited. No city, town, or municipality shall require any person applying for or holding an office, place, position, or employment

under the provisions of this chapter or under any local charter or other regulations described in RCW 41.08.010 to reside within the limits of such municipal corporation as a condition of employment, or to discriminate in any manner against any such person because of his or her residence outside of the limits of such city, town, or municipality. [2007 c 218 § 4; 1972 ex.s. c 37 § 4.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Purpose—1972 ex.s. c 37: See note following RCW 41.08.070.

41.08.080 Tenure of employment—Grounds for discharge, reduction, or deprivation of privileges. The tenure of every one holding an office, place, position or employment under the provisions of this chapter shall be only during good behavior, and any such person may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other special privileges for any of the following reasons:

(1) Incompetency, inefficiency or inattention to or dereliction of duty;

(2) Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public, or a fellow employee, or any other act of omission or commission tending to injure the public service; or any other willful failure on the part of the employee to properly conduct himself or herself; or any willful violation of the provisions of this chapter or the rules and regulations to be adopted hereunder;

(3) Mental or physical unfitness for the position which the employee holds;

(4) Dishonest, disgraceful, immoral or prejudicial conduct;

(5) Drunkenness or use of intoxicating liquors, narcotics, or any other habit forming drug, liquid or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the functions and duties of any position under civil service;

(6) Conviction of a felony, or a misdemeanor, involving moral turpitude;

(7) Any other act or failure to act which in the judgment of the civil service commissioners is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service. [2007 c 218 § 5; 1935 c 31 § 8; RRS § 9558-8.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.08.090 Procedure for removal, suspension, demotion or discharge—Investigation—Hearing—Appeal. No person in the classified civil service who shall have been permanently appointed or inducted into civil service under provisions of this chapter, shall be removed, suspended, demoted or discharged except for cause, and only upon the written accusation of the appointing power, or any citizen or taxpayer, a written statement of which accusation, in general terms, shall be served upon the accused, and a duplicate filed with the commission. Any person so removed, suspended, demoted or discharged may within ten days from the time of his or her removal, suspension, demotion or discharge, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The investigation shall be confined to the determination of

the question of whether such removal, suspension, demotion or discharge was or was not made for political or religious reasons and was or was not made in good faith for cause. After such investigation the commission may affirm the removal, or if it shall find that the removal, suspension, or demotion was made for political or religious reasons, or was not made in good faith for cause, shall order the immediate reinstatement or reemployment of such person in the office, place, position or employment from which such person was removed, suspended, demoted or discharged, which reinstatement shall, if the commission so provides in its discretion, be retroactive, and entitle such person to pay or compensation from the time of such removal, suspension, demotion or discharge. The commission upon such investigation, in lieu of affirming the removal, suspension, demotion or discharge may modify the order of removal, suspension, demotion or discharge by directing a suspension, without pay, for a given period, and subsequent restoration to duty, or demotion in classification, grade, or pay; the findings of the commission shall be certified, in writing to the appointing power, and shall be forthwith enforced by such officer.

All investigations made by the commission pursuant to the provisions of this section shall be by public hearing, after reasonable notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his or her defense. If such judgment or order be concurred in by the commission or a majority thereof, the accused may appeal therefrom to the court of original and unlimited jurisdiction in civil suits of the county wherein he or she resides. Such appeal shall be taken by serving the commission, within thirty days after the entry of such judgment or order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within ten days after the filing of such notice, make, certify and file such transcript with such court. The court of original and unlimited jurisdiction in civil suits shall thereupon proceed to hear and determine such appeal in a summary manner: PROVIDED, HOWEVER, That such hearing shall be confined to the determination of whether the judgment or order of removal, discharge, demotion or suspension made by the commission, was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds. [2007 c 218 § 6; 1935 c 31 § 9; RRS § 9558-9.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.08.100 Filling of vacancies—Probationary period. Whenever a position in the classified service becomes vacant, the appointing power, if it desires to fill the vacancy, shall make requisition upon the commission for the name and address of a person eligible for appointment thereto. The commission shall certify the name of the person highest on the eligible list for the class to which the vacant position has been allocated, who is willing to accept employment. If there is no appropriate eligible list for the class, the commission shall certify the name of the person standing highest on said list held appropriate for such class. If more than one vacancy is to be filled an additional name shall be certified for each

additional vacancy. The appointing power shall forthwith appoint such person to such vacant position.

Whenever requisition is to be made, or whenever a position is held by a temporary appointee and an eligible list for the class of such position exists, the commission shall forthwith certify the name of the person eligible for appointment to the appointing power, and said appointing power shall forthwith appoint the person so certified to said position. No person so certified shall be laid off, suspended, or given leave of absence from duty, transferred or reduced in pay or grade, except for reasons which will promote the good of the service, specified in writing, and after an opportunity to be heard by the commission and then only with its consent and approval.

To enable the appointing power to exercise a choice in the filling of positions, no appointment, employment or promotion in any position in the classified service shall be deemed complete until after the expiration of a period of three to six months' probationary service, as may be provided in the rules of the civil service commission during which the appointing power may terminate the employment of the person certified to him or her, or it, if during the performance test thus afforded, upon observation or consideration of the performance of duty, the appointing power deems him or her unfit or unsatisfactory for service in the department. Whereupon the appointing power shall designate the person certified as standing next highest on any such list and such person shall likewise enter upon said duties until some person is found who is deemed fit for appointment, employment or promotion for the probationary period provided therefor, whereupon the appointment, employment or promotion shall be deemed to be complete. [2007 c 218 § 7; 1935 c 31 § 11; RRS § 9558-11.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.08.110 Power to create offices, make appointments and fix salaries not infringed. All offices, places, positions and employments coming within the purview of this chapter, shall be created by the person or group of persons who, acting singly or in conjunction, as a mayor, city manager, chief, common council, commission or otherwise, is or are vested by law with power and authority to select, appoint, or employ any person coming within the purview of this chapter, and nothing herein contained shall infringe upon the power and authority of any such person or group of persons, or appointing power, to fix the salaries and compensation of all employees employed hereunder. [1935 c 31 § 12; RRS § 9558-12.]

41.08.120 Approval of payrolls. No treasurer, auditor, comptroller or other officer or employee of any city, town or municipality in which this chapter is effective, shall approve the payment of or be in any manner concerned in paying, auditing or approving any salary, wage or other compensation for services, to any person subject to the jurisdiction and scope of this chapter, unless a payroll, estimate or account for such salary, wage or other compensation, containing the names of the persons to be paid, the amount to be paid to each such person, the services on account of which same is paid, and any other information which, in the judgment of the civil service commission, should be furnished on said payroll,

bears the certificate of the civil service commission or of its secretary or other duly authorized agent, that the persons named in such payroll, estimate or account have been appointed or employed in compliance with the terms of this chapter and with the rules of the commission, and that the said payroll, estimate or account is, so far as known to the said commission, a true and accurate statement. The commission shall refuse to certify the pay of any public officer or employee whom it finds to be illegally or improperly appointed, and may further refuse to certify the pay of any public officer or employee who shall wilfully or through culpable negligence violate or fail to comply with this chapter or with the rules of the commission. [1935 c 31 § 13; RRS § 9558-13.]

41.08.130 Leaves of absence—Notice—Filling vacancy. Leave of absence, without pay, may be granted by any appointing power to any person under civil service: PROVIDED, That such appointing power shall give notice of such leave to the commission. All temporary employment caused by leaves of absence shall be made from the eligible list of the classified civil service. [1935 c 31 § 14; RRS § 9558-14.]

41.08.140 Enforcement by civil action—Legal counsel. It shall be the duty of the commission to begin and conduct all civil suits which may be necessary for the proper enforcement of this chapter and of the rules of the commission. The commission shall be represented in such suits by the chief legal officer of the city, but said commission may in any case be represented by special counsel appointed by it. [1935 c 31 § 15; RRS § 9558-15.]

41.08.150 Deceptive practices, false marks, etc., prohibited. No commissioner or any other person shall, by himself or herself, or in cooperation with one or more persons, defeat, deceive, or obstruct any person in respect of his or her right of examination or registration according to the rules and regulations of this chapter, or falsely mark, grade, estimate or report upon the examination or proper standing of any person examined, registered or certified pursuant to the provisions of this chapter, or aid in so doing, or make any false representation concerning the same, or concerning the person examined, or furnish any person any special or secret information for the purpose of improving or injuring the prospects or chances of any person so examined, registered or certified, or to be examined, registered or certified or persuade any other person, or permit or aid in any manner any other person to personate him or her, in connection with any examination or registration or application or request to be examined or registered. [2007 c 218 § 8; 1935 c 31 § 16; RRS § 9558-16.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.08.160 Political contributions and services—Not required—Solicitation and coercion prohibited. No person holding any office, place, position or employment subject to civil service, is under any obligation to contribute to any political fund or to render any political service to any person or party whatsoever, and no person shall be removed, reduced in grade or salary, or otherwise prejudiced for refusing so to do. No public officer, whether elected or appointed, shall dis-

charge, promote, demote or in any manner change the official rank, employment or compensation of any person under civil service, or promise or threaten so to do, for giving or withholding, or neglecting to make any contribution of money, or services, or any other valuable thing, for any political purpose. [1935 c 31 § 17; RRS § 9558-17.]

Political activities of public employees: RCW 41.06.250.

41.08.170 Local legislation required—Penalty. The various cities affected by the provisions of this chapter, shall, immediately upon the taking effect thereof, enact appropriate legislation for carrying this chapter into effect, and the failure upon the part of the duly constituted authorities of any such city so to do shall be considered a violation of this chapter and be punishable as such. [1935 c 31 § 18; RRS § 9558-18.]

41.08.180 Office and supplies to be furnished—Penalty for not providing. The duly constituted authorities of each and every city coming within the purview of this chapter, shall provide the commission with suitable and convenient rooms and accommodations and cause the same to be furnished, heated and lighted and supplied with all office supplies and equipment necessary to carry on the business of the commission and with such clerical assistance as may be necessary, all of which is to be commensurate with the number of persons in each such city coming within the purview of this chapter; and the failure upon the part of the duly constituted authorities to do so, shall be considered a violation of this chapter and shall be punishable as such. [1935 c 31 § 19; RRS § 9558-19.]

41.08.183 Time limit for creation of commission—Penalty. In ninety days after the taking effect of this chapter, it shall be the duty of the duly constituted authorities in each such city, subject to the provisions of this chapter, to appoint and create a civil service commission as provided for in RCW 41.08.010, and the failure upon the part of said duly constituted authorities, or any of them, so to do, shall be deemed a violation of this chapter, and shall be punishable as such. [1935 c 31 § 20; RRS § 9558-20.]

41.08.185 Duty of commission to organize and function—Penalty for violation. It shall be the duty of each commission appointed subject to the provisions of this chapter, to immediately organize and see to it that the provisions thereof are carried into effect, and to this end to make suitable rules and regulations not inconsistent with the purpose of this chapter, for the purpose of carrying the provisions thereof into effect; and the failure upon the part of said commission, or any individual member thereof to do so, shall be deemed a violation of this chapter, and shall be punishable as such. [1935 c 31 § 21; RRS § 9558-21.]

41.08.190 Cooperation of city officers and employees enjoined. It shall be the duty of all officers and employees of any such city to aid in all proper ways of carrying out the provisions of this chapter, and such rules and regulations as may, from time to time, be prescribed by the commission thereunder and to afford the commission, its members and employees, all reasonable facilities and assistance to inspect all books, papers, documents and accounts applying or in any

way appertaining to any and all offices, places, positions and employments, subject to civil service, and also to produce said books, papers, documents and accounts, and attend and testify, whenever required so to do by the commission or any commissioner. [1935 c 31 § 10; RRS § 9558-10.]

41.08.200 Appropriation for expenses. For the purpose of carrying out the provisions of this chapter, such city, town or municipality is hereby authorized to appropriate from the general fund not to exceed four-tenths of one percent of the total payroll of those included under the jurisdiction and scope of the chapter: PROVIDED, HOWEVER, That if the city council or other proper legislative body shall make an appropriation for the support of said commission equal to or more than the said continuing appropriation in any year, this section shall not be operative for said year but otherwise shall be in full force and effect. [1935 c 31 § 22; RRS § 9558-22.]

41.08.210 Penalty—Jurisdiction. Any person who shall wilfully violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than one hundred dollars and by imprisonment in the county jail for not longer than thirty days, or by both such fine and imprisonment. The court of original and unlimited jurisdiction in civil suits shall have jurisdiction of all such offenses defined by this chapter. [1935 c 31 § 23; RRS § 9558-23.]

41.08.220 Definitions. As used in this chapter, the following mentioned terms shall have the following described meanings:

The term "commission" means the civil service commission herein created, and the term "commissioner" means any one of the three commissioners of that commission.

The term "appointing power" includes every person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, common council, commission, or otherwise, is or are, vested by law with power and authority to select, appoint, or employ any person to hold any office, place, position or employment subject to civil service.

The term "appointment" includes all means of selection, appointing or employing any person to hold any office, place, position or employment subject to civil service.

The term "city" includes all cities, towns and municipalities having a full paid fire department.

The term "full paid fire department" means that the officers and firefighters employed in such are paid regularly by the city and devote their whole time to firefighting. [2007 c 218 § 9; 1935 c 31 § 24; RRS § 9558-24.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.08.900 Severability—1935 c 31. If any section, subsection, subdivision, sentence, clause or phrase of this chapter, shall for any reason be held to be unconstitutional such decision shall not affect the validity of the remaining portions of this chapter. [1935 c 31 § 25; RRS § 9558-25.]

41.08.910 Repeal. All acts and parts of acts in conflict with the provisions of this chapter are hereby repealed insofar

as they conflict with the provisions of this chapter. [1935 c 31 § 26; RRS § 9558-26.]

Chapter 41.12 RCW
CIVIL SERVICE FOR CITY POLICE

Sections

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41.12.010 Application of chapter. The provisions of this chapter shall have no application to cities and towns which at the present time have provided for civil service in the police department or which shall subsequently provide for civil service in the police department by local charter or other regulations which said local charter or regulations substantially accomplish the purpose of this chapter, nor to cities having a police force of not more than two persons including the chief of police. [1937 c 13 § 1; RRS § 9558a-1.]

41.12.020 Excluded cities—Repeal of local law—Effect. If any of the cities or towns referred to in RCW 41.12.010 shall at any time repeal the charter provisions or other local acts of said cities or towns providing for civil service for police officers as referred to in RCW 41.12.010, in that event this chapter shall apply to all of such cities and towns which have at any time abolished civil service for members of the police department. [2007 c 218 § 10; 1937 c 13 § 2; RRS § 9558a-2.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.12.030 Civil service commission—Appointment—Terms—Removal—Quorum. There is hereby created in every city, town or municipality except those referred to in RCW 41.12.010, having fully paid police officers a civil service commission which shall be composed of three persons.

The members of such commission shall be appointed by the person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, common council, commission, or otherwise, is or are vested by law with the power and authority to select, appoint, or employ the chief of a police department in any such city, prior to the enactment of this chapter. The members of such commission shall serve without compensation. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of such city for at least three years immediately preceding such appointment, and an elector of the county wherein he or she resides. The term of office of such commissioners shall be for six years, except that the first three members of such commission shall be appointed for different terms, as follows: One to serve for a period of two years, one to serve for a period of four years, and one to serve for a period of six years. Any member of such commission may be removed from office for incompetency, incompatibility or dereliction of duty, or malfeasance in office, or other good cause: PROVIDED, HOWEVER, That no member of the commission shall be removed until charges have been preferred, in writing, due notice and a full hearing had. The members of such commission shall devote due time and attention to the performance of the duties hereinafter specified and imposed upon them by this chapter. Two members of such commission shall constitute a quorum and the votes of any two members of such commission concurring shall be sufficient for the decision of all matters and the transaction of all business to be decided or transacted by the commission under or by virtue of the provisions of this chapter. Confirmation of said appointment or appointments of commissioners by any legislative body shall not be required. At the time of any appointment not more than two commissioners shall be adherents of the same political party. [2007 c 218 § 11; 1937 c 13 § 3; RRS § 9558a-3.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.12.040 Organization of commission—Secretary—Powers and duties of commission. Immediately after appointment the commission shall organize by electing one of its members chair and hold regular meetings at least once a month, and such additional meetings as may be required for the proper discharge of their duties.

They shall appoint a secretary and chief examiner, who shall keep the records for the commission, preserve all reports made to it, superintend and keep a record of all examinations held under its direction, and perform such other duties as the commission may prescribe.

The secretary and chief examiner shall be appointed as a result of competitive examination which examination may be either original and open to all properly qualified citizens of the city, town, or municipality, or promotional and limited to persons already in the service of the police department or of the police department and other departments of the city, town, or municipality, as the commission may decide. The secretary and chief examiner may be subject to suspension, reduction, or discharge in the same manner and subject to the same limitations as are provided in the case of members of the police department. It shall be the duty of the civil service commission:

(1) To make suitable rules and regulations not inconsistent with the provisions of this chapter. Such rules and regulations shall provide in detail the manner in which examinations may be held, and appointments, promotions, transfers, reinstatements, demotions, suspensions, and discharges shall be made, and may also provide for any other matters connected with the general subject of personnel administration, and which may be considered desirable to further carry out the general purposes of this chapter, or which may be found to be in the interest of good personnel administration. Such rules and regulations may be changed from time to time. The rules and regulations and any amendments thereof shall be printed, mimeographed, or multigraphed for free public distribution. Such rules and regulations may be changed from time to time;

(2) All tests shall be practical, and shall consist only of subjects which will fairly determine the capacity of persons examined to perform duties of the position to which appointment is to be made, and may include tests of physical fitness and/or of manual skill;

(3) The rules and regulations adopted by the commission shall provide for a credit in accordance with RCW 41.04.010 in favor of all applicants for appointment under civil service, who, in time of war, or in any expedition of the armed forces of the United States, have served in and been honorably discharged from the armed forces of the United States, including the army, navy, and marine corps and the American Red Cross. These credits apply to entrance examinations only;

(4) The commission shall make investigations concerning and report upon all matters touching the enforcement and effect of the provisions of this chapter, and the rules and regulations prescribed hereunder; inspect all institutions, departments, offices, places, positions, and employments affected by this chapter, and ascertain whether this chapter and all such rules and regulations are being obeyed. Such investigations may be made by the commission or by any commissioner designated by the commission for that purpose. Not only must these investigations be made by the commission, but the commission must make like investigation on petition of a citizen, duly verified, stating that irregularities or abuses exist, or setting forth in concise language, in writing, the necessity for such investigation. In the course of such investigation the commission or designated commissioner, or chief examiner, shall have the power to administer oaths, subpoena and require the attendance of witnesses and the production by them of books, papers, documents, and accounts appertaining to the investigation, and also to cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior court; and the oaths administered hereunder and the subpoenas issued hereunder shall have the same force and effect as the oaths administered by a superior court judge in his or her judicial capacity; and the failure upon the part of any person so subpoenaed to comply with the provisions of this section shall be deemed a violation of this chapter, and punishable as such;

(5) Hearings and Investigations: How conducted. All hearings and investigations before the commission, or designated commissioner, or chief examiner, shall be governed by this chapter and by rules of practice and procedure to be adopted by the commission, and in the conduct thereof nei-

ther the commission, nor designated commissioner shall be bound by the technical rules of evidence. No informality in any proceedings or hearing, or in the manner of taking testimony before the commission or designated commissioner, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission: PROVIDED, HOWEVER, That no order, decision, rule or regulation made by any designated commissioner conducting any hearing or investigation alone shall be of any force or effect whatsoever unless and until concurred in by at least one of the other two members;

(6) To hear and determine appeals or complaints respecting the administrative work of the personnel department; appeals upon the allocation of positions; the rejection of an examination, and such other matters as may be referred to the commission;

(7) Establish and maintain in card or other suitable form a roster of officers and employees;

(8) Provide for, formulate and hold competitive tests to determine the relative qualifications of persons who seek employment in any class or position and as a result thereof establish eligible lists for the various classes of positions, and to provide that persons laid off because of curtailment of expenditures, reduction in force, and for like causes, head the list in the order of their seniority, to the end that they shall be the first to be reemployed;

(9) When a vacant position is to be filled, to certify to the appointing authority, on written request, the name of the person highest on the eligible list for the class. If there are no such lists, to authorize provisional or temporary appointment list of such class. Such temporary or provisional appointment shall not continue for a period longer than four months; nor shall any person receive more than one provisional appointment or serve more than four months as provisional appointee in any one fiscal year;

(10) Keep such records as may be necessary for the proper administration of this chapter. [1993 c 47 § 5; 1937 c 13 § 5; RRS § 9558a-5.]

Preferred rights in employment, examinations, appointments, etc., limited to actual members of armed forces: RCW 73.04.090.

Veterans' scoring criteria status in examinations: RCW 41.04.010.

41.12.050 Persons included—Restricted exemptions—Competitive examinations—Transfers, discharges, and reinstatements. (1) For police departments with fewer than six commissioned officers, including the police chief, the classified civil service and provisions of this chapter includes all full paid employees of the department of the city, town, or municipality.

(2) For police departments with six or more commissioned officers, including the police chief, the legislative body of a city, town, or municipality may exempt from civil service individuals appointed as police chief after July 1, 1987.

(a) If the police chief is not exempt, the classified civil service includes all full paid employees of the department of the city, town, or municipality, including the police chief.

(b) If the police chief is exempt, the classified civil service includes all full paid employees of the department of the city, town, or municipality, except the police chief and an

additional number of positions, designated the unclassified service, determined as follows:

Department Personnel	Unclassified Position Appointments
6 through 10	2
11 through 20	3
21 through 50	4
51 through 100	5
101 through 250	6
251 through 500	8
501 and over	10

(3) The unclassified position appointments authorized by subsection (2)(b) of this section may only include selections from the following positions up to the limit of the number of positions authorized: Assistant chief, deputy chief, bureau commander, and administrative assistant or administrative secretary. The initial selection of specific positions to be in the unclassified service and exempt from civil service shall be made by the police chief, who shall notify the civil service commission of his or her selection. Subsequent changes in the designation of which positions are in the unclassified service may be made only with the concurrence of the police chief, the mayor or the city administrator, and the civil service commission, and then only after the civil service commission has heard the issue in an open meeting. If a position initially selected by the police chief to be in the unclassified service is in the classified civil service at the time of the selection, and if the position is occupied, the employee occupying the position has the right to return to the next highest position or a like position in the classified civil service.

(4) All appointments to and promotions in the department shall be made solely on merit, efficiency, and fitness except as provided in RCW 35.13.360 through 35.13.400, which shall be ascertained by open competitive examination and impartial investigation. No person in the unclassified service shall be reinstated in or transferred, suspended, or discharged from any such place, position, or employment contrary to the provisions of this chapter. [2002 c 143 § 1; 1993 c 189 § 1; 1987 c 339 § 2; 1937 c 13 § 4; RRS § 9558a-4.]

Chief of police or marshal—Eligibility requirements: RCW 35.21.333.

Additional notes found at www.leg.wa.gov

41.12.070 Qualifications of applicants. An applicant for a position of any kind under civil service, must be a citizen of the United States of America who can read and write the English language.

An applicant for a position of any kind under civil service must be of an age suitable for the position applied for, in ordinary good health, of good moral character and of temperate and industrious habits; these facts to be ascertained in such manner as the commission may deem advisable. [1972 ex.s. c 37 § 3; 1963 c 95 § 2; 1937 c 13 § 7; RRS § 9558a-7.]

Purpose—1972 ex.s. c 37: See note following RCW 41.08.070.

41.12.075 Residency as condition of employment—Discrimination because of lack of residency—Prohibited. No city, town, or municipality shall require any person apply-

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ing for or holding an office, place, position, or employment under the provisions of this chapter or under any local charter or other regulations described in RCW 41.12.010 to reside within the limits of such municipal corporation as a condition of employment or to discriminate in any manner against any such person because of his or her residence outside of the limits of such city, town, or municipality. [2007 c 218 § 12; 1972 ex.s. c 37 § 5.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Purpose—1972 ex.s. c 37: See note following RCW 41.08.070.

41.12.080 Tenure of employment—Grounds for discharge, reduction, or deprivation of privileges. The tenure of everyone holding an office, place, position or employment under the provisions of this chapter shall be only during good behavior, and any such person may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other special privileges for any of the following reasons:

(1) Incompetency, inefficiency or inattention to or dereliction of duty;

(2) Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public, or a fellow employee, or any other act of omission or commission tending to injure the public service; or any other willful failure on the part of the employee to properly conduct himself or herself; or any willful violation of the provisions of this chapter or the rules and regulation to be adopted hereunder;

(3) Mental or physical unfitness for the position which the employee holds;

(4) Dishonest, disgraceful, immoral or prejudicial conduct;

(5) Drunkenness or use of intoxicating liquors, narcotics, or any other habit forming drug, liquid or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the function and duties of any position under civil service;

(6) Conviction of a felony, or a misdemeanor, involving moral turpitude;

(7) Any other act or failure to act which in the judgment of the civil service commissioners is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service. [2007 c 218 § 13; 1937 c 13 § 8; RRS § 9558a-8.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.12.090 Procedure for removal, suspension, demotion or discharge—Investigation—Hearing—Appeal. No person in the classified civil service who shall have been permanently appointed or inducted into civil service under provisions of this chapter, shall be removed, suspended, demoted or discharged except for cause, and only upon written accusation of the appointing power, or any citizen or taxpayer; a written statement of which accusation, in general terms, shall be served upon the accused, and a duplicate filed with the commission. Any person so removed, suspended, demoted or discharged may within ten days from the time of his or her removal, suspension, demotion or discharge, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The

investigation shall be confined to the determination of the question of whether such removal, suspension, demotion or discharge was or was not made for political or religious reasons and was or was not made in good faith for cause. After such investigation the commission may affirm the removal, or if it shall find that the removal, suspension, or demotion was made for political or religious reasons, or was not made in good faith for cause, shall order the immediate reinstatement or reemployment of such person in the office, place, position or employment from which such person was removed, suspended, demoted or discharged, which reinstatement shall, if the commission so provides in its discretion, be retroactive, and entitle such person to pay or compensation from the time of such removal, suspension, demotion or discharge. The commission upon such investigation, in lieu of affirming the removal, suspension, demotion or discharge may modify the order of removal, suspension, demotion or discharge by directing a suspension, without pay, for a given period, and subsequent restoration to duty, or demotion in classification, grade, or pay; the findings of the commission shall be certified, in writing to the appointing power, and shall be forthwith enforced by such officer.

All investigations made by the commission pursuant to the provisions of this section shall be had by public hearing, after reasonable notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his or her defense. If such judgment or order be concurred in by the commission or a majority thereof, the accused may appeal therefrom to the court of original and unlimited jurisdiction in civil suits of the county wherein he or she resides. Such appeal shall be taken by serving the commission, within thirty days after the entry of such judgment or order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within ten days after the filing of such notice, make, certify and file such transcript with such court. The court of original and unlimited jurisdiction in civil suits shall thereupon proceed to hear and determine such appeal in a summary manner: PROVIDED, HOWEVER, That such hearing shall be confined to the determination of whether the judgment or order of removal, discharge, demotion or suspension made by the commission, was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds. [2007 c 218 § 14; 1937 c 13 § 9; RRS § 9558a-9.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.12.100 Filling of vacancies—Probationary period.

Whenever a position in the classified service becomes vacant, the appointing power, if it desires to fill the vacancy, shall make requisition upon the commission for the name and address of a person eligible for appointment thereto. The commission shall certify the name of the person highest on the eligible list for the class to which the vacant position has been allocated, who is willing to accept employment. If there is no appropriate eligible list for the class, the commission shall certify the name of the person standing highest on said list held appropriate for such class. If more than one vacancy

is to be filled an additional name shall be certified for each additional vacancy. The appointing power shall forthwith appoint such person to such vacant position.

Whenever requisition is to be made, or whenever a position is held by a temporary appointee and an eligible list for the class of such position exists, the commission shall forthwith certify the name of the person eligible for appointment to the appointing power, and said appointing power shall forthwith appoint the person so certified to said position. No person so certified shall be laid off, suspended, or given leave of absence from duty, transferred or reduced in pay or grade, except for reasons which will promote the good of the service, specified in writing, and after an opportunity to be heard by the commission and then only with its consent and approval.

To enable the appointing power to exercise a choice in the filling of positions, no appointment, employment or promotion in any position in the classified service shall be deemed complete until after the expiration of a period of three to six months' probationary service, as may be provided in the rules of the civil service commission during which the appointing power may terminate the employment of the person certified to him or her, or it, if during the performance test thus afforded, upon observation or consideration of the performance of duty, the appointing power deems him or her unfit or unsatisfactory for service in the department, whereupon the appointing power shall designate the person certified as standing next highest on any such list and such person shall likewise enter upon said duties until some person is found who is deemed fit for appointment, employment or promotion for the probationary period provided therefor, whereupon the appointment, employment or promotion shall be deemed to be complete. [2007 c 218 § 15; 1937 c 13 § 11; RRS § 9558a-11.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.12.110 Power to create offices, make appointments and fix salaries not infringed.

All offices, places, positions and employments coming within the purview of this chapter, shall be created by the person or group of persons who, acting singly or in conjunction, as a mayor, city manager, chief, common council, commission or otherwise, it is vested by law with power and authority to select, appoint, or employ any person coming within the purview of this chapter, and nothing herein contained shall infringe upon the power and authority of any such person or group of persons, or appointing power, to fix the salaries and compensation of all employees employed hereunder. [1937 c 13 § 12; RRS § 9558a-12.]

41.12.120 Approval of payrolls. No treasurer, auditor, comptroller or other officer, or employee of any city, town or municipality in which this chapter is effective, shall approve the payment of or be in any manner concerned in paying, auditing or approving any salary, wage, or other compensation for services, to any person subject to the jurisdiction and scope of this chapter, unless a payroll, estimate or account for such salary, wage or other compensation, containing the names of the persons to be paid, the amount to be paid to each such person, the services on account of which same is paid, and any other information which, in the judgment of the civil

service commission, should be furnished on said payroll, bears the certificate of the civil service commission or of its secretary or other duly authorized agent, that the persons named in such payroll, estimate or account have been appointed or employed in compliance with the terms of this chapter and with the rules of the commission, and that the said payroll, estimate or account is, so far as known to the said commission, a true and accurate statement. The commission shall refuse to certify the pay of any public officer or employee whom it finds to be illegally or improperly appointed, and may further refuse to certify the pay of any public officer or employee who shall wilfully or through culpable negligence violate or fail to comply with this chapter or with the rules of the commission. [1937 c 13 § 13; RRS § 9558a-13.]

41.12.130 Leaves of absence—Notice—Filling vacancy. Leave of absence, without pay, may be granted by any appointing power to any person under civil service: PROVIDED, That such appointing power shall give notice of such leave to the commission. All temporary employment caused by leaves of absence shall be made from the eligible list of the classified civil service. [1937 c 13 § 14; RRS § 9558a-14.]

41.12.140 Enforcement by civil action—Legal counsel. It shall be the duty of the commission to begin and conduct all civil suits which may be necessary for the proper enforcement of this chapter and of the rules of the commission. The commission shall be represented in such suits by the chief legal officer of the city, but said commission may in any case be represented by special counsel appointed by it. [1937 c 13 § 15; RRS § 9558a-15.]

41.12.150 Deceptive practices, false marks, etc., prohibited. No commissioner or any other person shall, by himself or herself, or in cooperation with one or more persons, defeat, deceive, or obstruct any person in respect of his or her right of examination or registration according to the rules and regulations of this chapter, or falsely mark, grade, estimate or report upon the examination or proper standing of any person examined, registered or certified pursuant to the provisions of this chapter, or aid in so doing, or make any false representation concerning the same, or concerning the person examined, or furnish any person any special or secret information for the purpose of improving or injuring the prospects or chances of any person so examined, registered or certified, or to be examined, registered or certified or persuade any other person, or permit or aid in any manner any other person to personate him or her, in connection with any examination or registration of application or request to be examined or registered. [2007 c 218 § 16; 1937 c 13 § 16; RRS § 9558a-16.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.12.160 Political contributions and services. No person holding any office, place, position or employment subject to civil service, is under any obligation to contribute to any political fund or to render any political service to any person or party whatsoever, and no person shall be removed, reduced in grade or salary, or otherwise prejudiced for refusing so to do. No public officer, whether elected or appointed,

shall discharge, promote, demote, or in any manner change the official rank, employment or compensation of any person under civil service, or promise or threaten so to do, for giving or withholding, or neglecting to make any contribution of money, or services, or any other valuable thing, for any political purpose. [1937 c 13 § 17; RRS § 9558a-17.]

Political activities of public employees: RCW 41.06.250.

41.12.170 Local legislation required—Penalty. The various cities affected by the provisions of this chapter, shall immediately upon the taking effect thereof, enact appropriate legislation for carrying this chapter into effect, and the failure upon the part of the duly constituted authorities of any such city so to do shall be considered a violation of this chapter and be punishable as such. [1937 c 13 § 18; RRS § 9558a-18.]

41.12.180 Office and supplies to be furnished—Penalty for not providing. The duly constituted authorities of each and every city coming within the purview of this chapter, shall provide the commission with suitable and convenient rooms and accommodations and cause the same to be furnished, heated and lighted and supplied with all office supplies and equipment necessary to carry on the business of the commission and with such clerical assistance as may be necessary, all of which is to be commensurate with the number of persons in each such city coming within the purview of this chapter; and the failure upon the part of the duly constituted authorities to do so, shall be considered a violation of this chapter and shall be punishable as such. [1937 c 13 § 19; RRS § 9558a-19.]

41.12.183 Time limit for creation of commission—Penalty. In ninety days after the taking effect of this chapter, it shall be the duty of the duly constituted authorities in each such city, subject to the provisions of this chapter, to appoint and create a civil service commission as provided for in RCW 41.12.010, and the failure upon the part of said duly constituted authorities, or any of them, so to do, shall be deemed a violation of this chapter, and shall be punishable as such. [1937 c 13 § 20; RRS § 9558a-20.]

41.12.185 Duty of commission to organize and function—Penalty for violation. It shall be the duty of each commission appointed subject to the provisions of this chapter, to immediately organize and see to it that the provisions thereof are carried into effect, and to this end to make suitable rules and regulations not inconsistent with the purpose of this chapter, for the purpose of carrying the provisions thereof into effect; and the failure upon the part of said commission, or any individual member thereof to do so, shall be deemed a violation of this chapter, and shall be punishable as such. [1937 c 13 § 21; RRS § 9558a-21.]

41.12.190 Cooperation of city officers and employees enjoined. It shall be the duty of all officers and employees of any such city to aid in all proper ways of carrying out the provisions of this chapter, and such rules and regulations as may, from time to time, be prescribed by the commission thereunder and to afford the commission, its members and employees, all reasonable facilities and assistance to inspect all

books, papers, documents and accounts applying or in any way appertaining to any and all offices, places, positions and employments, subject to civil service, and also to produce said books, papers, documents and accounts, and attend and testify, whenever required so to do by the commission or any commissioner. [1937 c 13 § 10; RRS § 9558a-10.]

41.12.200 Appropriation for expenses. For the purpose of carrying out the provisions of this chapter, such city, town or municipality is hereby authorized to appropriate from the general fund not to exceed four-tenths of one percent of the total payroll of those included under the jurisdiction and scope of the chapter: PROVIDED, HOWEVER, That if the city council or other proper legislative body shall make an appropriation for the support of said commission equal to or more than the said continuing appropriation in any year, this section shall not be operative for said year but otherwise shall be in full force and effect. [1937 c 13 § 22; RRS § 9558a-22.]

41.12.210 Penalty—Jurisdiction. Any person who shall wilfully violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than one hundred dollars and by imprisonment in the county jail for not longer than thirty days, or by both such fine and imprisonment. The court of original and unlimited jurisdiction in civil suits shall have jurisdiction of all such offenses defined by this chapter. [1937 c 13 § 23; RRS § 9558a-23.]

41.12.220 Definitions. As used in this chapter, the following mentioned terms shall have the following described meanings:

The term "commission" means the civil service commission herein created, and the term "commissioner" means any one of the three commissioners of that commission.

The term "appointing power" includes every person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, common council, commission, or otherwise, is or are, invested by law with power and authority to select, appoint, or employ any person to hold any office, place, position or employment subject to civil service.

The term "appointment" includes all means of selection, appointing or employing any person to hold any office, place, position or employment subject to civil service.

The term "city" includes all cities, towns and municipalities having a full paid police department.

The term "full paid police department" means that the officers and police officers employed in such are paid regularly by the city and devote their whole time to police duty: PROVIDED, "full paid police department" whenever used in this chapter shall also mean "full paid police officers." [2007 c 218 § 17; 1937 c 13 § 24; RRS § 9558a-24.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.12.900 Severability—1937 c 13. If any section, subsection, subdivision, sentence, clause or phrase of this chapter, shall for any reason be held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. [1937 c 13 § 25; RRS § 9558a-25.]

41.12.910 Repeal. All acts and parts of acts in conflict with the provisions of this chapter are hereby repealed insofar as they conflict with the provisions of this chapter. [1937 c 13 § 26; RRS § 9558a-26.]

Chapter 41.14 RCW

CIVIL SERVICE FOR SHERIFF'S OFFICE

Sections

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41.14.010 Declaration of purpose. The general purpose of this chapter is to establish a merit system of employment for county deputy sheriffs and other employees of the office of county sheriff, thereby raising the standards and efficiency of such offices and law enforcement in general. [1987 c 251 § 1; 1985 c 429 § 3; 1959 c 1 § 1 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.020 Terms defined. Definition of terms:

(1) "Appointing power" means the county sheriff who is invested by law with power and authority to select, appoint, or employ any deputy, deputies, or other necessary employees subject to civil service;

(2) "Appointment" includes all means of selecting, appointing, or employing any person to any office, place, position, or employment subject to civil service;

(3) "Commission" means the civil service commission, or combined county civil service commission, herein created,

and "commissioner" means any one of the members of any such commission;

(4) "County" means any county of the state, or any counties combined pursuant to RCW 41.14.040 for the purpose of carrying out the provisions of this chapter;

(5) "Deputy sheriff or other members of the office of county sheriff" means all persons regularly employed in the office of county sheriff either on a part time or full time basis. [2009 c 112 § 1; 1959 c 1 § 2 (Initiative Measure No. 23, approved November 4, 1958).]

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

41.14.030 Civil service commission—Appointment, terms, qualifications, compensation, etc. (1) There is created in each county and in each combination of counties, combined pursuant to RCW 41.14.040 to carry out the provisions of this chapter, a civil service commission which shall be composed of three persons, or five persons under subsection (2) of this section. The commission members shall be appointed by the board of county commissioners, or boards of county commissioners of each combination of counties, within sixty days after December 4, 1958. No person shall be appointed to the commission who is not a citizen of the United States, a resident of the county, or one of the counties combined, for at least two years immediately preceding his or her appointment, and an elector of the county wherein he or she resides. The term of office of the commissioners shall be six years, except that the first three members of the commission shall be appointed for different terms, as follows: One to serve for a period of two years, one to serve for a period of four years, and one to serve for a period of six years. Any member of the commission may be removed from office for incompetency, incompatibility, or dereliction of duty, or malfeasance in office, or other good cause: PROVIDED, That no member of the commission shall be removed until charges have been preferred, in writing, due notice, and a full hearing had. Any vacancy in the commission shall be filled by the county commissioners for the unexpired term. Two members of the commission shall constitute a quorum and the votes of any two members concurring shall be sufficient for the decision of all matters and the transaction of all business to be decided or transacted by the commission. Confirmation of the appointment of commissioners by any legislative body shall not be required. At the time of appointment not more than two commissioners shall be adherents of the same political party. No member after appointment shall hold any salaried public office or engage in county employment, other than his or her commission duties. The members of the commission shall serve without compensation.

(2)(a) Each county and each combination of counties under RCW 41.14.040 may, by ordinance, increase the number of members serving on a commission from three to five members. If a commission is increased to five members, the terms of the three commissioners serving at the time of the increase are not affected. The initial term of office for the two additional commissioners is six years.

(b) Three commissioners constitute a quorum for a five-member commission and the votes of three commissioners concurring are sufficient for the decision of all matters and

the transaction of all business decided or transacted by a five-member commission.

(c) At the time of appointment of the two additional commissioners, no more than three commissioners may be adherents of the same political party.

(d) Except as provided otherwise in this subsection (2), subsection (1) of this section applies to five-member commissions. [2012 c 117 § 11; 2009 c 112 § 2; 1959 c 1 § 3 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.040 Combined system authorized in counties with populations of less than forty thousand. Any counties with populations of less than forty thousand, whether contiguous or not, are authorized to establish and operate a combined civil service system to serve all counties so combined. The combination of any such counties shall be effective whenever each board of county commissioners of the counties involved adopts a resolution declaring intention to participate in the operation of a combined county civil service system in accordance with agreements made between any such counties. Any such combined county civil service commission shall serve the employees of each county sheriff's office impartially and according to need.

All matters affecting the combined civil service commission, including the selection of commissioners, shall be decided by majority vote of all the county commissioners of the counties involved.

All the provisions of this chapter shall apply equally to any such combined civil service system. [1991 c 363 § 114; 1959 c 1 § 4 (Initiative Measure No. 23, approved November 4, 1958).]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

41.14.050 Commission—Organization, meetings—Chief examiner, qualifications, duties. Immediately after appointment the commission shall organize by electing one of its members as chair and shall hold regular meetings at least once a month, and such additional meetings as may be required for the proper discharge of its duties.

The commission shall appoint a chief examiner who shall also serve as secretary of the commission and such assistants as may be necessary. The commission has supervisory responsibility over the chief examiner. The chief examiner shall keep the records for the commission, preserve all reports made to it, superintend and keep a record of all examinations held under its direction, and perform such other duties as the commission may prescribe.

The chief examiner shall be appointed as a result of competitive examination, which examination must be open to all properly qualified citizens of the county: PROVIDED, That no appointee of the commission, either as chief examiner or as an assistant to the chief examiner, shall be an employee of the sheriff's department. The chief examiner may be subject to suspension, reduction, or discharge in the same manner and subject to the same limitations as are provided in the case of members of the classified service. [2007 c 12 § 1; 1979 ex.s. c 153 § 1; 1959 c 1 § 5 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.060 Powers and duties of commission. It shall be the duty of the civil service commission:

(1) To make suitable rules and regulations not inconsistent with the provisions hereof. Such rules and regulations shall provide in detail the manner in which examinations may be held, and appointments, promotions, reallocations, transfers, reinstatements, demotions, suspensions, and discharges shall be made, and may also provide for any other matters connected with the general subject of personnel administration, and which may be considered desirable to further carry out the general purposes of this chapter, or which may be found to be in the interest of good personnel administration. The rules and regulations and any amendments thereof shall be printed, mimeographed, or multigraphed for free public distribution. Such rules and regulations may be changed from time to time.

(2) To give practical tests which shall consist only of subjects which will fairly determine the capacity of persons examined to perform duties of the position to which appointment is to be made. Such tests may include tests of physical fitness or manual skill or both.

(3) To make investigations concerning and report upon all matters touching the enforcement and effect of the provisions of this chapter, and the rules and regulations prescribed hereunder; to inspect all departments, offices, places, positions, and employments affected by this chapter, and ascertain whether this chapter and all such rules and regulations are being obeyed. Such investigations may be made by the commission or by any commissioner designated by the commission for that purpose. Not only must these investigations be made by the commission as aforesaid, but the commission must make like investigation on petition of a citizen, duly verified, stating that irregularities or abuses exist, or setting forth in concise language, in writing, the necessity for such investigation. In the course of such investigation the commission or designated commissioner, or chief examiner, may administer oaths, subpoena and require the attendance of witnesses and the production by them of books, papers, documents, and accounts appertaining to the investigation and also cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior court; and the oaths administered and the subpoenas issued hereunder shall have the same force and effect as the oaths administered and subpoenas issued by a superior court judge in his or her judicial capacity; and the failure of any person so subpoenaed to comply with the provisions of this section shall be deemed a violation of this chapter, and punishable as such.

(4) To conduct hearings and investigations in accordance with this chapter and by the rules of practice and procedure adopted by the commission, and in the conduct thereof neither the commission, nor designated commissioner shall be bound by technical rules of evidence. No informality in any proceedings or hearing, or in the manner of taking testimony before the commission or designated commissioner, shall invalidate any order, decision, rule, or regulation made, approved, or confirmed by the commission: PROVIDED, That no order, decision, rule, or regulation made by any designated commissioner conducting any hearing or investigation alone shall be of any force or effect whatsoever unless

and until concurred in by at least one of the other two members.

(5) To hear and determine appeals or complaints respecting the allocation of positions, the rejection of an examinee, and such other matters as may be referred to the commission.

(6) To provide for, formulate, and hold competitive tests to determine the relative qualifications of persons who seek employment in any class or position and as a result thereof establish eligible lists for the various classes of positions, and provide that persons laid off, or who have accepted voluntary demotion in lieu of layoff, because of curtailment of expenditures, reduction in force, and for like causes, head the list in the order of their seniority, to the end that they shall be the first to be reemployed or reinstated in their former job class.

(7) To certify to the appointing authority, when a vacant position is to be filled, on written request, the names of the three persons highest on the eligible list for the class. If there is no such list, to authorize a provisional or temporary appointment list for such class. A temporary appointment expires after four months. However, the appointing authority may extend the temporary appointment beyond the four-month period up to one year if the commission continues to advertise and test for the position. If, after one year from the date the initial temporary appointment was first made, there are less than three persons on the eligible list for the class, then the appointing authority may fill the position with any person or persons on the eligible list.

(8) To keep such records as may be necessary for the proper administration of this chapter. [2012 c 117 § 12; 2001 c 232 § 1; 1979 ex.s. c 153 § 2; 1959 c 1 § 6 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.065 Delegation of powers and duties of commission in county with a population of one million or more. Any county with a population of one million or more may assign the powers and duties of the commission to such county agencies or departments as may be designated by charter or ordinance: PROVIDED, That the powers and duties of the commission under RCW 41.14.120 shall not be assigned to any other body but shall continue to be vested in the commission, which shall exist to perform such powers and duties, together with such other adjudicative functions as may be designated by charter or ordinance. [1991 c 363 § 115; 1987 c 251 § 2.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

41.14.070 Classified and unclassified service designated—Procedures. (1) The classified civil service and provisions of this chapter shall include all deputy sheriffs and other employees of the office of sheriff in each county except the county sheriff in every county and an additional number of positions, designated the unclassified service, determined as follows:

	Unclassified Position Appointments
Staff Personnel 1 through 10	2
11 through 20	3
21 through 50	4

Staff Personnel	Unclassified Position Appointments
51 through 100	5
101 through 250	6
251 through 500	8
501 and over	10

(2) The unclassified position appointments authorized by this section must include selections from the following positions up to the limit of the number of positions authorized: Undersheriff, inspector, chief criminal deputy, chief civil deputy, jail superintendent, and administrative assistant or administrative secretary. The initial selection of specific positions to be exempt shall be made by the sheriff, who shall notify the civil service commission of his or her selection. Subsequent changes in the designation of which positions are to be exempt may be made only with the concurrence of the sheriff and the civil service commission, and then only after the civil service commission has heard the issue in open meeting. Should the position or positions initially selected by the sheriff to be exempt (unclassified) pursuant to this section be under the classified civil service at the time of such selection, and should it (or they) be occupied, the employee(s) occupying said position(s) shall have the right to return to the next highest position or a like position under classified civil service.

(3) In counties with a sheriff's department that operates the 911 emergency communications system, in addition to the unclassified positions authorized in subsections (1), (2), and (4) of this section, the sheriff may designate one unclassified position for the 911 emergency communications system.

(4) In addition to the unclassified positions authorized in this section, the county legislative authority of any county with a population of five hundred thousand or more operating under a home rule charter may designate unclassified positions of administrative responsibility not to exceed twenty positions. [2001 c 151 § 1; 1997 c 62 § 1; 1991 c 363 § 116; 1979 ex.s. c 153 § 3; 1975 1st ex.s. c 186 § 1; 1959 c 1 § 7 (Initiative Measure No. 23, approved November 4, 1958).]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

41.14.080 Classified service—Appointment, promotion, transfer, suspension, discharge. All appointments to and promotions to positions in the classified civil service of the office of county sheriff shall be made solely on merit, efficiency, and fitness, which shall be ascertained by open competitive examination and impartial investigation: PROVIDED, That before June 30, 1981, employees in an existing county personnel system may be transferred to newly created and classified positions within such county's sheriff's office, in order to permanently transfer the functions of these positions, without meeting the open competitive examination requirements of this section if the transfer is approved by the civil service commission created in RCW 41.14.030. No person in the classified civil service shall be reinstated in or transferred, suspended, or discharged from any such place, position, or employment contrary to the provisions of this

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chapter. [1980 c 108 § 1; 1959 c 1 § 8 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.090 Status of existing employees in classified service. For the benefit of the public service and to prevent delay, injury, or interruption therein by reason of the enactment hereof, all persons holding a position which is deemed classified by RCW 41.14.070 for a continuous period of six months prior to December 4, 1958, are eligible for permanent appointment under civil service to the offices, places, positions, or employments which they then held without examination or other act on their part, and not on probation; and every such person is automatically adopted and inducted permanently into civil service, into the office, place, position, or employment which he or she then held as completely and effectually to all intents and purposes as if such person had been permanently appointed thereto under civil service after examination and investigation. [2012 c 117 § 13; 1959 c 1 § 9 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.100 Qualifications of applicants for position. An applicant for a position of any kind under civil service, must be a citizen of the United States who can read and write the English language. [1963 c 95 § 3; 1959 c 1 § 10 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.110 Tenure—Grounds for deprivation. The tenure of every person holding an office, place, position, or employment under the provisions of this chapter shall be only during good behavior, and any such person may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other special privileges for any of the following reasons:

(1) Incompetency, inefficiency, or inattention to, or dereliction of duty;

(2) Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public, or a fellow employee, or any other act of omission or commission tending to injure the public service; or any other willful failure on the part of the employee to properly conduct himself or herself; or any willful violation of the provisions of this chapter or the rules and regulations to be adopted hereunder;

(3) Mental or physical unfitness for the position which the employee holds;

(4) Dishonest, disgraceful, or prejudicial conduct;

(5) Drunkenness or use of intoxicating liquors, narcotics, or any other habit forming drug, liquid, or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the function and duties of any position under civil service;

(6) Conviction of a felony, or a misdemeanor involving moral turpitude;

(7) Any other act or failure to act which in the judgment of the civil service commission is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service. [2012 c 117 § 14; 1959 c 1 § 11 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.120 Removal, suspension, demotion, or discharge—Procedure—Appeal. No person in the classified

civil service who has been permanently appointed or inducted into civil service under provisions of this chapter, shall be removed, suspended, demoted, or discharged except for cause, and only upon written accusation of the appointing power or any citizen or taxpayer; a written statement of which accusation, in general terms, shall be served upon the accused, and a duplicate filed with the commission. Any person so removed, suspended, discharged, or demoted may within ten days from the time of his or her removal, suspension, discharge, or demotion file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. Upon receipt of the written demand for an investigation, the commission shall within ten days set a date for a public hearing which will be held within thirty days from the date of receipt. The investigation shall be confined to the determination of the question of whether the removal, suspension, demotion, or discharge was made in good faith for cause. After such investigation the commission shall render a written decision within ten days and may affirm the removal, suspension, demotion, or discharge, or if it finds that removal, suspension, demotion, or discharge was not made in good faith for cause, shall order the immediate reinstatement or reemployment of such person in the office, place, position, or employment from which he or she was removed, suspended, demoted, or discharged, which reinstatement shall, if the commission so provides, be retroactive, and entitle such person to pay or compensation from the time of the removal, suspension, demotion, or discharge. The commission upon such investigation, in lieu of affirming a removal, suspension, demotion, or discharge, may modify the order by directing the removal, suspension, demotion, or discharge without pay, for a given period, and subsequent restoration to duty, or demotion in classification, grade, or pay. The findings of the commission shall be certified, in writing to the appointing power, and shall be forthwith enforced by such officer.

All investigations made by the commission pursuant to this section shall be by public hearing, after reasonable notice to the accused of the time and place thereof, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his or her defense. If order of removal, suspension, demotion, or discharge is concurred in by the commission or a majority thereof, the accused may appeal therefrom to the superior court of the county wherein he or she resides. Such appeal shall be taken by serving the commission, within thirty days after the entry of its order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to its order, be filed by the commission with the court. The commission shall, within ten days after the filing of the notice, make, certify, and file such transcript with the court. The court shall thereupon proceed to hear and determine the appeal in a summary manner. Such hearing shall be confined to the determination of whether the order of removal, suspension, demotion, or discharge made by the commission, was or was not made in good faith for cause, and no appeal shall be taken except upon such ground or grounds. The decision of the superior court may be appealed to the supreme court or the court of appeals. [2012 c 117 § 15; 1984 c 199 § 1; 1982 c 133 § 1; 1971 c 81 § 102;

1959 c 1 § 12 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.130 Filling vacancies in classified service—Eligibility list—Probation. Whenever a position in the classified service becomes vacant, the appointing power, if it desires to fill the vacancy, shall requisition the commission for the names and addresses of persons eligible for appointment thereto. Before a requisition can be made, the appointing authority shall give employees of the appointing authority who are in layoff status or who have been notified of an intended layoff an opportunity to qualify for any class within the office of the appointing authority. The commission shall certify the names of the three persons highest on the eligible list for the class to which the vacant position has been allocated, who are willing to accept employment. If there is no appropriate eligible list for the class, the commission shall certify the names of the three persons standing highest on the list held appropriate for such class. If more than one vacancy is to be filled an additional name shall be certified for each additional vacancy. The appointing power shall forthwith appoint a person from those certified to the vacant position.

To enable the appointing power to exercise a greater degree of choice in the filling of positions, no appointment, employment, or promotion in any position in the classified service shall be deemed complete until after the expiration of a period of one year's probationary service, as may be provided in the rules of the civil service commission, during which the appointing power may terminate the employment of the person appointed, if during the performance test thus afforded, upon observation or consideration of the performance of duty, the appointing power deems such person unfit or unsatisfactory for service in the office of county sheriff. Thereupon the appointing power shall again requisition the commission for the names and addresses of persons eligible for appointment in the manner provided by this section and the person appointed in the manner provided by this section shall likewise enter upon said duties for the probationary period, until some person is found who is deemed fit for appointment, employment, or promotion whereupon the appointment, employment, or promotion shall be deemed complete. [1984 c 199 § 2; 1979 ex.s. c 153 § 4; 1959 c 1 § 13 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.140 Power to fill positions—Consent of county commissioners—Salaries and compensation. All offices, places, positions, and employments coming within the purview of this chapter, shall be filled by the appointing power with the consent of the board of county commissioners, and nothing herein contained shall infringe upon such authority that an appointing power may have to fix the salaries and compensation of all employees employed hereunder. [1959 c 1 § 14 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.150 Procedure for payment of compensation—Refusal to pay. No treasurer, auditor or other officer, or employee of any county subject to this chapter shall approve the payment of or be in any manner concerned in paying, auditing, or approving any salary, wage, or other compensation for services, to any person subject to the jurisdiction and

scope of this chapter, unless a payroll, estimate, or account for such salary, wage, or other compensation, containing the names of the persons to be paid, the amount to be paid to each such person, the services on account of which same is paid, and any other information which, in the judgment of the civil service commission, should be furnished on such payroll, bears the certificate of the civil service commission, or of its chief examiner or other duly authorized agent, that the persons named therein have been appointed or employed in compliance with the terms of this chapter and the rules of the commission, and that the payroll, estimate, or account is, insofar as known to the commission, a true and accurate statement. The commission shall refuse to certify the pay of any public officer or employee whom it finds to be illegally or improperly appointed, and may further refuse to certify the pay of any public officer or employee who wilfully or through culpable negligence, violates or fails to comply with this chapter or with the rules of the commission. [1959 c 1 § 15 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.160 Leaves of absence. Leave of absence, without pay, may be granted by any appointing power to any person under civil service: PROVIDED, That such appointing power gives notice of the leave to the commission. All temporary employment caused by leaves of absence shall be made from the eligible list of the classified civil service. [1959 c 1 § 16 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.170 Actions to enforce chapter—Duties of prosecuting attorneys. The commission shall begin and conduct all civil suits which may be necessary for the proper enforcement of this chapter and rules of the commission. The commission shall be represented in such suits by the prosecuting attorney of the county. In the case of combined counties any one or more of the prosecuting attorneys of each county so combined may be selected by the commission to represent it. [1959 c 1 § 17 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.180 Prohibited acts relating to registration, examination, certification—Discrimination prohibited. No commissioner or any other person, shall, by himself or herself or in cooperation with others, defeat, deceive, or obstruct any person in respect of his or her right of examination or registration according to the rules and regulations, or falsely mark, grade, estimate, or report upon the examination or proper standing of any person examined, registered, or certified pursuant to this chapter, or aid in so doing, or make any false representation concerning the same, or concerning the person examined, or furnish any person any special or secret information for the purpose of improving or injuring the prospects or chances of any person so examined, registered or certified, or to be examined, registered, or certified, or persuade any other person, or permit or aid in any manner any other person to personate him or her, in connection with any examination or registration of application or request to be examined or registered.

The right of any person to an appointment or promotion to any position in a sheriff's office shall not be withheld because of his or her race, color, creed, national origin, polit-

ical affiliation or belief, nor shall any person be dismissed, demoted, or reduced in grade for such reason. [2012 c 117 § 16; 1959 c 1 § 18 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.190 Political activities regulated. No person holding any office, place, position, or employment subject to civil service, shall contribute to any political fund or render any political service to any person or party whatsoever, and no person shall be removed, reduced in grade or salary, or otherwise prejudiced for refusing so to do. No public officer, whether elected or appointed, shall discharge, promote, demote, or in any manner change the official rank, employment, or compensation of any person under civil service or promise or threaten so to do for giving or withholding, or neglecting to make any contribution of money, or service, or any other valuable thing, for any political purpose. [1959 c 1 § 19 (Initiative Measure No. 23, approved November 4, 1958).]

Political activities of public employees: RCW 41.06.250.

41.14.200 Cooperation and aid by other county officers and employees. All officers and employees of each county shall aid in all proper ways in carrying out the provisions of this chapter, and such rules and regulations as may, from time to time, be prescribed by the commission and afford the commission, its members, and employees, all reasonable facilities and assistance in the inspection of books, papers, documents, and accounts applying or in any way appertaining to any and all offices, places, positions, and employments, subject to civil service, and also shall produce such books, papers, documents, and accounts, and attend and testify, whenever required so to do by the commission or any commissioner. [1959 c 1 § 20 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.210 Funds for commission in counties with populations of two hundred ten thousand or more—County budget—Surplus. The county legislative authority or [of] each county with a population of two hundred ten thousand or more may provide in the county budget for each fiscal year a sum equal to one percent of the preceding year's total payroll of those included under the jurisdiction and scope of this chapter. The funds so provided shall be used for the support of the commission. Any part of the funds so provided and not expended for the support of the commission during the fiscal year shall be placed in the general fund of the county, or counties according to the ratio of contribution, on the first day of January following the close of such fiscal year. [1991 c 363 § 117; 1971 ex.s. c 214 § 3; 1959 c 1 § 21 (Initiative Measure No. 23, approved November 4, 1958).]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

41.14.220 Penalty—Jurisdiction. Any person who wilfully violates any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than one hundred dollars and by imprisonment in the county jail for not longer than thirty days or by both such fine and imprisonment. The superior court shall have jurisdiction of all such offenses. [1959 c

1 § 22 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.250 City contracts to obtain sheriff's office law enforcement services—Transfer of police department employees. When any city or town shall contract with the county sheriff's office to obtain law enforcement services to the city or town, any employee of the police department of such city or town who (1) was at the time such contract was entered into employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the county sheriff's office under such contract (2) will, as a direct consequence of such contract, be separated from the employ of the city or town, and (3) meets the minimum standards and qualifications of the county sheriff's office, then such employee may transfer his or her employment to the county sheriff's office as provided for in RCW 41.14.260 and 41.14.270. [2012 c 117 § 17; 1972 ex.s. c 48 § 1.]

41.14.260 City contracts to obtain sheriff's office law enforcement services—Transfer of police department employees into county civil service for sheriff's office—Seniority for employment. (1) An eligible employee may transfer into the county civil service system for the sheriff's office by filing a written request with the county civil service commission and by giving written notice thereof to the legislative authority of the city or town. Upon receipt of such request by the civil service commission the transfer of employment shall be made. The employee so transferring will (1) be on probation for the same period as are new employees of the sheriff's office, (2) be eligible for promotion after completion of the probationary period as completed, (3) receive a salary at least equal to that of other new employees of the sheriff's office, and (4) in all other matters, such as retirement, vacation, etc., have, within the county civil service system, all the rights, benefits, and privileges that he or she would have been entitled to had he or she been a member of the county sheriff's office from the beginning of his or her employment with the city or town police department. The city or town shall, upon receipt of such notice, transmit to the county civil service commission a record of the employee's service with the city or town which shall be credited to such member as a part of his or her period of employment in the county sheriff's office. The sheriff may appoint the transferring employee to whatever duties he or she feels are in the best interest of the department and the individual.

(2) If in the process of contracting for law enforcement services economies or efficiencies are achieved or if the city or town intends by such contract to curtail expenditures and the level of services to the city or town, then only so many of the transferring employees shall be placed upon the payroll of the sheriff's office as the sheriff determines are needed to provide the contracted services. These needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in RCW 41.14.250, 41.14.260, and 41.14.270 shall head the list of their respective class or job listing in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the county sheriff's office when appropriate positions become available. [2012 c 117 § 18; 1972 ex.s. c 48 § 2.]

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41.14.270 City contracts to obtain sheriff's office law enforcement services—Layoffs—Notice—Time limitation for transfers. When a city or town shall contract with the county sheriff's office for law enforcement services and as a result thereof lays off any employee who is eligible to transfer to the county sheriff's office pursuant to RCW 41.14.250 and 41.14.260, the city or town shall notify such employee of his or her right to so transfer and such employee shall have ninety days to transfer his or her employment to the county sheriff's office: PROVIDED, That any employee layed off [laid off] during the year prior to February 21, 1972 shall have ninety days after the effective date to transfer his or her employment. [2012 c 117 § 19; 1972 ex.s. c 48 § 3.]

41.14.280 City contracts to obtain sheriff's office law enforcement services—Rules and regulations. In addition to its other duties prescribed by law, the civil service commission shall make such rules and regulations as may be necessary to provide for the orderly integration of employees of a city or town who shall transfer to the county sheriff's office pursuant to RCW 41.14.250, 41.14.260, and 41.14.270. [1972 ex.s. c 48 § 4.]

41.14.290 Appointment of classified employee to exempt position—Return to regular position. Any classified employee having civil service status in a position may take an appointment in an exempt position in the same county and maintain the right to return to his or her regular position or to a like position at the conclusion of such appointment. Such employee must apply to return to classified service within thirty calendar days of:

- (1) Termination of employment in such exempt position;
- or
- (2) Termination of employment in any other exempt position in which the employee subsequently serves provided there was no break in service with the county of more than thirty calendar days. [1979 ex.s. c 153 § 5.]

41.14.900 Severability—1959 c 1. If any section, sentence, clause, or phrase of this chapter should be held to be invalid or unconstitutional, the validity or constitutionality thereof shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this chapter. [1959 c 1 § 23 (Initiative Measure No. 23, approved November 4, 1958).]

Chapter 41.16 RCW FIREFIGHTERS' RELIEF AND PENSIONS— 1947 ACT

Sections

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- 41.16.920 Construction—1959 c 5—Benefits retroactively authorized.
- 41.16.921 Construction—1975 1st ex.s. c 178, RCW 41.16.145.
- 41.16.922 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Prior acts relating to firefighters' relief and pensions: 1935 c 39; 1929 c 86; 1919 c 196; 1909 c 50 were repealed by 1947 c 91 § 12 (codified herein as RCW 41.16.230).

Firefighters' relief and pensions—1955 act: Chapter 41.18 RCW.

Rights of firefighter injured outside corporate limits of municipality: RCW 35.84.050.

Volunteer firefighters' relief and pensions: Chapter 41.24 RCW.

41.16.010 Terms defined. For the purpose of this chapter, unless clearly indicated by the context, words and phrases shall have the following meaning:

(1) "Beneficiary" shall mean any person or persons designated by a firefighter in a writing filed with the board, and who shall be entitled to receive any benefits of a deceased firefighter under this chapter.

(2) "Board" shall mean the municipal firefighters' pension board.

(3) "Child or children" shall mean a child or children unmarried and under eighteen years of age.

(4) "Contributions" shall mean and include all sums deducted from the salary of firefighters and paid into the fund as hereinafter provided.

(5) "Disability" shall mean and include injuries or sickness sustained as a result of the performance of duty.

(6) "Firefighter" shall mean any person regularly or temporarily, or as a substitute, employed and paid as a member of a fire department, who has passed a civil service examination for firefighter and who is actively employed as a firefighter; and shall include any "prior firefighter."

(7) "Fire department" shall mean the regularly organized, full time, paid, and employed force of firefighters of the municipality.

(8) "Fund" shall mean the firefighters' pension fund created herein.

(9) "Municipality" shall mean every city and town having a regularly organized full time, paid, fire department employing firefighters.

(10) "Performance of duty" shall mean the performance of work and labor regularly required of firefighters and shall include services of an emergency nature rendered while off regular duty, but shall not include time spent in traveling to work before answering roll call or traveling from work after dismissal at roll call.

(11) "Prior firefighter" shall mean a firefighter who was actively employed as a firefighter of a fire department prior to the first day of January, 1947, and who continues such employment thereafter.

(12) "Retired firefighter" shall mean and include a person employed as a firefighter and retired under the provisions of chapter 50, Laws of 1909, as amended.

(13) "Widow or widower" means the surviving wife, husband, or state registered domestic partner of a retired firefighter who was retired on account of length of service and who was lawfully married to, or in a state registered domestic partnership with, such firefighter; and whenever that term is used with reference to the wife or former wife, husband or former husband, or current or former state registered domestic partner of a retired firefighter who was retired because of disability, it shall mean his or her lawfully married wife, husband, or state registered domestic partner on the date he or she sustained the injury or contracted the illness that resulted in his or her disability. Said term shall not mean or include a surviving wife, husband, or state registered domestic partner who by process of law within one year prior to the retired firefighter's death, collected or attempted to collect from him or her funds for the support of herself or himself or for his or her children. [2009 c 521 § 88; 2007 c 218 § 18; 2003 c 30 § 1; 1973 1st ex.s. c 154 § 61; 1947 c 91 § 1; Rem. Supp. 1947 § 9578-40.]

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

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.16.020 Pension board created—Members—Terms—Vacancies—Officers—Quorum. There is hereby created in each city and town a municipal firefighters' pension board to consist of the following five members, ex officio, the mayor, or in a city of the first class, the mayor or a designated representative who shall be an elected official of the city, who shall be chairperson of the board, the city controller or clerk, the chairperson of finance of the city council, or if there is no chairperson of finance, the city treasurer, and in addition, two regularly employed or retired firefighters elected by secret ballot of those employed and retired firefighters who are subject to the jurisdiction of the board. The members to be elected by the firefighters shall be elected annually for a two year term. The two firefighters elected as members shall, in turn, select a third eligible member who shall serve as an alternate in the event of an absence of one of the regularly elected members. In case a vacancy occurs in the membership of the firefighters or retired members, the members shall in the same manner elect a successor to serve the unexpired term. The board may select and appoint a secretary who may, but need not be a member of the board. In case of absence or inability of the chairperson to act, the board may select a chairperson pro tempore who shall during such absence or inability perform the duties and exercise the powers of the chairperson. A majority of the members of the board shall constitute a quorum and have power to transact business. [2007 c 218 § 19; 2003 c 30 § 2; 1988 c 164 § 2; 1973 1st ex.s. c 19 § 1; 1961 c 255 § 10; 1947 c 91 § 2; Rem. Supp. 1947 § 9578-41. Prior: 1935 c 39 § 1; 1919 c 196 § 3; 1909 c 50 §§ 1, 2.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.030 Meetings. The board shall meet at least once quarterly, the date to be fixed by regulation of the board, at such other regular times as may be fixed by a regulation of the board; and at any time upon call of the chairperson, of which due advance notice shall be given the other members of the board. [2007 c 218 § 20; 2002 c 15 § 1; 1947 c 91 § 3; Rem. Supp. 1947 § 9578-42. Prior: 1929 c 86 § 1; 1919 c 196 § 3; 1909 c 50 § 3.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.040 Powers and duties. The board shall have such general powers as are vested in it by the provisions of this chapter, and in addition thereto, the power to:

(1) Generally supervise and control the administration of this chapter and the firefighters' pension fund created hereby.

(2) Pass upon and allow or disallow all applications for pensions or other benefits provided by this chapter.

(3) Provide for payment from said fund of necessary expenses of maintenance and administration of said pension system and fund.

(4) Invest the moneys of the fund in a manner consistent with the investment policies outlined in RCW 35.39.060. Authorized investments shall include investment grade securities issued by the United States, state, municipal corporations, other public bodies, corporate bonds, and other investments authorized by RCW 35.39.030, 35.58.510, 35.81.070, 35.82.070, 36.29.020, 39.58.020, 39.58.080, 39.58.130, 39.60.010, 39.60.020, 68.52.060, 68.52.065, and 72.19.120.

(5) Employ such agents, employees and other personnel as the board may deem necessary for the proper administration of this chapter.

(6) Compel witnesses to appear and testify before it, in the same manner as is or may be provided by law for the taking of depositions in the superior court. Any member of the board may administer oaths to witnesses who testify before the board of a nature and in a similar manner to oaths administered by superior courts of the state of Washington.

(7) Issue vouchers approved by the chairperson and secretary and to cause warrants therefor to be issued and paid from said fund for the payment of claims allowed by it.

(8) Keep a record of all its proceedings, which record shall be public; and prepare and file with the city treasurer and city clerk or comptroller prior to the date when any payments are to be made from the fund, a list of all persons entitled to payment from the fund, stating the amount and purpose of such payment, said list to be certified to and signed by the chairperson and secretary of the board and attested under oath.

(9) Make rules and regulations not inconsistent with this chapter for the purpose of carrying out and effecting the same.

(10) Appoint one or more duly licensed and practicing physicians who shall examine and report to the board upon all applications for relief and pension under this chapter. Such physicians shall visit and examine all sick firefighters and firefighters who are disabled when, in their judgment, the best interests of the relief and pension fund require it or when ordered by the board. They shall perform all operations on such sick and injured firefighters and render all medical aid

and care necessary for the recovery of such firefighters on account of sickness or disability received while in the performance of duty as defined in this chapter. Such physicians shall be paid from said fund, the amount of said fees or salary to be set and agreed upon by the board and the physicians. No physician not regularly appointed or specially appointed and employed, as hereinafter provided, shall receive or be entitled to any fees or compensation from said fund as attending physician to a sick or injured firefighter. If any sick or injured firefighter refuses the services of the appointed physicians, or the specially appointed and employed physician, he or she shall be personally liable for the fees of any other physician employed by him or her. No person shall have a right of action against the board or the municipality for negligence of any physician employed by it. The board shall have the power and authority to select and employ, besides the regularly appointed physician, such other physician, surgeon or specialist for consultation with, or assistance to the regularly appointed physician, or for the purpose of performing operations or rendering services and treatment in particular cases, as it shall deem advisable, and to pay fees for such services from said fund. Said board shall hear and decide all applications for such relief or pensions under this chapter, and its decisions on such applications shall be final and conclusive and not subject to revision or reversal except by the board. [2007 c 218 § 21; 1992 c 89 § 1; 1967 ex.s. c 91 § 1; 1947 c 91 § 4; Rem. Supp. 1947 § 9578-43. Prior: 1929 c 86 § 1; 1919 c 196 § 3; 1909 c 50 § 3.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.050 Firefighters' pension fund—How constituted. There is hereby created and established in the treasury of each municipality a fund which shall be known and designated as the firefighters' pension fund, which shall consist of: (1) All bequests, fees, gifts, emoluments, or donations given or paid thereto; (2) twenty-five percent of all moneys received by the state from taxes on fire insurance premiums; (3) taxes paid pursuant to the provisions of RCW 41.16.060; (4) interest on the investments of the fund; and (5) contributions by firefighters as provided for herein. The moneys received from the tax on fire insurance premiums under the provisions of this chapter shall be distributed in the proportion that the number of paid firefighters in the city, town, or fire protection district bears to the total number of paid firefighters throughout the state to be ascertained in the following manner: The secretary of the firefighters' pension board of each city, town, and fire protection district now or hereafter coming under the provisions of this chapter shall within thirty days after June 7, 1961, and on or before the fifteenth day of January thereafter, certify to the state treasurer the number of paid firefighters in the fire department in such city, town, or fire protection district. For any city or town annexed by a fire protection district at any time before, on, or after June 9, 1994, the city or town shall continue to certify to the state treasurer the number of paid firefighters in the city or town fire department immediately before annexation until all obligations against the firefighters' pension fund in the city or town have been satisfied. For the purposes of the calculation in this section, the state treasurer shall subtract the number certified by the annexed city or town from the number of paid firefighters certified by an annexing fire protection district.

The state treasurer shall on or before the first day of June of each year deliver to the treasurer of each city, town, and fire protection district coming under the provisions of this chapter his or her warrant, payable to each city, town, or fire protection district for the amount due such city, town or fire protection district ascertained as herein provided and the treasurer of each such city, town, or fire protection district shall place the amount thereof to the credit of the firefighters' pension fund of such city, town, or fire protection district. [2007 c 218 § 22; 1999 c 117 § 3; 1994 c 273 § 23; 1986 c 296 § 3; 1982 1st ex.s. c 35 § 16; 1967 c 42 § 1; 1961 c 255 § 8; 1949 c 45 § 1; 1947 c 91 § 5; Rem. Supp. 1949 § 9578-44. Prior: 1929 c 86 § 11; 1919 c 196 § 14.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Insurance premiums taxes: RCW 48.14.020.

Additional notes found at www.leg.wa.gov

41.16.060 Tax levy for fund. It shall be the duty of the legislative authority of each municipality, each year as a part of its annual tax levy, to levy and place in the fund a tax of twenty-two and one-half cents per thousand dollars of assessed value against all the taxable property of such municipality: PROVIDED, That if a report by a qualified actuary on the condition of the fund establishes that the whole or any part of said dollar rate is not necessary to maintain the actuarial soundness of the fund, the levy of said twenty-two and one-half cents per thousand dollars of assessed value may be omitted, or the whole or any part of said dollar rate may be levied and used for any other municipal purpose.

It shall be the duty of the legislative authority of each municipality, each year as a part of its annual tax levy and in addition to the city levy limit set forth in RCW 84.52.043, to levy and place in the fund an additional tax of twenty-two and one-half cents per thousand dollars of assessed value against all taxable property of such municipality: PROVIDED, That if a report by a qualified actuary establishes that all or any part of the additional twenty-two and one-half cents per thousand dollars of assessed value levy is unnecessary to meet the estimated demands on the fund under this chapter for the ensuing budget year, the levy of said additional twenty-two and one-half cents per thousand dollars of assessed value may be omitted, or the whole or any part of such dollar rate may be levied and used for any other municipal purpose: PROVIDED FURTHER, That cities that have annexed to library districts according to RCW 27.12.360 through 27.12.395 and/or fire protection districts according to RCW 52.04.061 through 52.04.081 shall not levy this additional tax to the extent that it causes the combined levies to exceed the statutory or constitutional limits.

The amount of a levy under this section allocated to the pension fund may be reduced in the same proportion as the regular property tax levy of the municipality is reduced by chapter 84.55 RCW. [1987 c 319 § 2; 1980 c 155 § 4; 1973 1st ex.s. c 195 § 43; 1973 1st ex.s. c 195 § 144; 1970 ex.s. c 92 § 2; 1965 ex.s. c 45 § 1; 1961 c 255 § 9; 1951 c 72 § 1; 1947 c 91 § 6; Rem. Supp. 1947 § 9578-45. Prior: 1929 c 86 § 12; 1919 c 196 § 15; 1909 c 50 § 14.]

Additional notes found at www.leg.wa.gov

41.16.070 Contributions by firefighters. (1) Every firefighter employed on and after January 1, 1947, shall con-

tribute to the fund and there shall be deducted from his or her pay and placed in the fund an amount in accordance with the following table:

Firefighter whose age at last birthday at time of entry of service was:	Contributions and deductions from salary
21 and under	5.00%
22	5.24%
23	5.50%
24	5.77%
25	6.07%
26	6.38%
27	6.72%
28	7.09%
29	7.49%
30 and over	7.92%

(2) Every firefighter employed prior to January 1, 1947, and continuing active employment shall contribute to the fund and there shall be deducted from his or her salary and placed in the fund, five percent of his or her salary.

(3) Every firefighter actively employed and eligible for retirement and not retired shall contribute to the fund and there shall be deducted from his or her salary and placed in the fund, four percent of his or her salary. [2007 c 218 § 23; 1947 c 91 § 7; Rem. Supp. 1947 § 9578-46. Prior: 1929 c 86 § 14; 1919 c 196 § 18.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.080 Retirement for service. Any firefighter employed in a fire department on and before the first day of January, 1947, hereinafter in this section and RCW 41.16.090 to 41.16.190 inclusive, referred to as "firefighter," and who shall have served twenty-five or more years and having attained the age of fifty-five years, as a member of the fire department, shall be eligible for retirement and shall be retired by the board upon his or her written request. Upon his or her retirement any firefighter shall be paid a pension based upon the average monthly salary drawn for the five calendar years before retirement, the number of years of his or her service and a percentage factor based upon his or her age on entering service, as follows:

Entrance age at last birthday	Salary percentage factor
20 and under	1.50%
21	1.55%
22	1.60%
23	1.65%
24	1.70%
25	1.75%
26	1.80%
27	1.85%
28	1.90%
29	1.95%
30 and over	2.00%

Said monthly pension shall be in the amount of his or her average monthly salary for the five calendar years before retirement, times the number of years of service, times the applicable percentage factor. [2007 c 218 § 24; 1959 c 5 § 2; 1957 c 82 § 2. Prior: 1947 c 91 § 8, part; 1935 c 39 § 2, part; 1929 c 86 § 2, part; 1919 c 196 § 4, part; 1909 c 50 § 4, part; Rem. Supp. 1947 § 9578-47, part.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.090 Limit of pension. All pensioners receiving a pension under the provisions of this chapter as provided for in section 12, chapter 91, Laws of 1947 and RCW 41.16.230, shall from and after April 25, 1973 receive a minimum pension of three hundred dollars per month. [1973 1st ex.s. c 181 § 1; 1967 ex.s. c 91 § 2; 1959 c 5 § 3; 1957 c 82 § 3. Prior: 1947 c 91 § 8, part; 1935 c 39 § 2, part; 1929 c 86 § 2, part; 1919 c 196 § 4, part; 1909 c 50 § 4, part; Rem. Supp. 1947 § 9578-47, part.]

41.16.100 Payment on death of retired firefighter. The widow or widower, child, children or beneficiary of any firefighter retired under this chapter shall receive an amount equal to his or her accumulated contributions to the fund, plus earned interest thereon compounded semiannually: PROVIDED, That there shall be deducted from said sum the amount paid to decedent in pensions and the remainder shall be paid to his or her widow or widower, child, children or beneficiary: PROVIDED FURTHER, That the amount paid shall not be less than one thousand dollars. [2007 c 218 § 25; 1973 1st ex.s. c 154 § 62; 1959 c 5 § 4; 1957 c 82 § 4. Prior: 1947 c 91 § 8, part; 1935 c 39 § 2, part; 1929 c 86 § 2, part; 1919 c 196 § 4, part; 1909 c 50 § 4, part; Rem. Supp. 1947 § 9578-47, part.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.16.110 Payment on death of eligible pensioner before retirement. Whenever any firefighter shall die while eligible to retirement on account of years of service, and shall not have been retired, benefits shall be paid in accordance with RCW 41.16.100. [2007 c 218 § 26; 1959 c 5 § 5; 1957 c 82 § 5. Prior: 1947 c 91 § 8, part; 1935 c 39 § 2, part; 1929 c 86 § 2, part; 1919 c 196 § 4, part; 1909 c 50 § 4, part; Rem. Supp. 1947 § 9578-47, part.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.120 Payment on death in line of duty. Whenever any active firefighter or firefighter retired for disability shall die as the result of an accident or other fortuitous event occurring while in the performance of his or her duty, his widow or her widower may elect to accept a monthly pension equal to one-half the deceased firefighter's salary but in no case in excess of one hundred fifty dollars per month, or the sum of five thousand dollars cash. The right of election must be exercised within sixty days of the firefighter's death. If not so exercised, the pension benefits shall become fixed and shall be paid from the date of death. Such pension shall cease if, and when, he or she remarries. If there is no widow or widower, then such pension benefits shall be paid to his or her child or children. [2007 c 218 § 27; 1973 1st ex.s. c 154 § 63; 1959 c 5 § 6; 1957 c 82 § 6. Prior: 1947 c 91 § 8, part; 1935 c

39 § 2, part; 1929 c 86 § 2, part; 1919 c 196 § 5, part; 1909 c 50 § 4, part; Rem. Supp. 1947 § 9578-47, part.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.16.130 Payment upon disablement in line of duty. (1) Any firefighter who shall become disabled as a result of the performance of his or her duty or duties as defined in this chapter, may be retired at the expiration of six months from the date of his or her disability, upon his or her written request filed with his or her retirement board. The board may upon such request being filed, consult such medical advice as it sees fit, and may have the applicant examined by such physicians as it deems desirable. If from the reports of such physicians the board finds the applicant capable of performing his or her duties in the fire department, the board may refuse to recommend his or her retirement.

(2) If the board deems it for the good of the fire department or the pension fund, it may recommend the applicant's retirement without any request therefor by him or her, after giving him or her a thirty days' notice. Upon his or her retirement he or she shall be paid a monthly disability pension in [an] amount equal to one-half of his or her monthly salary at date of retirement, but which shall not exceed one hundred fifty dollars a month. If he or she recovers from his or her disability he or she shall thereupon be restored to active service, with the same rank he or she held when he or she retired.

(3) If the firefighter dies during disability and not as a result thereof, RCW 41.16.160 shall apply. [2007 c 218 § 28; 1959 c 5 § 7; 1957 c 82 § 7. Prior: 1947 c 91 § 8, part; 1935 c 39 § 3, part; 1929 c 86 § 3, part; 1919 c 196 § 5, part; 1909 c 50 § 5, part; Rem. Supp. 1947 § 9578-47, part.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.140 Payment upon disablement not in line of duty. Any firefighter who has served more than fifteen years and sustains a disability not in the performance of his or her duty which renders him or her unable to continue his or her service, shall within sixty days exercise his or her choice either to receive his or her contribution to the fund, plus earned interest compounded semiannually, or be retired and paid a monthly pension based on the factor of his or her age shown in RCW 41.16.080, times his or her average monthly salary as a member of the fire department of his or her municipality at the date of his or her retirement, times the number of years of service rendered at the time he or she sustained such disability. If such firefighter shall die leaving surviving him a wife or surviving her a husband, or child or children, then such wife or husband, or if he leaves no wife or she leaves no husband, then his or her child or children shall receive the sum of his or her contributions, plus accumulated compound interest, and such payment shall be reduced in the amount of the payments made to deceased. [2007 c 218 § 29; 1973 1st ex.s. c 154 § 64; 1959 c 5 § 8; 1957 c 82 § 8. Prior: 1947 c 91 § 8, part; 1935 c 39 § 6, part; 1929 c 86 § 7, part; 1919 c 196 § 9, part; 1909 c 50 § 9, part; Rem. Supp. 1947 § 9578-47, part.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.16.145 Annual increase in benefits payable on retirement for service, death in line of duty, and disability—Appeals. The amount of all benefits payable under the provisions of RCW 41.16.080, 41.16.120, 41.16.130, 41.16.140 and 41.16.230 shall be increased annually as hereafter in this section provided. The local pension board shall meet subsequent to March 31st but prior to June 30th of each year for the purposes of adjusting benefit allowances payable pursuant to the aforementioned sections. The local board shall determine the increase in the consumer price index between January 1st and December 31st of the previous year and increase in dollar amount the benefits payable subsequent to July 1st of the year in which said board makes such determination by a dollar amount proportionate to the increase in the consumer price index: PROVIDED, That regardless of the change in the consumer price index, such increase shall be at least two percent each year such adjustment is made.

Each year effective with the July payment all benefits specified herein, shall be increased by this section. This benefit increase shall be paid monthly as part of the regular pension payment and shall be cumulative. The increased benefits authorized by this section shall not affect any benefit payable under the provisions of chapter 41.16 RCW in which the benefit payment is attached to a current salary of the rank held at time of retirement. A beneficiary of benefit increases provided for pursuant to this section is hereby authorized to appeal a decision on such increases or the failure of the local pension board to order such increased benefits or the amount of such benefits to the Washington law enforcement officers' and firefighters' system retirement board provided for in *RCW 41.26.050.

For the purpose of this section the term "consumer price index" shall mean, for any calendar year, the consumer price index for the Seattle, Washington area as compiled by the bureau of labor statistics of the United States department of labor. [2007 c 218 § 30; 1975-'76 2nd ex.s. c 44 § 1; 1975 1st ex.s. c 178 § 1; 1974 ex.s. c 190 § 1; 1970 ex.s. c 37 § 3; 1969 ex.s. c 209 § 38.]

***Reviser's note:** RCW 41.26.050 was repealed by 1982 c 163 § 23. Powers, duties, and functions of the Washington law enforcement officers' and firefighters' retirement board were transferred to the director of retirement systems by RCW 41.26.051, which has been decodified.

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.16.150 Payment on separation from service. (1) Any firefighter who has served twenty years or more and who shall resign or be dismissed, shall have the option of receiving all his or her contributions plus earned interest compounded semiannually, or a monthly pension in the amount of his or her average monthly salary times the number of years of service rendered, times one and one-half percent. Payment of such pension shall commence at the time of severance from the fire department, or at the age of fifty-five years, whichever shall be later. The firefighter shall have sixty days from the severance date to elect which option he or she will take. In the event he or she fails to exercise his or her right of election then he or she shall receive the amount of his or her contributions plus accrued compounded interest. In the event he or she elects such pension, but dies before attaining the age of fifty-five, his widow or her widower, or if he leaves

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no widow or she leaves no widower, then his or her child or children shall receive only his or her contribution, plus accrued compounded interest. In the event he or she elects to take a pension and dies after attaining the age of fifty-five, his widow or her widower, or if he leaves no widow or she leaves no widower, then child or children shall receive his or her contributions, plus accrued compounded interest, less the amount of pension payments made to such firefighter during his or her lifetime.

(2) Any firefighter who shall have served for a period of less than twenty years, and shall resign or be dismissed, shall be paid the amount of his or her contributions, plus accrued compounded interest. [2007 c 218 § 31; 1973 1st ex.s. c 154 § 65; 1959 c 5 § 9; 1957 c 82 § 9. Prior: 1947 c 91 § 8, part; Rem. Supp. 1947 § 9578-47, part.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.16.160 Payment on death not in line of duty. Whenever any firefighter, after four years of service, shall die from natural causes, or from an injury not sustained in the performance of his or her duty and for which no pension is provided in this chapter, and who has not been retired on account of disability, his widow or her widower, if he or she was his wife or her husband at the time he or she was stricken with his or her last illness, or at the time he or she received the injuries from which he or she died; or if there is no such widow, then his or her child or children shall be entitled to the amount of his or her contributions, plus accrued compounded interest, or the sum of one thousand dollars, whichever sum shall be the greater. In case of death as above stated, before the end of four years of service, an amount based on the proportion of the time of service to four years shall be paid such beneficiaries. [2007 c 218 § 32; 1973 1st ex.s. c 154 § 66; 1959 c 5 § 10; 1957 c 82 § 10. Prior: 1947 c 91 § 8, part; 1929 c 86 § 7, part; 1919 c 196 § 9, part; 1909 c 50 § 9, part; Rem. Supp. 1947 § 9578-47, part.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.16.170 Payment on death of firefighter with no dependents. Whenever a firefighter dies leaving no widow or widower or children, the amount of his or her accumulated contributions, plus accrued compounded interest only, shall be paid his or her beneficiary. [2007 c 218 § 33; 1973 1st ex.s. c 154 § 67; 1959 c 5 § 11; 1957 c 82 § 11. Prior: 1947 c 91 § 8, part; 1935 c 39 § 5; 1929 c 86 § 6, part; 1919 c 196 § 8, part; 1909 c 50 § 8, part; Rem. Supp. 1947 § 9578-47, part.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.16.180 Funeral expense. Upon the death of any active firefighter, firefighter who is disabled, or retired firefighter, the board shall pay from the fund the sum of two hundred dollars to assist in defraying the funeral expenses of such firefighter. [2007 c 218 § 34; 1959 c 5 § 12; 1957 c 82 § 12. Prior: 1947 c 91 § 8, part; 1935 c 39 § 10; 1929 c 86 § 15; 1919 c 196 § 18; Rem. Supp. 1947 § 9578-47, part.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.190 Waiting period—Disability retirement.

No firefighter disabled in the performance of duty shall receive a pension until six months has elapsed after such disability was sustained. Therefore, whenever the retirement board, pursuant to examination by the board's physician and such other evidence as it may require, shall find a firefighter has been disabled while in the performance of his or her duties, it shall declare him or her inactive. For a period of six months from the time he or she became disabled, he or she shall continue to draw full pay from his or her municipality and in addition thereto he or she shall, at the expense of the municipality, be provided with such medical, hospital and nursing care as the retirement board deems proper. If the board finds at the expiration of six months that the firefighter is unable to return to and perform his or her duties, then he or she shall be retired as herein provided. [2007 c 218 § 35; 1959 c 5 § 13; 1957 c 82 § 13. Prior: 1947 c 91 § 8, part; 1935 c 39 § 4, part; 1929 c 86 § 5, part; 1919 c 196 § 7, part; 1909 c 50 § 7, part; Rem. Supp. 1947 § 9578-47, part.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.200 Examination of disability pensioners—Restoration to duty. The board shall require all firefighters receiving disability pensions to be examined every six months. All such examinations shall be made by physicians duly appointed by the board. If a firefighter shall fail to submit to such examination within ten days of having been so ordered in writing by said retirement board all pensions or benefits paid to said firefighter under this chapter, shall immediately cease and the disbursing officer in charge of such payments shall issue no further payments to such firefighter. If such firefighter fails to present himself or herself for examination within thirty days after being ordered so to do, he or she shall forfeit all rights under this chapter. If such firefighter, upon examination as aforesaid, shall be found fit for service, he or she shall be restored to duty in the same rank held at the time of his or her retirement, or if unable to perform the duties of said rank, then, at his or her request, in such other rank, the duties of which he or she is then able to perform. The board shall thereupon so notify the firefighter and shall require him or her to resume his or her duties as a member of the fire department. If, upon being so notified, such member shall fail to report for employment within ten days, he or she shall forfeit all rights to any benefits under this chapter. [2007 c 218 § 36; 1947 c 91 § 9; Rem. Supp. 1947 § 9578-48. Prior: 1929 c 86 § 8; 1919 c 196 § 10; 1909 c 50 § 10.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.210 Transfer of assets to new fund—Assumption of obligations. (1) Funds or assets on hand in the firefighters' relief and pension fund of any municipality established under the provisions of chapter 50, Laws of 1909, as amended, after payment of warrants drawn upon and payable therefrom, shall, by the city treasurer, be transferred to and placed in the firefighters' pension fund created by this chapter; and the firefighters' pension fund created by this chapter shall be liable for and there shall be paid therefrom in the order of their issuance any and all unpaid warrants drawn upon said firefighters' relief and pension fund.

(2) Any moneys loaned or advanced by a municipality from the general or any other fund of such municipality to the firefighters' relief and pension fund created under the provisions of chapter 50, Laws of 1909, as amended, and not repaid shall be an obligation of the firefighters' pension fund created under this chapter, and shall at such times and in such amounts as is directed by the board be repaid. [2007 c 218 § 37; 1947 c 91 § 10; Rem. Supp. 1947 § 9578-49.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.220 Credit for military service. Any person who was a member of the fire department and within the provisions of chapter 50, Laws of 1909, as amended, at the time he or she entered, and who is a veteran, as defined in RCW 41.04.005, shall have added and accredited to his or her period of employment as a firefighter as computed under this chapter his or her period of war service in such armed forces upon payment by him or her of his or her contribution for the period of his or her absence, at the rate provided by chapter 50, Laws of 1909, as amended, for other members: PROVIDED, HOWEVER, Such accredited service shall not in any case exceed five years. [2007 c 218 § 38; 1969 ex.s. c 269 § 7; 1947 c 91 § 11; Rem. Supp. 1947 § 9578-50.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.230 Repeal does not affect accrued rights. Chapter 50, Laws of 1909; chapter 196, Laws of 1919; chapter 86, Laws of 1929, and chapter 39, Laws of 1935 (secs. 9559 to 9578, incl., Rem. Rev. Stat.; secs. 396-1 to 396-43, incl., PPC) and all other acts or parts of acts in conflict herewith are hereby repealed: PROVIDED, That the repeal of said laws shall not affect any "prior firefighter," his widow, her widower, child or children, any firefighter eligible for retirement but not retired, his widow, her widower, child or children, or the rights of any retired firefighter, his widow, her widower, child or children, to receive payments and benefits from the firefighters' pension fund created under this chapter, in the amount, and in the manner provided by said laws which are hereby repealed and as if said laws had not been repealed. [2007 c 218 § 39; 1973 1st ex.s. c 154 § 68; 1947 c 91 § 12; Rem. Supp. 1947 § 9578-51.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.16.240 Application of chapter to fire protection districts. Any fire protection district having a full paid fire department may by resolution of its board of fire commissioners provide for the participation of its full time employees in a pension program in the same manner, with the same powers, and with the same force and effect as to such districts as the pension program provided by chapter 41.16 RCW for cities, towns and municipalities, or fire protection districts. [1955 c 46 § 1.]

41.16.250 Retirement and job security rights preserved upon annexation, etc., of district. If all or any portion of a fire protection district is annexed to or incorporated into a city or town, or is succeeded by a metropolitan municipal corporation or county fire department, no full time paid firefighter affected by such annexation, incorporation or succession shall receive a reduction in his or her retirement and

job security rights: PROVIDED, That this section shall not apply to any retirement and job security rights authorized under chapter 41.24 RCW. [2007 c 218 § 40; 1963 c 63 § 1.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.260 Transfer of credit from city employees' retirement system to firefighters' pension system. See RCW 41.18.210.

41.16.900 Severability—1947 c 91. If any clause, part or section of this chapter shall be adjudged in violation of the Constitution, or for any reason invalid, such judgment shall not affect nor invalidate the remainder of the chapter, nor any other clause, part or section thereof, but such judgment shall be confined in its operation to the clause, part or section directly involved in the controversy in which such judgment was rendered, and the balance of the chapter shall remain in full force and effect. [1947 c 91 § 13.]

41.16.910 Severability—1959 c 5. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to any other persons or circumstances is not affected. [1959 c 5 § 15.]

41.16.911 Severability—1975 1st ex.s. c 178. If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 178 § 6.]

41.16.920 Construction—1959 c 5—Benefits retroactively authorized. The provisions of chapter 5, Laws of 1959 are intended to be remedial and procedural and any benefits heretofore paid to recipients hereunder pursuant to any previous act are retroactively included and authorized as a part of chapter 5, Laws of 1959. [1959 c 5 § 14.]

41.16.921 Construction—1975 1st ex.s. c 178, RCW 41.16.145. (1) The provisions of this section are procedural and remedial.

(2) The application and effect of chapter 178, Laws of 1975 1st ex. sess. shall be retroactive to and including May 6, 1974. Each benefit being paid on June 4, 1975, shall then be adjusted as if chapter 178, Laws of 1975 1st ex. sess. had been in existence since May 6, 1974. Additionally, any amounts which would have been paid had chapter 178, Laws of 1975 1st ex. sess. been in effect since May 6, 1974, shall then be due as a one-time lump sum payment.

(3) The provisions of RCW 41.16.145 shall be construed and read to have granted the percentage increase provided by that section to those receiving benefits pursuant to RCW 41.16.230, until and including July 1, 1974, at which time those persons shall be regarded as eligible for the benefits granted by chapter 190, Laws of 1974 ex. sess., as provided in subsection (2) of this section. Any amounts now payable due to a failure to so construe and read RCW 41.16.145 are now due as a one-time lump sum payment. [1975 1st ex.s. c 178 § 5.]

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41.16.922 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 87.]

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

Chapter 41.18 RCW

FIREFIGHTERS' RELIEF AND PENSIONS—1955 ACT

Sections

- 41.18.010 Definitions.
- 41.18.015 Pension boards in fire districts created—Members—Terms—Vacancies—Officers—Quorum.
- 41.18.020 Powers and duties of board.
- 41.18.030 Contributions by firefighters.
- 41.18.040 Retirement for service—Widow's or widower's pension—Payments to children.
- 41.18.042 Actuarially reduced retirement allowance—Spousal benefit.
- 41.18.045 Pension benefits for widows or widowers of unretired, eligible firefighters—Retroactive.
- 41.18.050 Disablement in line of duty—Retirement.
- 41.18.060 Disablement in line of duty—Inactive period—Allowance—Medical, hospital, nursing care.
- 41.18.080 Payment upon disablement not in line of duty.
- 41.18.090 Examination of disability pensioners—Restoration to active duty.
- 41.18.100 Payment on death in line of duty or while retired on account of service-connected disability.
- 41.18.102 Applicability of RCW 41.18.040 and 41.18.100.
- 41.18.104 Annual increase in benefits payable on retirement for service or disability—Appeals.
- 41.18.130 Payment on separation—With less than twenty-five years service or less than fifty years of age—Option to be classified as vested firefighter.
- 41.18.140 Funeral expenses.
- 41.18.150 Credit for military service.
- 41.18.160 Certain firefighters may elect to be covered under other law.
- 41.18.165 Credit for membership in private organization acquired by municipality.
- 41.18.170 Application of chapter.
- 41.18.180 Firefighter contributor under prior law may obtain benefits of chapter—Refunds.
- 41.18.190 Transfer of membership authorized.
- 41.18.200 Minimum pension.
- 41.18.210 Transfer of credit from city employees' retirement system to firefighters' pension system.
- 41.18.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Prior acts relating to firefighters' relief and pensions: 1935 c 39; 1929 c 86; 1919 c 196; 1909 c 50 were repealed by 1947 c 91 § 12 (codified as RCW 41.16.230).

Firefighters' relief and pensions—1947 act: Chapter 41.16 RCW.

Volunteer firefighters' relief and pensions: Chapter 41.24 RCW.

41.18.010 Definitions. For the purpose of this chapter, unless clearly indicated otherwise by the context, words and phrases shall have the meaning hereinafter ascribed.

(1) "Basic salary" means the basic monthly salary, including longevity pay, attached to the rank held by the retired firefighter at the date of his or her retirement, without regard to extra compensation which such firefighter may have received for special duties assignments not acquired through civil service examination: PROVIDED, That such basic salary shall not be deemed to exceed the salary of a battalion chief.

(2) "Beneficiary" shall mean any person or persons designated by a firefighter in a writing filed with the board, and who shall be entitled to receive any benefits of a deceased firefighter under this chapter.

(3) "Board" shall mean the municipal firefighters' pension board.

(4) "Child" or "children" means a firefighter's child or children under the age of eighteen years, unmarried, and in the legal custody of such firefighter at the time of his death or her death.

(5) "Contributions" shall mean and include all sums deducted from the salary of firefighters and paid into the fund as hereinafter provided.

(6) "Disability" shall mean and include injuries or sickness sustained by a firefighter.

(7) "Earned interest" means and includes all annual increments to the firefighters' pension fund from income earned by investment of the fund. The earned interest payable to any firefighter when he or she leaves the service and accepts his or her contributions, shall be that portion of the total earned income of the fund which is directly attributable to each individual firefighter's contributions. Earnings of the fund for the preceding year attributable to individual contributions shall be allocated to individual firefighters' accounts as of January 1st of each year.

(8) "Fire department" shall mean the regularly organized, full time, paid, and employed force of firefighters of the municipality.

(9) "Firefighter" means any person hereafter regularly or temporarily, or as a substitute newly employed and paid as a member of a fire department, who has passed a civil service examination for firefighters and who is actively employed as a firefighter or, if provided by the municipality by appropriate local legislation, as a fire dispatcher: PROVIDED, Nothing in chapter 209, Laws of 1969 ex. sess. shall impair or permit the impairment of any vested pension rights of persons who are employed as fire dispatchers at the time chapter 209, Laws of 1969 ex. sess. takes effect; and any person heretofore regularly or temporarily, or as a substitute, employed and paid as a member of a fire department, and who has contributed under and been covered by the provisions of chapter 41.16 RCW as now or hereafter amended and who has come under the provisions of this chapter in accordance with RCW 41.18.170 and who is actively engaged as a firefighter or as a member of the fire department as a firefighter or fire dispatcher.

(10) "Fund" shall have the same meaning as in RCW 41.16.010 as now or hereafter amended. Such fund shall be created in the manner and be subject to the provisions specified in chapter 41.16 RCW as now or hereafter amended.

(11) "Municipality" shall mean every city, town and fire protection district having a regularly organized full time, paid, fire department employing firefighters.

(12) "Performance of duty" shall mean the performance of work or labor regularly required of firefighters and shall include services of an emergency nature normally rendered while off regular duty.

(13) "Retired firefighter" means and includes a person employed as a firefighter and retired under the provisions of this chapter.

(14) "Widow or widower" means the surviving spouse of a firefighter and shall include the surviving wife, husband, or state registered domestic partner of a firefighter, retired on account of length of service, who was lawfully married to, or in a state registered domestic partnership with, him or to her for a period of five years prior to the time of his or her retirement; and the surviving wife, husband, or state registered domestic partner of a firefighter, retired on account of disability, who was lawfully married to, or in a state registered domestic partnership with, him or her at and prior to the time he or she sustained the injury or contracted the illness resulting in his or her disability. The word shall not mean the divorced wife or husband or former state registered domestic partner of an active or retired firefighter. [2009 c 521 § 90; 2007 c 218 § 41; 1973 1st ex.s. c 154 § 69; 1969 ex.s. c 209 § 40; 1965 ex.s. c 45 § 2; 1961 c 255 § 1; 1955 c 382 § 1.]

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

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

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.18.015 Pension boards in fire districts created—Members—Terms—Vacancies—Officers—Quorum. There is hereby created in each fire protection district which qualifies under this chapter, a firefighters' pension board to consist of the following five members, the chairperson of the fire commissioners for said district who shall be chairperson of the board, the county auditor, county treasurer, and in addition, two regularly employed or retired firefighters elected by secret ballot of the employed and retired firefighters. Retired members who are subject to the jurisdiction of the pension board have both the right to elect and the right to be elected under this section. The first members to be elected by the firefighters shall be elected annually for a two-year term. The two firefighter elected members shall, in turn, select a third eligible member who shall serve in the event of an absence of one of the regularly elected members. In case a vacancy occurs in the membership of the firefighter or retired members, the members shall in the same manner elect a successor to serve the unexpired term. The board may select and appoint a secretary who may, but need not be a member of the board. In case of absence or inability of the chairperson to act, the board may select a chairperson pro tempore who shall during such absence or inability perform the duties and exercise the powers of the chairperson. A majority of the members of said board shall constitute a quorum and have power to transact business. [2007 c 218 § 42; 1992 c 6 § 1; 1961 c 255 § 11.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.18.020 Powers and duties of board. The board, in addition to such general and special powers as are vested in it

by the provisions of chapter 41.16 RCW, which powers the board shall have with respect to this chapter shall have power to:

- (1) Generally supervise and control the administration of this chapter;
- (2) Pass upon and allow or disallow applications for pensions or other benefits provided by this chapter;
- (3) Provide for payment from the firefighters' pension fund of necessary expenses of maintenance and administration required by the provisions of this chapter;
- (4) Make rules and regulations not inconsistent with this chapter for the purpose of carrying out and effecting the same;
- (5) Require the physicians appointed under the provisions of chapter 41.16 RCW, to examine and report to the board upon all applications for relief and pensions under this chapter; and
- (6) Perform such acts, receive such compensation and enjoy such immunity as provided in RCW 41.16.040. [2007 c 218 § 43; 1955 c 382 § 2.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.18.030 Contributions by firefighters. Every firefighter to whom this chapter applies shall contribute to the firefighters' pension fund a sum equal to six percent of his or her basic salary which shall be deducted therefrom and placed in the fund. [2007 c 218 § 44; 1961 c 255 § 2; 1955 c 382 § 3.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.18.040 Retirement for service—Widow's or widower's pension—Payments to children. Whenever any firefighter, *at the time of taking effect of this act or thereafter, shall have been appointed under civil service rules and have served for a period of twenty-five years or more as a member in any capacity of the regularly constituted fire department of any city, town or fire protection district which may be subject to the provisions of this chapter, and shall have attained the age of fifty years, he or she shall be eligible for retirement and shall be retired by the board upon his or her written request. Upon his or her retirement such firefighter shall be paid a monthly pension which shall be equal to fifty percent of the basic salary now or hereafter attached to the same rank and status held by the said firefighter at the date of his or her retirement: PROVIDED, That a firefighter hereafter retiring who has served as a member for more than twenty-five years, shall have his or her pension payable under this section increased by two percent of the basic salary per year for each full year of such additional service to a maximum of five additional years.

Upon the death of any such retired firefighter, his or her pension shall be paid to his widow or her widower, at the same monthly rate that the retired firefighter would have received had he or she lived, if such widow or widower was his wife or her husband for a period of five years prior to the time of his or her retirement. If there be no widow or widower, then such monthly payments shall be distributed to and divided among his or her children, share and share alike, until they reach the age of eighteen or are married, whichever occurs first. [2007 c 218 § 45; 1973 1st ex.s. c 154 § 70; 1969

(2014 Ed.)

ex.s. c 209 § 29; 1965 ex.s. c 45 § 3; 1961 c 255 § 3; 1955 c 382 § 4.]

***Reviser's note:** The phrase "at the time of taking effect of this act or thereafter" first appears in the 1961 amendment, which became effective at midnight June 7, 1961 (see preface, 1961 session laws). The basic act, 1955 c 382, became effective at midnight June 8, 1955 (see preface, 1955 session laws).

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.18.042 Actuarially reduced retirement allowance—Spousal benefit. (1) Any retired firefighter married to a spouse ineligible for survivor benefits under RCW 41.18.040, 41.18.080, and 41.18.100 may choose an actuarially equivalent benefit adopted by the board that pays the retired firefighter a reduced retirement allowance, and upon death such portion of the retired firefighter's reduced retirement allowance as designated by the retired firefighter shall be continued throughout the life of the spouse.

(2) A retired firefighter who married a spouse ineligible for survivor benefits under RCW 41.18.040, 41.18.080, and 41.18.100 prior to July 26, 2009, has one year after July 26, 2009, to designate their spouse as a survivor beneficiary.

(3) The benefit provided to a child survivor beneficiary under RCW 41.18.040, 41.18.080, and 41.18.100 shall not be affected or reduced by the retired firefighter's selection of the actuarially reduced spousal survivor benefit provided by this section, and shall be equivalent to the amount payable as if the choice under subsection (1) of this section was not made.

(4)(a) Any retired firefighter who chose to receive a reduced retirement allowance under subsection (1) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection if:

(i) The retiree's survivor spouse designated in subsection (1) of this section predeceases the retiree; and

(ii) The retiree provides to the board proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree from the beginning of the month following the date of the beneficiary's death shall be the current monthly amount payable as if the selection under subsection (1) of this section was not made. [2009 c 156 § 1.]

41.18.045 Pension benefits for widows or widowers of unretired, eligible firefighters—Retroactive. Upon the death of a firefighter who is eligible to retire under RCW 41.18.040 as now or hereafter amended, but who has not retired, a pension shall be paid to his widow or her widower at the same monthly rate that he or she was eligible to receive at the time of his or her death, if such widow or widower was his wife or her husband for a period of five years prior to his or her death. If there be no widow or widower, then such monthly payments shall be distributed to and divided among his or her children, share and share alike, until they reach the age of eighteen or are married, whichever comes first.

This section shall apply retroactively for the benefit of all widows or widowers and survivors of firefighters who died after January 1, 1967, if such firefighters were otherwise eligible to retire on the date of death. [2007 c 218 § 46; 1973 1st ex.s. c 154 § 71; 1969 ex.s. c 209 § 25.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.18.050 Disablement in line of duty—Retirement.

Every firefighter who shall become disabled as a result of the performance of duty may be retired at the expiration of six months from the date of his or her disability, upon his or her written request filed with his or her retirement board. The board may, upon such request being filed, consult such medical advice as it sees fit, and may have the applicant examined by such physicians as it deems desirable. If from the reports of such physicians the board finds the applicant capable of performing his or her duties in the fire department, the board may refuse to recommend his or her retirement. If, after the expiration of six months from the date of his or her disability, the board deems it for the good of the fire department or the pension fund it may recommend the retirement of a firefighter disabled as a result of the performance of duty without any request for the same by him or her, and after having been given by the board a thirty days' written notice of such recommendation he or she shall be retired. [2007 c 218 § 47; 1955 c 382 § 5.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.18.060 Disablement in line of duty—Inactive period—Allowance—Medical, hospital, nursing care.

Whenever the retirement board, pursuant to examination by the board's physician and such other evidence as it may require, shall find a firefighter has been disabled while in the performance of his or her duties it shall declare the firefighter inactive. For a period of six months from the time of the disability the firefighter shall draw from the pension fund a disability allowance equal to his or her basic monthly salary and, in addition, shall be provided with medical, hospital and nursing care as long as the disability exists. The board may, at its discretion, elect to reimburse the firefighter who is disabled for premiums the firefighter has paid for medical insurance that supplements medicare, including premiums the firefighter has paid for medicare part B coverage. If the board finds at the expiration of six months that the firefighter is unable to return to and perform his or her duties, the firefighter shall be retired at a monthly sum equal to fifty percent of the amount of his or her basic salary at any time thereafter attached to the rank which he or she held at the date of retirement: PROVIDED, That where, at the time of retirement hereafter for disability under this section, the firefighter has served honorably for a period of more than twenty-five years as a member, in any capacity of the regularly constituted fire department of a municipality, the firefighter shall have his or her pension payable under this section increased by two percent of his or her basic salary per year for each full year of additional service to a maximum of five additional years. [2007 c 218 § 48; 1992 c 22 § 1; 1969 ex.s. c 209 § 30; 1961 c 255 § 4; 1955 c 382 § 6.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.18.080 Payment upon disablement not in line of duty. Any firefighter who has completed his or her probationary period and has been permanently appointed, and sustains a disability not in the performance of his or her duty which renders him or her unable to continue his or her service, may request to be retired by filing a written request with his or her retirement board within sixty days from the date of

his or her disability. The board may, upon such request being filed, consult such medical advice as it deems fit and proper. If the board finds the firefighter capable of performing his or her duties, it may refuse to recommend retirement and order the firefighter back to duty. If no request for retirement has been received after the expiration of sixty days from the date of his or her disability, the board may recommend retirement of the firefighter. The board shall give the firefighter a thirty-day written notice of its recommendation, and he or she shall be retired upon expiration of said notice. Upon retirement he or she shall receive a pension equal to fifty percent of his or her basic salary. For a period of ninety days following such disability the firefighter shall receive an allowance from the fund equal to his or her basic salary. He or she shall during said ninety days be provided with such medical, hospital, and nursing care as the board deems proper. No funds shall be expended for such disability if the board determines that the firefighter was gainfully employed or engaged for compensation in other than fire department duty when the disability occurred, or if such disability was the result of dissipation or abuse. Whenever any firefighter shall die as a result of a disability sustained not in the line of duty, his widow or her widower shall receive a monthly pension equal to one-third of his or her basic salary; if such widow or widower has dependent upon her or him for support a child or children of such deceased firefighter, he or she shall receive an additional pension as follows: One child, one-eighth of the deceased's basic salary; two children, one-seventh; three or more children, one-sixth. If there be no widow or widower, monthly payments equal to one-third of the deceased firefighter's basic salary shall be made to his or her child or children. The widow or widower may elect at any time in writing to receive a cash settlement, and if the board after hearing finds it financially beneficial to the pension fund, he or she may receive the sum of five thousand dollars cash in lieu of all future monthly pension payments, and other benefits, including benefits to any child and/or children. [2009 c 156 § 2; 2007 c 218 § 49; 1973 1st ex.s. c 154 § 72; 1965 c 109 § 1; 1961 c 255 § 5; 1955 c 382 § 9.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.18.090 Examination of disability pensioners—Restoration to active duty. The board shall require all firefighters receiving disability pensions to be examined every six months: PROVIDED, That no such examinations shall be required if upon certification by physicians the board shall formally enter upon its records a finding of fact that the disability is and will continue to be of such a nature that return to active duty can never reasonably be expected. All examinations shall be made by physicians duly appointed by the board. If a firefighter shall willfully fail to present himself or herself for examination, within thirty days after being ordered so to do, he or she shall forfeit all rights under this chapter. If such firefighter, upon examination as aforesaid, shall be found fit for service, he or she shall be restored to duty in the same rank held at the time of his or her retirement, or if unable to perform the duties of said rank then, at his or her request, in such other like or lesser rank as may be or become open and available, the duties of which he or she is then able to perform. The board shall thereupon so notify the firefighter

and shall require him or her to resume his or her duties as a member of the fire department. If, upon being so notified, such member shall willfully fail to report for employment within ten days, he or she shall forfeit all rights to any benefit under this chapter. [2007 c 218 § 50; 1955 c 382 § 15.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.18.100 Payment on death in line of duty or while retired on account of service-connected disability. In the event a firefighter is killed in the performance of duty, or in the event a firefighter retired on account of service-connected disability shall die from any cause, his widow or her widower shall receive a monthly pension under one of the following applicable provisions: (1) If a firefighter is killed in the line of duty his widow or her widower shall receive a monthly pension equal to fifty percent of his or her basic salary at the time of his or her death; (2) if a firefighter who has retired on account of a service-connected disability dies, his widow or her widower shall receive a monthly pension equal to the amount of the monthly pension such retired firefighter was receiving at the time of his or her death. If she or he at any time so elects in writing and the board after hearing finds it to be financially beneficial to the pension fund, he or she may receive in lieu of all future monthly pension and other benefits, including benefits to child or children, the sum of five thousand dollars in cash. If there be no widow or widower at the time of such firefighter's death or upon the widow's or widower's death the monthly pension benefits provided for under this section shall be paid to and divided among his or her child or children share and share alike, until they reach the age of eighteen or are married, whichever occurs first. A pension payable under the provisions of this section shall not be less than that specified under RCW 41.18.200. [2009 c 156 § 3; 2007 c 218 § 51; 1975 1st ex.s. c 178 § 4; 1973 1st ex.s. c 154 § 73; 1969 ex.s. c 209 § 28; 1965 ex.s. c 45 § 4; 1955 c 382 § 8.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.18.102 Applicability of RCW 41.18.040 and 41.18.100. The provisions of RCW 41.18.040 and 41.18.100 shall be applicable to all firefighters employed prior to March 1, 1970, but shall not apply to any former firefighter who has terminated his or her employment prior to July 1, 1969. [2007 c 218 § 52; 1969 ex.s. c 209 § 32.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.18.104 Annual increase in benefits payable on retirement for service or disability—Appeals. The amount of all benefits payable under the provisions of RCW 41.18.040, 41.18.080, 41.18.100 and 41.18.200 as now or hereafter amended, shall be increased annually as hereafter in this section provided. The local pension board shall meet subsequent to March 31st but prior to June 30th of each year for the purpose of adjusting benefit allowances payable pursuant to the aforementioned sections. The local board shall determine the increase in the consumer price index between January 1st and December 31st of the previous year and increase in dollar amount the benefits payable subsequent to July 1st

of the year in which said board makes such determination by a dollar amount proportionate to the increase in the consumer price index: PROVIDED, That regardless of the change in the consumer price index, such increase shall be at least two percent each year such adjustment is made.

Each year effective with the July payment all benefits specified herein, shall be increased as authorized by this section. This benefit increase shall be paid monthly as part of the regular pension payment and shall be cumulative. The increased benefits authorized by this section shall not affect any benefit payable under the provisions of chapter 41.18 RCW in which the benefit payment is attached to a current salary of the rank held at time of retirement. A beneficiary of benefit increases provided for pursuant to this section is hereby authorized to appeal a decision on such increases or the failure of the local pension board to order such increased benefits or the amount of such benefits to the Washington law enforcement officers' and firefighters' system retirement board provided for in *RCW 41.26.050.

For the purpose of this section the term

"Consumer price index" shall mean, for any calendar year, the consumer price index for the Seattle, Washington area as compiled by the bureau of labor statistics of the United States department of labor. [1975-'76 2nd ex.s. c 44 § 2; 1975 1st ex.s. c 178 § 2; 1974 ex.s. c 190 § 2; 1970 ex.s. c 37 § 1; 1969 ex.s. c 209 § 33.]

***Reviser's note:** RCW 41.26.050 was repealed by 1982 c 163 § 23. Powers, duties, and functions of the Washington law enforcement officers' and firefighters' retirement board were transferred to the director of retirement systems by RCW 41.26.051, which has been decodified. See Table of Disposition of Former RCW Sections.

Additional notes found at www.leg.wa.gov

41.18.130 Payment on separation—With less than twenty-five years service or less than fifty years of age—Option to be classified as vested firefighter. Any firefighter who shall have served for a period of less than twenty-five years, or who shall be less than fifty years of age, and shall resign, or be dismissed from the fire department for a reason other than conviction for a felony, shall be paid the amount of his or her contributions to the fund plus earned interest: PROVIDED, That in the case of any firefighter who has completed twenty years of service, such firefighter, upon termination for any cause except for a conviction of a felony, shall have the option of electing, in lieu of recovery of his or her contributions as herein provided, to be classified as a vested firefighter in accordance with the following provisions:

(1) Written notice of such election shall be filed with the board within thirty days after the effective date of such firefighter's termination;

(2) During the period between the date of his or her termination and the date upon which he or she becomes a retired firefighter as hereinafter provided, such vested firefighter and his or her spouse or dependent children shall be entitled to all benefits available under chapter 41.18 RCW to a retired firefighter and his or her spouse or dependent children with the exception of the service retirement allowance as herein provided for: PROVIDED, That any claim for medical coverage under RCW 41.18.060 shall be attributable to service connected illness or injury;

(3) Any firefighter electing to become a vested firefighter shall be entitled at such time as he or she otherwise would have completed twenty-five years of service had he or she not terminated, to receive a service retirement allowance computed on the following basis: Two percent of the amount of salary attached to the position held by the vested firefighter for the year preceding the date of his or her termination, for each year of service rendered prior to the date of his or her termination. [2007 c 218 § 53; 1969 ex.s. c 209 § 31; 1961 c 255 § 6; 1955 c 382 § 11.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.18.140 Funeral expenses. The board shall pay from the firefighters' pension fund upon the death of any active or retired firefighter the sum of five hundred dollars, to assist in defraying the funeral expenses of such firefighter. [2007 c 218 § 54; 1961 c 255 § 7; 1955 c 382 § 13.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.18.150 Credit for military service. Every person who was a member of the fire department at the time he or she entered and served in the armed forces of the United States in time of war, whether as a draftee, or inductee, and who shall have been discharged from such armed forces under conditions other than dishonorable, shall have added and accredited to his or her period of employment as a firefighter his or her period of war or peacetime service in the armed forces: PROVIDED, That such added and accredited service shall not as to any individual exceed five years. [2007 c 218 § 55; 1955 c 382 § 14.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.18.160 Certain firefighters may elect to be covered under other law. Every firefighter as defined in this chapter heretofore employed as a member of a fire department, whether or not as a prior firefighter as defined in chapter 41.16 RCW, who desires to make the contributions and avail himself or herself of the pension and other benefits of said chapter 41.16 RCW, can do so by handing to and leaving with the firefighters' pension board of his or her municipality a written notice of such intention within sixty days of the effective date of this chapter, or if he or she was on disability retirement under chapter 41.16 RCW, at the effective date of this chapter and has been recalled to active duty by the retirement board, shall give such notice within sixty days of his or her return to active duty, and not otherwise. [2007 c 218 § 56; 1955 c 382 § 17.]

Reviser's note: Effective date of chapter 41.18 RCW is midnight June 8, 1955; see preface 1955 session laws.

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.18.165 Credit for membership in private organization acquired by municipality. Every person who was a member of a firefighting organization operated by a private enterprise, which firefighting organization shall be hereafter acquired before September 1, 1959, by a municipality as its fire department as a matter of public convenience or necessity, where it is in the public interest to retain the trained personnel of such firefighting organization, shall have added and accredited to his or her period of employment as a firefighter

his or her period of service with said private enterprise, except that this shall apply only to those persons who are in the service of such firefighting organization at the time of its acquisition by the municipality and who remain in the service of that municipality until this chapter shall become applicable to such persons.

No such person shall have added and accredited to his or her period of employment as a firefighter his or her period of service with said private enterprise unless he, she, or a third party shall pay to the municipality his or her contribution for the period of such service with the private enterprise at the rate provided in RCW 41.18.030, or, if he or she shall be entitled to any private pension or retirement benefits as a result of such service with the private enterprise, unless he or she agrees at the time of his or her employment by the municipality to accept a reduction in the payment of any benefits payable under this chapter that are based in whole or in part on such added and accredited service by the amount of those private pension or retirement benefits received. For the purposes of RCW 41.18.030, the date of entry of service shall be deemed the date of entry into service with the private enterprise, which service is accredited by this section, and the amount of contributions for the period of accredited service shall be based on the wages or salary of such person during that added and accredited period of service with the private enterprise.

The city may receive payments for these purposes from a third party and shall make from such payments contributions with respect to such prior service as may be necessary to enable the fund to assume its obligations. [2007 c 218 § 57; 1959 c 69 § 1.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.18.170 Application of chapter. The provisions of this chapter governing contributions, pensions, and benefits shall have exclusive application (1) to firefighters as defined in this chapter hereafter becoming members of a fire department, (2) to firefighters as defined in this chapter heretofore employed in a department who have not otherwise elected as provided for in RCW 41.18.160, and (3) to firefighters on disability retirement under chapter 41.16 RCW, at the effective date of this chapter, who thereafter shall have been returned to active duty by the retirement board, and who have not otherwise elected as provided for in RCW 41.18.160 within sixty days after return to active duty. [2007 c 218 § 58; 1955 c 382 § 16.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.18.180 Firefighter contributor under prior law may obtain benefits of chapter—Refunds. Any firefighter who has made contributions under any prior act may elect to avail himself or herself of the benefits provided by this chapter or under such prior act by filing written notice with the board within sixty days from June 7, 1961: PROVIDED, That any firefighter who has received refunds by reason of selecting the benefits of prior acts shall return the amount of such refunds as a condition to coverage under chapter 255, Laws of 1961. [2007 c 218 § 59; 1961 c 255 § 12.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.18.190 Transfer of membership authorized. Any firefighter as defined in RCW 41.18.010 who has prior to July 1, 1969 been employed as a member of a fire department and who desires to make contributions and avail himself or herself of the pension and other benefits of chapter 41.18 RCW as now law or hereafter amended, may transfer his or her membership from any other pension fund, except the Washington law enforcement officers' and firefighters' retirement system, to the pension fund provided in chapter 41.18 RCW: PROVIDED, That such firefighter transmits written notice of his or her intent to transfer to the pension board of his or her municipality prior to September 1, 1969. [2007 c 218 § 60; 1969 ex.s. c 209 § 41.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Law enforcement officers' and firefighters' retirement system: Chapter 41.26 RCW.

Additional notes found at www.leg.wa.gov

41.18.200 Minimum pension. All retirees and survivors receiving a pension under the provisions of this chapter shall from and after April 25, 1973 receive a minimum pension of three hundred dollars per month. [1973 1st ex.s. c 181 § 2.]

41.18.210 Transfer of credit from city employees' retirement system to firefighters' pension system. Any former employee of a department of a city of the first class, who (1) was a member of the employees' retirement system of such city, and (2) is now employed within the fire department of such city, may transfer his or her former membership credit from the city employees' retirement system to the firefighter's pension system created by chapters 41.16 and 41.18 RCW by filing a written request with the board of administration and the municipal firefighters' pension board, respectively.

Upon the receipt of such request, the transfer of membership to the city's firefighter's pension system shall be made, together with a transfer of all accumulated contributions credited to such member. The board of administration shall transmit to the municipal firefighters' pension board a record of service credited to such member which shall be computed and credited to such member as a part of his or her period of employment in the city's firefighter's pension system. For the purpose of the transfer contemplated by this section, those affected individuals who have formerly withdrawn funds from the city employees' retirement system shall be allowed to restore contributions withdrawn from that retirement system directly to the firefighter's pension system and receive credit in the firefighter's pension system for their former membership service in the prior system.

Any employee so transferring shall have all the rights, benefits, and privileges that he or she would have been entitled to had he or she been a member of the city's firefighter's pension system from the beginning of his or her employment with the city.

No person so transferring shall thereafter be entitled to any other public pension, except that provided by chapter 41.26 RCW or social security, which is based upon such service with the city.

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The right of any employee to file a written request for transfer of membership as set forth in this section shall expire December 31, 1974. [2007 c 218 § 61; 1974 ex.s. c 148 § 1.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.18.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 89.]

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

Chapter 41.20 RCW POLICE RELIEF AND PENSIONS IN FIRST-CLASS CITIES

Sections

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41.20.005 Definitions. As used in chapter 41.20 RCW:
(1) "Rank" means civil service rank.
(2) "Position" means the particular employment held at any particular time, which may or may not be the same as civil service rank.

(3) Words importing masculine gender shall extend to females also.

(4) "Salary" means the basic monthly rate of salary or wages, including longevity pay but not including overtime earnings or special salary or wages. [1969 ex.s. c 209 § 39; 1959 c 78 § 1.]

Additional notes found at www.leg.wa.gov

41.20.010 Board of trustees—Composition. (1) The mayor or his or her designated representative who shall be an elected official of the city, and the clerk, treasurer, president of the city council or mayor pro tem of each city of the first class, or in case any such city has no city council, the commissioner who has supervision of the police department, together with three active or retired members of the police department, to be elected as herein provided, in addition to the duties now required of them, are constituted a board of trustees of the relief and pension fund of the police department of each such city, and shall provide for the disbursement of the fund, and designate the beneficiaries thereof.

(2) The police department and the retired law enforcement officers of each city of the first class shall elect three members to act as members of the board. Members shall be elected for three year terms. Existing members shall continue in office until replaced as provided for in this section.

(3) Such election shall be held in the following manner. Not more than thirty nor less than fifteen days preceding the first day of June in each year, written notice of the nomination of any member or retired member of the department for membership on the board may be filed with the secretary of the board. Each notice of nomination shall be signed by not less than five members or retired members of the department, and nothing herein contained shall prevent any member or retired member of the department from signing more than one notice of nomination. The election shall be held on a date to be fixed by the secretary during the month of June. Notice of the dates upon which notice of nomination may be filed and of the date fixed for the election of such members of the board shall be given by the secretary of the board by posting written notices thereof in a prominent place in the police headquarters. For the purpose of such election, the secretary of the board shall prepare and furnish printed or typewritten ballots in the usual form, containing the names of all persons regularly nominated for membership and shall furnish a ballot box for the election. Each member and each retired member of the police department shall be entitled to vote at the election for one nominee as a member of the board. The chief of the department shall appoint two members to act as officials of the election, who shall be allowed their regular wages for the day, but shall receive no additional compensation therefor. The election shall be held in the police headquarters of the department and the polls shall open at 7:30 a.m. and close at 8:30 p.m. The one nominee receiving the highest number of votes shall be declared elected to the board and his or her term shall commence on the first day of July succeeding the election. In the first election the nominee receiving the greatest number of votes shall be elected to the three year term, the second greatest to the two year term and the third greatest to the one year term. Retired members who are subject to the jurisdiction of the board have both the right to elect and the right to be elected under this section. Ballots shall

contain all names of those nominated, both active and retired. Notice of nomination and voting by retired members shall be conducted by the board. [2012 c 117 § 20; 1988 c 164 § 3; 1973 1st ex.s. c 16 § 1; 1955 c 69 § 1; 1911 c 18 § 1; 1909 c 39 § 1; RRS § 9579.]

41.20.020 Officers of board—Annual report. The mayor, or his or her designated representative, shall be ex officio chair, the clerk shall be ex officio secretary, and the treasurer shall be ex officio treasurer of said board. The secretary of said board, at the time of making his or her annual reports as said city clerk, shall annually report the condition of said fund, the receipts and disbursements on account of the same, together with a complete list of the beneficiaries of said fund, and the amounts paid to each of them. [2012 c 117 § 21; 1973 1st ex.s. c 16 § 2; 1909 c 39 § 2; RRS § 9580.]

41.20.030 Meetings—Disbursements of fund—Quorum. The board herein provided for shall hold monthly meetings on the first Mondays of each month and upon the call of its president. It shall issue warrants, signed by its president and secretary, to the persons entitled thereto under provisions of this chapter other than RCW 41.20.050, 41.20.060, 41.20.080 and 41.20.085 for the amounts of money ordered paid to such persons from such fund by said board, which warrants shall state for what purpose such payments are made; it shall keep a record of its proceedings, which record shall be a public record; it shall, at each monthly meeting, send to the treasurer of such city a written or printed list of all persons entitled to payment under provisions of this chapter other than RCW 41.20.050, 41.20.060, 41.20.080 and 41.20.085 from the fund herein provided for, stating the amount of such payments and for what granted, which list shall be certified to and signed by the president and secretary of such board, attested under oath. The treasurer of such city shall thereupon enter a copy of said list upon a book to be kept for that purpose and which shall be known as "the police relief and pension fund book", and the said board shall direct payment of the amounts named therein to the persons entitled thereto, out of such fund. The treasurer shall prepare and enter into such book an additional list showing those persons entitled to payment under RCW 41.20.050, 41.20.060, 41.20.080 and 41.20.085 and shall on the last day of each month issue warrants in the appropriate amounts to such persons. A majority of all the members of said board herein provided for shall constitute a quorum, and have power to transact business. [1973 c 143 § 1; 1911 c 18 § 5; 1909 c 39 § 11; RRS § 9589.]

41.20.040 Additional powers of board. The board shall, in addition to other powers herein granted, have power:

(1) To compel witnesses to attend and testify before it upon all matters connected with the administration of this chapter, in the same manner as provided by law for the taking of testimony in courts of record in this state, and its president or any member of the board may administer oaths to such witnesses.

(2) To provide for the payment from the fund of all necessary expenses and printing.

No compensation or emolument shall be paid to any member of the board for any duty required or performed under this chapter.

Each board may make all needful rules and regulations for its guidance in the administration of and in conformity with the provisions of this chapter. [1955 c 69 § 2; 1909 c 39 § 12; RRS § 9590.]

41.20.050 Pension on retirement for years of service.

Whenever a person has been duly appointed, and has served honorably for a period of twenty-five years, as a member, in any capacity, of the regularly constituted police department of a city subject to the provisions of this chapter, the board, after hearing, if one is requested in writing, may order and direct that such person be retired, and the board shall retire any member so entitled, upon his or her written request therefor. The member so retired *hereafter shall be paid from the fund during his or her lifetime a pension equal to fifty percent of the amount of salary *at any time hereafter attached to the position held by the retired member for the year preceding the date of his or her retirement: PROVIDED, That, except as to a position higher than that of captain held for at least three calendar years prior to date of retirement, no such pension shall exceed an amount equivalent to fifty percent of the salary of captain, and all existing pensions shall be increased to not less than three hundred dollars per month as of April 25, 1973: PROVIDED FURTHER, That a person *hereafter retiring who has served as a member for more than twenty-five years, shall have his or her pension payable under this section increased by two percent of his or her salary per year for each full year of such additional service to a maximum of five additional years.

Any person who has served in a position higher than the rank of captain for a minimum of three years may elect to retire at such higher position and receive for his or her lifetime a pension equal to fifty percent of the amount of the salary *at any time hereafter attached to the position held by such retired member for the year preceding his or her date of retirement: PROVIDED, That such person make the said election to retire at a higher position by September 1, 1969 and at the time of making the said election, pay into the relief and pension fund in addition to the contribution required by RCW 41.20.130: (1) an amount equal to six percent of that portion of all monthly salaries previously received upon which a sum equal to six percent has not been previously deducted and paid into the police relief and pension fund; (2) and such person agrees to continue paying into the police relief and pension fund until the date of retirement, in addition to the contributions required by RCW 41.20.130, an amount equal to six percent of that portion of monthly salary upon which a six percent contribution is not currently deducted pursuant to RCW 41.20.130.

Any person affected by this chapter who at the time of entering the armed services was a member of such police department and is a veteran as defined in RCW 41.04.005, shall have added to his or her period of employment as computed under this chapter, his or her period of war service in the armed forces, but such credited service shall not exceed five years and such period of service shall be automatically added to each member's service upon payment by him or her of his or her contribution for the period of his or her absence

at the rate provided in RCW 41.20.130. [2012 c 117 § 22; 1973 1st ex.s. c 181 § 3; 1969 ex.s. c 269 § 6; 1969 ex.s. c 219 § 1; 1969 ex.s. c 209 § 36; 1969 c 123 § 1; 1961 c 191 § 1; 1959 c 78 § 3; 1959 c 6 § 1. Prior: 1957 c 84 § 1; 1955 c 69 § 3; 1945 c 45 § 1; 1937 c 24 § 1; 1915 c 40 § 2; 1911 c 18 § 2; 1909 c 39 § 4; Rem. Supp. 1945 § 9582.]

*Reviser's note: The words "hereafter" and "at any time hereafter" first appear in the 1961 amendment.

Additional notes found at www.leg.wa.gov

41.20.060 Pension on retirement for duty connected disability.

Whenever any person, while serving as a police officer in any such city becomes physically disabled by reason of any bodily injury received in the immediate or direct performance or discharge of his or her duties as a police officer, or becomes incapacitated for service on account of any duty connected disability, such incapacity not having been caused or brought on by dissipation or abuse, of which the board shall be judge, the board may, upon his or her written request filed with the secretary, or without such written request, if it deems it to be for the benefit of the public, retire such person from the department, and order and direct that he or she be paid from the fund during his or her lifetime, a pension equal to fifty percent of the amount of salary *at any time hereafter attached to the position which he or she held in the department at the date of his or her retirement, but not to exceed an amount equivalent to fifty percent of the salary of captain except as to a position higher than that of captain held for at least three calendar years prior to the date of retirement in which case as to such position the provisions of RCW 41.20.050 shall apply, and all existing pensions shall be increased to not less than three hundred dollars per month as of April 25, 1973: PROVIDED, That where, at the time of retirement hereafter for duty connected disability under this section, such person has served honorably for a period of more than twenty-five years as a member, in any capacity, of the regularly constituted police department of a city subject to the provisions of this chapter, the foregoing percentage factors to be applied in computing the pension payable under this section shall be increased by two percent of his or her salary per year for each full year of such additional service to a maximum of five additional years.

Whenever such disability ceases, the pension shall cease, and such person shall be restored to active service at the same rank he or she held at the time of his or her retirement, and at the current salary attached to said rank at the time of his or her return to active service.

Disability benefits provided for by this chapter shall not be paid when the police officer is disabled while he or she is engaged for compensation in outside work not of a police or special police nature. [2012 c 117 § 23; 1998 c 157 § 3; 1973 1st ex.s. c 181 § 4; 1969 ex.s. c 219 § 2; 1969 ex.s. c 209 § 37; 1969 c 123 § 2; 1961 c 191 § 2; 1959 c 78 § 4; 1959 c 6 § 2; 1957 c 84 § 2; 1955 c 69 § 5; 1937 c 24 § 2; 1911 c 18 § 3; 1909 c 39 § 5; RRS § 9583.]

*Reviser's note: The words "at any time hereafter" first appear in the 1961 amendment.

Purpose—1998 c 157 §§ 2-5: "The purpose of sections 2 through 5 of this act is to clarify that the intent of the legislature in enacting RCW 41.20.060, insofar as that section provides benefits to members for disabilities incurred in the line of duty, was to provide a statute in the nature of a workers' compensation act that provides compensation to employees for per-

sonal injuries incurred in the course of employment. Accordingly this act amends and divides RCW 41.20.060 into two separate sections. Section 3 of this act clarifies and emphasizes the legislature's intent that the disability benefits granted by RCW 41.20.060, as amended, are granted only to those members who become disabled by any injury or incapacity that is incurred in the line of duty. Section 4 of this act continues to provide disability retirement benefits to members who become disabled by an injury or incapacity not incurred in the line of duty." [1998 c 157 § 2.]

Additional notes found at www.leg.wa.gov

41.20.061 Increase in presently payable benefits for service or disability authorized. See RCW 41.26.250.

41.20.065 Pension on retirement for nonduty disability. Whenever any person, while serving as a police officer in any such city becomes physically disabled by reason of any bodily injury not incurred in the line of duty, or becomes incapacitated for service, such incapacity not having been caused or brought on by dissipation or abuse, of which the board shall be judge, the board may, upon his or her written request filed with the secretary, or without such written request, if it deems it to be for the benefit of the public, retire such person from the department, and order and direct that he or she be paid from the fund during his or her lifetime, a pension equal to fifty percent of the amount of salary at any time hereafter attached to the position which he or she held in the department at the date of his or her retirement, but not to exceed an amount equivalent to fifty percent of the salary of captain, except as to a position higher than that of captain held for at least three calendar years prior to the date of retirement, in which case as to such position the provisions of RCW 41.20.050 shall apply, and all existing pensions shall be increased to not less than three hundred dollars per month as of April 25, 1973: PROVIDED, That where, at the time of retirement hereafter for disability under this section, such person has served honorably for a period of more than twenty-five years as a member, in any capacity, of the regularly constituted police department of a city subject to the provisions of this chapter, the foregoing percentage factors to be applied in computing the pension payable under this section shall be increased by two percent of his or her salary per year for each full year of such additional service, to a maximum of five additional years.

Whenever such disability ceases, the pension shall cease, and such person shall be restored to active service at the same rank he or she held at the time of his or her retirement, and at the current salary attached to said rank at the time of his or her return to active service.

Disability benefits provided for by this chapter shall not be paid when the police officer is disabled while he or she is engaged for compensation in outside work not of a police or special police nature. [2012 c 117 § 24; 1998 c 157 § 4.]

Purpose—1998 c 157 §§ 2-5: See note following RCW 41.20.060.

Additional notes found at www.leg.wa.gov

41.20.070 Certificate of disability. No person shall be retired, as provided in RCW 41.20.060, or receive any benefit from said fund, unless there shall be filed with said board certificate of his or her disability, which certificate shall be subscribed and sworn to by said person, and by the city physician (if there be one) and two regularly licensed and practicing physicians of such city, and such board may require other

evidence of disability before ordering such retirement and payment as aforesaid. [2012 c 117 § 25; 1909 c 39 § 6; RRS § 9584.]

41.20.080 Pension on death before or after retirement. Whenever any member of the police department of any such city loses his or her life while actually engaged in the performance of duty, or as the proximate result thereof, leaving a surviving spouse or child or children under the age of eighteen years, upon satisfactory proof of such facts made to it, the board shall order and direct that a pension, equal to one-half of the amount of the salary *at any time hereafter attached to the position which such member held in the police department at the time of his or her death, shall be paid to the surviving spouse for life, or if there is no surviving spouse, or if the surviving spouse shall die, then to the child or children until they are eighteen years of age: PROVIDED, That if such spouse or child or children marry, the person so marrying shall thereafter receive no further pension from the fund: PROVIDED FURTHER, That all existing pensions shall be increased to not less than three hundred dollars per month as of April 25, 1973.

If any member so losing his or her life, leaves no spouse, or child or children under the age of eighteen years, the board shall pay the sum of two hundred dollars toward the funeral expenses of such member. [2012 c 117 § 26; 1973 1st ex.s. c 181 § 5; 1961 c 191 § 3; 1959 c 78 § 5; 1959 c 6 § 3; 1957 c 84 § 3; 1955 c 69 § 6; 1937 c 24 § 3; 1915 c 40 § 3; 1909 c 39 § 7; RRS § 9585.]

*Reviser's note: The words "at any time hereafter" first appear in the 1961 amendment.

41.20.085 Pension on death before or after retirement—Surviving spouse not formerly covered—"Surviving spouse" defined. Whenever any member of the police department of any such city shall die, or shall have heretofore died, or whenever any such member who has been heretofore retired or who is hereafter retired for length of service or a disability, shall have died, or shall die, leaving a surviving spouse or child or children under the age of eighteen years, upon satisfactory proof of such facts made to it, the board shall order and direct that a pension equal to one-third of the amount of salary at any time hereafter attached to the position held by such member in the police department at the time of his or her death or retirement, not to exceed one-third of the salary of captain, shall be paid to the surviving spouse during the surviving spouse's life, and in addition, to the child or children, until they are eighteen years of age, as follows: For one child, one-eighth of the salary on which such pension is based; for two children, a total of one-seventh of said salary; and for three or more children, a total of one-sixth of said salary: PROVIDED, If such spouse or child or children marry, the person so marrying shall receive no further pension from the fund. In case there is no surviving spouse, or if the surviving spouse shall die, the child or children shall be entitled to the spouse's share in addition to the share specified herein until they reach eighteen years of age. No spouse shall be entitled to any payments on the death of a retired officer unless such surviving spouse has been married to such officer for a period of at least five years prior to the date of his or her retirement.

As of April 25, 1973, a surviving spouse not otherwise covered by the provisions of section 2, chapter 78, Laws of 1959, shall be entitled to a pension of three hundred dollars per month.

"Surviving spouse" as used in this section means surviving female or male spouse. [2012 c 117 § 27; 1973 1st ex.s. c 181 § 6; 1969 ex.s. c 209 § 26; 1961 c 140 § 1; 1959 c 78 § 2.]

Additional notes found at www.leg.wa.gov

41.20.086 Increase in certain presently payable death benefits authorized. See RCW 41.26.260.

41.20.090 Lump sum payment on death before or after retirement. Whenever any member of the police department of such city shall, after five years of service in said department, die, his or her surviving spouse or, if there is no surviving spouse, the child or children under the age of eighteen years, or if there is no surviving spouse or child or children, then his or her parents or unmarried sister or sisters, minor brother or brothers, dependent upon him or her for support, shall be entitled to the sum of one thousand dollars from such fund. This section to apply to members who shall have been retired, for any reason, from active service under the provisions of this chapter. [2012 c 117 § 28; 1959 c 78 § 6; 1937 c 24 § 4; 1915 c 40 § 4; 1911 c 18 § 4; 1909 c 39 § 8; RRS § 9586.]

Additional notes found at www.leg.wa.gov

41.20.100 Examination of disability pensioners—Emergency duty. Any person retired for disability under this chapter may be summoned before the board herein provided for, at any time thereafter, and shall submit himself or herself thereto for examination as to his or her fitness for duty, and shall abide the decision and order of said board with reference thereto; and all members of such police force who may be retired under the provisions of this chapter, shall report to the chief of police of such city where so retired on the first Mondays of April, July, October, and January of each year; and in cases of emergency, may be assigned to and shall perform such duty as said chief of police may direct, and such persons shall have no claim against such city for payment for such duty so performed. [2012 c 117 § 29; 1909 c 39 § 9; RRS § 9587.]

41.20.110 Withdrawal of pension—Grounds. Whenever any person who shall have received any benefit from said fund shall be convicted of any felony, or shall become a habitual drunkard, or shall fail to report himself or herself for examination for duty as required herein, unless excused by the board, or shall disobey the requirements of said board then such board shall order and direct that such pension or allowance that may have been granted to such person shall immediately cease, and such person shall receive no further pension or allowance or benefit under this chapter, but in lieu thereof the said pension or allowance or benefit may, at the discretion of the board, be paid to those immediately dependent upon him or her, or to his or her legally appointed guardian. [2012 c 117 § 30; 1937 c 24 § 5; 1909 c 39 § 10; RRS § 9588.]

Additional notes found at www.leg.wa.gov

(2014 Ed.)

41.20.120 Sick benefits. Whenever any active member of the police department, or any member *hereafter retired, on account of service, sickness or disability, not caused or brought on by dissipation or abuse, of which the board shall be judge, is confined in any hospital or in his or her home and, whether or not so confined, requires nursing, care, or attention, the board shall pay for the active member the necessary hospital, care, and nursing expenses of the member out of the fund; and the board may pay for the retired member hospital, care, and nursing expenses as are reasonable, in the board's discretion. The board may, at its discretion, elect, in lieu of paying some or all such expenses for the retired member, to reimburse the retired member for premiums the member has paid for medical insurance that supplements medicare, including premiums the member has paid for medicare part B coverage. The salary of the active member shall continue while he or she is necessarily confined to the hospital or home or elsewhere during the period of recuperation, as determined by the board, for a period not exceeding six months; after which period the other provisions of this chapter shall apply: PROVIDED, That the board in all cases may have the active or retired member suffering from such sickness or disability examined at any time by a licensed physician or physicians, to be appointed by the board, for the purpose of ascertaining the nature and extent of the sickness or disability, the physician or physicians to report to the board the result of the examination within three days thereafter. Any active or retired member who refuses to submit to such examination or examinations shall forfeit all his or her rights to benefits under this section: PROVIDED FURTHER, That the board shall designate the hospital and medical services available to the police officer who is sick or disabled. [2012 c 117 § 31; 1992 c 22 § 2; 1961 c 191 § 4; 1959 c 78 § 7; 1955 c 69 § 7; 1915 c 40 § 5; 1911 c 18 § 6; 1909 c 39 § 13; RRS § 9591.]

*Reviser's note: The words "hereafter retired" first appear in the 1961 amendment.

41.20.130 Fund created. There is created in each city subject to the provisions of this chapter a police relief and pension fund. The fund shall be constituted as follows:

A sum equal to six percent thereof shall be deducted monthly from the salary of each police officer by the city treasurer and placed in the fund, but the maximum deduction shall not exceed six percent of the monthly salary of captain.

At the time the annual tax levy of the city is made, the city council, or other legislative body, shall order the transfer of an amount of money into the fund, sufficient with the salary deductions, to meet the financial requirements thereof:

(1) From moneys collected or received from all licenses issued;

(2) From fines and forfeitures collected or received in money for violation of city ordinances. [1959 c 78 § 8; 1955 c 69 § 8; 1933 c 30 § 1; 1929 c 101 § 3; 1923 c 54 § 1; 1915 c 40 § 1; 1909 c 39 § 3; RRS § 9581.]

41.20.140 Pension payments monthly—Surplus to general fund. Payments provided for in this chapter shall be made monthly upon proper vouchers. If at any time there is more money in the fund provided for in this chapter than is necessary for the purposes of this chapter, then such surplus shall be transferred from such fund to the general fund of the

city: PROVIDED, That at all times enough money shall be kept in said fund to meet all payments provided for in this chapter. [1911 c 18 § 7; 1909 c 39 § 14; RRS § 9592.]

41.20.150 Return of member's contributions— Option to be classified as vested member. Whenever any member affected by this chapter terminates his or her employment prior to the completion of twenty-five years of service he or she shall receive seventy-five percent of his or her contributions made after *the effective date of this act and he or she shall not receive any contributions made prior thereto: PROVIDED, That in the case of any member who has completed twenty years of service, such member, upon termination for any cause except for a conviction of a felony, shall have the option of electing, in lieu of recovery of his or her contributions as herein provided, to be classified as a vested member in accordance with the following provisions:

(1) Written notice of such election shall be filed with the board within thirty days after the effective date of such member's termination;

(2) During the period between the date of his or her termination and the date upon which he or she becomes a retired member as hereinafter provided, such vested member and his or her spouse or dependent children shall be entitled to all benefits available under chapter 41.20 RCW to a retired member and his or her spouse or dependent children with the exception of the service retirement allowance as herein provided for: PROVIDED, That any claim for medical coverage under RCW 41.20.120 shall be attributable to service connected illness or injury;

(3) Any member electing to become a vested member shall be entitled at such time as he or she otherwise would have completed twenty-five years of service had he or she not terminated, to receive a service retirement allowance computed on the following basis: Two percent of the amount of salary at any time hereafter attached to the position held by the vested member for the year preceding the date of his or her termination, for each year of service rendered prior to the date of his or her termination. At such time the vested member shall be regarded as a retired member and, in addition to the retirement allowance herein provided for, shall continue to be entitled to all such other benefits as are by chapter 41.20 RCW made available to retired members. [2012 c 117 § 32; 1969 c 123 § 3; 1955 c 69 § 4.]

*Reviser's note: The words "the effective date of this act" first appear in 1955 c 69 § 4, which became effective midnight June 8, 1955.

41.20.155 Return of member's contributions— Applicability. The provisions of RCW 41.20.050, 41.20.060 and 41.20.150 shall be applicable to all members employed on June 12, 1969, and to those who shall thereafter become members, but shall not apply to any former member who has terminated his or her employment prior to June 12, 1969. [2012 c 117 § 33; 1969 c 123 § 4.]

41.20.160 Credit for membership in private organization acquired by city of first class. Any person affected by this chapter who was a member of a police organization operated by a private enterprise which police organization shall be hereafter acquired before September 1, 1959, by a city of the first class as its police department as a matter of

public convenience or necessity, where it is in the public interest to retain the trained personnel of such police organization, shall have added to his or her period of employment as computed under this chapter his or her period of service with said private enterprise, except that this shall apply only to those persons who are in the service of such police organization at the time of its acquisition by the city of the first class and who remain in the service of that city until this chapter shall become applicable to such persons.

No such person shall have added to his or her period of employment as computed under this chapter his or her period of service with said private enterprise unless he or she or a third party shall pay to the city his or her contribution for the period of such service with the private enterprise, or, if he or she shall be entitled to any private pension or retirement benefits as a result of such service with the private enterprise, unless he or she agrees at the time of his or her employment by the city to accept a reduction in the payment of any benefits payable under this chapter that are based in whole or in part on such added service by the amount of those private pension or retirement benefits received. The rate of such contribution shall be two percent of the wage or salary of such person during that added period of service with the private enterprise before midnight, June 8, 1955, and four and one-half percent of such wage or salary after midnight, June 8, 1955. Such contributions shall be paid into the police relief and pension fund and shall be held subject to the provisions of RCW 41.20.150, except that all such contributions shall be deemed to have been made after June 8, 1955. Such contributions may be invested in investments permitted under chapter 35.39 RCW and may be kept invested until required to meet payments of benefits to such persons.

The city may receive payments for these purposes from a third party and shall make from such payments contributions with respect to such prior service as may be necessary to enable the police relief and pension fund to assume its obligations. [2012 c 117 § 34; 1983 c 3 § 92; 1959 c 71 § 1.]

Additional notes found at www.leg.wa.gov

41.20.170 Transfer of membership. Any former employee of a department of a city of the first class who (1) was a member of the employees' retirement system of such city, and (2) is now employed within the police department of such city, may transfer his or her membership from the city employees' retirement system to the city's police relief and pension fund system by filing a written request with the board of administration and the board of trustees, respectively, of the two systems.

Upon the receipt of such request, the transfer of membership to the city's police relief and pension fund system shall be made, together with a transfer of all accumulated contributions credited to such member. The board of administration of the city's employees' retirement system shall transmit to the board of trustees of the city's police relief and pension fund system a record of service credited to such member which shall be computed and credited to such member as a part of his or her period of employment in the city's police relief and pension fund system. For the purpose of the transfer contemplated by this section, the affected individuals shall be allowed to restore withdrawn contributions to the

city employees' retirement system and reinstate their membership service records.

Any employee so transferring shall have all the rights, benefits and privileges that he or she would have been entitled to had he or she been a member of the city's police relief and pension fund system from the beginning of his or her employment with the city.

No person so transferring shall thereafter be entitled to any other public pension, except that provided by chapter 41.26 RCW or social security, which is based upon service with the city.

The right of any employee to file a written request for transfer of membership as set forth herein shall expire December 31, 1973. [2012 c 117 § 35; 1973 c 143 § 2; 1969 ex.s. c 209 § 27; 1963 c 82 § 1.]

Additional notes found at www.leg.wa.gov

41.20.175 Transfer of service credit from firefighters' pension system to city's police pension system. A former employee of a fire department of a city of the first class who (1) was a member of the firefighters' pension system created by chapters 41.16 or 41.18 RCW, and (2) is now employed within the police department of such city, will be regarded as having received membership service credit for such service to the fire department in the city's police and relief pension system at the time he or she recovers such service credit by paying withdrawn contributions to the Washington law enforcement officers' and firefighters' retirement system pursuant to RCW 41.26.030(28). [2012 c 117 § 36; 1974 ex.s. c 148 § 2.]

41.20.180 Exemption from taxation and judicial process—Exception—Assignability. The right of a person to a pension, an annuity, or retirement allowance, or disability allowance, or death benefits, or any optional benefit, or any other right accrued or accruing to any person under the provisions of this chapter, and any fund created hereby, and all moneys and investments and income thereof, are exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable: PROVIDED, That benefits under this chapter shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation. [2012 c 159 § 19; 1979 ex.s. c 205 § 2; 1965 c 33 § 1.]

41.20.900 Construction—1959 c 6—Benefits retroactively authorized. The provisions of *this act are intended to be remedial and procedural and any benefits heretofore paid to recipients hereunder pursuant to any previous act are retroactively included and authorized as a part of *this act. [1959 c 6 § 4.]

*Reviser's note: "this act" appears in chapter 6, Laws of 1959, which reenacted RCW 41.20.050, 41.20.060, and 41.20.080. These sections were subsequently amended by chapter 78, Laws of 1959.

(2014 Ed.)

41.20.910 Severability—1959 c 6. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1959 c 6 § 5.]

41.20.920 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 91.]

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

Chapter 41.22 RCW

LAW ENFORCEMENT CHAPLAINS

Sections

- 41.22.010 Legislative findings.
- 41.22.020 Washington state patrol and the department of fish and wildlife—Volunteer chaplain authorized.
- 41.22.030 Local law enforcement agencies—Volunteer chaplains authorized.
- 41.22.040 Volunteer chaplains—Duties.
- 41.22.900 Severability—1985 c 223.

State-employed chaplains—Housing allowance: RCW 41.04.360.

41.22.010 Legislative findings. The career of a police officer is highly stressful, resulting in unacceptable rates of divorce, alcoholism, low morale and suicide. The nature of law enforcement work requires that much information be kept confidential, unfairly burdening the emotional capacity of law enforcement personnel. Police officers may become the hidden victims of society because of their daily work with crisis.

The legislature finds that law enforcement chaplains can provide emotional support for law enforcement personnel, including counseling, stress management, and family life counseling. The legislature also finds that law enforcement chaplains can serve as a crisis intervention resource for personnel of police, fire, and corrections departments, and medical examiners or coroners. [1985 c 223 § 1.]

41.22.020 Washington state patrol and the department of fish and wildlife—Volunteer chaplain authorized. The Washington state patrol and the department of fish and wildlife may utilize the services of a volunteer chaplain. [2009 c 204 § 2; 1985 c 223 § 2.]

41.22.030 Local law enforcement agencies—Volunteer chaplains authorized. The legislature authorizes local

law enforcement agencies to use the services of volunteer chaplains associated with an agency. [1985 c 223 § 3.]

41.22.040 Volunteer chaplains—Duties. The duties of a volunteer law enforcement chaplain include counseling, training, and crises intervention for law enforcement personnel, their families and the general public. [1985 c 223 § 4.]

41.22.900 Severability—1985 c 223. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 223 § 5.]

Chapter 41.24 RCW

VOLUNTEER FIREFIGHTERS' AND RESERVE OFFICERS' RELIEF AND PENSIONS

(Formerly: Volunteer firefighters' relief and pensions)

Sections

41.24.010	Definitions.
41.24.020	Enrollment of firefighters—Death, disability, retirement benefits.
41.24.023	Retired participant may resume volunteer service—Board approval required.
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41.24.035	Legal, medical expenses—May be paid from earnings of the principal fund and administrative fund.
41.24.040	Fees, when payable—Interest—Effect of nonpayment.
41.24.050	Emergency medical technicians or first aid vehicle operators—Restriction on retirement system membership.
41.24.060	Board of trustees—How constituted.
41.24.070	Officers of board—Record of proceedings—Forms.
41.24.080	Duties of board and state board—Disbursements.
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41.24.250	State board for volunteer firefighters and reserve officers—Composition—Terms—Vacancies—Oath.
41.24.260	State board for volunteer firefighters and reserve officers—Meetings—Quorum.
41.24.270	State board for volunteer firefighters and reserve officers—Compensation—Travel expenses.
41.24.280	State board for volunteer firefighters and reserve officers—Attorney general is legal advisor.
41.24.290	State board for volunteer firefighters and reserve officers—Powers and duties.

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41.24.310	State board for volunteer firefighters and reserve officers—Secretary, duties, compensation.
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41.24.330	Emergency medical service districts—Board of trustees—Creation.
41.24.340	Emergency medical service districts—Board of trustees—Officers—Annual report.
41.24.400	Reserve officers—Enrollment—Limitations.
41.24.410	Reserve officers—Credit for service.
41.24.430	Reserve officers—Eligibility for benefit.
41.24.450	Reserve officers—Municipality adoption of relief benefits.
41.24.460	Reserve officers—Board of trustees.
41.24.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Prior acts relating to volunteer firefighters' relief and pensions: (1) 1935 c 121 (repealed by 1945 c 261 § 27).

(2) Benefits extended to volunteer firefighters of fire protection districts: 1943 c 137.

Fire protection districts: Title 52 RCW.

Firefighters' relief and pensions: Chapters 41.16, 41.18 RCW.

41.24.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Administrative fund" means the volunteer firefighters' and reserve officers' administrative fund created under RCW 41.24.030.

(2) "Appropriate legislation" means an ordinance when an ordinance is the means of legislating by any municipality, and resolution in all other cases.

(3) "Board of trustees" or "local board" means: (a) For matters affecting firefighters, a firefighter board of trustees created under RCW 41.24.060; (b) for matters affecting an emergency worker, an emergency medical service district board of trustees created under RCW 41.24.330; or (c) for matters affecting reserve officers, a reserve officer board of trustees created under RCW 41.24.460.

(4) "Emergency worker" means any emergency medical service personnel, regulated by chapters 18.71 and 18.73 RCW, who is a member of an emergency medical service district but shall not include emergency medical service personnel who are eligible for participation in the Washington public employees' retirement system, with respect to periods of service rendered in such capacity.

(5) "Fire department" means any regularly organized fire department or emergency medical service district consisting wholly of volunteer firefighters, or any part-paid and part-volunteer fire department duly organized and maintained by any municipality: PROVIDED, That any such municipality wherein a part-paid fire department is maintained may by appropriate legislation permit the full-paid members of its department to come under the provisions of chapter 41.16 RCW.

(6) "Firefighter" includes any firefighter or emergency worker who is a member of any fire department of any municipality but shall not include firefighters who are eligible for participation in the Washington law enforcement officers' and firefighters' retirement system or the Washington public employees' retirement system, with respect to periods of service rendered in such capacity.

(7) "Municipal corporation" or "municipality" includes any county, city, town or combination thereof, fire protection district, local law enforcement agency, or any emergency

medical service district or other special district, authorized by law to protect life or property within its boundaries through a fire department, emergency workers, or reserve officers.

(8) "Participant" means: (a) For purposes of relief, any reserve officer who is or may become eligible for relief under this chapter or any firefighter or emergency worker; and (b) for purposes of retirement pension, any firefighter, emergency worker, or reserve officer who is or may become eligible to receive a benefit of any type under the retirement provisions of this chapter, or whose beneficiary may be eligible to receive any such benefit.

(9) "Performance of duty" or "performance of service" shall be construed to mean and include any work in and about company quarters, any fire station, any law enforcement office or precinct, or any other place under the direction or general orders of the chief or other officer having authority to order such member to perform such work; performing other officially assigned duties that are secondary to his or her duties as a firefighter, emergency worker, or reserve officer such as maintenance, public education, inspections, investigations, court testimony, and fund-raising for the benefit of the department; being on call or on standby under the orders of the chief or designated officer of the department, except at the individual's home or place of business; responding to, working at, or returning from an alarm of fire, emergency call, or law enforcement duties; drill or training; or any work performed of an emergency nature in accordance with the rules and regulations of the fire department or local law enforcement agency.

(10) "Principal fund" means the volunteer firefighters' and reserve officers' relief and pension principal fund created under RCW 41.24.030.

(11) "Relief" means all medical, death, and disability benefits available under this chapter that are made necessary from death, sickness, injury, or disability arising in the performance of duty, including benefits provided under RCW 41.24.110, 41.24.150, 41.24.160, 41.24.175, 41.24.220, and 41.24.230, but does not include retirement pensions provided under this chapter.

(12) "Reserve officer" means the same as defined by the Washington state criminal justice training commission under chapter 43.101 RCW, but shall not include enforcement officers who are eligible for participation in the Washington law enforcement officers' and firefighters' retirement system or the Washington public employees' retirement system, with respect to periods of service rendered in such capacity.

(13) "Retired participant" means any participant who is at least sixty-five years of age and has been retired by the board of trustees under RCW 41.24.170 and has been in receipt of a monthly pension for no less than three months.

(14) "Retirement pension" means retirement payments for the performance of service, as provided under RCW 41.24.170, 41.24.172, 41.24.175, 41.24.180, and 41.24.185.

(15) "State board" means the state board for volunteer firefighters and reserve officers. [2010 c 60 § 2; 2006 c 26 § 1; 2005 c 37 § 1; 1999 c 148 § 1; 1995 c 11 § 1; 1993 c 331 § 1; 1989 c 91 § 8; 1970 ex.s. c 6 § 18; 1955 c 263 § 1; 1945 c 261 § 1; Rem. Supp. 1945 § 9578-15.]

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

Fire protection district having full paid fire department: RCW 41.16.240.

(2014 Ed.)

Additional notes found at www.leg.wa.gov

41.24.020 Enrollment of firefighters—Death, disability, retirement benefits. (1) Every municipal corporation maintaining and operating a regularly organized fire department shall make provision by appropriate legislation for the enrollment of every firefighter under the relief provisions of this chapter for the purpose of providing protection for all its firefighters and their families from death, sickness, injury, or disability arising in the performance of their duties as firefighters. Nothing in this chapter shall prohibit any municipality from providing such additional protection for relief as it may deem proper.

(2) Any municipal corporation maintaining and operating a regularly organized fire department may make provision by appropriate legislation allowing any member of its fire department to enroll under the retirement pension provisions of this chapter.

(3) Every municipal corporation shall make provisions for the collection and payment of the fees provided under this chapter, and shall continue to make such provisions for all firefighters who come under this chapter as long as they shall continue to be members of its fire department. [1999 c 148 § 2; 1989 c 91 § 9; 1945 c 261 § 2; Rem. Supp. 1945 § 9578-16.]

Additional notes found at www.leg.wa.gov

41.24.023 Retired participant may resume volunteer service—Board approval required. (1) A local municipality may, at its discretion, permit a retired participant to make application to the local board to resume volunteer service as a firefighter, under the following conditions:

(a) A retired participant who chooses to resume volunteer service is not eligible for disability payments pursuant to RCW 41.24.150 in the event that the retired participant becomes disabled as the result of the performance of his or her duties.

(b) Prior to permitting a retired participant to resume volunteer service, a local board shall require that a retired participant submit to annual examinations by a physician or other medical staff. A retired participant may resume volunteer service only if the examining physician or other medical staff certifies each year that the retired participant meets appropriate medical and health standards. Physicians and medical staff that examine retired participants shall be reimbursed by the local municipality, and report to the local and state boards, consistent with RCW 41.24.110.

(c) A local municipality that elects to permit retired participants to resume volunteer service shall be required to pay an additional annual charge based on the increased cost of medical and relief benefits for retired participants. The amount of the additional annual charge shall be set by the state board, in consultation with the state actuary.

(2) No period of volunteer service performed by a retired participant may be used in calculating a retirement pension under RCW 41.24.170.

(3) The legislature reserves the right to amend or repeal this section in the future and no participant, retired participant, or beneficiary has a contractual right to resume volunteer service while in receipt of a retirement pension. [2010 c 60 § 1.]

41.24.030 Volunteer firefighters' and reserve officers' relief and pension principal fund created—Composition—Investment—Use—Treasurer's report. (1) The volunteer firefighters' and reserve officers' relief and pension principal fund is created in the state treasury as a trust fund for the benefit of the participants covered by this chapter consisting of:

(a) All bequests, fees, gifts, emoluments, or donations given or paid to the fund.

(b) An annual fee for each member of its fire department to be paid by each municipal corporation for the purpose of affording relief provided in this chapter for firefighters as follows:

(i) Thirty dollars for each volunteer or part-paid member of its fire department;

(ii) A sum equal to one and one-half of one percent of the annual salary attached to the rank of each full-paid member of its fire department, prorated for 1970 on the basis of services prior to March 1, 1970.

(c) An annual fee for each emergency worker of an emergency medical service district paid by the district that is sufficient to pay the full costs of covering the emergency worker under the relief provisions of this chapter, including operating expenses. The state board shall determine the amount of this fee based on the latest actuarial valuation of the system.

(d) Where a municipal corporation has elected to make relief provisions of this chapter available to its reserve officers, an annual fee for each reserve officer paid by the municipal corporation that is sufficient to pay the full costs of covering the reserve officer under the relief provisions of this chapter, including operating expenses. The state board shall determine the amount of this fee based on the latest actuarial valuation of the system.

(e) Where a municipal corporation has elected to make the retirement pension provisions of this chapter available to members of its fire department, an annual fee of sixty dollars for each of its firefighters electing to enroll, thirty dollars of which shall be paid by the municipality and thirty dollars of which shall be paid by the firefighter. However, nothing in this section prohibits any municipality from voluntarily paying the firefighters' fee for this retirement pension coverage.

(f) Where an emergency medical service district has elected to make the retirement pension provisions of this chapter available to its emergency workers, for each emergency worker electing to enroll: (i) An annual fee of thirty dollars shall be paid by the emergency worker; and (ii) an annual fee paid by the emergency medical service district that, together with the thirty dollar fee per emergency worker, is sufficient to pay the full costs of covering the emergency worker under the retirement pension benefits provided under this chapter, including operating expenses. The state board shall determine the amount of this fee based on the latest actuarial valuation of the system. However, nothing in this section prohibits any emergency medical service district from voluntarily paying the emergency workers' fees for this retirement pension coverage.

(g) Where a municipal corporation has elected to make the retirement pension provisions of this chapter available to its reserve officers, for each reserve officer electing to enroll: (i) An annual fee of thirty dollars shall be paid by the reserve officer; and (ii) an annual fee paid by the municipal corpora-

tion that, together with the thirty dollar fee per reserve officer, is sufficient to pay the full costs of covering the reserve officer under the retirement pension benefits provided under this chapter, including operating expenses. The state board shall determine the amount of this fee based on the latest actuarial valuation of the system. However, nothing in this section prohibits any municipal corporation from voluntarily paying the reserve officers' fees for this retirement pension coverage.

(h) Moneys transferred from the administrative fund, as provided under subsection (4) of this section, which may only be used to pay relief and retirement pensions for firefighters.

(i) Earnings from the investment of moneys in the principal fund.

(2) The state investment board, upon request of the state treasurer shall have full power to invest, reinvest, manage, contract, sell, or exchange investments acquired from that portion of the amounts credited to the principal fund as is not, in the judgment of the state board, required to meet current withdrawals. Investments shall be made in the manner prescribed by RCW 43.84.150 and not otherwise.

All bonds, investments, or other obligations purchased by the state investment board shall be placed in the custody of the state treasurer, and he or she shall collect the principal thereof and interest thereon when due.

The state investment board may sell any of the bonds, investments, or obligations so acquired and the proceeds thereof shall be paid to the state treasurer.

(3) The interest, earnings, and proceeds from the sale and redemption of any investments held by the principal fund and invested by the state investment board shall be credited to and form a part of the principal fund, less the allocation to the state investment board expense account pursuant to RCW 43.33A.160.

Subject to restrictions contained in this chapter, all amounts credited to the principal fund shall be available for making the benefit payments required by this chapter.

The state treasurer shall make an annual report showing the condition of the fund.

(4) The volunteer firefighters' and reserve officers' administrative fund is created in the state treasury. Moneys in the fund, including unanticipated revenues under RCW 43.79.270, may be spent only after appropriation, and may be used only for operating expenses of the volunteer firefighters' and reserve officers' relief and pension principal fund, the operating expenses of the volunteer firefighters' and reserve officers' administrative fund, or for transfer from the administrative fund to the principal fund.

(a) Forty percent of all moneys received by the state from taxes on fire insurance premiums shall be paid into the state treasury and credited to the administrative fund.

(b) The state board shall compute a percentage of the amounts credited to the administrative fund to be paid into the principal fund.

(c) For the purpose of providing amounts to be used to defray the cost of administration of the principal and administrative funds, the state board shall ascertain at the beginning of each biennium and request from the legislature an appropriation from the administrative fund sufficient to cover estimated expenses for the biennium. [2005 c 37 § 2; 1999 c 148 § 3. Prior: 1995 c 45 § 1; 1995 c 11 § 3; 1992 c 97 § 1; 1991

sp.s. c 13 § 98; prior: 1989 c 194 § 1; 1989 c 91 § 1; 1986 c 296 § 4; 1982 1st ex.s. c 35 § 17; 1981 c 3 § 26; 1973 1st ex.s. c 170 § 1; 1970 ex.s. c 6 § 19; 1967 c 160 § 2; 1957 c 116 § 1; 1955 c 223 § 1; 1945 c 261 § 3; Rem. Supp. 1945 § 9578-17; prior: 1935 c 121 § 1; RRS § 9578-1.]

Insurance premium taxes: RCW 48.14.020.

Additional notes found at www.leg.wa.gov

41.24.035 Legal, medical expenses—May be paid from earnings of the principal fund and administrative fund. The state board is authorized to pay from the earnings of the principal fund and administrative fund lawful obligations of the system for legal expenses and medical expenses which expenses are primarily incurred for the purpose of protecting the principal fund or are incurred in compliance with statutes governing such funds.

The term "legal expense" includes, but is not limited to, legal services provided through the legal services revolving fund, fees for expert witnesses, travel expenses, fees for court reporters, cost of transcript preparation, and reproduction of documents.

The term "medical costs" includes, but is not limited to, expenses for the medical examination or reexamination of members or retirees, the costs of preparation of medical reports, and fees charged by medical professionals for attendance at discovery proceedings or hearings. [1999 c 148 § 4; 1989 c 194 § 2.]

Additional notes found at www.leg.wa.gov

41.24.040 Fees, when payable—Interest—Effect of nonpayment. On or before the first day of March of each year, every municipality shall pay such amount as shall be due from it to the principal fund, together with the amounts collected from the participants. A participant shall not forfeit his or her right to participate in the relief provisions of this chapter by reason of the municipal corporation failing to pay the amount due from it. A participant shall not forfeit his or her right to participate in the retirement pension provisions of this chapter until after March 1st of the year in which the municipality fails to make the required payments. Where a municipality has failed to pay or remit the annual fees required within the time provided, such delinquent payment shall bear interest at the rate of one percent per month from March 1st until paid or remitted. Where a participant has forfeited his or her right to participate in the retirement provisions of this chapter that participant may be reinstated so as to participate to the same extent as if all fees had been paid by the payment of all back fees with interest at the rate of one percent per month provided he or she has at all times been otherwise eligible. [1999 c 148 § 5; 1995 c 11 § 5; 1989 c 91 § 10; 1945 c 261 § 4; Rem. Supp. 1945 § 9578-18. Prior: 1935 c 121 § 10; RRS § 9578-10.]

Additional notes found at www.leg.wa.gov

41.24.050 Emergency medical technicians or first aid vehicle operators—Restriction on retirement system membership. No person serving as an emergency medical technician or first aid vehicle operator under chapter 18.73 RCW shall be permitted to join the law enforcement officers' and firefighters' retirement system solely on the basis of such service. In no case shall the membership of any fire depart-

ment coming under the provisions of this chapter be limited to less than fifteen firefighters. [2002 c 11 § 1; 1989 c 91 § 11; 1975-'76 2nd ex.s. c 67 § 1; 1945 c 261 § 5; Rem. Supp. 1945 § 9578-19. Prior: 1935 c 121 § 9; RRS § 9578-9.]

Additional notes found at www.leg.wa.gov

41.24.060 Board of trustees—How constituted. A firefighter board of trustees is created and established to administer this chapter in every municipal corporation maintaining a regularly organized fire department. A firefighter board of trustees shall consist of the mayor, city clerk or comptroller, and one councilmember of such municipality, the chief of the fire department, and one member of the fire department to be elected by the members of such fire department for a term of one year and annually thereafter. Where a municipality is governed by a board, the chair, one member of the board, and the secretary or clerk thereof shall serve as members of the firefighter board of trustees in lieu of the mayor, clerk or comptroller, and councilmember. [1999 c 148 § 6; 1981 c 213 § 7; 1945 c 261 § 6; 1943 c 137 § 2; Rem. Supp. 1945 § 9578-20. Prior: 1935 c 121 § 2; RRS § 9578-2.]

41.24.070 Officers of board—Record of proceedings—Forms. The mayor or chair of the board or commission of any municipality with a fire department, or his or her designee, shall be chair of the firefighter board of trustees, and the clerk or comptroller or secretary of any such municipality, board, or commission, or his or her designee, shall be the secretary-treasurer of the board of trustees.

The secretary shall keep a public record of all proceedings and of all receipts and disbursements made by the board of trustees, shall make an annual report of its expenses and disbursements with a full list of the beneficiaries of the principal fund in the municipality, and shall make all required reports to the state board. The state board shall provide all necessary forms to firefighter boards of trustees. [1999 c 148 § 7; 1969 c 118 § 1; 1945 c 261 § 7; Rem. Supp. 1945 § 9578-21. Prior: 1935 c 121 § 3; RRS § 9578-3.]

41.24.080 Duties of board and state board—Disbursements. The board of trustees of each municipal corporation shall provide for enrollment of all members of its fire department under the relief provisions of this chapter; provide for enrollment of all its reserve officers under the relief provisions of this chapter if it has extended these relief provisions to its reserve officers; receive all applications for the enrollment under the retirement pension provisions of this chapter when the municipality has extended these retirement pension provisions to its firefighters or reserve officers; provide for disbursements of relief; determine the eligibility of firefighters and reserve officers for retirement pensions; and pass on all claims and direct payment thereof from the principal fund to those entitled thereto. Vouchers shall be issued to the persons entitled thereto by the local board. It shall send to the state board, after each meeting, a voucher for each person entitled to payment from the principal fund, stating the amount of such payment and for what granted, which voucher shall be certified and signed by the chair and secretary of the local board. The state board, after review and approval, shall cause a warrant to be issued on the principal fund for the amount specified and approved on each voucher.

However, in retirement pension cases after the applicant's eligibility for pension is verified, the state board shall authorize the regular issuance of monthly warrants or electronic transfers of funds in payment of the retirement pension without further action of the board of trustees of any such municipality. [1999 c 148 § 8; 1989 c 91 § 12; 1969 c 118 § 2; 1955 c 263 § 9; 1945 c 261 § 8; Rem. Supp. 1945 § 9578-22. Prior: 1935 c 121 § 2; RRS § 9578-2.]

Additional notes found at www.leg.wa.gov

41.24.090 Meetings. A board of trustees shall meet on the call of its chair on a regular monthly meeting day when there is business to come before it. The chair shall be required to call a meeting on any regular meeting day at the request of any member of the fund or his or her beneficiary claiming any relief or retirement pension. [1999 c 148 § 9; 1945 c 261 § 9; Rem. Supp. 1945 § 9578-23.]

41.24.100 Compelling attendance of witnesses—Oaths—Rules and regulations. The board of trustees herein, in addition to other powers herein granted, shall have power to compel the attendance of witnesses to testify before it on all matters connected with the operation of this chapter, and its chair or any member of said board may administer oaths to such witnesses; to make all necessary rules and regulations for its guidance in conformity with the provisions of this chapter: PROVIDED, HOWEVER, That no compensation or emoluments shall be paid to any member of said board of trustees for any duties performed under this chapter as such trustees. [2012 c 117 § 37; 1945 c 261 § 10; Rem. Supp. 1945 § 9578-24. Prior: 1935 c 121 § 2; RRS § 9578-2.]

41.24.110 Reimbursement of physicians and medical staff. The local board shall make provisions for reimbursing regularly licensed practicing physicians and other medical staff who examine participants making application for membership. Physicians and other medical staff shall perform such services and operations and render all medical aid and care necessary for the recovery and treatment of participants on account of injury, sickness, or disability received while in the performance of duties and shall be paid for these services from the principal fund, but not in excess of the schedule of fees for like services approved by the director of labor and industries under Title 51 RCW. A physician or other medical staff, who is not approved by the local board, shall not receive or be entitled to any compensation from the principal fund as the private or attending physician or other private or attending medical staff of any participant. A person shall not have any right of action against the local board for the negligence of any physician or other medical staff who is reimbursed from the principal fund. Any physician or other medical staff who is reimbursed from the principal fund for providing service or care for a participant shall report his or her findings in writing to the local board and the state board. [1999 c 148 § 10; 1989 c 91 § 13; 1953 c 253 § 6; 1949 c 145 § 1; 1945 c 261 § 11; Rem. Supp. 1949 § 9578-25. Prior: 1935 c 121 § 2; RRS § 9578-2.]

Additional notes found at www.leg.wa.gov

41.24.120 Hearing of application for benefits—Appeal to state board. The local board shall initially hear

and decide all applications for relief or retirement pensions under this chapter, subject to review by, or appeal by the proper person to, the state board where decision on such review or appeal shall be final and conclusive. [1999 c 148 § 11; 1969 c 118 § 3; 1955 c 263 § 10; 1945 c 261 § 12; Rem. Supp. 1945 § 9578-27. Prior: 1935 c 121 § 2; RRS § 9578-2.]

41.24.130 Quorum—Vote on allowance of claims. A majority of the board of trustees shall constitute a quorum, and no business shall be transacted when a majority is not present, and no claim shall be allowed where a majority of the board has not voted favorably thereon. [1945 c 261 § 13; Rem. Supp. 1945 § 9578-27. Prior: 1935 c 121 § 2; RRS § 9578-2.]

41.24.140 Guardian may be appointed. A local board may appoint a guardian whenever and wherever the claim of a participant or his or her beneficiary would, in the opinion of the local board, be best served by the appointment. The local board shall have full power to make and direct the payments under this chapter to any person entitled to the payments without the necessity of any guardianship or administration proceedings, when in its judgment, it shall determine it to be for the best interests of the beneficiary. [1999 c 148 § 12; 1989 c 91 § 14; 1945 c 261 § 14; Rem. Supp. 1945 § 9578-28. Prior: 1935 c 121 § 2; RRS § 9578-2.]

Additional notes found at www.leg.wa.gov

41.24.150 Disability payments. (1)(a) Whenever a participant becomes physically or mentally disabled, injured, or sick, in consequence or as the result of the performance of his or her duties, so as to be wholly prevented from engaging in each and every duty of his or her regular occupation, business, or profession, he or she shall be paid from the principal fund monthly, an amount (i) equal to his or her monthly wage as certified by the local board or (ii) two thousand five hundred fifty dollars, whichever is less, for a period not to exceed six months, or an amount equal to his or her daily wage as certified by the local board or eighty-five dollars, whichever is less, per day for such period as is part of a month, after which period, if the member is incapacitated to such an extent that he or she is thereby prevented from engaging in any occupation or performing any work for compensation or profit or if the member sustained an injury after October 1, 1978, which resulted in the loss or paralysis of both legs or arms, or one leg and one arm, or total loss of eyesight, but such injury has not prevented the member from engaging in an occupation or performing work for compensation or profit, he or she is entitled to draw from the fund monthly, the sum of one thousand two hundred seventy-five dollars so long as the disability continues, except as *provided. However, if the participant has a wife or husband and/or a child or children unemancipated or under eighteen years of age, he or she is entitled to draw from the fund monthly the additional sums of two hundred fifty-five dollars because of the fact of his wife or her husband, and one hundred ten dollars because of the fact of each child unemancipated or under eighteen years of age, all to a total maximum amount of two thousand five hundred fifty dollars.

(b) Beginning on July 1, 2001, and each July 1st thereafter, the compensation amounts specified in (a)(ii) of this sub-

section shall be readjusted to reflect the percentage change in the consumer price index, calculated as follows: The index for the calendar year preceding the year in which the July calculation is made, to be known as "calendar year A," is divided by the index for the calendar year preceding calendar year A, and the resulting ratio is multiplied by the compensation amount in effect on June 30th immediately preceding the July 1st on which the respective calculation is made. For the purposes of this subsection, "index" means the same as the definition in RCW 2.12.037(1).

(2) The state board may at any time reopen the grant of such disability pension if the pensioner is gainfully employed, and may reduce it in the proportion that the annual income from such gainful employment bears to the annual income received by the pensioner at the time of his or her disability.

(3) Where a participant sustains a permanent partial disability the state board may provide that the injured participant receive a lump sum compensation therefor to the same extent as is provided for permanent partial disability under the workers' compensation act under Title 51 RCW in lieu of such monthly disability payments. [2001 c 134 § 1; 1999 c 148 § 13; 1996 c 57 § 1; 1989 c 91 § 2; 1987 c 185 § 10; 1986 c 163 § 1; 1981 c 21 § 1; 1975-'76 2nd ex.s. c 76 § 1; 1969 c 118 § 4; 1965 c 86 § 1; 1957 c 159 § 1; 1953 c 253 § 1; 1945 c 261 § 15; Rem. Supp. 1945 § 9578-29. Prior: 1935 c 121 § 4; RRS § 9578-4.]

*Reviser's note: 1999 c 148 § 13 deleted "hereinafter."

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

Additional notes found at www.leg.wa.gov

41.24.155 Vocational rehabilitation—Purpose—Costs—Administration—Discretion of state board. (1) One of the primary purposes of this section is to enable injured participants to return to their regular occupation, business, or profession, or to engage in any occupation or perform any work for compensation or profit. To this end, the state board shall utilize the services of individuals and organizations, public or private, whose experience, training, and interests in vocational rehabilitation and retraining qualify them to lend expert assistance to the state board in such programs of vocational rehabilitation as may be reasonable to make the participant return to his or her regular occupation, business, or profession, or to engage in any occupation or perform any work for compensation or profit consistent with his or her physical and mental status. After evaluation and recommendation by such individuals or organizations and prior to final evaluation of the participant's permanent disability, if in the sole opinion of the state board, whether or not medical treatment has been concluded, vocational rehabilitation is both necessary and likely to enable the injured participant to return to his or her regular occupation, business, or profession, or to engage in any occupation or perform any work for compensation or profit, the state board may, in its sole discretion, pay the cost as provided in subsection (3) or (4) of this section.

(2) When, in the sole discretion of the state board, vocational rehabilitation is both necessary and likely to make the participant return to his or her regular occupation, business, or profession, or to engage in any occupation or perform any

work for compensation or profit, then the following order of priorities shall be used:

- (a) Return to the previous job with the same employer;
- (b) Modification of the previous job with the same employer including transitional return to work;
- (c) A new job with the same employer in keeping with any limitations or restrictions;
- (d) Modification of a new job with the same employer including transitional return to work;
- (e) Modification of the previous job with a new employer;
- (f) A new job with a new employer or self-employment based upon transferable skills;
- (g) Modification of a new job with a new employer;
- (h) A new job with a new employer or self-employment involving on-the-job training;
- (i) Short-term retraining and job placement.

(3)(a) Except as provided in (b) of this subsection, costs for vocational rehabilitation benefits allowed by the state board under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, transportation, child or dependent care, and other necessary expenses in an amount not to exceed four thousand dollars. This amount must be used within fifty-two weeks of the determination that vocational rehabilitation is permitted under this section.

(b) The expenses allowed under (a) of this subsection may include training fees for on-the-job training and the cost of furnishing tools and other equipment necessary for self-employment or reemployment. However, compensation or payment of retraining with job placement expenses under (a) of this subsection may not be authorized for a period of more than fifty-two weeks, except that such period may, in the sole discretion of the state board, after its review, be extended for an additional fifty-two weeks or portion thereof by written order of the state board. However, under no circumstances shall the total amount of benefit paid under this section exceed four thousand dollars.

(4) In addition to the vocational rehabilitation expenditures provided for under subsection (3) of this section, an additional five thousand dollars may, upon authorization of the state board, be expended for: (a) Accommodations for an injured participant that are medically necessary for participation in an approved retraining plan; and (b) accommodations necessary to perform the essential functions of an occupation in which an injured participant is seeking employment, consistent with the retraining plan or the recommendations of a vocational evaluation. The injured participant's attending physician or licensed advanced registered nurse practitioner must verify the necessity of the modifications or accommodations. The total expenditures authorized in this subsection shall not exceed five thousand dollars.

(5) The state board shall follow the established criteria set forth by the department of labor and industries to monitor the quality and effectiveness of rehabilitation services provided by the individuals and organizations used under subsection (1) of this section. The state board shall make referrals for vocational rehabilitation services based on these performance criteria.

(6) The state board may engage, where feasible and cost-effective, in a cooperative program with the state

employment security department to provide job placement services under this section.

(7) Except as otherwise provided in this section, the vocational benefits provided for in this section are available to participants who have claims currently pending as of April 17, 2007, or whose injury occurred on or after January 1, 2006. [2007 c 57 § 1.]

Effective date—2007 c 57: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 17, 2007]." [2007 c 57 § 2.]

41.24.160 Death benefits. (1)(a) Whenever a participant dies as the result of injuries received, or sickness contracted in consequence or as the result of the performance of his or her duties, the board of trustees shall order and direct the payment from the principal fund of (i) the sum of two hundred fourteen thousand dollars to his widow or her widower, or if there is no widow or widower, then to his or her dependent child or children, or if there is no dependent child or children, then to his or her dependent parents or either of them, or if there are no dependent parents or parent, then the death benefit shall be paid to the member's estate, and (ii)(A) the sum of one thousand two hundred seventy-five dollars per month to his widow or her widower, with (B) an additional amount of five hundred dollars per month paid to the legal guardian or surviving parent of each birth or legally adopted child, unemancipated or under eighteen years of age, and dependent upon the member for support at the time of his or her death.

(b) Beginning on July 1, 2001, and each July 1st thereafter, the compensation amounts specified in (a)(ii)(A) and (B) of this subsection shall be readjusted to reflect the percentage change in the consumer price index, calculated as follows: The index for the calendar year preceding the year in which the July calculation is made, to be known as "calendar year A," is divided by the index for the calendar year preceding calendar year A, and the resulting ratio is multiplied by the compensation amount in effect on June 30th immediately preceding the July 1st on which the respective calculation is made. For the purposes of this subsection, "index" means the same as the definition in RCW 2.12.037(1).

(2) In the case provided for in this section, the monthly payment provided may be converted in whole or in part into a lump sum payment, not in any case to exceed twenty-five thousand dollars, equal or proportionate, as the case may be, to the actuarial equivalent of the monthly payment in which event the monthly payments shall cease in whole or in part accordingly or proportionately. Such conversion may be made either upon written application to the state board and shall rest in the discretion of the state board; or the state board is authorized to make, and authority is given it to make, on its own motion, lump sum payments, equal or proportionate, as the case may be, to the value of the annuity then remaining in full satisfaction of claims due to dependents. Within the rule under this subsection the amount and value of the lump sum payment may be agreed upon between the applicant and the state board. [2013 c 100 § 1; 2001 c 134 § 2. Prior: 1999 c 148 § 14; 1999 c 117 § 5; 1998 c 151 § 1; 1996 c 57 § 2; 1989 c 91 § 3; 1986 c 163 § 2; 1981 c 21 § 2; 1975-'76 2nd ex.s. c 76 § 2; 1973 1st ex.s. c 154 § 74; 1965 c 86 § 2; 1961 c 57 §

1; 1957 c 159 § 2; 1953 c 253 § 2; 1951 c 103 § 2; 1945 c 261 § 16; Rem. Supp. 1945 § 9578-30; prior: 1935 c 121 § 6; RRS § 9578-6.]

Additional notes found at www.leg.wa.gov

41.24.170 Retirement pensions. Except as provided in RCW 41.24.410, whenever any participant has been a member and served honorably for a period of ten years or more as an active member in any capacity, of any regularly organized fire department or law enforcement agency of any municipality in this state, and which municipality has adopted appropriate legislation allowing its firefighters or reserve officers to enroll in the retirement pension provisions of this chapter, and the participant has enrolled under the retirement pension provisions and has reached the age of sixty-five years, the board of trustees shall order and direct that he or she be retired and be paid a monthly pension from the principal fund as provided in this section.

Whenever a participant has been a member, and served honorably for a period of twenty-five years or more as an active member in any capacity, of any regularly organized volunteer fire department or law enforcement agency of any municipality in this state, and he or she has reached the age of sixty-five years, and the annual retirement fee has been paid for a period of twenty-five years, the board of trustees shall order and direct that he or she be retired and such participant be paid a monthly pension of three hundred dollars from the fund for the balance of that participant's life.

Whenever any participant has been a member, and served honorably for a period of twenty-five years or more as an active member in any capacity, of any regularly organized volunteer fire department or law enforcement agency of any municipality in this state, and the participant has reached the age of sixty-five years, and the annual retirement fee has been paid for a period of less than twenty-five years, the board of trustees shall order and direct that he or she be retired and that such participant shall receive a minimum monthly pension of fifty dollars increased by the sum of ten dollars each month for each year the annual fee has been paid, but not to exceed the maximum monthly pension provided in this section, for the balance of the participant's life.

No pension provided in this section may become payable before the sixty-fifth birthday of the participant, nor for any service less than twenty-five years: PROVIDED, HOWEVER, That:

(1) Any participant, who is older than fifty-nine years of age, less than sixty-five years of age, and has completed twenty-five years or more of service may irrevocably elect a reduced monthly pension in lieu of the pension that participant would be entitled to under this section at age sixty-five. The participant who elects this option shall receive the reduced pension for the balance of his or her life. The reduced monthly pension is calculated as a percentage of the pension the participant would be entitled to at age sixty-five. The percentage used in the calculation is based upon the age of the participant at the time of retirement as follows:

Age 60	Sixty percent
Age 61	Sixty-eight percent
Age 62	Seventy-six percent

Age 63 Eighty-four percent
 Age 64 Ninety-two percent

(2) If a participant is age sixty-five or older but has less than twenty-five years of service, the participant is entitled to a reduced benefit. The reduced benefit shall be computed as follows:

(a) Upon completion of ten years, but less than fifteen years of service, a monthly pension equal to twenty percent of such pension as the participant would have been entitled to receive at age sixty-five after twenty-five years of service;

(b) Upon completion of fifteen years, but less than twenty years of service, a monthly pension equal to thirty-five percent of such pension as the participant would have been entitled to receive at age sixty-five after twenty-five years of service; and

(c) Upon completion of twenty years, but less than twenty-five years of service, a monthly pension equal to seventy-five percent of such pension as the participant would have been entitled to receive at age sixty-five after twenty-five years of service.

(3) If a participant with less than twenty-five years of service elects to retire after turning age sixty but before turning age sixty-five, the participant's retirement allowance is subject:

(a) First to the reduction under subsection (2) of this section based upon the participant's years of service; and

(b) Second to the reduction under subsection (1) of this section based upon the participant's age. [2003 c 62 § 1. Prior: 1999 c 148 § 15; 1999 c 117 § 4; 1995 c 11 § 7; 1992 c 97 § 2; 1989 c 91 § 4; 1981 c 21 § 4; 1979 ex.s. c 157 § 1; 1973 1st ex.s. c 170 § 2; 1969 c 118 § 5; 1961 c 57 § 2; 1953 c 253 § 3; 1951 c 103 § 1; 1945 c 261 § 17; Rem. Supp. 1945 § 9578-31.]

Additional notes found at www.leg.wa.gov

41.24.1701 Purchasing retirement pension coverage—Criteria. (1) At any time prior to or upon retiring and prior to receiving any pension disbursements, a participant is allowed to:

(a) Purchase retirement pension coverage as provided in subsection (2) of this section for years of service credited prior to their enrollment in the pension system, and for which reinstatement of years of service is not available under RCW 41.24.040; or

(b) Purchase retirement pension coverage as provided in subsection (2) of this section for years of service that were lost due to the withdrawal of pension fees.

(2) The participant and/or the municipality must make payment for the purchase of retirement pension coverage by paying the actuarial value of the resulting benefit increase in a manner defined by the state board.

(3) Retirement pension coverage may only be purchased for the period in which service was performed as defined in RCW 41.24.010(9) and in a manner consistent with this section. [2012 c 239 § 1.]

41.24.172 Retirement pensions—Options—Election. Before beginning to receive the retirement pension provided for in RCW 41.24.170, the participant shall elect, in a writing filed with the state board, to have the retirement pen-

(2014 Ed.)

sion paid under either option 1 or 2, with option 2 calculated so as to be actuarially equivalent to option 1.

(1) Option 1. A participant electing this option shall receive a monthly pension payable throughout the participant's life. However, if the participant dies before the total retirement pension paid to the participant equals the amount paid on behalf of the participant into the principal fund, then the balance shall be paid to the participant's surviving spouse, or if there be no surviving spouse, then to the participant's legal representatives.

(2) Option 2. A participant electing this option shall receive a reduced monthly pension, which upon the participant's death shall be continued throughout the life of and paid to the participant's surviving spouse named in the written election filed with the state board, however, in the event that the surviving spouse dies before the participant, the participant's monthly retirement allowance shall increase, effective the first day of the following month, to the monthly amount that would have been received had the participant elected option 1. [1999 c 148 § 16; 1999 c 117 § 6; 1995 c 11 § 9; 1989 c 91 § 6.]

Reviser's note: This section was amended by 1999 c 117 § 6 and by 1999 c 148 § 16, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at www.leg.wa.gov

41.24.175 Disability or retirement payments—Computation according to latest legislative expression. Payments to persons who are now receiving, or who may hereafter receive any disability or retirement payments under the provisions of chapter 41.24 RCW shall be computed in accordance with the last act enacted by the legislature relative thereto: PROVIDED HOWEVER, That nothing herein contained shall be construed as reducing the amount of any pension to which any firefighter shall have been eligible to receive under the provisions of section 1, chapter 103, Laws of 1951. [1989 c 91 § 15; 1959 c 9 § 1.]

Additional notes found at www.leg.wa.gov

41.24.176 Disability or retirement payments—Construction. The provisions of *this act are intended to be remedial and procedural and any benefits heretofore paid to recipients hereunder pursuant to any previous act are retroactively included and authorized as part of *this act. [1959 c 9 § 2.]

***Reviser's note:** "this act" appears in 1959 c 9, which is codified as RCW 41.24.175 and 41.24.176.

41.24.180 Lump sum payments. The board of trustees of any municipal corporation shall direct payment from the principal fund in the following cases:

(1) To any participant, upon his or her request, upon attaining the age of sixty-five years, who, for any reason, is not qualified to receive the monthly retirement pension provided under this chapter and who was enrolled in the retirement provisions and on whose behalf annual fees for retirement pension were paid, a lump sum amount equal to the amount paid into the fund by the participant.

(2) If any participant who has not completed at least ten years of service dies without having requested a lump sum payment under subsection (1) or (3) of this section, there

shall be paid to the participant's surviving spouse, or if there be no surviving spouse, then to such participant's legal representatives, a lump sum amount equal to the amount paid into the fund by the participant. If any participant who has completed at least ten years of service dies other than as the result of injuries received or sickness contracted in consequence or as the result of the performance of his or her duties, without having requested a lump sum payment under subsection (1) or (3) of this section and before beginning to receive the monthly pension provided for in this chapter, the participant's surviving spouse shall elect to receive either:

(a) A monthly pension computed as provided for in RCW 41.24.170 actuarially adjusted to reflect option 2 of RCW 41.24.172 and further actuarially reduced to reflect the difference in the number of years between the participant's age at death and age sixty-five; or

(b) A lump sum amount equal to the amount paid into the principal fund by the participant and the municipality or municipalities in whose department he or she has served.

If there be no such surviving spouse, then there shall be paid to the participant's legal representatives a lump sum amount equal to the amount paid into the fund by the participant.

(3) If any participant retires from service before attaining the age of sixty-five years, the participant may make application for the return in a lump sum of the amount paid into the fund by himself or herself. [1999 c 148 § 17; 1989 c 91 § 5; 1975-'76 2nd ex.s. c 76 § 3; 1974 ex.s. c 26 § 1. Prior: 1973 1st ex.s. c 170 § 3; 1973 1st ex.s. c 154 § 75; 1961 c 57 § 3; 1945 c 261 § 18; Rem. Supp. 1945 § 9578-22.]

Conversion of death benefits to lump sum: RCW 41.24.160.

Additional notes found at www.leg.wa.gov

41.24.185 Lump sum payments—Monthly pension under fifty dollars. Any monthly pension, payable under this chapter, which will not amount to fifty dollars may be converted into a lump sum payment equal to the actuarial equivalent of the monthly pension. The conversion may be made either upon written application to the state board and shall rest at the discretion of the state board; or the state board may make, on its own motion, lump sum payments, equal or proportionate, as the case may be, to the value of the annuity then remaining in full satisfaction of claims due. Any person receiving a monthly payment of less than twenty-five dollars at the time of September 1, 1979, may elect, within two years, to convert such payments into a lump sum payment as provided in this section. [2003 c 62 § 2; 1989 c 91 § 7.]

Additional notes found at www.leg.wa.gov

41.24.190 Proof of service. The filing of reports of enrollment shall be prima facie evidence of the service of the participants therein listed for the year of such report as to service rendered subsequent to July 6, 1945. Proof of service of firefighters [participants] prior to that date shall be by documentary evidence, or such other evidence reduced to writing and sworn to under oath, as shall be submitted to the state board and certified by it as sufficient. [1995 c 11 § 11; 1989 c 91 § 16; 1969 c 118 § 6; 1953 c 253 § 4; 1945 c 261 § 19; Rem. Supp. 1945 § 9578-33.]

Additional notes found at www.leg.wa.gov

41.24.200 Service need not be continuous nor in a single department or agency. The aggregate term of service of any participant need not be continuous nor need it be confined to a single fire department or law enforcement agency nor a single municipality in this state to entitle such participant to a retirement pension if the participant has been duly enrolled in a fire department or law enforcement agency of a municipality which has elected to extend the retirement pension provisions of this chapter to its firefighters or reserve officers at the time he or she becomes eligible for the retirement pension and has paid all fees prescribed. To be eligible to the full pension a participant must have an aggregate of twenty-five years service, have made twenty-five annual payments into the fund, and be sixty-five years of age at the time the participant commences drawing the pension provided for by this chapter, all of which twenty-five years service must have been in the fire department or law enforcement agency of a municipality or municipalities which have elected to extend the retirement pension provisions of this chapter to its firefighters or reserve officers. Nothing in this chapter shall require any participant having twenty-five years active service to continue as a firefighter or reserve officer and no participant who has completed twenty-five years of active service for which annual retirement pension fees have been paid and who continues as a firefighter or reserve officer shall be required to pay any additional annual pension fees. [1999 c 148 § 18; 1995 c 11 § 12; 1989 c 91 § 17; 1973 1st ex.s. c 170 § 4; 1961 c 57 § 4; 1953 c 253 § 5; 1945 c 261 § 20; Rem. Supp. 1945 § 9578-34.]

Additional notes found at www.leg.wa.gov

41.24.210 Report of accident—Time limitation for filing report and claim. A participant shall not receive relief for disability, sickness, or injuries received in the performance of his or her duties, unless there is filed with the board of trustees a report of accident, which report shall be subscribed to by the claimant, the head of the department, and the authorized attending physician, if there is one. A claim for benefits arising from disability, sickness, or injuries incurred in consequence or as a result of the performance of duties shall not be allowed by the state board unless there has been filed with it a report of accident within ninety days after its occurrence and a claim based thereon within one year after the occurrence of the accident on which such claim is based. The state board may require such other or further evidence as it deems advisable before ordering any relief. [1999 c 148 § 19; 1989 c 91 § 18; 1969 c 118 § 7; 1957 c 159 § 3; 1945 c 261 § 21; Rem. Supp. 1945 § 9578-35.]

Additional notes found at www.leg.wa.gov

41.24.215 Injured volunteer—Recovery from third party. (1) If an injured volunteer seeks damages from a third party, the state board may also seek recovery of actual costs from the responsible third party. A volunteer seeking damages from a third party is required to notify the state board about the legal proceeding.

(2) The state board is responsible for its proportionate share of the costs and attorneys' fees of the legal proceedings.

(3) Any recovery is subject to a lien by the state board for its share under this section.

(4) This section does not restrict or prohibit the state board's right to seek recovery from a third party when a volunteer firefighter is injured. [2005 c 37 § 3.]

41.24.220 Hospitalization, surgery, etc. Whenever any participant becomes injured, disabled, or sick in consequence or as the result of the performance of his or her duties by reason of which he or she is confined to any hospital or other medical facility, an amount not exceeding the daily ward rate of the hospital or regular fees for such service shall be allowed and paid from the principal fund. This allowance shall not be in lieu of but in addition to any other allowance provided in this chapter. In addition, the costs of surgery, medicine, laboratory fees, X-ray, special therapies, and similar additional costs shall be paid. When extended treatment, not available in the injured, disabled, or sick participant's home area, is required, the participant may be reimbursed for actual mileage to and from the place of extended treatment pursuant to RCW 43.03.060. [1999 c 148 § 20; 1989 c 91 § 19; 1975-'76 2nd ex.s. c 76 § 4; 1965 c 86 § 3; 1961 c 57 § 5; 1957 c 159 § 4; 1953 c 253 § 7; 1951 c 103 § 3; 1949 c 145 § 2; 1945 c 261 § 22; Rem. Supp. 1949 § 9578-36. Prior: 1935 c 121 § 5; RRS § 9578-5.]

Additional notes found at www.leg.wa.gov

41.24.230 Funeral and burial expenses. Upon the death of any participant resulting from injuries or sickness in consequence or as the result of the performance of his or her duties, the board of trustees shall authorize the issuance of a voucher for the sum of two thousand dollars, and upon the death of any participant who is receiving any disability payments provided for in this chapter, the board of trustees shall authorize the issuance of a voucher for the sum of five hundred dollars, to help defray the funeral expenses and burial of the participant, which voucher shall be paid in the manner provided for payment of other charges against the principal fund. [1999 c 148 § 21; 1989 c 91 § 20; 1986 c 163 § 3; 1981 c 21 § 3; 1975-'76 2nd ex.s. c 76 § 5; 1961 c 57 § 6; 1957 c 159 § 5; 1951 c 103 § 4; 1945 c 261 § 23; Rem. Supp. 1945 § 9578-37. Prior: 1935 c 121 § 7; RRS § 9578-7.]

Additional notes found at www.leg.wa.gov

41.24.240 Benefits not transferable or subject to legal process—Exceptions—Chapter not exclusive. The right of any person to any future payment under the provisions of this chapter shall not be transferable or assignable at law or in equity, and none of the moneys paid or payable or the rights existing under this chapter, shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. This section shall not be applicable to any child support collection action taken under chapter 26.18, 26.23, or 74.20A RCW. Benefits under this chapter shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation.

Nothing in this chapter shall be construed to deprive any participant, eligible to receive a pension hereunder, from receiving a pension under any other act to which that participant may become eligible by reason of services other than or

in addition to his or her services under this chapter. [1995 c 11 § 13. Prior: 1989 c 360 § 26; 1989 c 91 § 21; 1979 ex.s. c 205 § 3; 1957 c 159 § 6; 1945 c 261 § 24; Rem. Supp. 1945 § 9578-38.]

Additional notes found at www.leg.wa.gov

41.24.245 Payments to spouse or ex spouse pursuant to court order. (1) If the state board or the secretary makes payments to a spouse or ex spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to a court decree of dissolution or legal separation, it shall be a sufficient answer to any claim of a beneficiary against the state board, the secretary, or the principal fund for the state board or secretary to show that the payments were made pursuant to a court decree.

(2) All payments made to a nonmember spouse or ex spouse pursuant to RCW 41.24.240 shall cease upon the death of such a nonmember spouse or ex spouse. Upon such a death, the state board and the secretary shall pay to the member his or her full monthly entitlement of benefits.

(3) The provisions of RCW 41.24.240 and this section shall apply to all court decrees of dissolution or legal separation and court-approved property settlement agreements, regardless of when entered, but shall apply only to those persons who have actually retired or who have requested withdrawal of any or all of their contributions to the principal fund: PROVIDED, That the state board or secretary shall not be responsible for making court-ordered divisions of withdrawals unless the order is filed with the state board at least thirty days before the withdrawal payment date. [1999 c 148 § 22; 1987 c 326 § 19.]

Mandatory assignment of retirement benefits to spouse or ex spouse: RCW 41.50.500 through 41.50.660.

Additional notes found at www.leg.wa.gov

41.24.250 State board for volunteer firefighters and reserve officers—Composition—Terms—Vacancies—Oath. The state board for volunteer firefighters and reserve officers is created to consist of five members who are participants under this chapter, at least three of whom are not receiving relief or retirement pension payments under this chapter, no two of whom shall be from the same congressional district. The members are appointed by the governor to serve overlapping terms of six years. Of members first appointed, one shall be appointed for a term of six years, one for five years, one for four years, one for three years, and one for two years. The governor may consider participants who are recommended for appointment by the appropriate state associations. Upon the expiration of a term, a successor shall be appointed by the governor for a term of six years. Any vacancy shall be filled by the governor for the unexpired term. Each member of the state board, before entering on the performance of his or her duties, shall take an oath that he or she will not knowingly violate or willingly permit the violation of any provision of law applicable to this chapter, which oath shall be filed with the secretary of state.

The state board is not unlawfully constituted and a member of the board is not ineligible to serve the remainder of the member's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional

districts. [2007 c 56 § 1; 1999 c 148 § 23; 1989 c 91 § 22; 1982 1st ex.s. c 30 § 11; 1955 c 263 § 2.]

Additional notes found at www.leg.wa.gov

41.24.260 State board for volunteer firefighters and reserve officers—Meetings—Quorum. The state board shall hold regular semiannual meetings in April and October of each year, and special meetings not more than once monthly at such times and places as may be called by the chair or by two of its members. No action shall be taken by the state board without the approval of two members. [2012 c 117 § 38; 1955 c 263 § 3.]

41.24.270 State board for volunteer firefighters and reserve officers—Compensation—Travel expenses. Each member of the state board shall be compensated in accordance with RCW 43.03.240. Each member shall also receive travel expenses, including going to and from meetings of the state board or other authorized business of the state board, in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 70; 1975-'76 2nd ex.s. c 34 § 87; 1969 c 118 § 8; 1955 c 263 § 4.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

41.24.280 State board for volunteer firefighters and reserve officers—Attorney general is legal advisor. The attorney general shall be the legal advisor for the state board. [1999 c 148 § 24; 1955 c 263 § 5.]

41.24.290 State board for volunteer firefighters and reserve officers—Powers and duties. The state board shall:

(1) Generally supervise and control the administration of this chapter;

(2) Promulgate, amend, or repeal rules and regulations not inconsistent with this chapter for the purpose of effecting a uniform and efficient manner of carrying out the provisions of this chapter and the purposes to be accomplished thereby, and for the government of boards of trustees of the municipalities of this state in the discharge of their functions under this chapter;

(3) Review any action, and hear and determine any appeal which may be taken from the decision of the board of trustees of any municipality made pursuant to this chapter;

(4) Take such action as may be necessary to secure compliance of the municipalities governed by this chapter and to provide for the collection of all fees and penalties which are, or may be, due and delinquent from any such municipality;

(5) Review the action of the board of trustees of any municipality authorizing any pension as provided by this chapter; and authorize the regular issuance of monthly warrants in payment thereof without further action of the board of trustees of such municipality;

(6) Require periodic reports from the recipient of any benefits under this chapter for the purpose of determining their continued eligibility therefor;

(7) Maintain such records as may be necessary and proper for the proper maintenance and operation of the principal fund, including records of the names of every person enrolled under this chapter, and provide all necessary forms

to enable local boards of trustees to effectively carry out their duties as provided by this chapter;

(8) Compel the taking of testimony from witnesses under oath before the state board, or any member or the secretary thereof, or before the local board of trustees or any member thereof, for the purpose of obtaining evidence, at any time, in connection with any claim or pension pending or authorized for payment. For such purpose the state board shall have the same power of subpoena as prescribed in RCW 51.52.100. Failure of any claimant to appear and give any testimony as herein provided shall suspend any rights or eligibility to receive payments for the period of such failure to appear and testify;

(9) Appoint a secretary to hold office at the pleasure of the state board, fix the secretary's compensation at such sum as it shall deem appropriate, and prescribe the secretary's duties not otherwise provided by this chapter. [1999 c 148 § 25; 1989 c 91 § 23; 1955 c 263 § 6.]

Additional notes found at www.leg.wa.gov

41.24.300 State board for volunteer firefighters and reserve officers—Vouchers, warrants. All expenses incurred by the state board shall be accomplished by vouchers signed by the secretary and one member of the state board and issued to the persons entitled thereto and sent to the proper state agency. The proper state agency shall issue a warrant on the principal fund or administrative fund for the amount specified. [1999 c 148 § 26; 1979 ex.s. c 157 § 2; 1969 c 118 § 9; 1955 c 263 § 7.]

41.24.310 State board for volunteer firefighters and reserve officers—Secretary, duties, compensation. The secretary shall maintain an office at Olympia at a place to be provided, wherein the secretary shall:

(1) Keep a record of all proceedings of the state board, which shall be public;

(2) Maintain a record of all members of the pension fund, including such pertinent information relative thereto as may be required by law or rule of the state board;

(3) Receive and promptly remit to the state treasurer all moneys received for the principal fund;

(4) Transmit periodically to the proper state agency for payment all claims payable from the principal fund, stating the amount and purpose of such payment;

(5) Certify monthly for payment a list of all persons approved for retirement pensions and the amount to which each is entitled; and

(6) Perform such other and further duties as shall be prescribed by the state board.

The secretary shall receive such compensation as shall be fixed by the state board, together with travel expenses in carrying out his or her duties authorized by the state board in accordance with RCW 43.03.050 and 43.03.060. [1999 c 148 § 27; 1989 c 91 § 24; 1975-'76 2nd ex.s. c 34 § 88; 1969 c 118 § 10; 1955 c 263 § 8.]

Additional notes found at www.leg.wa.gov

41.24.320 State board for volunteer firefighters and reserve officers—State actuary to provide actuarial services. The state actuary shall provide actuarial services for the state board. [1999 c 148 § 28; 1989 c 91 § 25.]

Additional notes found at www.leg.wa.gov

41.24.330 Emergency medical service districts—Board of trustees—Creation. An emergency medical service district board of trustees is created to administer this chapter in every county maintaining a regularly organized emergency medical service district. The emergency medical service district board shall consist of two of the members of the county legislative authority or their designees, the county auditor or the auditor's designee, the head of the emergency medical service district, and one emergency worker from the emergency medical service district to be elected by the emergency workers of the emergency medical service district for a term of one year and annually thereafter.

The emergency medical service district shall make provisions for the collection and payment of the fees provided under this chapter and shall continue to make such provisions for all emergency workers who come under this chapter as long as they shall continue to be members of the fire department. [1999 c 148 § 29; 1993 c 331 § 2.]

41.24.340 Emergency medical service districts—Board of trustees—Officers—Annual report. The chair of the county legislative authority, or the chair's designee, shall be chair of the emergency medical service district board of trustees, and the county auditor, or the auditor's designee, shall be the secretary-treasurer of the emergency medical service district board of trustees.

The secretary shall keep a public record of all proceedings and of all receipts and disbursements made by the emergency medical service district board of trustees, shall make an annual report of its expenses and disbursements with a full list of the beneficiaries of the principal fund in the county, and shall make all required reports to the state board. The state board shall provide all necessary forms to emergency worker boards of trustees. [1999 c 148 § 30; 1993 c 331 § 3.]

41.24.400 Reserve officers—Enrollment—Limitations. (1) Except as provided in subsection (2) of this section, any municipality may make provision by appropriate legislation and payment of fees required by RCW 41.24.030(1) solely for the purpose of enabling any reserve officer to enroll under the retirement pension provisions of this chapter or fees required under RCW 41.24.030(1) to pay for the costs of extending the relief provisions of this chapter to its reserve officers.

(2) A reserve officer is not eligible to receive a benefit under the retirement provisions of this chapter for service under chapter 41.26, 41.32, 41.35, 41.37, or 41.40 RCW.

(3) Every municipality shall make provisions for the collection and payment of the fees required under this chapter, and shall continue to make provisions for all reserve officers who come under this chapter as long as they continue to be employed as reserve officers.

(4) Except as provided under RCW 41.24.450, a reserve officer is not eligible to receive a benefit under the relief provisions of this chapter. [2007 c 492 § 7; 1999 c 148 § 31; 1998 c 307 § 4; 1995 c 11 § 2.]

41.24.410 Reserve officers—Credit for service. Credit for service as a reserve officer shall not be counted for

purposes of RCW 41.24.170 except as stated in this section: Within one year of an election to cover reserve officers under the retirement provisions of this chapter, the municipality must elect, on a one-time basis, one of the following:

(1)(a) To count credit for service only after July 23, 1995;

(b) To pay annual fees only for service after July 23, 1995; or

(2)(a) To count credit for all service as a reserve officer, but only if the actuarial cost, as determined by the state board, is paid by the municipality. The municipality may charge reserve officers for any portion of the cost; and

(b) To pay annual fees only for service after July 23, 1995; or

(3)(a) To count credit for all service as a reserve officer, but only if the actuarial cost, as determined by the state board, is paid by the municipality. The municipality may charge reserve officers for any portion of the cost; and

(b) To pay annual fees for service prior to July 23, 1995, if:

(i) The reserve officer elects, within one year of the municipality's election under this section, to pay the annual fee plus one percent per month interest for each year of past service counted; and

(ii) The municipality pays the actuarial cost, as determined by the state board, of the benefit provided in (b) of this subsection. The municipality may charge reserve officers for any portion of the cost.

Payments under this section may be made in a lump sum or in a manner prescribed by the state board. [1995 c 11 § 4.]

41.24.430 Reserve officers—Eligibility for benefit. A reserve officer shall not receive a retirement benefit under this chapter unless he or she completes at least three years of service after July 23, 1995. [1995 c 11 § 8.]

41.24.450 Reserve officers—Municipality adoption of relief benefits. A municipality employing reserve officers may adopt appropriate legislation extending the relief provisions of this chapter to its reserve officers. The relief provisions of this chapter may not be extended to reserve officers if the municipality has extended industrial insurance coverage to its reserve officers under RCW 51.12.140 or 51.12.035(2), or any other provision of law. A municipality that adopts appropriate legislation extending the relief provisions of this chapter to its reserve officers shall enjoy the same extent of immunity from civil actions for personal injuries to its reserve officers that arises if the reserve officers were covered under Title 51 RCW. [1999 c 148 § 32; 1998 c 307 § 1.]

41.24.460 Reserve officers—Board of trustees. A municipality that adopts appropriate legislation extending the relief provisions of this chapter to its reserve officers shall create a reserve officer board of trustees to administer this chapter composed as follows:

(1) A county reserve officer board of trustees shall consist of the following five members: (a) Two members of the county legislative authority and the county auditor, or their designees; (b) the sheriff; and (c) one reserve officer who is

elected by reserve officers of the county for an annual one-year term.

(2) Any other reserve officer board of trustees shall consist of the following five members: (a) The mayor, if one exists for the municipality, and one member of the municipality's legislative authority, or two members of the municipality's legislative authority if a mayor does not exist for the municipality, or their designees; (b) the clerk, comptroller, or chief fiscal officer of the municipality; (c) the head of the law enforcement agency; and (d) one reserve officer who is elected by reserve officers of the municipality for an annual term of one year.

(3) The secretary of the board of trustees shall keep a public record of all proceedings and of all receipts and disbursements made by the board of trustees, shall make an annual report of its expenses and disbursements with a full list of the beneficiaries of the principal fund in the municipality, and shall make all required reports to the state board. The state board shall provide the boards of trustees with all necessary forms. [1999 c 148 § 33; 1998 c 307 § 2.]

41.24.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 92.]

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

Chapter 41.26 RCW

LAW ENFORCEMENT OFFICERS' AND FIREFIGHTERS' RETIREMENT SYSTEM

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- 41.26.906 Effective date—2003 c 92.
- 41.26.921 Effective date—1977 ex.s. c 294.
- 41.26.922 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Reviser's note: Throughout chapter 41.26 RCW, the phrase "this act" has been changed to "this chapter." 1969 ex.s. c 209 consists of this chapter and RCW 41.16.145, 41.18.010, 41.18.040, 41.18.045, 41.18.060, 41.18.100, 41.18.102, 41.18.104, 41.18.130, 41.18.190, 41.20.005, 41.20.085, 41.20.170, 41.20.050, and 41.20.060.

Emergency medical technician or first aid vehicle operator prohibited from joining system solely on basis of such service: RCW 41.24.050.

Additional notes found at www.leg.wa.gov

"PROVISIONS APPLICABLE TO PLAN 1 AND PLAN 2"

41.26.005 Provisions applicable to "plan 1" and "plan 2." RCW 41.26.010 through 41.26.062 shall apply to members of plan 1 and plan 2. [1992 c 72 § 2; 1991 c 35 § 12; 1989 c 273 § 10; 1985 c 102 § 5; 1979 ex.s. c 249 § 1; 1977 ex.s. c 294 § 18.]

Intent—1991 c 35: "(1) The legislature intends to reorganize chapter 41.26 RCW. The goals of this reorganization are to: (a) Arrange provisions relating to the Washington law enforcement officers' and firefighters' retirement system plan 1, the Washington law enforcement officers' and firefighters' retirement system plan 2, and those provisions relating to both plan 1 and plan 2 into three separate subchapters within chapter 41.26 RCW; (b) decodify or repeal obsolete statutes; (c) update references to the retirement board to refer to either the department of retirement systems or the director of that department, as appropriate; (d) make all references gender neutral; and (e) recodify administrative provisions. The legislature does not intend to make substantive changes in the meaning, interpretation, court construction, or constitutionality of any provision of chapter 41.26 RCW or other statutory provisions or rules adopted under those provisions.

(2) The legislature intends to reorganize chapter 41.32 RCW. The goals of this reorganization are to: (a) Arrange provisions relating to the Washington teachers' retirement system plan 1, the Washington teachers' retirement system plan 2, and both plan 1 and plan 2 into three separate subchapters within chapter 41.32 RCW; (b) decodify or repeal obsolete statutes; (c) update references to the retirement board to refer to either the department of

retirement systems or the director of that department, as appropriate; (d) make all references gender neutral; and (e) recodify administrative provisions. The legislature does not intend to make substantive changes in the meaning, interpretation, court construction, or constitutionality of any provision of chapter 41.32 RCW or other statutory provisions or rules adopted under those provisions.

(3) The legislature intends to reorganize chapter 41.40 RCW. The goals of this reorganization are to: (a) Arrange provisions relating to the public employees' retirement system plan 1, the public employees' retirement system plan 2, and both plan 1 and plan 2 into three separate subchapters within chapter 41.40 RCW; (b) decodify obsolete statutes; (c) update references to the retirement board to refer to either the department of retirement systems or the director of that department, as appropriate; (d) make all references gender neutral; and (e) recodify administrative provisions. The legislature does not intend to make substantive changes in the meaning, interpretation, court construction, or constitutionality of any provision of chapter 41.40 RCW or other statutory provisions or rules adopted under those provisions.

(4) This act is technical in nature and shall not have the effect of terminating or in any way modifying any rights, proceedings, or liabilities, civil or criminal, which exist on July 28, 1991." [1991 c 35 § 1.]

Purpose—Retrospective application—1985 c 102: See notes following RCW 41.26.120.

Additional notes found at www.leg.wa.gov

41.26.010 Short title. This chapter shall be known and cited as the "Washington Law Enforcement Officers' and Firefighters' Retirement System Act". [1969 ex.s. c 209 § 1.]

41.26.020 Purpose of chapter. The purpose of this chapter is to provide for an actuarial reserve system for the payment of death, disability, and retirement benefits to law enforcement officers and firefighters, and to beneficiaries of such employees, thereby enabling such employees to provide for themselves and their dependents in case of disability or death, and effecting a system of retirement from active duty. [1969 ex.s. c 209 § 2.]

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

(1) "Accumulated contributions" means the employee's contributions made by a member, including any amount paid under RCW 41.50.165(2), plus accrued interest credited thereon.

(2) "Actuarial reserve" means a method of financing a pension or retirement plan wherein reserves are accumulated as the liabilities for benefit payments are incurred in order that sufficient funds will be available on the date of retirement of each member to pay the member's future benefits during the period of retirement.

(3) "Actuarial valuation" means a mathematical determination of the financial condition of a retirement plan. It includes the computation of the present monetary value of benefits payable to present members, and the present monetary value of future employer and employee contributions, giving effect to mortality among active and retired members and also to the rates of disability, retirement, withdrawal from service, salary and interest earned on investments.

(4)(a) "Basic salary" for plan 1 members, means the basic monthly rate of salary or wages, including longevity pay but not including overtime earnings or special salary or wages, upon which pension or retirement benefits will be computed and upon which employer contributions and salary deductions will be based.

(b) "Basic salary" for plan 2 members, means salaries or wages earned by a member during a payroll period for per-

sonal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay. In any year in which a member serves in the legislature the member shall have the option of having such member's basic salary be the greater of:

(i) The basic salary the member would have received had such member not served in the legislature; or

(ii) Such member's actual basic salary received for non-legislative public employment and legislative service combined. Any additional contributions to the retirement system required because basic salary under (b)(i) of this subsection is greater than basic salary under (b)(ii) of this subsection shall be paid by the member for both member and employer contributions.

(5)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance, disability allowance, death benefit, or any other benefit described herein.

(b) "Beneficiary" for plan 2 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(6)(a) "Child" or "children" means an unmarried person who is under the age of eighteen or mentally or physically disabled as determined by the department, except a person who is disabled and in the full time care of a state institution, who is:

(i) A natural born child;

(ii) A stepchild where that relationship was in existence prior to the date benefits are payable under this chapter;

(iii) A posthumous child;

(iv) A child legally adopted or made a legal ward of a member prior to the date benefits are payable under this chapter; or

(v) An illegitimate child legitimized prior to the date any benefits are payable under this chapter.

(b) A person shall also be deemed to be a child up to and including the age of twenty years and eleven months while attending any high school, college, or vocational or other educational institution accredited, licensed, or approved by the state, in which it is located, including the summer vacation months and all other normal and regular vacation periods at the particular educational institution after which the child returns to school.

(7) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(8) "Director" means the director of the department.

(9) "Disability board" for plan 1 members means either the county disability board or the city disability board established in RCW 41.26.110.

(10) "Disability leave" means the period of six months or any portion thereof during which a member is on leave at an allowance equal to the member's full salary prior to the commencement of disability retirement. The definition contained in this subsection shall apply only to plan 1 members.

(11) "Disability retirement" for plan 1 members, means the period following termination of a member's disability

leave, during which the member is in receipt of a disability retirement allowance.

(12) "Domestic partners" means two adults who have registered as domestic partners under RCW 26.60.020.

(13) "Employee" means any law enforcement officer or firefighter as defined in subsections (16) and (18) of this section.

(14)(a) "Employer" for plan 1 members, means the legislative authority of any city, town, county, or district or the elected officials of any municipal corporation that employs any law enforcement officer and/or firefighter, any authorized association of such municipalities, and, except for the purposes of RCW 41.26.150, any labor guild, association, or organization, which represents the firefighters or law enforcement officers of at least seven cities of over 20,000 population and the membership of each local lodge or division of which is composed of at least sixty percent law enforcement officers or firefighters as defined in this chapter.

(b) "Employer" for plan 2 members, means the following entities to the extent that the entity employs any law enforcement officer and/or firefighter:

(i) The legislative authority of any city, town, county, or district;

(ii) The elected officials of any municipal corporation;

(iii) The governing body of any other general authority law enforcement agency; or

(iv) A four-year institution of higher education having a fully operational fire department as of January 1, 1996.

(c) Except as otherwise specifically provided in this chapter, "employer" does not include a government contractor. For purposes of this subsection, a "government contractor" is any entity, including a partnership, limited liability company, for-profit or nonprofit corporation, or person, that provides services pursuant to a contract with an "employer." The determination whether an employer-employee relationship has been established is not based on the relationship between a government contractor and an "employer," but is based solely on the relationship between a government contractor's employee and an "employer" under this chapter.

(15)(a) "Final average salary" for plan 1 members, means (i) for a member holding the same position or rank for a minimum of twelve months preceding the date of retirement, the basic salary attached to such same position or rank at time of retirement; (ii) for any other member, including a civil service member who has not served a minimum of twelve months in the same position or rank preceding the date of retirement, the average of the greatest basic salaries payable to such member during any consecutive twenty-four month period within such member's last ten years of service for which service credit is allowed, computed by dividing the total basic salaries payable to such member during the selected twenty-four month period by twenty-four; (iii) in the case of disability of any member, the basic salary payable to such member at the time of disability retirement; (iv) in the case of a member who hereafter vests pursuant to RCW 41.26.090, the basic salary payable to such member at the time of vesting.

(b) "Final average salary" for plan 2 members, means the monthly average of the member's basic salary for the highest consecutive sixty service credit months of service prior to such member's retirement, termination, or death. Periods con-

stituting authorized unpaid leaves of absence may not be used in the calculation of final average salary.

(c) In calculating final average salary under (a) or (b) of this subsection, the department of retirement systems shall include:

(i) Any compensation forgone by a member employed by a state agency or institution during the 2009-2011 fiscal biennium as a result of reduced work hours, mandatory or voluntary leave without pay, temporary reduction in pay implemented prior to December 11, 2010, or temporary layoffs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer; and

(ii) Any compensation forgone by a member employed by the state or a local government employer during the 2011-2013 fiscal biennium as a result of reduced work hours, mandatory leave without pay, temporary layoffs, or reductions to current pay if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer. Reductions to current pay shall not include elimination of previously agreed upon future salary increases.

(16) "Firefighter" means:

(a) Any person who is serving on a full time, fully compensated basis as a member of a fire department of an employer and who is serving in a position which requires passing a civil service examination for firefighter, and who is actively employed as such;

(b) Anyone who is actively employed as a full time firefighter where the fire department does not have a civil service examination;

(c) Supervisory firefighter personnel;

(d) Any full time executive secretary of an association of fire protection districts authorized under RCW 52.12.031. The provisions of this subsection (16)(d) shall not apply to plan 2 members;

(e) The executive secretary of a labor guild, association or organization (which is an employer under subsection (14) of this section), if such individual has five years previous membership in a retirement system established in chapter 41.16 or 41.18 RCW. The provisions of this subsection (16)(e) shall not apply to plan 2 members;

(f) Any person who is serving on a full time, fully compensated basis for an employer, as a fire dispatcher, in a department in which, on March 1, 1970, a dispatcher was required to have passed a civil service examination for firefighter;

(g) Any person who on March 1, 1970, was employed on a full time, fully compensated basis by an employer, and who on May 21, 1971, was making retirement contributions under the provisions of chapter 41.16 or 41.18 RCW; and

(h) Any person who is employed on a full-time, fully compensated basis by an employer as an emergency medical technician.

(17) "General authority law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, but not including the

Washington state patrol. Such an agency, department, or division is distinguished from a limited authority law enforcement agency having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas, including but not limited to, the state departments of natural resources and social and health services, the state gambling commission, the state lottery commission, the state parks and recreation commission, the state utilities and transportation commission, the state liquor control board, and the state department of corrections. A general authority law enforcement agency under this chapter does not include a government contractor.

(18) "Law enforcement officer" beginning January 1, 1994, means any person who is commissioned and employed by an employer on a full time, fully compensated basis to enforce the criminal laws of the state of Washington generally, with the following qualifications:

(a) No person who is serving in a position that is basically clerical or secretarial in nature, and who is not commissioned shall be considered a law enforcement officer;

(b) Only those deputy sheriffs, including those serving under a different title pursuant to county charter, who have successfully completed a civil service examination for deputy sheriff or the equivalent position, where a different title is used, and those persons serving in unclassified positions authorized by RCW 41.14.070 except a private secretary will be considered law enforcement officers;

(c) Only such full time commissioned law enforcement personnel as have been appointed to offices, positions, or ranks in the police department which have been specifically created or otherwise expressly provided for and designated by city charter provision or by ordinance enacted by the legislative body of the city shall be considered city police officers;

(d) The term "law enforcement officer" also includes the executive secretary of a labor guild, association or organization (which is an employer under subsection (14) of this section) if that individual has five years previous membership in the retirement system established in chapter 41.20 RCW. The provisions of this subsection (18)(d) shall not apply to plan 2 members; and

(e) The term "law enforcement officer" also includes a person employed on or after January 1, 1993, as a public safety officer or director of public safety, so long as the job duties substantially involve only either police or fire duties, or both, and no other duties in a city or town with a population of less than ten thousand. The provisions of this subsection (18)(e) shall not apply to any public safety officer or director of public safety who is receiving a retirement allowance under this chapter as of May 12, 1993.

(19) "Medical services" for plan 1 members, shall include the following as minimum services to be provided. Reasonable charges for these services shall be paid in accordance with RCW 41.26.150.

(a) Hospital expenses: These are the charges made by a hospital, in its own behalf, for

(i) Board and room not to exceed semiprivate room rate unless private room is required by the attending physician due to the condition of the patient.

(ii) Necessary hospital services, other than board and room, furnished by the hospital.

(b) Other medical expenses: The following charges are considered "other medical expenses", provided that they have not been considered as "hospital expenses".

(i) The fees of the following:

(A) A physician or surgeon licensed under the provisions of chapter 18.71 RCW;

(B) An osteopathic physician and surgeon licensed under the provisions of chapter 18.57 RCW;

(C) A chiropractor licensed under the provisions of chapter 18.25 RCW.

(ii) The charges of a registered graduate nurse other than a nurse who ordinarily resides in the member's home, or is a member of the family of either the member or the member's spouse.

(iii) The charges for the following medical services and supplies:

(A) Drugs and medicines upon a physician's prescription;

(B) Diagnostic X-ray and laboratory examinations;

(C) X-ray, radium, and radioactive isotopes therapy;

(D) Anesthesia and oxygen;

(E) Rental of iron lung and other durable medical and surgical equipment;

(F) Artificial limbs and eyes, and casts, splints, and trusses;

(G) Professional ambulance service when used to transport the member to or from a hospital when injured by an accident or stricken by a disease;

(H) Dental charges incurred by a member who sustains an accidental injury to his or her teeth and who commences treatment by a legally licensed dentist within ninety days after the accident;

(I) Nursing home confinement or hospital extended care facility;

(J) Physical therapy by a registered physical therapist;

(K) Blood transfusions, including the cost of blood and blood plasma not replaced by voluntary donors;

(L) An optometrist licensed under the provisions of chapter 18.53 RCW.

(20) "Member" means any firefighter, law enforcement officer, or other person as would apply under subsections (16) or (18) of this section whose membership is transferred to the Washington law enforcement officers' and firefighters' retirement system on or after March 1, 1970, and every law enforcement officer and firefighter who is employed in that capacity on or after such date.

(21) "Plan 1" means the law enforcement officers' and firefighters' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(22) "Plan 2" means the law enforcement officers' and firefighters' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

(23) "Position" means the employment held at any particular time, which may or may not be the same as civil service rank.

(24) "Regular interest" means such rate as the director may determine.

(25) "Retiree" for persons who establish membership in the retirement system on or after October 1, 1977, means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(26) "Retirement fund" means the "Washington law enforcement officers' and firefighters' retirement system fund" as provided for herein.

(27) "Retirement system" means the "Washington law enforcement officers' and firefighters' retirement system" provided herein.

(28)(a) "Service" for plan 1 members, means all periods of employment for an employer as a firefighter or law enforcement officer, for which compensation is paid, together with periods of suspension not exceeding thirty days in duration. For the purposes of this chapter service shall also include service in the armed forces of the United States as provided in RCW 41.26.190. Credit shall be allowed for all service credit months of service rendered by a member from and after the member's initial commencement of employment as a firefighter or law enforcement officer, during which the member worked for seventy or more hours, or was on disability leave or disability retirement. Only service credit months of service shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter.

(i) For members retiring after May 21, 1971 who were employed under the coverage of a prior pension act before March 1, 1970, "service" shall also include (A) such military service not exceeding five years as was creditable to the member as of March 1, 1970, under the member's particular prior pension act, and (B) such other periods of service as were then creditable to a particular member under the provisions of RCW 41.18.165, 41.20.160, or 41.20.170. However, in no event shall credit be allowed for any service rendered prior to March 1, 1970, where the member at the time of rendition of such service was employed in a position covered by a prior pension act, unless such service, at the time credit is claimed therefor, is also creditable under the provisions of such prior act.

(ii) A member who is employed by two employers at the same time shall only be credited with service to one such employer for any month during which the member rendered such dual service.

(b) "Service" for plan 2 members, means periods of employment by a member for one or more employers for which basic salary is earned for ninety or more hours per calendar month which shall constitute a service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for at least seventy hours but less than ninety hours per calendar month shall constitute one-half service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for less than seventy hours shall constitute a one-quarter service credit month.

Members of the retirement system who are elected or appointed to a state elective position may elect to continue to be members of this retirement system.

Service credit years of service shall be determined by dividing the total number of service credit months of service by twelve. Any fraction of a service credit year of service as

so determined shall be taken into account in the computation of such retirement allowance or benefits.

If a member receives basic salary from two or more employers during any calendar month, the individual shall receive one service credit month's service credit during any calendar month in which multiple service for ninety or more hours is rendered; or one-half service credit month's service credit during any calendar month in which multiple service for at least seventy hours but less than ninety hours is rendered; or one-quarter service credit month during any calendar month in which multiple service for less than seventy hours is rendered.

(29) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(30) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(31) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(32) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(33) "Surviving spouse" means the surviving widow or widower of a member. "Surviving spouse" shall not include the divorced spouse of a member except as provided in RCW 41.26.162. [2012 c 236 § 2; 2011 1st sp.s. c 5 § 1; 2010 2nd sp.s. c 1 § 903; 2010 1st sp.s. c 32 § 6. Prior: 2009 c 523 § 3; 2005 c 459 § 1; 2003 c 388 § 2; 2002 c 128 § 3; prior: 1996 c 178 § 11; 1996 c 38 § 2; prior: 1994 c 264 § 14; 1994 c 197 § 5; prior: 1993 c 502 § 1; 1993 c 322 § 1; 1991 sp.s. c 12 § 1; prior: (1991 sp.s. c 11 § 3 repealed by 1991 sp.s. c 12 § 3); 1991 c 365 § 35; 1991 c 343 § 14; 1991 c 35 § 13; 1987 c 418 § 1; 1985 c 13 § 5; 1984 c 230 § 83; 1981 c 256 § 4; 1979 ex.s. c 249 § 2; 1977 ex.s. c 294 § 17; 1974 ex.s. c 120 § 1; 1972 ex.s. c 131 § 1; 1971 ex.s. c 257 § 6; 1970 ex.s. c 6 § 1; 1969 ex.s. c 209 § 3.]

Purpose—Application—2012 c 236: "(1) On August 18, 2011, the state supreme court entered an opinion in the matter of *Dolan v. King County*, Cause No. 82842-3. The court recognized that a public employees' retirement system eligible employee must work for a public employees' retirement system employer under RCW 41.40.010. However, the court did not explain how such an employee can be an employee of a government contractor and also of a government employer. The legislature determines it necessary and appropriate to affirmatively state that a governmental contractor is not an employer for purposes of the state's public pension systems, including the public employees' retirement system, whether or not the contractor is providing mandatory or discretionary governmental services, and whether or not the contractor is a for-profit or not-for-profit entity.

(2) The legislature has not intended in its pension legislation to provide retirement system eligibility to employees of government contractors. Only in specific circumstances, such as employees of entities, including nonprofits, created by government under the interlocal cooperation act in chapter 39.34 RCW, has the legislature and department of retirement systems permitted retirement system eligibility for employees of government contractors. The department's rules in WAC 415-02-110 conform to the purpose and intent of the legislature regarding public pension eligibility.

(3) It is the purpose of this act to more clearly state and to confirm that employees of for-profit or not-for-profit corporations or other entities providing services under governmental contracts are not, as a result of providing such governmental service, eligible for membership in the various public retirement programs. The state and its local governments have not provided for such eligibility and such eligibility would create unfunded liability for state and local governments and potential impacts on the integrity of the public pension systems.

(4) This act provides cross-references to existing statutes that affect eli-

gibility for pensions under the retirement systems authorized by chapters 41.26, 41.32, 41.35, 41.37, 41.40, and 41.50 RCW and to the relevant definition sections of those chapters. Except as provided, this act is technical in nature and neither enhances nor diminishes existing pension rights. It is not the intent of the legislature to change the substance or effect of any statute previously enacted. Rather, this act provides cross-references to applicable statutes in order to aid with the administration of eligibility and benefits authorized in chapters 41.26, 41.32, 41.35, 41.37, 41.40, and 41.50 RCW.

(5) This act shall apply solely to eligibility for state-sponsored public employee pension plans under chapters 41.26, 41.32, 41.35, 41.37, and 41.40 RCW and shall not affect any other statute or rule regarding employee benefits, status, or workplace protections.

(6) This act is curative and remedial, but does not affect the state supreme court decision in *Dolan v. King County*, Cause No. 82842-3, and the right established therein of King county public defenders and staff to public employees' retirement system enrollment and eligibility." [2012 c 236 § 1.]

Effective date—2011 1st sp.s. c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 1st sp.s. c 5 § 7.]

Effective date—2010 2nd sp.s. c 1: See note following RCW 38.52.105.

Intent—Conflict with federal requirements—Effective date—2010 1st sp.s. c 32: See notes following RCW 42.04.060.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Purpose—1981 c 256: "It is the primary purpose of this act to assure that the provisions of RCW 41.04.250 and 41.04.260 and of any deferred compensation plan established thereunder, are in conformity with the requirements of 26 U.S.C. Sec. 457 and any other requirements of federal law relating to such a deferred compensation plan. This act shall be construed in such a manner as to accomplish this purpose." [1981 c 256 § 1.]

Purpose—1971 ex.s. c 257: "It is the purpose of this act to provide minimum medical and health standards for membership coverage into the Washington law enforcement officers' and firefighters' retirement system act, for the improvement of the public service, and to safeguard the integrity and actuarial soundness of their pension systems, and to improve their retirement and pension systems and related provisions." [1971 ex.s. c 257 § 1.]

Additional notes found at www.leg.wa.gov

41.26.035 "Minimum medical and health standards" defined. The term "minimum medical and health standards" means minimum medical and health standards adopted by the department under this chapter. [1991 c 35 § 14; 1971 ex.s. c 257 § 2.]

Intent—1991 c 35: See note following RCW 41.26.005.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

41.26.040 System created—Membership—Funds. The Washington law enforcement officers' and firefighters' retirement system is hereby created for firefighters and law enforcement officers.

(1) Notwithstanding RCW 41.26.030(20), all firefighters and law enforcement officers employed as such on or after March 1, 1970, on a full time fully compensated basis in this state shall be members of the retirement system established by this chapter with respect to all periods of service as such, to the exclusion of any pension system existing under any prior act.

(2) Any employee serving as a law enforcement officer or firefighter on March 1, 1970, who is then making retire-

ment contributions under any prior act shall have his or her membership transferred to the system established by this chapter as of such date. Upon retirement for service or for disability, or death, of any such employee, his or her retirement benefits earned under this chapter shall be computed and paid. In addition, his or her benefits under the prior retirement act to which he or she was making contributions at the time of this transfer shall be computed as if he or she had not transferred. For the purpose of such computations, the employee's creditability of service and eligibility for service or disability retirement and survivor and all other benefits shall continue to be as provided in such prior retirement act, as if transfer of membership had not occurred. The excess, if any, of the benefits so computed, giving full value to survivor benefits, over the benefits payable under this chapter shall be paid whether or not the employee has made application under the prior act. If the employee's prior retirement system was the Washington public employees' retirement system, payment of such excess shall be made by that system; if the employee's prior retirement system was the statewide city employees' retirement system, payment of such excess shall be made by the employer which was the member's employer when his or her transfer of membership occurred: PROVIDED, That any death in line of duty lump sum benefit payment shall continue to be the obligation of that system as provided in RCW 41.44.210; in the case of all other prior retirement systems, payment of such excess shall be made by the employer which was the member's employer when his or her transfer of membership occurred.

(3) All funds held by any firefighters' or police officers' relief and pension fund shall remain in that fund for the purpose of paying the obligations of the fund. The municipality shall continue to levy the dollar rate as provided in RCW 41.16.060, and this dollar rate shall be used for the purpose of paying the benefits provided in chapters 41.16 and 41.18 RCW. The obligations of chapter 41.20 RCW shall continue to be paid from whatever financial sources the city has been using for this purpose. [2012 c 117 § 39; 1991 c 35 § 15; 1989 c 273 § 11; 1979 ex.s. c 45 § 1; 1974 ex.s. c 120 § 7; 1973 1st ex.s. c 195 § 44; 1970 ex.s. c 6 § 2; 1969 ex.s. c 209 § 4.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.26.045 Minimum medical and health standards.

(1) Notwithstanding any other provision of law after February 19, 1974 no law enforcement officer or firefighter, may become eligible for coverage in the pension system established by this chapter, until the individual has met and has been certified as having met minimum medical and health standards: PROVIDED, That an elected sheriff or an appointed chief of police or fire chief, shall not be required to meet the age standard: PROVIDED FURTHER, That in cities and towns having not more than two law enforcement officers and/or not more than two firefighters and if one or more of such persons do not meet the minimum medical and health standards as required by the provisions of this chapter, then such person or persons may join any other pension system that the city has available for its other employees: AND PROVIDED FURTHER, That for one year after February 19, 1974 any such medical or health standard now existing or

hereinafter adopted, insofar as it establishes a maximum age beyond which an applicant is to be deemed ineligible for coverage, shall be waived as to any applicant for employment or reemployment who is otherwise eligible except for his or her age, who has been a member of any one or more of the retirement systems created by chapter 41.20 of the Revised Code of Washington and who has restored all contributions which he or she has previously withdrawn from any such system or systems.

(2) This section shall not apply to persons who initially establish membership in the retirement system on or after July 1, 1979. [2012 c 117 § 40; 1979 ex.s. c 249 § 3; 1977 ex.s. c 294 § 20; 1974 ex.s. c 120 § 8; 1971 ex.s. c 257 § 3.]

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

Additional notes found at www.leg.wa.gov

41.26.046 Minimum medical and health standards—Board to adopt—Publication and distribution—Employer certification procedures. By July 31, 1971, the *retirement board shall adopt minimum medical and health standards for membership coverage into the Washington law enforcement officers' and firefighters' retirement system act. In adopting such standards the *retirement board shall consider existing standards recommended by the international association of chiefs of police and the international association of firefighters, and shall adopt equal or higher standards, together with appropriate standards and procedures to insure uniform compliance with this chapter. The standards when adopted shall be published and distributed to each employer, and each employer shall adopt certification procedures and such other procedures as are required to insure that no law enforcement officer or firefighter receives membership coverage unless and until he or she has actually met minimum medical and health standards: PROVIDED, That an elected sheriff or an appointed chief of police, fire chief, or director of public safety shall not be required to meet the age standard. The *retirement board may amend the minimum medical and health standards as experience indicates, even if the standards as so amended are lower or less rigid than those recommended by the international associations mentioned above. The cost of the medical examination contemplated by this section is to be paid by the employer. [2012 c 117 § 41; 1987 c 418 § 2; 1977 ex.s. c 294 § 21; 1974 ex.s. c 120 § 12; 1972 ex.s. c 131 § 2; 1971 ex.s. c 257 § 4.]

***Reviser's note:** Powers, duties, and functions of the Washington law enforcement officers' and firefighters' retirement board were transferred to the director of retirement systems by RCW 41.26.051, which has been decodified. See Table of Disposition of Former RCW Sections.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

Additional notes found at www.leg.wa.gov

41.26.047 Minimum medical and health standards—Exemptions—Employer may adopt higher standards. Nothing in RCW 41.26.035, 41.26.045 and 41.26.046 shall apply to any firefighters or law enforcement officers who are employed as such on or before August 1, 1971, as long as they continue in such employment; nor to promotional appointments after becoming a member in the police or fire department of any employer nor to the reemployment of a law enforcement officer or firefighter by the same or a differ-

ent employer within six months after the termination of his or her employment, nor to the reinstatement of a law enforcement officer or firefighter who has been on military or disability leave, disability retirement status, or leave of absence status. Nothing in this chapter shall be deemed to prevent any employer from adopting higher medical and health standards than those which are adopted by the *retirement board. [2012 c 117 § 42; 1972 ex.s. c 131 § 3; 1971 ex.s. c 257 § 5.]

***Reviser's note:** Powers, duties, and functions of the Washington law enforcement officers' and firefighters' retirement board were transferred to the director of retirement systems by RCW 41.26.051, which has been decodified. See Table of Disposition of Former RCW Sections.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

Additional notes found at www.leg.wa.gov

41.26.048 Special death benefit—Death in the course of employment—Death from disease or infection arising from employment—Annual adjustment. (1) A two hundred fourteen thousand dollar death benefit shall be paid to the member's estate, or such person or persons, trust or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's death benefit shall be paid to the member's surviving spouse or domestic partner as if in fact such spouse or domestic partner had been nominated by written designation, or if there be no such surviving spouse or domestic partner, then to such member's legal representatives.

(2) The benefit under this section shall be paid only when death occurs: (a) As a result of injuries sustained in the course of employment; or (b) as a result of an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050.

(3)(a) Beginning July 1, 2010, and every year thereafter, the department shall determine the following information:

(i) The index for the 2008 calendar year, to be known as "index A;"

(ii) The index for the calendar year prior to the date of determination, to be known as "index B;" and

(iii) The ratio obtained when index B is divided by index A.

(b) The value of the ratio obtained shall be the annual adjustment to the original death benefit and shall be applied beginning every July 1st. In no event, however, shall the annual adjustment:

(i) Produce a benefit which is lower than two hundred fourteen thousand dollars;

(ii) Exceed three percent in the initial annual adjustment; or

(iii) Differ from the previous year's annual adjustment by more than three percent.

(c) For the purposes of this section, "index" means, for any calendar year, that year's average consumer price index—Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statis-

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tics, United States department of labor. [2010 c 261 § 2; 2009 c 523 § 4; 2007 c 487 § 2; 2006 c 351 § 1; 1996 c 226 § 1.]

Application—2010 c 261: "Sections 2 and 7 of this act apply to the benefits of all members killed in the course of employment since January 1, 2009." [2010 c 261 § 9.]

Additional notes found at www.leg.wa.gov

41.26.053 Exemption from judicial process, taxes—Exceptions—Deduction for insurance upon request. (1) Subject to subsections (2) and (3) of this section, the right of a person to a retirement allowance, disability allowance, or death benefit, to the return of accumulated contributions, the retirement, disability or death allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter, are hereby exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2) On the written request of any person eligible to receive benefits under this section, the department may deduct from such payments the premiums for life, health, or other insurance. The request on behalf of any child or children shall be made by the legal guardian of such child or children. The department may provide for such persons one or more plans of group insurance, through contracts with regularly constituted insurance carriers or health care service contractors.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law. [2012 c 159 § 21. Prior: 1991 c 365 § 20; 1991 c 35 § 25; 1989 c 360 § 24; 1987 c 326 § 22; 1979 ex.s. c 205 § 4; 1971 ex.s. c 257 § 12; 1970 ex.s. c 6 § 15; 1969 ex.s. c 209 § 23. Formerly RCW 41.26.180.]

Intent—1991 c 35: See note following RCW 41.26.005.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

Additional notes found at www.leg.wa.gov

41.26.056 No bond required on appeal to court. No bond of any kind shall be required of a claimant appealing to the superior court, the court of appeals, or the supreme court from a decision of the director affecting such claimant's right to retirement or disability benefits. [1984 c 184 § 18; 1971 c 81 § 103; 1969 ex.s. c 209 § 21. Formerly RCW 41.26.230.]

Additional notes found at www.leg.wa.gov

41.26.057 Benefit calculation—Limitation. (1) The annual compensation taken into account in calculating retiree

benefits under this system shall not exceed the limits imposed by section 401(a)(17) of the federal internal revenue code for qualified trusts.

(2) The department shall adopt rules as necessary to implement this section. [1995 c 145 § 1.]

41.26.059 Establishing, restoring service credit. Notwithstanding any provision to the contrary, persons who fail to:

(1) Establish allowable membership service not previously credited;

(2) Restore all or a part of that previously credited membership service represented by withdrawn contributions; or

(3) Restore service credit represented by a lump sum payment in lieu of benefits, before the deadline established by statute, may do so under the conditions set forth in RCW 41.50.165. [1998 c 17 § 1.]

41.26.061 Disability retirement—Criminal conduct.

A member shall not receive a disability retirement benefit under RCW 41.26.120, 41.26.125, 41.26.130, or 41.26.470 if the disability is the result of criminal conduct by the member committed after April 21, 1997. [1997 c 103 § 1.]

Additional notes found at www.leg.wa.gov

41.26.062 Falsification—Penalty. Any employer, member or beneficiary who shall knowingly make false statements or shall falsify or permit to be falsified any record or records of the retirement system in an attempt to defraud the retirement system, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 217; 1972 ex.s. c 131 § 10. Formerly RCW 41.26.300.]

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

Additional notes found at www.leg.wa.gov

"PLAN 1"

41.26.075 Provisions applicable to plan 1. RCW 41.26.080 through 41.26.3903 shall apply only to members of plan 1. [1992 c 72 § 3; 1991 c 35 § 101.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.26.080 Funding total liability of plan 1 system. (1) Except as set forth under subsection (2) of this section, the total liability of the plan 1 system shall be funded as follows:

(a) Every plan 1 member shall have deducted from each payroll a sum equal to six percent of his or her basic salary for each pay period.

(b) Every employer shall contribute monthly a sum equal to six percent of the basic salary of each plan 1 employee who is a member of this retirement system. The employer shall transmit the employee and employer contributions with a copy of the payroll to the retirement system monthly.

(c) The remaining liabilities of the plan 1 system shall be funded as provided in chapter 41.45 RCW.

(d) Every member shall be deemed to consent and agree to the contribution made and provided for herein, and shall receipt in full for his or her salary or compensation. Payment less said contributions shall be a complete discharge of all claims and demands whatsoever for the services rendered by

such person during the period covered by such payments, except his or her claim to the benefits to which he or she may be entitled under the provisions of this chapter.

(2) No employer or member contribution is required after June 30, 2000, unless the most recent valuation study for law enforcement officers' and firefighters' retirement system plan 1 indicates the plan has unfunded liabilities. The legislature clarifies the enactment of section 907, chapter 1, Laws of 2000 2nd sp. sess. and affirms the suspension of employer and member contributions to plan 1 of the law enforcement officers' and firefighters' retirement system, effective June 30, 2000, as provided in this subsection. The legislature intends this 2007 amendment of this subsection to be curative, remedial, and retrospectively applicable to June 30, 2000. [2007 c 492 § 8; 2000 2nd sp.s. c 1 § 907; 1991 c 35 § 17; 1989 c 273 § 13; 1969 ex.s. c 209 § 8.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.26.090 Retirement for service. Retirement of a member for service shall be made by the department as follows:

(1) Any member having five or more service credit years of service and having attained the age of fifty years shall be eligible for a service retirement allowance and shall be retired upon the member's written request effective the first day following the date upon which the member is separated from service.

(2) Any member having five or more service credit years of service, who terminates his or her employment with any employer, may leave his or her contributions in the fund. Any employee who so elects, upon attaining age fifty, shall be eligible to apply for and receive a service retirement allowance based on his or her years of service, commencing on the first day following his or her attainment of age fifty.

(3) Any member selecting optional vesting under subsection (2) of this section with less than twenty service credit years of service shall not be covered by the provisions of RCW 41.26.150, and the member's survivors shall not be entitled to the benefits of RCW 41.26.160 unless his or her death occurs after he or she has attained the age of fifty years. Those members selecting this optional vesting with twenty or more years service shall not be covered by the provisions of RCW 41.26.150 until the attainment of the age of fifty years. A member selecting this optional vesting, with less than twenty service credit years of service credit, who dies prior to attaining the age of fifty years, shall have paid from the Washington law enforcement officers' and firefighters' retirement fund, to such member's surviving spouse, if any, otherwise to such beneficiary as the member shall have designated in writing, or if no such designation has been made, to the personal representative of his or her estate, a lump sum which is equal to the amount of such member's accumulated contributions plus accrued interest. If the vested member has twenty or more service credit years of service credit the surviving spouse or children shall then become eligible for the benefits of RCW 41.26.160 regardless of the member's age at the time of his or her death, to the exclusion of the lump sum amount provided by this subsection.

(4) Any member who has attained the age of sixty years shall be retired on the first day of the calendar month next

succeeding that in which said member shall have attained the age of sixty and may not thereafter be employed as a law enforcement officer or firefighter: PROVIDED, That for any member who is elected or appointed to the office of sheriff, chief of police, or fire chief, his or her election or appointment shall be considered as a waiver of the age sixty provision for retirement and nonemployment for whatever number of years remain in his or her present term of office and any succeeding periods for which he or she may be so elected or appointed. The provisions of this subsection shall not apply to any member who is employed as a law enforcement officer or firefighter on March 1, 1970. [1991 sp.s. c 11 § 4. Prior: 1991 c 343 § 15; 1991 c 35 § 18; 1977 ex.s. c 294 § 22; 1972 ex.s. c 131 § 6; 1971 ex.s. c 257 § 8; 1970 ex.s. c 6 § 4; 1969 ex.s. c 209 § 9.]

Purpose—1991 sp.s. c 11: "The purpose of this act is to correct certain double amendments created during the 1991 regular session that the code reviser's office is unable to merge under RCW 1.12.025. The session laws repealed by section 2 of this act are strictly technical in nature and affect no policy. Sections *3 through 6 of this act are being reenacted to effectuate a legislative directive contained in 1991 c 35 s 2." [1991 sp.s. c 11 § 1.]

*Reviser's note: 1991 sp.s. c 11 § 3 was repealed by 1991 sp.s. c 12 § 3.

*Reviser's note: 1991 sp.s. c 11 § 3 was repealed by 1991 sp.s. c 12 § 3.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

Additional notes found at www.leg.wa.gov

41.26.100 Allowance on retirement for service. A member upon retirement for service shall receive a monthly retirement allowance computed according to his or her completed creditable service credit years of service as follows: Five years but under ten years, one-twelfth of one percent of his or her final average salary for each month of service; ten years but under twenty years, one-twelfth of one and one-half percent of his or her final average salary for each month of service; and twenty years and over one-twelfth of two percent of his or her final average salary for each month of service: PROVIDED, That the recipient of a retirement allowance who shall return to service as a law enforcement officer or firefighter shall be considered to have terminated his or her retirement status and he or she shall immediately become a member of the retirement system with the status of membership he or she had as of the date of retirement. Retirement benefits shall be suspended during the period of his or her return to service and he or she shall make contributions and receive service credit. Such a member shall have the right to again retire at any time and his or her retirement allowance shall be recomputed, and paid, based upon additional service rendered and any change in final average salary. [2006 c 350 § 1; 1991 c 343 § 16; 1974 ex.s. c 120 § 3; 1972 ex.s. c 131 § 7; 1971 ex.s. c 257 § 9; 1970 ex.s. c 6 § 5; 1969 ex.s. c 209 § 10.]

Effective date—2006 c 350 § 1: "Section 1 of this act takes effect July 1, 2006." [2006 c 350 § 3.]

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

Additional notes found at www.leg.wa.gov

(2014 Ed.)

41.26.110 City and county disability boards authorized—Composition—Terms—Reimbursement for travel expenses—Duties. (1) All claims for disability shall be acted upon and either approved or disapproved by either type of disability board authorized to be created in this section.

(a) Each city having a population of twenty thousand or more shall establish a disability board having jurisdiction over all members employed by those cities and composed of the following five members: Two members of the city legislative body to be appointed by the mayor; one active or retired firefighter employed by or retired from the city to be elected by the firefighters employed by or retired from the city who are subject to the jurisdiction of the board; one active or retired law enforcement officer employed by or retired from the city to be elected by the law enforcement officers employed by or retired from the city who are subject to the jurisdiction of the board; and one member from the public at large who resides within the city to be appointed by the other four members designated in this subsection. Only those active or retired firefighters and law enforcement officers who are subject to the jurisdiction of the board have the right to elect under this section. All firefighters and law enforcement officers employed by or retired from the city are eligible for election. Each of the elected members shall serve a two year term. If there are either no firefighters or law enforcement officers under the jurisdiction of the board eligible to vote, a second eligible employee representative shall be elected by the law enforcement officers or firefighters eligible to vote. The members appointed pursuant to this subsection shall serve for two year terms: PROVIDED, That cities of the first class only, shall retain existing firefighters' pension boards established pursuant to RCW 41.16.020 and existing boards of trustees of the relief and pension fund of the police department as established pursuant to RCW 41.20.010 which such boards shall have authority to act upon and approve or disapprove claims for disability by firefighters or law enforcement officers as provided under the Washington law enforcement officers' and firefighters' retirement system act.

(b) Each county shall establish a disability board having jurisdiction over all members employed by or retired from an employer within the county and not employed by a city in which a disability board is established. The county disability board so created shall be composed of five members to be chosen as follows: One member of the legislative body of the county to be appointed by the county legislative body; one member of a city or town legislative body located within the county which does not contain a city disability board established pursuant to (a) of this subsection to be chosen by a majority of the mayors of such cities and towns within the county which does not contain a city disability board; one active firefighter or retired firefighter employed by or retired from an employer within the county to be elected by the firefighters employed or retired from an employer within the county who are not employed by or retired from a city in which a disability board is established and who are subject to the jurisdiction of that board; one law enforcement officer or retired law enforcement officer employed by or retired from an employer within the county to be elected by the law enforcement officers employed in or retired from an

employer within the county who are not employed by or retired from a city in which a disability board is established and who are subject to the jurisdiction of that board; and one member from the public at large who resides within the county but does not reside within a city in which a city disability board is established, to be appointed by the other four members designated in this subsection. However, in counties with a population less than sixty thousand, the member of the disability board appointed by a majority of the mayors of the cities and towns within the county that do not contain a city disability board must be a resident of one of the cities and towns but need not be a member of a city or town legislative body. Only those active or retired firefighters and law enforcement officers who are subject to the jurisdiction of the board have the right to elect under this section. All firefighters and law enforcement officers employed by or retired from an employer within the county who are not employed by or retired from a city in which a disability board is established are eligible for election. All members appointed or elected pursuant to this subsection shall serve for two year terms. If there are no firefighters under the jurisdiction of the board eligible to vote, a second eligible employee representative shall be elected by the law enforcement officers eligible to vote. If there are no law enforcement officers under the jurisdiction of the board eligible to vote, a second eligible representative shall be elected by the firefighters eligible to vote.

(2) The members of both the county and city disability boards shall not receive compensation for their service upon the boards but the members shall be reimbursed by their respective county or city for all expenses incidental to such service as to the amount authorized by law.

(3) The disability boards authorized for establishment by this section shall perform all functions, exercise all powers, and make all such determinations as specified in this chapter. [2013 c 213 § 1; 2013 c 23 § 69; 2005 c 66 § 1; 2003 c 30 § 3; 2000 c 234 § 1; 1988 c 164 § 1; 1982 c 12 § 1; 1974 ex.s. c 120 § 9; 1970 ex.s. c 6 § 6; 1969 ex.s. c 219 § 3; 1969 ex.s. c 209 § 11.]

Reviser's note: This section was amended by 2013 c 23 § 69 and by 2013 c 213 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2005 c 66: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 15, 2005]." [2005 c 66 § 2.]

Additional notes found at www.leg.wa.gov

41.26.115 Director of retirement systems to adopt rules governing disability boards—Remand of orders not in accordance with rules. (1) The director of retirement systems shall adopt rules, in accordance with chapter 34.05 RCW, under which each disability board shall execute its disability retirement duties under this chapter. The rules shall include, but not be limited to, the following:

(a) Standards governing the type and manner of presentation of medical, employability, and other evidence before disability boards; and

(b) Standards governing the necessity and frequency of medical and employability reexaminations of persons receiving disability benefits.

(2) If the director determines that an order or determination of a disability board was not processed in accordance with the rules established under this section, the director may remand the order or determination for further proceedings consistent with the rules. [1981 c 294 § 1.]

Additional notes found at www.leg.wa.gov

41.26.120 Retirement for disability incurred in the line of duty. Any member, regardless of age or years of service may be retired by the disability board, subject to approval by the director as hereinafter provided, for any disability incurred in the line of duty which has been continuous since his or her discontinuance of service and which renders the member unable to continue service. No disability retirement allowance shall be paid until the expiration of a period of six months after the discontinuance of service during which period the member, if found to be physically or mentally unfit for duty by the disability board following receipt of his or her application for disability retirement, shall be granted a disability leave by the disability board and shall receive an allowance equal to the full monthly salary and shall continue to receive all other benefits provided to active employees from the employer for such period. However, if, at any time during the initial six-month period, the disability board finds the beneficiary is no longer disabled, the disability leave allowance shall be canceled and the member shall be restored to duty in the same rank or position, if any, held by the beneficiary at the time the member became disabled. Applications for disability retirement shall be processed in accordance with the following procedures:

(1) Any member who believes he or she is or is believed to be physically or mentally disabled shall be examined by such medical authority as the disability board shall employ, upon application of said member, or a person acting in his or her behalf, stating that said member is disabled, either physically or mentally: PROVIDED, That no such application shall be considered unless said member or someone in his or her behalf, in case of the incapacity of a member, shall have filed the application within a period of one year from and after the discontinuance of service of said member.

(2) If the examination shows, to the satisfaction of the disability board, that the member is physically or mentally disabled from the further performance of duty, that such disability was incurred in the line of duty, and that such disability has been continuous from the discontinuance of service, the disability board shall enter its written decision and order, accompanied by appropriate findings of fact and by conclusions evidencing compliance with this chapter as now or hereafter amended, granting the member a disability retirement allowance; otherwise, if the member is not found by the disability board to be so disabled, the application shall be denied pursuant to a similar written decision and order, subject to appeal to the director in accordance with RCW 41.26.200: PROVIDED, That in any order granting a duty disability retirement allowance, the disability board shall make a finding that the disability was incurred in line of duty.

(3) Every order of a disability board granting a duty disability retirement allowance shall forthwith be reviewed by the director except the finding that the disability was incurred in the line of duty. The director may affirm the decision of the disability board or remand the case for further proceedings,

or the director may reverse the decision of the disability board if the director finds the disability board's findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the disability board; or
- (c) Made upon unlawful procedure; or
- (d) Affected by other error of law; or
- (e) Clearly erroneous in view of the entire record as submitted and the public policy contained in this chapter; or
- (f) Arbitrary or capricious.

(4) Every member who can establish, to the disability board, that he or she is physically or mentally disabled from the further performance of duty, that such disability was incurred in the line of duty, and that such disability will be in existence for a period of at least six months may waive the six-month period of disability leave and be immediately granted a duty disability retirement allowance, subject to the approval of the director as provided in subsection (3) of this section. [1991 c 35 § 19; 1986 c 176 § 5; 1985 c 102 § 2; 1981 c 294 § 2; 1974 ex.s. c 120 § 10; 1972 ex.s. c 131 § 8; 1970 ex.s. c 6 § 7; 1969 ex.s. c 209 § 12.]

Intent—1991 c 35: See note following RCW 41.26.005.

Purpose—1985 c 102: "As expressed in RCW 41.26.270, the intent of the legislature in enacting the law enforcement officers' and firefighters' retirement system was to provide in RCW 41.26.120 a statute in the nature of a workers' compensation act which provides compensation to employees for personal injuries or sickness incurred in the course of employment. The sole purpose of this 1985 act is to clarify that intent." [1985 c 102 § 1.]

Disability leave supplement for law enforcement officers and firefighters: RCW 41.04.500 through 41.04.550.

Additional notes found at www.leg.wa.gov

41.26.125 Retirement for disability not incurred in the line of duty. Any member, regardless of age or years of service, may be retired by the disability board, subject to approval by the director as provided in this section, for any disability not incurred in the line of duty which has been continuous since discontinuance of service and which renders the member unable to continue service. No disability retirement allowance may be paid until the expiration of a period of six months after the discontinuance of service during which period the member, if found to be physically or mentally unfit for duty by the disability board following receipt of the member's application for disability retirement, shall be granted a disability leave by the disability board and shall receive an allowance equal to the member's full monthly salary and shall continue to receive all other benefits provided to active employees from the member's employer for the period. However, if, at any time during the initial six-month period, the disability board finds the beneficiary is no longer disabled, the disability leave allowance shall be canceled and the member shall be restored to duty in the same rank or position, if any, held by the member at the time the member became disabled. Applications for disability retirement shall be processed in accordance with the following procedures:

(1) Any member who believes he or she is, or is believed to be, physically or mentally disabled shall be examined by such medical authority as the disability board shall employ, upon application of the member, or a person acting in the member's behalf, stating that the member is disabled, either physically or mentally: PROVIDED, That no such applica-

tion shall be considered unless the member or someone acting in the member's behalf, in case of the incapacity of a member, has filed the application within a period of one year from and after the discontinuance of service of the member.

(2) If the examination shows, to the satisfaction of the disability board, that the member is physically or mentally disabled from the further performance of duty, that such disability was not incurred in the line of duty, and that such disability had been continuous from the discontinuance of service, the disability board shall enter its written decision and order, accompanied by appropriate findings of fact and by conclusions evidencing compliance with this chapter, granting the member a disability retirement allowance. Otherwise, if the member is not found by the disability board to be so disabled, the application shall be denied pursuant to a similar written decision and order, subject to appeal to the director in accordance with RCW 41.26.200: PROVIDED, That in any order granting a nonduty disability retirement allowance, the disability board shall make a finding that the disability was not incurred in the line of duty.

(3) Every order of a disability board granting a nonduty disability retirement allowance shall forthwith be reviewed by the director except the finding that the disability was not incurred in the line of duty. The director may affirm the decision of the disability board or remand the case for further proceedings, or the director may reverse the decision of the disability board if the director finds the disability board's findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the disability board; or
- (c) Made upon unlawful procedure; or
- (d) Affected by other error of law; or
- (e) Clearly erroneous in view of the entire record as submitted and the public policy contained in this chapter; or
- (f) Arbitrary or capricious.

(4) Every member who can establish to the disability board that the member is physically or mentally disabled from the further performance of duty, that such disability was not incurred in the line of duty, and that such disability will be in existence for a period of at least six months, may waive the six-month period of disability leave and be immediately granted a nonduty disability retirement allowance, subject to the approval of the director as provided in subsection (3) of this section. [1986 c 176 § 6; 1985 c 102 § 3.]

Purpose—Retrospective application—1985 c 102: See notes following RCW 41.26.120.

41.26.130 Allowance on retirement for disability. (1) Upon retirement for disability a member shall be entitled to receive a monthly retirement allowance computed as follows: (a) A basic amount of fifty percent of final average salary at time of disability retirement, and (b) an additional five percent of final average salary for each child as defined in *RCW 41.26.030(7), (c) the combined total of (a) and (b) of this subsection shall not exceed a maximum of sixty percent of final average salary.

(2) A disabled member shall begin receiving the disability retirement allowance as of the expiration of his or her six month period of disability leave or, if his or her application was filed after the sixth month of discontinuance of service

but prior to the one year time limit, the member's disability retirement allowance shall be retroactive to the end of the sixth month.

(3) Benefits under this section will be payable until the member recovers from the disability or dies. If at the time that the disability ceases the member is over the age of fifty, he or she shall then receive either disability retirement allowance or retirement for service allowance, whichever is greater.

(4) Benefits under this section for a disability that is incurred while in other employment will be reduced by any amount the member receives or is entitled to receive from workers' compensation, social security, group insurance, other pension plan, or any other similar source provided by another employer on account of the same disability.

(5) A member retired for disability shall be subject to periodic examinations by a physician approved by the disability board prior to attainment of age fifty, pursuant to rules adopted by the director under RCW 41.26.115. Examinations of members who retired for disability prior to July 26, 1981, shall not exceed two medical examinations per year. [1991 c 35 § 20; 1987 c 185 § 11; 1981 c 294 § 3; 1970 ex.s. c 6 § 8; 1969 ex.s. c 209 § 13.]

***Reviser's note:** RCW 41.26.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (7) to subsection (6).

Intent—1991 c 35: See note following RCW 41.26.005.

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

Additional notes found at www.leg.wa.gov

41.26.135 Cessation of disability—Determination.

(1) A disabled member who believes that his or her disability has ceased in accordance with RCW 41.26.130(3) may make application to the disability board which originally found the member to be disabled, for a determination that the disability has ceased.

(2) Every order of a disability board determining that a member's disability has ceased pursuant to RCW 41.26.130(3) shall forthwith be reviewed by the director. The director may affirm the decision of the disability board or remand the case for further proceedings if the director finds the disability board's findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the disability board; or
- (c) Made upon unlawful procedure; or
- (d) Affected by other error of law; or
- (e) Clearly erroneous in view of the entire record as submitted and the public policy contained in this chapter; or
- (f) Arbitrary or capricious.

(3) Determinations of whether a disability has ceased under RCW 41.26.130(3) and this section shall be made in accordance with the same procedures and standards governing other cancellations of disability retirement. [1985 c 103 § 1.]

41.26.140 Reexaminations of disability beneficiaries—Reentry—Appeal. (1) Upon the basis of reexaminations of members on disability retirement as provided in RCW 41.26.130, the disability board shall determine whether such disability beneficiary is still unable to perform his or her

duties either physically or mentally for service in the department where he or she was employed.

(2) If the disability board shall determine that the beneficiary is not so incapacitated the retirement allowance shall be canceled and the member shall be restored to duty in the same civil service rank, if any, held by the beneficiary at the time of his or her retirement or if unable to perform the duties of said rank, then, at his or her request, in such other like or lesser rank as may be or become open and available, the duties of which he or she is then able to perform. In no event, shall a beneficiary previously drawing a disability allowance be returned or be restored to duty at a salary or rate of pay less than the current salary attached to the rank or position held by the said beneficiary at the date of retirement for disability. If the disability board determines that the beneficiary is able to return to service he or she shall be entitled to notice and a hearing, both the notice and the hearing shall comply with the requirements of chapter 34.05 RCW, as now or hereafter amended.

(3) Should a disability beneficiary reenter service and be eligible for membership in the retirement system, the retirement allowance shall be canceled and he or she shall immediately become a member of the retirement system.

(4) Should any disability beneficiary under age fifty refuse to submit to examination, the retirement allowance shall be discontinued until withdrawal of such refusal, and should such refusal continue for one year or more, the retirement allowance shall be canceled.

(5) Should the disability retirement allowance of any disability beneficiary be canceled for any cause other than reentrance into service or retirement for service, he or she shall be paid the excess, if any, of the accumulated contributions at the time of retirement over all payments made on his or her behalf under this chapter.

(6) Any person feeling aggrieved by an order of a disability board determining that a beneficiary's disability has not ceased, pursuant to RCW 41.26.130(3) has the right to appeal the order or determination to the director. The director shall have no jurisdiction to entertain the appeal unless a notice of appeal is filed with the director within thirty days following the rendition of the order by the disability board. A copy of the notice of appeal shall be served upon the director and the applicable disability board and, within ninety days thereof, the disability board shall certify its decision and order which shall include findings of fact and conclusions of law, together with a transcript of all proceedings in connection therewith, to the director for review. Upon review of the record, the director may affirm the order of the disability board or may remand the case for further proceedings if the director finds that the disability board's findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the disability board; or
- (c) Made upon unlawful procedure; or
- (d) Affected by other error of law; or
- (e) Clearly erroneous in view of the entire record as submitted and the public policy contained in this chapter; or
- (f) Arbitrary or capricious. [1991 c 35 § 21; 1985 c 103 § 2; 1981 c 294 § 4; 1974 ex.s. c 120 § 4; 1970 ex.s. c 6 § 9; 1969 ex.s. c 209 § 14.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.26.150 Sickness or disability benefits—Medical services. (1) Whenever any active member, or any member hereafter retired, on account of service, sickness, or disability, not caused or brought on by dissipation or abuse, of which the disability board shall be judge, is confined in any hospital or in home, and whether or not so confined, requires medical services, the employer shall pay for the active or retired member the necessary medical services not payable from some other source as provided for in subsection (2) of this section. In the case of active or retired firefighters the employer may make the payments provided for in this section from the firefighters' pension fund established pursuant to RCW 41.16.050 where the fund had been established prior to March 1, 1970. If this pension fund is depleted, the employer shall have the obligation to pay all benefits payable under chapters 41.16 and 41.18 RCW.

(a) The disability board in all cases may have the active or retired member suffering from such sickness or disability examined at any time by a licensed physician or physicians, to be appointed by the disability board, for the purpose of ascertaining the nature and extent of the sickness or disability, the physician or physicians to report to the disability board the result of the examination within three days thereafter. Any active or retired member who refuses to submit to such examination or examinations shall forfeit all rights to benefits under this section for the period of the refusal.

(b) The disability board shall designate the medical services available to any sick or disabled member.

(2) The medical services payable under this section will be reduced by any amount received or eligible to be received by the member under workers' compensation, social security including the changes incorporated under Public Law 89-97, insurance provided by another employer, other pension plan, or any other similar source. Failure to apply for coverage if otherwise eligible under the provisions of Public Law 89-97 shall not be deemed a refusal of payment of benefits thereby enabling collection of charges under the provisions of this chapter.

(3) Upon making the payments provided for in subsection (1) of this section, the employer shall be subrogated to all rights of the member against any third party who may be held liable for the member's injuries or for payment of the cost of medical services in connection with a member's sickness or disability to the extent necessary to recover the amount of payments made by the employer.

(4) Any employer under this chapter, either singly, or jointly with any other such employer or employers through an association thereof as provided for in chapter 48.21 RCW, may provide for all or part of one or more plans of group hospitalization and medical aid insurance to cover any of its employees who are members of the Washington law enforcement officers' and firefighters' retirement system, and/or retired former employees who were, before retirement, members of the retirement system, through contracts with regularly constituted insurance carriers, with health maintenance organizations as defined in chapter 48.46 RCW, or with health care service contractors as defined in chapter 48.44 RCW. Benefits payable under the plan or plans shall be

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deemed to be amounts received or eligible to be received by the active or retired member under subsection (2) of this section.

(5) Any employer under this chapter may, at its discretion, elect to reimburse a retired former employee under this chapter for premiums the retired former employee has paid for medical insurance that supplements medicare, including premiums the retired former employee has paid for medicare part B coverage. [2013 c 23 § 70; 1992 c 22 § 3; 1991 c 35 § 22; 1987 c 185 § 12; 1983 c 106 § 23; 1974 ex.s. c 120 § 11; 1971 ex.s. c 257 § 10; 1970 ex.s. c 6 § 10; 1969 ex.s. c 219 § 4; 1969 ex.s. c 209 § 15.]

Intent—1991 c 35: See note following RCW 41.26.005.

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

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

Additional notes found at www.leg.wa.gov

41.26.160 Death benefits—Duty or military service connected. (1) In the event of the duty connected death of any member who is in active service, or who has vested under the provisions of RCW 41.26.090 with twenty or more service credit years of service, or who is on duty connected disability leave or retired for duty connected disability, or upon the death of a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, the surviving spouse shall become entitled, subject to RCW 41.26.162, to receive a monthly allowance equal to fifty percent of the final average salary at the date of death if active, or the amount of retirement allowance the vested member would have received at age fifty, or the amount of the retirement allowance such retired member was receiving at the time of death if retired for duty connected disability. The amount of this allowance will be increased five percent of final average salary for each child as defined in *RCW 41.26.030(7), subject to a maximum combined allowance of sixty percent of final average salary: PROVIDED, That if the child or children is or are in the care of a legal guardian, payment of the increase attributable to each child will be made to the child's legal guardian or, in the absence of a legal guardian and if the member has created a trust for the benefit of the child or children, payment of the increase attributable to each child will be made to the trust.

(2) If at the time of the duty connected death of a vested member with twenty or more service credit years of service as provided in subsection (1) of this section or a member retired for duty connected disability, or at the time of the death of a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, the surviving spouse has not been lawfully married to such member for one year prior to retirement or separation from service if a vested member, the surviving spouse shall not be eligible to receive the benefits under this section: PROVIDED, That if a member dies as a result of a disability incurred in the line of duty or while honorably serving in the national guard or military reserves during a period of war as

defined in RCW 41.04.005, then if he or she was married at the time he or she was disabled or left the employ of an employer due to service in the national guard or military reserves during a period of war as defined in RCW 41.04.005, the surviving spouse shall be eligible to receive the benefits under this section.

(3) If there be no surviving spouse eligible to receive benefits at the time of such member's duty connected death, then the child or children of such member shall receive a monthly allowance equal to thirty percent of final average salary for one child and an additional ten percent for each additional child subject to a maximum combined payment, under this subsection, of sixty percent of final average salary. When there cease to be any eligible children as defined in *RCW 41.26.030(7), there shall be paid to the legal heirs of the member the excess, if any, of accumulated contributions of the member at the time of death over all payments made to survivors on his or her behalf under this chapter: PROVIDED, That payments under this subsection to children shall be prorated equally among the children, if more than one. If the member has created a trust for the benefit of the child or children, the payment shall be made to the trust.

(4) In the event that there is no surviving spouse eligible to receive benefits under this section, and that there be no child or children eligible to receive benefits under this section, then the accumulated contributions shall be paid to the estate of the member.

(5) If a surviving spouse receiving benefits under this section remarries after June 13, 2002, the surviving spouse shall continue to receive the benefits under this section.

(6) If a surviving spouse receiving benefits under the provisions of this section thereafter dies and there are children as defined in *RCW 41.26.030(7), payment to the spouse shall cease and the child or children shall receive the benefits as provided in subsection (3) of this section.

(7) The payment provided by this section shall become due the day following the date of death and payments shall be retroactive to that date. [2009 c 226 § 1; 2005 c 62 § 1; 2002 c 158 § 1; 1999 c 134 § 2; 1991 sp.s. c 11 § 5. Prior: 1991 c 343 § 17; 1991 c 35 § 23; 1986 c 176 § 7; 1977 ex.s. c 294 § 23; 1974 ex.s. c 120 § 5; 1972 ex.s. c 131 § 9; 1971 ex.s. c 257 § 11; 1970 ex.s. c 6 § 12; 1969 ex.s. c 209 § 17.]

***Reviser's note:** RCW 41.26.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (7) to subsection (6).

Purpose—1999 c 134: "The purpose of sections 1 through 4 of this act is to clarify that the intent of the legislature in enacting RCW 41.26.160, insofar as that section provides benefits to members or surviving spouses for deaths incurred in the line of duty, was to provide a statute in the nature of a workers' compensation act that provides compensation to employees or surviving spouses for personal injuries or deaths incurred in the course of employment. Accordingly, this act amends and divides RCW 41.26.160 into two separate sections. Section 2 of this act clarifies and emphasizes the legislature's intent that the death benefits granted by RCW 41.26.160, as amended, are granted only to those members who die or become disabled by any injury or incapacity that is incurred in the line of duty. Section 3 of this act continues to provide death retirement benefits to members or surviving spouses for deaths not incurred in the line of duty." [1999 c 134 § 1.]

Purpose—Effective dates—1991 sp.s. c 11: See notes following RCW 41.26.090.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

41.26.161 Death benefits—Nonduty connected. (1) In the event of the nonduty connected death of any member who is in active service, or who has vested under the provisions of RCW 41.26.090 with twenty or more service credit years of service, or who is on disability leave or retired, whether for nonduty connected disability or service, the surviving spouse shall become entitled, subject to RCW 41.26.162, to receive a monthly allowance equal to fifty percent of the final average salary at the date of death if active, or the amount of retirement allowance the vested member would have received at age fifty, or the amount of the retirement allowance such retired member was receiving at the time of death if retired for service or nonduty connected disability. The amount of this allowance will be increased five percent of final average salary for each child as defined in *RCW 41.26.030(7), subject to a maximum combined allowance of sixty percent of final average salary: PROVIDED, That if the child or children is or are in the care of a legal guardian, payment of the increase attributable to each child will be made to the child's legal guardian or, in the absence of a legal guardian and if the member has created a trust for the benefit of the child or children, payment of the increase attributable to each child will be made to the trust.

(2) If at the time of the death of a vested member with twenty or more service credit years of service as provided in subsection (1) of this section or a member retired for service or disability, the surviving spouse has not been lawfully married to such member for one year prior to retirement or separation from service if a vested member, the surviving spouse shall not be eligible to receive the benefits under this section.

(3) If there be no surviving spouse eligible to receive benefits at the time of such member's death, then the child or children of such member shall receive a monthly allowance equal to thirty percent of final average salary for one child and an additional ten percent for each additional child subject to a maximum combined payment, under this subsection, of sixty percent of final average salary. When there cease to be any eligible children as defined in *RCW 41.26.030(7), there shall be paid to the legal heirs of the member the excess, if any, of accumulated contributions of the member at the time of death over all payments made to survivors on his or her behalf under this chapter: PROVIDED, That payments under this subsection to children shall be prorated equally among the children, if more than one. If the member has created a trust for the benefit of the child or children, the payment shall be made to the trust.

(4) In the event that there is no surviving spouse eligible to receive benefits under this section, and that there be no child or children eligible to receive benefits under this section, then the accumulated contributions shall be paid to the estate of said member.

(5) If a surviving spouse receiving benefits under this section remarries after June 13, 2002, the surviving spouse shall continue to receive the benefits under this section.

(6) If a surviving spouse receiving benefits under the provisions of this section thereafter dies and there are children as defined in *RCW 41.26.030(7), payment to the spouse shall cease and the child or children shall receive the benefits as provided in subsection (3) of this section.

(7) The payment provided by this section shall become due the day following the date of death and payments shall be retroactive to that date. [2005 c 62 § 2; 2002 c 158 § 2; 1999 c 134 § 3.]

***Reviser's note:** RCW 41.26.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (7) to subsection (6).

Purpose—Effective date—1999 c 134: See notes following RCW 41.26.160.

41.26.162 Ex spouse qualifying as surviving spouse.

(1) An ex spouse of a law enforcement officers' and firefighters' retirement system retiree shall qualify as surviving spouse under RCW 41.26.160 or 41.26.161 if the ex spouse has been provided benefits under any currently effective court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation. Such an ex spouse shall continue to receive the court-awarded portion of the member's benefit after the member's death as if the member was still alive.

(2) An ex spouse whose benefit resumes as a result of chapter 62, Laws of 2005 shall receive an initial payment equivalent to that portion of the member's benefit received prior to its suspension. The benefit will not be adjusted under RCW 41.26.240 for the period the allowance was suspended.

(3) Chapter 62, Laws of 2005 shall not result in the payment of benefits for the period during which benefits were suspended.

(4) This section shall apply retroactively. [2005 c 62 § 3; 2002 c 158 § 3; 1991 sp.s. c 12 § 2.]

41.26.164 Optional reduced retirement allowance—Continues for spouse otherwise ineligible for survivor benefits. (1) No later than July 1, 2005, the department shall adopt rules to allow a member who meets the criteria set forth in subsection (2) of this section to choose an actuarially equivalent benefit that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of a spouse ineligible for survivor benefits under RCW 41.26.160 or 41.26.161.

(2) To choose an actuarially equivalent benefit according to subsection (1) of this section, a member shall:

(a) Have a portion of the retirement allowance payable to the retiree that is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670; and

(b) Choose an actuarially reduced benefit equivalent to that portion not subject to periodic payments under (a) of this subsection during a one-year period beginning one year after the date of marriage to the survivor benefit-ineligible spouse.

(3) A member who married a spouse ineligible for survivor benefits under RCW 41.26.160 or 41.26.161 prior to the effective date of the rules adopted under this section and satisfies subsection (2)(a) of this section has one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(4) No benefit provided to a child survivor beneficiary under RCW 41.26.160 or 41.26.161 is affected or reduced by

the member's selection of the actuarially reduced spousal survivor benefit provided by this section.

(5)(a) Any member who chose to receive a reduced retirement allowance under subsection (1) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection if:

(i) The retiree's survivor spouse designated in subsection (1) of this section predeceases the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree from the beginning of the month following the date of the beneficiary's death shall be increased by the following:

(i) One hundred percent multiplied by the result of (b)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor. [2005 c 67 § 1; 2002 c 158 § 4.]

Effective date—2005 c 67: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 15, 2005]." [2005 c 67 § 2.]

41.26.170 Refund of contributions on discontinuance of service—Reentry. (1) Should service of a member be discontinued except by death, disability, or retirement, the member shall, upon application therefor, be paid the accumulated contributions within sixty days after the day of application and the rights to all benefits as a member shall cease: PROVIDED, That any member with at least five years' service may elect the provisions of RCW 41.26.090(2).

(2) Any member whose contributions have been paid in accordance with subsection (1) of this section and who reenters the service of an employer shall upon the restoration of withdrawn contributions, which restoration must be completed within a total period of five years of service following resumption of employment, then receive credit toward retirement for the period of previous service which these contributions are to cover.

(3) If the member fails to meet the time limitations of subsection (2) of this section, the member may make the payment required under RCW 41.50.165(2) prior to retirement. The member shall then receive credit toward retirement for the period of previous service that the withdrawn contributions cover. [1994 c 197 § 6; 1991 c 35 § 24; 1970 ex.s. c 6 § 14; 1969 ex.s. c 209 § 22.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Intent—1991 c 35: See note following RCW 41.26.005.

41.26.190 Credit for military service. Each person affected by this chapter who at the time of entering the armed services was a member of this system, and has honorably served in the armed services of the United States, shall have added to the period of service as computed under this chapter, the period of service in the armed forces: PROVIDED, That such credited service shall not exceed five years. [1991 c 35 § 26; 1970 ex.s. c 6 § 13; 1969 ex.s. c 209 § 18.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.26.192 Credit for service under prior pension system—Restoration of withdrawn contributions. If a member of plan 1 served as a law enforcement officer or firefighter under a prior pension system and that service is not creditable to plan 1 because the member withdrew his or her contributions plus accrued interest from the prior pension system, the member's prior service as a law enforcement officer shall be credited to plan 1 if the member pays to the retirement system the amount under RCW 41.50.165(2) prior to retirement. [1994 c 197 § 7; 1992 c 157 § 1.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

41.26.194 Credit for service under prior pension system—Service not covered under prior system. If a plan 1 member's prior service as a law enforcement officer or firefighter under a prior pension system is not creditable because, although employed in a position covered by a prior pension act, the member had not yet become a member of the pension system governed by the act, the member's prior service as a law enforcement officer or firefighter shall be creditable under plan 1, if the member pays to the plan the amount set forth under RCW 41.50.165(2) prior to retirement. [1994 c 197 § 8; 1992 c 157 § 2.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

41.26.195 Transfer of service credit from other retirement system—Irrevocable election allowed. Any member of the teachers' retirement system plans 1, 2, or 3, the public employees' retirement system plans 1, 2, or 3, the public safety employees' retirement system plan 2, the school employees' retirement system plans 2 or 3, or the Washington state patrol retirement system plans 1 or 2 who has previously established service credit in the law enforcement officers' and firefighters' retirement system plan 1 may make an irrevocable election to have such service transferred to their current retirement system and plan subject to the following conditions:

(1) If the individual is employed by an employer in an eligible position, as of July 1, 1997, the election to transfer service must be filed in writing with the department no later than July 1, 1998. If the individual is not employed by an employer in an eligible position, as of July 1, 1997, the election to transfer service must be filed in writing with the department no later than one year from the date they are employed by an employer in an eligible position.

(2) An individual transferring service under this section forfeits the rights to all benefits as a member of the law enforcement officers' and firefighters' retirement system plan 1 and will be permanently excluded from membership.

(3) Any individual choosing to transfer service under this section will have transferred to their current retirement system and plan: (a) All the individual's accumulated contributions; (b) an amount sufficient to ensure that the employer contribution rate in the individual's current system and plan will not increase due to the transfer; and (c) all applicable months of service, as defined in *RCW 41.26.030(14)(a).

(4) If an individual has withdrawn contributions from the law enforcement officers' and firefighters' retirement system plan 1, the individual may restore the contributions, together

with interest as determined by the director, and recover the service represented by the contributions for the sole purpose of transferring service under this section. The contributions must be restored before the transfer can occur and the restoration must be completed within the time limitations specified in subsection (1) of this section.

(5) Service transferred under this section is applicable for meeting the total service required for military service credit as defined in RCW 41.40.170(3) but is not applicable for meeting the total service credit required for military service credit under RCW 43.43.260(3). This subsection applies to members who retired on or after January 1, 1998.

(6) If an individual does not meet the time limitations of subsection (1) of this section, the individual may elect to restore any withdrawn contributions and transfer service under this section by paying the amount required under subsection (3)(b) of this section less any employee contributions transferred. [2010 c 260 § 1; 2007 c 492 § 9; 2003 c 294 § 2; 1997 c 122 § 1.]

***Reviser's note:** RCW 41.26.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (14)(a) to subsection (28)(a).

41.26.197 Service credit for paid leave of absence—Application to elected officials of labor organizations. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided under the provisions of RCW 41.26.080 through 41.26.3903.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The basic salary reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement. [1993 c 95 § 3.]

Additional notes found at www.leg.wa.gov

41.26.199 Purchase of additional service credit—Costs—Rules. (1) A member eligible to retire under RCW 41.26.090 may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The

rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service and shall be used exclusively to provide the member with a monthly annuity that is paid in addition to the member's retirement allowance. [2006 c 214 § 5.]

Effective date—2006 c 214: See note following RCW 41.40.034.

41.26.200 Appeal to director of retirement systems.

Any person feeling aggrieved by any order or determination of a disability board denying disability leave or disability retirement, or canceling a previously granted disability retirement allowance, shall have the right to appeal the order or determination to the director. The director shall have no jurisdiction to entertain the appeal unless a notice of appeal is filed with the director within thirty days following the rendition of the order by the applicable disability board. A copy of the notice of appeal shall be served upon the director and the applicable disability board and, within ninety days thereof, the disability board shall certify its decision and order which shall include findings of fact and conclusions of law, together with a transcript of all proceedings in connection therewith, to the director for review. Upon review of the record, the director may affirm the order of the disability board or may remand the case for such further proceedings as he or she may direct, in accordance with such rules of procedure as the director shall promulgate. [1981 c 294 § 5; 1974 ex.s. c 120 § 6; 1971 ex.s. c 257 § 13; 1970 ex.s. c 6 § 11; 1969 ex.s. c 209 § 16.]

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

Additional notes found at www.leg.wa.gov

41.26.211 Notice for hearing required prior to petitioning for judicial review. Any person aggrieved by any final decision of the director must, before petitioning for judicial review, file with the director of the retirement system by mail or personally within sixty days from the day such decision was communicated to such person, a notice for a hearing. The notice of hearing shall set forth in full detail the grounds upon which such person considers such decision unjust or unlawful and shall include every issue to be considered, and it must contain a detailed statement of facts upon which such person relies in support thereof. Such persons shall be deemed to have waived all objections or irregularities concerning the matter on which such appeal is taken other than those specifically set forth in the notice of hearing or appearing in the records of the retirement system. [1984 c 184 § 16; 1981 c 294 § 6; 1969 ex.s. c 209 § 19. Formerly RCW 41.26.052, 41.26.210.]

Additional notes found at www.leg.wa.gov

41.26.221 Hearing—Conduct. A hearing shall be held by the director, or the director's duly authorized representative, in the county of the residence of the claimant at a time and place designated by the director. Such hearing shall be de

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novo and shall conform to the provisions of chapter 34.05 RCW, as now or hereafter amended. The disability board and the department shall be entitled to appear in all such proceedings and introduce testimony in support of the decision. Judicial review of any final decision by the director shall be governed by the provisions of chapter 34.05 RCW as now law or hereafter amended. [1984 c 184 § 17; 1981 c 294 § 7; 1969 ex.s. c 209 § 20. Formerly RCW 41.26.054, 41.26.220.]

Additional notes found at www.leg.wa.gov

41.26.240 Increases or decreases in retirement allowances to be determined by department in accordance with consumer price index. For purposes of this section:

(1) "Index" shall mean, for any calendar year, that year's average Consumer Price Index—Seattle, Washington area for urban wage earners and clerical workers, all items (1957-1959=100), compiled by the Bureau of Labor Statistics, United States Department of Labor;

(2) "Retirement allowance" shall mean the retirement allowance provided for in RCW 41.26.100 and 41.26.130, and the monthly allowance provided for in RCW 41.26.160.

Effective April 1 of 1971, and of each succeeding year, every retirement allowance which has been in effect for more than one year shall be adjusted to that dollar amount which exceeds its original dollar amount by the percentage difference which the department finds to exist between the index for the previous calendar year and the index for the calendar year prior to the effective retirement date of the person to whom, or on behalf of whom, such retirement allowance is being paid.

For the purposes of this section, basic allowance shall mean that portion of a total retirement allowance, and any cost of living adjustment thereon, attributable to a member (individually) and shall not include the increased amounts attributable to the existence of a child or children. In those cases where a child ceases to be qualified as an eligible child, so as to lessen the total allowance, the allowance shall, at that time, be reduced to the basic allowance plus the amount attributable for the appropriate number of eligible children. In those cases where a child qualifies as an eligible child subsequent to the retirement of a member so as to increase the total allowance payable, such increased allowance shall at the time of the next and appropriate subsequent cost of living adjustments, be considered the original dollar amount of the allowance. [1991 c 35 § 27; 1974 ex.s. c 120 § 13; 1970 ex.s. c 6 § 16; 1969 ex.s. c 209 § 24.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.26.250 Increase in presently payable benefits for service or disability authorized. All benefits presently payable pursuant to the provisions of RCW 41.20.050, 41.20.060 and 41.20.080 as such RCW sections existed prior to the effective date of the amendment of such RCW sections by sections 1, 2, 3, chapter 191, Laws of 1961 to persons who retired prior to the effective date of the said 1961 amendatory act, shall be increased annually as hereafter in this section provided. The local pension board shall meet subsequent to March 31st but prior to June 30th of each year for the purpose of adjusting benefit allowances payable pursuant to the aforementioned sections. The local board shall determine the

increase in the consumer price index between January 1st and December 31st of the previous year and increase in dollar amount the benefits payable subsequent to July 1st of the year in which said board makes such determination by a dollar amount proportionate to the increase in the consumer price index: PROVIDED, That regardless of the change in the consumer price index, such increase shall be at least two percent each year such adjustment is made.

Each year effective with the July payment all benefits specified herein, shall be increased as authorized by this section. This benefit increase shall be paid monthly as part of the regular pension payment and shall be cumulative.

For the purpose of this section the term

"Consumer price index" shall mean, for any calendar year, the consumer price index for the Seattle, Washington area as compiled by the bureau of labor statistics of the United States department of labor. [1975 1st ex.s. c 178 § 3; 1974 ex.s. c 190 § 3; 1970 ex.s. c 37 § 2; 1969 ex.s. c 209 § 34.]

Additional notes found at www.leg.wa.gov

41.26.260 Increase in certain presently payable death benefits authorized. All benefits presently payable pursuant to the provisions of RCW 41.20.085 which are not related to the amount of current salary attached to the position held by the deceased member, shall be increased annually in the same manner and to the same extent as provided for pursuant to RCW 41.26.250. [1974 ex.s. c 190 § 4; 1969 ex.s. c 209 § 35.]

41.26.270 Declaration of policy respecting benefits for injury or death—Civil actions abolished. The legislature of the state of Washington hereby declares that the relationship between members of the law enforcement officers' and firefighters' retirement system and their governmental employers is similar to that of workers to their employers and that the sure and certain relief granted by this chapter is desirable, and as beneficial to such law enforcement officers and firefighters as workers' compensation coverage is to persons covered by Title 51 RCW. The legislature further declares that removal of law enforcement officers and firefighters from workers' compensation coverage under Title 51 RCW necessitates the (1) continuance of sure and certain relief for personal injuries incurred in the course of employment or occupational disease, which the legislature finds to be accomplished by the provisions of this chapter and (2) protection for the governmental employer from actions at law; and to this end the legislature further declares that the benefits and remedies conferred by this chapter upon law enforcement officers and firefighters covered hereunder, shall be to the exclusion of any other remedy, proceeding, or compensation for personal injuries or sickness, caused by the governmental employer except as otherwise provided by this chapter; and to that end all civil actions and civil causes of actions by such law enforcement officers and firefighters against their governmental employers for personal injuries or sickness are hereby abolished, except as otherwise provided in this chapter. [1989 c 12 § 13; 1987 c 185 § 13; 1985 c 102 § 4; 1971 ex.s. c 257 § 14.]

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

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Purpose—Retrospective application—1985 c 102: See notes following RCW 41.26.120.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

41.26.281 Cause of action for injury or death, when. If injury or death results to a member from the intentional or negligent act or omission of a member's governmental employer, the member, the widow, widower, child, or dependent of the member shall have the privilege to benefit under this chapter and also have cause of action against the governmental employer as otherwise provided by law, for any excess of damages over the amount received or receivable under this chapter. [1991 c 35 § 28; 1971 ex.s. c 257 § 15. Formerly RCW 41.26.058, 41.26.280.]

Intent—1991 c 35: See note following RCW 41.26.005.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

41.26.3901 Severability—1969 ex.s. c 209. If any provision of *this 1969 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1969 ex.s. c 209 § 42. Formerly RCW 41.26.900.]

***Reviser's note:** "this 1969 amendatory act," see note following chapter digest.

41.26.3902 Act to control inconsistencies. To the extent that the provisions of *this 1969 amendatory act are inconsistent with the provisions of any other law, the provisions of *this 1969 amendatory act shall be controlling. [1969 ex.s. c 209 § 43. Formerly RCW 41.26.910.]

***Reviser's note:** "this 1969 amendatory act," see note following chapter digest.

41.26.3903 Effective date—1969 ex.s. c 209. *This 1969 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect on July 1, 1969. [1969 ex.s. c 209 § 45. Formerly RCW 41.26.920.]

***Reviser's note:** "This 1969 amendatory act," see note following chapter digest.

"PLAN 2"

41.26.410 Provisions applicable to plan 2. RCW 41.26.420 through 41.26.550 shall apply only to plan 2 members. [1991 c 35 § 29; 1977 ex.s. c 294 § 2.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.26.420 Computation of the retirement allowance. Except as provided in RCW 41.26.530, a member of the retirement system shall receive a retirement allowance equal to two percent of such member's final average salary for each year of service. [1993 c 517 § 2; 1979 ex.s. c 249 § 4; 1977 ex.s. c 294 § 3.]

Purpose—1993 c 517: "The legislature recognizes the demanding, physical nature of law enforcement and firefighting, and the resulting need to allow law enforcement officers and firefighters to make transitions into other careers when these employees feel they can no longer pursue law enforce-

ment or firefighting. The legislature also recognizes the challenge and cost of maintaining the viability of a retired employee's benefit over longer periods of retirement as longevity increases, and that this problem is compounded for employees who leave a career before they retire from the workforce.

Therefore, the purpose of this act is to: (1) Provide full retirement benefits to law enforcement officers and firefighters at an appropriate age that reflects the unique and physically demanding nature of their work; (2) provide a fair and reasonable value from the retirement system for those who leave the law enforcement or firefighting profession before retirement; (3) increase flexibility for law enforcement officers and firefighters to make transitions into other public or private sector employment; (4) increase employee options for addressing retirement needs, personal financial planning, and career transitions; and (5) continue the legislature's established policy of having employees pay a fifty percent share of the contributions toward their retirement benefits and any enhancements." [1993 c 517 § 1.]

Additional notes found at www.leg.wa.gov

41.26.425 Lump sum retirement allowance—Reentry—Conditions for reinstatement of service. (1) On or after June 10, 1982, the director may pay a beneficiary, subject to the provisions of subsection (5) of this section, a lump sum payment in lieu of a monthly benefit if the initial monthly benefit computed in accordance with RCW 41.26.420 would be less than fifty dollars. The lump sum payment shall be the greater of the actuarial equivalent of such monthly benefits or an amount equal to the individual's accumulated contributions plus accrued interest.

(2) A beneficiary, subject to the provisions of subsection (5) of this section, who is receiving a regular monthly benefit of less than fifty dollars may request, in writing, to convert from a monthly benefit to a lump sum payment. If the director approves the conversion, the calculation of the actuarial equivalent of the total estimated regular benefit will be computed based on the beneficiary's age at the time the benefit initially accrued. The lump sum payment will be reduced to reflect any payments received on or after the initial benefit accrual date.

(3) Persons covered under the provisions of subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to re-retiring, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(4) If a member fails to meet the time limitations set forth under subsection (3) of this section, the member may reinstate all previous service under RCW 41.50.165(2) prior to retirement. The sum deposited shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(5) Only persons entitled to or receiving a service retirement allowance under RCW 41.26.420 or an earned disability allowance under RCW 41.26.470 qualify for participation under this section.

(6) It is the intent of the legislature that any member who receives a settlement under this section shall be deemed to be retired from this system. [1994 c 197 § 9; 1982 c 144 § 1.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

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41.26.430 Retirement for service. (1) **NORMAL RETIREMENT.** Any member with at least five service credit years of service who has attained at least age fifty-three shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.26.420.

(2) **EARLY RETIREMENT.** Any member who has completed at least twenty service credit years of service and has attained age fifty shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.26.420, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age fifty-three.

(3) **ALTERNATE EARLY RETIREMENT.** Any member who has completed at least twenty service credit years and has attained age fifty shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.26.420, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age fifty-three. [2000 c 247 § 904; 1993 c 517 § 3; 1991 c 343 § 18; 1977 ex.s. c 294 § 4.]

Purpose—1993 c 517: See note following RCW 41.26.420.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Additional notes found at www.leg.wa.gov

41.26.432 Additional service credit purchase—Rules.

(1) A member eligible to retire under RCW 41.26.430 may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law. [2005 c 21 § 1.]

Effective date—2005 c 21: "This act takes effect July 1, 2006." [2005 c 21 § 2.]

41.26.435 Transfer of service credit from other retirement system—Enforcement officer for department of fish and wildlife. (1) A member of plan 2 who was a member of the public employees' retirement system plan 2 or plan 3 while employed as an enforcement officer for the department of fish and wildlife has the option to make an election no later than December 31, 2009, filed in writing

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with the department of retirement systems, to transfer all service credit previously earned as an enforcement officer in the public employees' retirement system plan 2 or plan 3 to the law enforcement officers' and firefighters' retirement system plan 2. Service credit that a member elects to transfer from the public employees' retirement system to the law enforcement officers' and firefighters' retirement system under this section shall be transferred no earlier than June 30, 2012, and only after the member completes payment as provided in subsection (2) of this section.

(2)(a) A member who elects to transfer service credit under subsection (1) of this section shall make the payments required by this subsection prior to having service credit earned as an enforcement officer with the department of fish and wildlife under the public employees' retirement system plan 2 or plan 3 transferred to the law enforcement officers' and firefighters' retirement system plan 2.

(b) A member who elects to transfer service credit from the public employees' retirement system plan 2 under this subsection shall pay, for the applicable period of service, the difference between the contributions the employee paid to the public employees' retirement system plan 2 and the contributions that would have been paid by the employee had the employee been a member of the law enforcement officers' and firefighters' retirement system plan 2, plus interest on this difference as determined by the director. This payment must be made no later than June 30, 2014, and must be made prior to retirement.

(c) A member who elects to transfer service credit from the public employees' retirement system plan 3 under this subsection shall transfer to the law enforcement officers' and firefighters' retirement system plan 2, for the applicable period of service, the full balance of the member's defined contribution account within plan 3 as of the effective date of the transfer. At no time will the member pay, for the applicable period of service, a sum less than the contributions that would have been paid by the employee had the employee been a member of the law enforcement officers' and firefighters' retirement system plan 2, plus interest as determined by the director. This transfer and any additional payment, if necessary, must be made no later than June 30, 2014, and must be made prior to retirement.

(d) Upon completion of the payment required in (b) of this subsection, the department shall transfer from the public employees' retirement system to the law enforcement officers' and firefighters' retirement system plan 2: (i) All of the employee's applicable accumulated contributions plus interest and all of the applicable employer contributions plus interest; and (ii) all applicable months of service, as defined in RCW 41.26.030(28)(b), credited to the employee under this chapter for service as an enforcement officer with the department of fish and wildlife as though that service was rendered as a member of the law enforcement officers' and firefighters' retirement system plan 2.

(e) Upon completion of the payment required in (c) of this subsection, the department shall transfer from the public employees' retirement system to the law enforcement officers' and firefighters' retirement system plan 2: (i) All of the employee's applicable accumulated contributions plus interest and all of the applicable employer contributions plus interest; and (ii) all applicable months of service, as defined

in RCW 41.26.030(28)(b), credited to the employee under this chapter for service as an enforcement officer with the department of fish and wildlife as though that service was rendered as a member of the law enforcement officers' and firefighters' retirement system plan 2.

(f) If a member who elected to transfer pursuant to this section dies or retires for disability prior to June 30, 2012, the member's benefit is calculated as follows:

(i) All of the applicable service credit, accumulated contributions, and interest is transferred to the law enforcement officers' and firefighters' retirement system plan 2 and used in the calculation of a benefit.

(ii) If a member's obligation under (b) or (c) of this subsection has not been paid in full at the time of death or disability retirement, the member, or in the case of death the surviving spouse or eligible minor children, have the following options:

(A) Pay the bill in full;

(B) If a continuing monthly benefit is chosen, have the benefit actuarially reduced to reflect the amount of the unpaid obligation under (b) or (c) of this subsection; or

(C) Continue to make payment against the obligation under (b) or (c) of this subsection, provided that payment in full is made no later than June 30, 2014.

(g) Upon transfer of service credit, contributions, and interest under this subsection, the employee is permanently excluded from membership in the public employees' retirement system for all service related to time served as an enforcement officer with the department of fish and wildlife under the public employees' retirement system plan 2 or plan 3. [2012 c 248 § 1; 2009 c 157 § 1.]

41.26.440 Post-retirement cost-of-living. Beginning July 1, 1979, and every year thereafter, the department shall determine the following information for each retired member or beneficiary whose retirement allowance has been in effect for at least one year:

(1) The original dollar amount of the retirement allowance;

(2) The index for the calendar year prior to the effective date of the retirement allowance, to be known as "index A";

(3) The index for the calendar year prior to the date of determination, to be known as "index B"; and

(4) The ratio obtained when index B is divided by index A.

The value of the ratio obtained shall be the annual adjustment to the original retirement allowance and shall be applied beginning with the July payment. In no event, however, shall the annual adjustment:

(a) Produce a retirement allowance which is lower than the original retirement allowance;

(b) Exceed three percent in the initial annual adjustment; or

(c) Differ from the previous year's annual adjustment by more than three percent.

For the purposes of this section, "index" means, for any calendar year, that year's average consumer price index—Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor. [1977 ex.s. c 294 § 5.]

Additional notes found at www.leg.wa.gov

41.26.450 Port districts and institutions of higher education—Must make both employer and state contributions. Port districts established under Title 53 RCW and institutions of higher education as defined in RCW 28B.10.016 shall contribute both the employer and state shares of the cost of the retirement system for any of their employees who are law enforcement officers. Institutions of higher education shall contribute both the employer and the state shares of the cost of the retirement system for any of their employees who are firefighters. [2000 c 247 § 801; 1996 c 38 § 3; 1993 c 502 § 2; 1989 c 273 § 14; 1986 c 268 § 1; 1984 c 184 § 10; 1977 ex.s. c 294 § 6.]

Additional notes found at www.leg.wa.gov

41.26.460 Options for payment of retirement allowances—Retirement allowance adjustment—Court-approved property settlement. (1) Upon retirement for service as prescribed in RCW 41.26.430 or disability retirement under RCW 41.26.470, a member shall elect to have the retirement allowance paid pursuant to the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse or domestic partner; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse or domestic partner, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a designated person. Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married or a domestic partner, must provide the written consent of his or her spouse or domestic partner to the option selected under this section, except as provided in (b) of this subsection. If a member is married or a domestic partner and both the member and member's spouse or domestic partner do not give written consent to an option under this section, the department will pay the member a joint and fifty percent survivor benefit and record the member's spouse or domestic partner as the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal or domestic partner consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal or domestic partner consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

(4) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse or domestic partner from a postretirement marriage or domestic partnership as a survivor during a one-year period beginning one year after the date of the postretirement marriage or domestic partnership provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage or domestic partnership prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse or domestic partner as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a non-spouse or a person not their domestic partner as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(5) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.26.530(1) and the member's divorcing spouse or domestic partner be divided into two separate benefits payable over the life of each spouse or domestic partner.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried or in a domestic partnership at the time of retirement remains subject to the spousal or domestic partner consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse or former domestic partner shall be eligible to commence receiving their separate benefit upon reaching the ages provided in RCW 41.26.430(1) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse or domestic partner if the nonmember ex spouse or former domestic partner was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (4) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse or domestic partner shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution. [2009 c 523 § 5; 2003 c 294 § 3; 2002 c 158 § 7; 2000 c 186 § 1; 1998 c 340 § 5; 1996 c 175 § 3; 1995 c 144 § 17; 1990 c 249 § 3; 1977 ex.s. c 294 § 7.]

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.26.463 Optional actuarially equivalent life annuity benefit—Rules—Definition. (1) At the time of retirement, plan 2 members may purchase an optional actuarially equivalent life annuity benefit from the [Washington] law enforcement officers' and firefighters' retirement system plan 2 retirement fund established in RCW 41.50.075. A minimum payment of twenty-five thousand dollars is required.

(2) Subject to rules adopted by the department, a member purchasing an annuity under this section must pay all of the cost with an eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan.

(a) The department shall adopt rules to ensure that all eligible rollovers and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from

another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(b) "Eligible retirement plan" means a tax qualified plan offered by a governmental employer. [2014 c 91 § 1.]

41.26.470 Earned disability allowance—Cancellation of allowance—Reentry—Receipt of service credit while disabled—Conditions—Disposition upon death of recipient—Disabled in the line of duty—Total disability—Reimbursement for certain payments. (1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the director shall be eligible to receive an allowance under the provisions of RCW 41.26.410 through 41.26.550. Such member shall receive a monthly disability allowance computed as provided for in RCW 41.26.420 and shall have such allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age fifty-three, except under subsection (7) of this section.

(2) Any member who receives an allowance under the provisions of this section shall be subject to such comprehensive medical examinations as required by the department. If such medical examinations reveal that such a member has recovered from the incapacitating disability and the member is no longer entitled to benefits under Title 51 RCW, the retirement allowance shall be canceled and the member shall be restored to duty in the same civil service rank, if any, held by the member at the time of retirement or, if unable to perform the duties of the rank, then, at the member's request, in such other like or lesser rank as may be or become open and available, the duties of which the member is then able to perform. In no event shall a member previously drawing a disability allowance be returned or be restored to duty at a salary or rate of pay less than the current salary attached to the rank or position held by the member at the date of the retirement for disability. If the department determines that the member is able to return to service, the member is entitled to notice and a hearing. Both the notice and the hearing shall comply with the requirements of chapter 34.05 RCW, the administrative procedure act.

(3) Those members subject to this chapter who became disabled in the line of duty on or after July 23, 1989, and who receive benefits under RCW 41.04.500 through 41.04.530 or similar benefits under RCW 41.04.535 shall receive or continue to receive service credit subject to the following:

(a) No member may receive more than one month's service credit in a calendar month.

(b) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(c) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(d) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(e) State contributions shall be as provided in RCW 41.45.060 and 41.45.067.

(f) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred.

(g) The service and compensation credit under this section shall be granted for a period not to exceed six consecutive months.

(h) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right.

(4)(a) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no such designated person or persons still living at the time of the recipient's death, then to the surviving spouse or domestic partner, or, if there is neither such designated person or persons still living at the time of his or her death nor a surviving spouse or domestic partner, then to his or her legal representative.

(b) If a recipient of a monthly retirement allowance under this section died before April 27, 1989, and before the total of the retirement allowance paid to the recipient equaled the amount of his or her accumulated contributions at the date of retirement, then the department shall pay the balance of the accumulated contributions to the member's surviving spouse or, if there is no surviving spouse, then in equal shares to the member's children. If there is no surviving spouse or children, the department shall retain the contributions.

(5) Should the disability retirement allowance of any disability beneficiary be canceled for any cause other than reentrance into service or retirement for service, he or she shall be paid the excess, if any, of the accumulated contributions at the time of retirement over all payments made on his or her behalf under this chapter.

(6) A member who becomes disabled in the line of duty, and who ceases to be an employee of an employer except by service or disability retirement, may request a refund of one hundred fifty percent of the member's accumulated contributions. Any accumulated contributions attributable to restorations made under RCW 41.50.165(2) shall be refunded at one hundred percent. A person in receipt of this benefit is a retiree.

(7) A member who becomes disabled in the line of duty shall be entitled to receive a minimum retirement allowance equal to ten percent of such member's final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five.

(8) A member who became disabled in the line of duty before January 1, 2001, and is receiving an allowance under RCW 41.26.430 or subsection (1) of this section shall be entitled to receive a minimum retirement allowance equal to ten percent of such member's final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five, and shall have the allowance actuarially reduced to reflect the difference in the number of years

between age at disability and the attainment of age fifty-three. An additional benefit shall not result in a total monthly benefit greater than that provided in subsection (1) of this section.

(9) A member who is totally disabled in the line of duty is entitled to receive a retirement allowance equal to seventy percent of the member's final average salary. The allowance provided under this subsection shall be offset by:

(a) Temporary disability wage-replacement benefits or permanent total disability benefits provided to the member under Title 51 RCW; and

(b) Federal social security disability benefits, if any; so that such an allowance does not result in the member receiving combined benefits that exceed one hundred percent of the member's final average salary. However, the offsets shall not in any case reduce the allowance provided under this subsection below the member's accrued retirement allowance.

A member is considered totally disabled if he or she is unable to perform any substantial gainful activity due to a physical or mental condition that may be expected to result in death or that has lasted or is expected to last at least twelve months. Substantial gainful activity is defined as average earnings in excess of eight hundred sixty dollars a month in 2006 adjusted annually as determined by the director based on federal social security disability standards. The department may require a person in receipt of an allowance under this subsection to provide any financial records that are necessary to determine continued eligibility for such an allowance. A person in receipt of an allowance under this subsection whose earnings exceed the threshold for substantial gainful activity shall have their benefit converted to a line-of-duty disability retirement allowance as provided in subsection (7) of this section.

Any person in receipt of an allowance under the provisions of this section is subject to comprehensive medical examinations as may be required by the department under subsection (2) of this section in order to determine continued eligibility for such an allowance.

(10)(a) In addition to the retirement allowance provided in subsection (9) of this section, the retirement allowance of a member who is totally disabled in the line of duty shall include reimbursement for any payments made by the member after June 10, 2010, for premiums on employer-provided medical insurance, insurance authorized by the consolidated omnibus budget reconciliation act of 1985 (COBRA), medicare part A (hospital insurance), and medicare part B (medical insurance). A member who is entitled to medicare must enroll and maintain enrollment in both medicare part A and medicare part B in order to remain eligible for the reimbursement provided in this subsection. The legislature reserves the right to amend or repeal the benefits provided in this subsection in the future and no member or beneficiary has a contractual right to receive any distribution not granted prior to that time.

(b) The retirement allowance of a member who is not eligible for reimbursement provided in (a) of this subsection shall include reimbursement for any payments made after June 30, 2013, for premiums on other medical insurance. However, in no instance shall the reimbursement exceed the amount reimbursed for premiums authorized by the consoli-

dated omnibus budget reconciliation act of 1985 (COBRA). [2013 c 287 § 2; 2010 c 259 § 2. Prior: 2009 c 523 § 6; 2009 c 95 § 1; 2006 c 39 § 1; 2005 c 451 § 1; 2004 c 4 § 1; 2001 c 261 § 2; 2000 c 247 § 1104; 1999 c 135 § 1; 1995 c 144 § 18; 1993 c 517 § 4; 1990 c 249 § 19; prior: 1989 c 191 § 1; 1989 c 88 § 1; 1982 c 12 § 2; 1981 c 294 § 9; 1977 ex.s. c 294 § 8.]

Short title—2013 c 287: "This act may be known as the Wynn Loiland act." [2013 c 287 § 1.]

Short title—2010 c 259: "This act may be known as the Jason McKissack act." [2010 c 259 § 1.]

Effective date—2006 c 39: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 14, 2006]." [2006 c 39 § 3.]

Effective date—2005 c 451: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 13, 2005]." [2005 c 451 § 2.]

Application—2004 c 4 § 1: "This act applies to all members, subject to section 1 of this act, who become or became disabled in the line of duty on or after January 1, 2001." [2004 c 4 § 2.]

Purpose—1993 c 517: See note following RCW 41.26.420.

Findings—1990 c 249: See note following RCW 2.10.146.

Disability leave supplement for law enforcement officers and firefighters: RCW 41.04.500 through 41.04.550.

Additional notes found at www.leg.wa.gov

41.26.473 Disabled in the line of duty—Continuation of service credit—Conditions. Those members subject to this chapter who became disabled in the line of duty on or after July 1, 2002, and who received or are receiving benefits under Title 51 RCW or a similar federal workers' compensation program shall receive or continue to receive service credit subject to the following:

(1) No member may receive more than one month's service credit in a calendar month.

(2) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(3) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(4) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(5) State contribution shall be as provided in RCW 41.45.060 and 41.45.067.

(6) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred. If contribution payments are made retroactively, interest shall be charged at the rate set by the director on both employee and employer contributions. Service credit shall not be granted until the employee contribution has been paid.

(7) The service and compensation credit shall not be granted for a period to exceed twenty-four consecutive months.

(8) This section does not abridge service credit rights granted in RCW 41.26.470(3). However, members receiving service credit under RCW 41.26.470(3) may not receive service credit under this section.

(9) Should the legislature revoke the service credit authorized under this section or repeal this section, no

affected employee is entitled to receive the credit as a matter of contractual right. [2007 c 49 § 1.]

41.26.476 Use of shared leave—Impact on calculation of service credit and final average salary. (1) A member in receipt of employer-authorized shared leave after June 10, 2010, shall receive the same treatment in respect to service credit and final average salary that the member would normally receive if using accrued annual leave or sick leave.

(2) For purposes of this section shared leave includes, but is not limited to:

(a) Direct transfers of annual leave, sick leave, or other leave from one employee to another;

(b) Indirect transfers of annual leave, sick leave, or other leave via leave banks or a similar pool of donated leave; or

(c) Shift trades or employees working shifts on behalf of a member.

(3) Shared leave that has been reported to the department prior to June 10, 2010, and for which contributions have been made, remains creditable for service credit and final average salary. [2010 c 50 § 1. Formerly RCW 41.26.033.]

41.26.480 Industrial insurance. Notwithstanding any other provision of law, members shall be eligible for industrial insurance as provided by Title 51 RCW, as now or hereafter amended, and shall be included in the payroll of the employer for such purpose. [1977 ex.s. c 294 § 9.]

Additional notes found at www.leg.wa.gov

41.26.490 Application for and effective date of retirement allowances. Any member or beneficiary eligible to receive a retirement allowance under the provisions of RCW 41.26.430, 41.26.470, or 41.26.510 shall be eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members under the provisions of RCW 41.26.430 shall accrue from the first day of the calendar month immediately following such member's separation from service.

(2) Retirement allowances paid to vested members no longer in service, but qualifying for such an allowance pursuant to RCW 41.26.430, shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members under the provisions of RCW 41.26.470 shall accrue from the first day of the calendar month immediately following such member's separation from service for disability.

(4) Retirement allowances paid as death benefits under the provisions of RCW 41.26.510 shall accrue from the first day of the calendar month immediately following the member's death.

(5) A person is separated from service on the date a person has terminated all employment with an employer. [1997 c 254 § 2; 1977 ex.s. c 294 § 10.]

Intent—Construction—1997 c 254: "(1) This act, which defines separation from service and restrictions concerning postretirement employment, is intended to clarify existing statutory provisions regarding these issues. As a result of this act, the legal standard for determining separation from service and the impact to a retiree's benefit should they return to work following retirement, are either the same as under the prior law, or less restrictive. Accordingly, this act does not constitute a diminution of benefits and applies to all members of the affected retirement systems.

(2) This act, which addresses the determination of employee status, is intended to clarify existing law. The clarifications are consistent with long-standing common law of the state of Washington and long-standing department of retirement systems' interpretations of the appropriate standard to be used in determining employee status. Accordingly, sections 3(49) and 10(22) of this act do not constitute a diminution of benefits and apply to all members of the teachers' retirement system and the public employees' retirement system." [1997 c 254 § 1.]

Additional notes found at www.leg.wa.gov

41.26.500 Suspension of retirement allowance upon reemployment—Reinstatement—Option to enter into membership.

(1) Except under subsection (3) of this section, a retiree under the provisions of plan 2 shall not be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010, 41.32.010, 41.37.010, or 41.35.010, or as a law enforcement officer or firefighter as defined in RCW 41.26.030. If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(2) The department shall adopt rules implementing this section.

(3) A member or retiree who becomes employed in an eligible position as defined in RCW 41.40.010, 41.32.010, 41.35.010, or 41.37.010 shall have the option to enter into membership in the corresponding retirement system for that position notwithstanding any provision of RCW 41.04.270. A retiree who elects to enter into plan membership shall have his or her benefits suspended as provided in subsection (1) of this section. A retiree who does not elect to enter into plan membership shall continue to receive his or her benefits without interruption. [2005 c 372 § 2; (2005 c 372 § 1 expired July 1, 2006); 2004 c 242 § 54; 1998 c 341 § 604; 1990 c 274 § 12; 1977 ex.s. c 294 § 11.]

Effective date—2005 c 372 § 2: "Section 2 of this act takes effect July 1, 2006." [2005 c 372 § 5.]

Expiration date—2005 c 372 § 1: "Section 1 of this act expires July 1, 2006." [2005 c 372 § 3.]

Effective date—2004 c 242: See RCW 41.37.901.

Findings—Construction—1990 c 274: See notes following RCW 41.32.010.

Additional notes found at www.leg.wa.gov

41.26.510 Death benefits. (1) Except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system at the time of such member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court

order filed under RCW 41.50.670, shall be paid to the member's surviving spouse or domestic partner as if in fact such spouse or domestic partner had been nominated by written designation, or if there be no such surviving spouse or domestic partner, then to such member's legal representatives.

(2) Except as provided in subsection (4) of this section, if a member who is killed in the course of employment or a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse, domestic partner, or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 41.26.430, actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.26.460 and if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.26.430; if a surviving spouse or domestic partner who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse or domestic partner, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse or domestic partner eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance share and share alike calculated as herein provided making the assumption that the ages of the spouse or domestic partner and member were equal at the time of the member's death; or

(b)(i) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670; or

(ii) If the member dies on or after July 25, 1993, one hundred fifty percent of the member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670. Any accumulated contributions attributable to restorations made under RCW 41.50.165(2) shall be refunded at one hundred percent.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies after October 1, 1977, and is not survived by a spouse, domestic partner, or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To an estate, a person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) The retirement allowance of a member who is killed in the course of employment, as determined by the director of

the department of labor and industries, or the retirement allowance of a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction for early retirement as provided in RCW 41.26.430 or an actuarial reduction to reflect a joint and one hundred percent survivor option under RCW 41.26.460. The member's retirement allowance is computed under RCW 41.26.420, except that the member shall be entitled to a minimum retirement allowance equal to ten percent of such member's final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five.

(5) The retirement allowance paid to the spouse or domestic partner and dependent children of a member who is killed in the course of employment, as set forth in *RCW 41.05.011(16), shall include reimbursement for any payments of premium rates to the Washington state health care authority pursuant to RCW 41.05.080. [2010 c 261 § 1. Prior: 2009 c 523 § 7; 2009 c 226 § 2; 2006 c 345 § 1; 2004 c 5 § 1; 2000 c 247 § 1001; prior: 1995 c 245 § 1; 1995 c 144 § 19; 1993 c 236 § 3; 1991 c 365 § 31; 1990 c 249 § 14; 1977 ex.s. c 294 § 12.]

*Reviser's note: RCW 41.05.011 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (16) to subsection (5).

Application—2010 c 261 § 1: "Section 1 of this act applies prospectively to the benefits of all members killed in the course of employment since October 1, 1977." [2010 c 261 § 8.]

Contractual right not granted—2006 c 345: "The legislature reserves the right to amend or repeal this act in the future and no member or beneficiary has a contractual right to receive any distribution not granted prior to that time." [2006 c 345 § 3.]

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.26.520 Service credit for paid leave of absence, officers of labor organizations, unpaid leave of absence, military service. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.26.410 through 41.26.550.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The basic salary reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (7) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be

obtained only if the member makes the employer, member, and state contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner.

(4) A law enforcement member may be authorized by an employer to work part time and to go on a part-time leave of absence. During a part-time leave of absence a member is prohibited from any other employment with their employer. A member is eligible to receive credit for any portion of service credit not earned during a month of part-time leave of absence if the member makes the employer, member, and state contributions, plus interest, as determined by the department for the period of the authorized leave within five years of resumption of full-time service or prior to retirement whichever comes sooner. Any service credit purchased for a part-time leave of absence is included in the two-year maximum provided in subsection (3) of this section.

(5) If a member fails to meet the time limitations of subsection (3) or (4) of this section, the member may receive a maximum of two years of service credit during a member's working career for those periods when a member is on unpaid leave of absence authorized by an employer. This may be done by paying the amount required under RCW 41.50.165(2) prior to retirement.

(6) For the purpose of subsection (3) or (4) of this section the contribution shall not include the contribution for the unfunded supplemental present value as required by RCW 41.45.060, 41.45.061, and 41.45.067. The contributions required shall be based on the average of the member's basic salary at both the time the authorized leave of absence was granted and the time the member resumed employment.

(7) A member who leaves the employ of an employer to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services; and

(ii) The member makes the employee contributions required under RCW 41.45.060, 41.45.061, and 41.45.067 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2); or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds stand-

ing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(b) Upon receipt of member contributions under (a)(ii), (d)(iii), or (e)(iii) of this subsection, or adequate proof under (a)(iv), (d)(iv), or (e)(iv) of this subsection, the department shall establish the member's service credit and shall bill the employer and the state for their respective contributions required under RCW 41.26.450 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii), (d)(iii), or (e)(iii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(d) The surviving spouse, domestic partner, or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(8) A member receiving benefits under Title 51 RCW who is not receiving benefits under this chapter shall be deemed to be on unpaid, authorized leave of absence. [2009 c 523 § 8; 2009 c 205 § 8; 2005 c 64 § 9; 2002 c 28 § 1; 2000 c 247 § 1105; 1996 c 61 § 1; 1994 c 197 § 10; 1993 c 95 § 4; 1992 c 119 § 1; 1989 c 88 § 2; 1977 ex.s. c 294 § 13.]

Reviser's note: This section was amended by 2009 c 205 § 8 and by 2009 c 523 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Additional notes found at www.leg.wa.gov

41.26.530 Vested membership. (1) A member who separates or has separated after having completed at least five years of service may remain a member during the period of such member's absence from service for the exclusive purpose only of receiving a retirement allowance under the provisions of RCW 41.26.430 if such member maintains the member's accumulated contributions intact.

(2) The retirement allowance payable under the provisions of RCW 41.26.430 to a member who separates after having completed at least twenty years of service, and remains a member during the period of his or her absence from service by maintaining his or her accumulated contributions intact, shall be increased by twenty-five one-hundredths of one percent, compounded for each month from the date of separation to the date the retirement allowance commences as provided in RCW 41.26.490. [1993 c 517 § 5; 1977 ex.s. c 294 § 14.]

Purpose—1993 c 517: See note following RCW 41.26.420.

Additional notes found at www.leg.wa.gov

41.26.540 Refund of contributions on termination. (1)(a) A member who has completed less than ten years of service, who ceases to be an employee of an employer except by service or disability retirement, may request a refund of the member's accumulated contributions.

(b) A member who has completed ten or more years of service, who ceases to be an employee of an employer except by service or disability retirement, may request a refund of one hundred fifty percent of the member's accumulated contributions. Any accumulated contributions attributable to res-

tortations made under RCW 41.50.165(2) shall be refunded at one hundred percent.

(2) The refund shall be made within ninety days following the receipt of the request and notification of termination through the contribution reporting system by the employer; except that in the case of death, an initial payment shall be made within thirty days of receipt of request for such payment and notification of termination through the contribution reporting system by the employer. A member who files a request for refund and subsequently enters into employment with another employer prior to the refund being made shall not be eligible for a refund. The refund of accumulated contributions shall terminate all rights to benefits under RCW 41.26.410 through 41.26.550. [1995 c 245 § 2; 1993 c 517 § 6; 1982 1st ex.s. c 52 § 5; 1977 ex.s. c 294 § 15.]

Purpose—1993 c 517: See note following RCW 41.26.420.

Additional notes found at www.leg.wa.gov

41.26.547 Emergency medical technicians—Job relocation—Retirement options. (Expires July 1, 2023.) (1) A member of plan 2 who was a member of the public employees' retirement system while employed providing emergency medical services for a city, town, county, or district and whose job was relocated from another department of a city, town, county, or district to a fire department, or a member of the public employees' retirement system who is eligible for membership in plan 2 under *RCW 41.26.030(4)(h), has the following options:

(a) Remain a member of the public employees' retirement system; or

(b) Leave any service credit earned as a member of the public employees' retirement system in the public employees' retirement system, and have all future service earned in the law enforcement officers' and firefighters' retirement system plan 2, becoming a dual member under the provisions of chapter 41.54 RCW; or

(c) Make an election no later than June 30, 2013, filed in writing with the department of retirement systems, to transfer service credit previously earned as an emergency medical technician for a city, town, county, or district in the public employees' retirement system plan 1 or plan 2 to the law enforcement officers' and firefighters' retirement system plan 2 as defined in RCW 41.26.030. Service credit that a member elects to transfer from the public employees' retirement system to the law enforcement officers' and firefighters' retirement system under this section shall be transferred no earlier than five years after the effective date the member elects to transfer except under subsection (3) of this section, and only after the member earns five years of service credit as a firefighter following the effective date the member elects to transfer except under subsection (3) of this section.

(2) A member of plan 1 who was a member of the public employees' retirement system while employed providing emergency medical services for a city, town, county, or district and whose job was relocated from another department of a city, town, county, or district to a fire department has the following options:

(a) Remain a member of the public employees' retirement system; or

(b) Leave any service credit earned as a member of the public employees' retirement system in the public employees'

retirement system, and have all future service earned in the law enforcement officers' and firefighters' retirement system plan 1.

(3)(a) A member who elects to transfer service credit under subsection (1)(c) of this section shall make the payments required by this subsection prior to having service credit earned as an emergency medical technician for a city, town, county, or district under the public employees' retirement system plan 1 or plan 2 transferred to the law enforcement officers' and firefighters' retirement system plan 2. However, in no event shall service credit be transferred earlier than five years after the effective date the member elects to transfer, or prior to the member earning five years of service credit as a firefighter following the effective date the member elects to transfer, except under (e) of this subsection.

(b) A member who elects to transfer service credit under this subsection shall pay, for the applicable period of service, the difference between the contributions the employee paid to the public employees' retirement system plan 1 or plan 2 and the contributions that would have been paid by the employee had the employee been a member of the law enforcement officers' and firefighters' retirement system plan 2, plus interest on this difference as determined by the director. This payment must be made no later than five years from the effective date of the election made under subsection (1)(c) of this section and must be made prior to retirement, except under (e) of this subsection.

(c) For a period of service transferred by a member eligible for membership in plan 2 under *RCW 41.26.030(4)(h), the employer shall pay an amount sufficient to ensure that the contribution level to the law enforcement officers' and firefighters' retirement system will not increase due to this transfer. This payment must be made within five years of the completion of the employee payment in (b) of this subsection.

(d) No earlier than five years after the effective date the member elects to transfer service credit under this section and upon completion of the payment required in (b) of this subsection except under (e) of this subsection, the department shall transfer from the public employees' retirement system plan 1 or plan 2 to the law enforcement officers' and firefighters' retirement system plan 2: (i) All of the employee's applicable accumulated contributions plus interest and an equal amount of employer contributions; and (ii) all applicable months of service, as defined in *RCW 41.26.030(14)(b), credited to the employee under this chapter for service as an emergency services provider for a city, town, county, or district as though that service was rendered as a member of the law enforcement officers' and firefighters' retirement system plan 2.

(e) If a member who elected to transfer pursuant to this section dies or retires for disability prior to five years from their election date, the member's benefit is calculated as follows:

(i) All of the applicable service credit, accumulated contributions, and interest is transferred to the law enforcement officers' and firefighters' retirement system plan 2 and used in the calculation of a benefit.

(ii) If a member's obligation under (b) of this subsection has not been paid in full at the time of death or disability retirement, the member, or in the case of death the surviving spouse or eligible minor children, have the following options:

(A) Pay the bill in full;

(B) If a continuing monthly benefit is chosen, have the benefit actuarially reduced to reflect the amount of the unpaid obligation under (b) of this subsection; or

(C) Continue to make payment against the obligation under (b) of this subsection, provided that payment in full is made no later than five years from the member's original election date.

(f) Upon transfer of service credit, contributions, and interest under this subsection, the employee is permanently excluded from membership in the public employees' retirement system for all service transfers related to their time served as an emergency medical technician for a city, town, county, or district under the public employees' retirement system plan 1 or plan 2. [2007 c 304 § 1; 2005 c 459 § 2; 2003 c 293 § 1.]

***Reviser's note:** RCW 41.26.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsections (4)(h) and (14)(b) to subsections (16)(h) and (28)(b) respectively.

Expiration date—2014 c 145; 2007 c 304: "Sections 1 and 3 of this act expire July 1, 2023." [2014 c 145 § 1; 2007 c 304 § 4.]

Expiration date—2005 c 459 § 2: "Section 2 of this act expires July 1, 2023." [2007 c 304 § 2; 2005 c 459 § 3.]

Additional notes found at www.leg.wa.gov

41.26.550 Reentry. (1) A member, who had left service and withdrawn the member's funds pursuant to RCW 41.26.540, shall receive service credit for such prior service if the member restores all withdrawn funds together with interest since the time of withdrawal as determined by the department.

The restoration of such funds must be completed within five years of the resumption of service or prior to retirement, whichever occurs first.

(2) If a member fails to meet the time limitations of subsection (1) of this section, the member may receive service credit destroyed by the withdrawn contributions if the amount required under RCW 41.50.165(2) is paid. [1994 c 197 § 11; 1993 c 517 § 7; 1977 ex.s. c 294 § 16.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Purpose—1993 c 517: See note following RCW 41.26.420.

Additional notes found at www.leg.wa.gov

"PLAN 2 GOVERNANCE"

41.26.700 Overview—Intent. The law enforcement officers' and firefighters' retirement system plan 2 is currently subject to policymaking by the legislature's joint committee on pension policy with ratification by the members of the legislature and is administered by the department of retirement systems.

Members of the plan have no direct input into the management of their retirement program. Forty-six other states currently have member representation in their pension management. Chapter 2, Laws of 2003 is intended to give management of the retirement program to the people whose lives are directly affected by it and who provide loyal and valiant service to ensure the health, safety, and welfare of the citizens of the state of Washington. [2003 c 2 § 1 (Initiative Measure No. 790, approved November 5, 2002).]

(2014 Ed.)

41.26.705 Intent—2003 c 2. It is the intent of chapter 2, Laws of 2003 to:

(1) Establish a board of trustees responsible for the adoption of actuarial standards to be applied to the plan;

(2) Provide for additional benefits for firefighters and law enforcement officers subject to the cost limitations provided for in chapter 2, Laws of 2003;

(3) Exercise fiduciary responsibility in the oversight of those pension management functions assigned to the board;

(4) Provide effective monitoring of the plan by providing an annual report to the legislature, to the members and beneficiaries of the plan, and to the public;

(5) Establish contribution rates for employees, employers, and the state of Washington that will guaranty viability of the plan, subject to the limitations provided for in chapter 2, Laws of 2003;

(6) Provide for an annual budget and to pay costs from the trust, as part of the normal cost of the plan; and

(7) Enable the board of trustees to retain professional and technical advisors as necessary for the fulfillment of their statutory responsibilities. [2003 c 2 § 2 (Initiative Measure No. 790, approved November 5, 2002).]

41.26.710 Definitions. The definitions in this section apply throughout this subchapter unless the context clearly requires otherwise.

(1) "Member" or "beneficiary" means:

(a) Current and future law enforcement officers and firefighters who are contributing to the plan;

(b) Retired employees or their named beneficiaries who receive benefits from the plan; and

(c) Separated vested members of the plan who are not currently receiving benefits.

(2) "Plan" means the law enforcement officers' and firefighters' retirement system plan 2.

(3) "Actuary" means the actuary employed by the board of trustees.

(4) "State actuary" means the actuary employed by the department.

(5) "Board" means the board of trustees.

(6) "Board member" means a member of the board of trustees.

(7) "Department" means the department of retirement systems.

(8) "Minimum benefits" means those benefits provided for in chapter 41.26 RCW as of July 1, 2003.

(9) "Employer" means the same as under *RCW 41.26.030(2)(b).

(10) "Enrolled actuary" means an actuary who is enrolled under the employee retirement income security act of 1974 (Subtitle C of Title III) and who is a member of the society of actuaries or the American academy of actuaries.

(11) "Increased benefit" means a benefit in addition to the minimum benefits.

(12) "Trust" means the assets of the plan.

(13) "Benefits" means the age or service or combination thereof required for retirement, the level of service and disability retirement benefits, survivorship benefits, payment options including a deferred retirement option plan, average final compensation, postretirement cost-of-living adjustments, including health care and the elements of compensa-

tion. Benefits shall not include the classifications of employment eligible to participate in the plan.

(14) "Actuarially sound" means the plan is sufficiently funded to meet its projected liabilities and to defray the reasonable expenses of its operation based upon commonly accepted, sound actuarial principles. [2003 c 2 § 3 (Initiative Measure No. 790, approved November 5, 2002).]

*Reviser's note: RCW 41.26.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (2)(b) to subsection (14)(b).

41.26.715 Board of trustees—Created—Selection of trustees—Terms of office—Vacancies. (1) An eleven member board of trustees is hereby created.

(a) Before January 1, 2007, three of the board members shall be active law enforcement officers who are participants in the plan. Beginning with the first vacancy on or after January 1, 2007, two board members shall be active law enforcement officers who are participants in the plan and one board member shall be either an active or a retired law enforcement officer who is a participant of the plan. The law enforcement officer board members shall be appointed by the governor from a list provided by a recognized statewide council whose membership consists exclusively of guilds, associations, and unions representing state and local government police officers, deputies, and sheriffs and excludes federal law enforcement officers.

(b) Before January 1, 2007, three of the board members shall be active firefighters who are participants in the plan. Beginning with the first vacancy on or after January 1, 2007, two board members shall be active firefighters who are participants in the plan and one board member shall be either an active or a retired firefighter who is a participant of the plan. The firefighter board members shall be appointed by the governor from a list provided by a recognized statewide council, affiliated with an international association representing the interests of firefighters.

(c) Three of the board members shall be representatives of employers and shall be appointed by the governor.

(d) One board member shall be a member of the house of representatives who is appointed by the governor based on the recommendation of the speaker of the house of representatives.

(e) One board member shall be a member of the senate who is appointed by the governor based on the recommendation of the majority leader of the senate.

(f) After January 1, 2008, at least one board member must be a retired participant of the law enforcement officers' and firefighters' retirement system plan 2. This member may be appointed under (a) through (e) of this subsection.

(2) The initial law enforcement officer and firefighter board members shall serve terms of six, four, and two years, respectively. Thereafter, law enforcement officer and firefighter board members serve terms of six years. The initial employer representative board members shall serve terms of four, five, and six years, respectively. Thereafter, employer representative board members serve terms of four years. The initial legislative board members shall serve terms of five years and six months. Thereafter, legislative board members serve terms of two years, which begin on January 1st of odd-numbered years. Board members may be reappointed to suc-

ceeding terms without limitation. Board members shall serve until their successors are appointed and seated.

(3) In the event of a vacancy on the board, the vacancy shall be filled in the same manner as prescribed for an initial appointment. [2007 c 303 § 1; 2003 c 2 § 4 (Initiative Measure No. 790, approved November 5, 2002).]

41.26.7151 Board of trustees—Political party representation. The legislative board members appointed under RCW 41.26.715 must include one member from the two largest political parties. The speaker of the house of representatives shall request a recommendation from the minority leader of the house of representatives if a member from the opposite party must be recommended for appointment. The majority leader of the senate shall request a recommendation from the minority leader of the senate if a member from the opposite party must be recommended for appointment. [2007 c 303 § 2.]

41.26.717 Additional duties and powers of board. The law enforcement officers' and firefighters' plan 2 retirement board established in section 4, chapter 2, Laws of 2003 has the following duties and powers in addition to any other duties or powers authorized or required by law. The board:

(1) Shall employ staff as necessary to implement the purposes of chapter 2, Laws of 2003. Staff must be state employees under Title 41 RCW;

(2) Shall adopt an annual budget as provided in section 5, chapter 2, Laws of 2003. Expenses of the board are paid from the expense fund created in RCW 41.26.732;

(3) May make, execute, and deliver contracts, conveyances, and other instruments necessary to exercise and discharge its powers and duties;

(4) May contract for all or part of the services necessary for the management and operation of the board with other state or nonstate entities authorized to do business in the state; and

(5) May contract with actuaries, auditors, and other consultants as necessary to carry out its responsibilities. [2003 c 92 § 1.]

41.26.720 Board of trustees—Powers—Meeting procedures—Quorum—Judicial review—Budget. (1) The board of trustees have the following powers and duties and shall:

(a) Adopt actuarial tables, assumptions, and cost methodologies in consultation with an enrolled actuary retained by the board. The state actuary shall provide assistance when the board requests. The actuary retained by the board shall utilize the aggregate actuarial cost method, or other recognized actuarial cost method based on a level percentage of payroll, as that term is employed by the American academy of actuaries. The actuary retained by the board shall adjust the actuarial cost method to recognize the actuarial present value of future revenue that will be included in the calculation of the market value of assets pursuant to RCW 41.26.805(2), using the methods and assumptions employed by the state actuary in RCW 41.26.805(9). In determining the reasonableness of actuarial valuations, assumptions, and cost methodologies, the actuary retained by the board shall provide a copy of all such calculations to the state actuary. If the two actuaries

concur on the calculations, contributions shall be made as set forth in the report of the board's actuary. If the two actuaries cannot agree, they shall appoint a third, independent, enrolled actuary who shall review the calculations of the actuary retained by the board and the state actuary. Thereafter, contributions shall be based on the methodology most closely following that of the third actuary;

(b)(i) Provide for the design and implementation of increased benefits for members and beneficiaries of the plan, subject to the contribution limitations under RCW 41.26.725. An increased benefit may not be approved by the board until an actuarial cost of the benefit has been determined by the actuary and contribution rates adjusted as may be required to maintain the plan on a sound actuarial basis. Increased benefits as approved by the board shall be presented to the legislature on January 1st of each year. The increased benefits as approved by the board shall become effective within ninety days unless a bill is enacted in the next ensuing session of the legislature, by majority vote of each house of the legislature, repealing the action of the board;

(ii) As an alternative to the procedure in (b)(i) of this subsection, recommend to the legislature changes in the benefits for members and beneficiaries, without regard to the cost limitations in RCW 41.26.725(3). Benefits adopted in this manner shall have the same contractual protections as the minimum benefits in the plan. The recommendations of the board shall be presented to the legislature on January 1st of each year. These measures shall take precedence over all other measures in the legislature, except appropriations bills, and shall be either enacted or rejected without change or amendment by the legislature before the end of such regular session;

(c) Retain professional and technical advisors necessary for the accomplishment of its duties. The cost of these services may be withdrawn from the trust;

(d) Consult with the department for the purpose of improving benefit administration and member services;

(e) Provide an annual report to the governor and the legislature setting forth the actuarial funding status of the plan and making recommendations for improvements in those aspects of retirement administration directed by the legislature or administered by the department;

(f) Establish uniform administrative rules and operating policies in the manner prescribed by law;

(g) Engage administrative staff and acquire office space independent of, or in conjunction with, the department. The department shall provide funding from its budget for these purposes;

(h) Publish on an annual basis a schedule of increased benefits together with a summary of the minimum benefits as established by the legislature which shall constitute the official plan document; and

(i) Be the fiduciary of the plan and discharge the board's duties solely in the interest of the members and beneficiaries of the plan.

(2) Meetings of the board of trustees shall be conducted as follows:

(a) All board meetings are open to the public, preceded by timely public notice;

(b) All actions of the board shall be taken in open public session, except for those matters which may be considered in executive session as provided by law;

(c) The board shall retain minutes of each meeting setting forth the names of those board members present and absent, and their voting record on any voted issue; and

(d) The board may establish, with the assistance of the appropriate office of state government, an internet web site providing for interactive communication with state government, members and beneficiaries of the plan, and the public.

(3) A quorum of the board is six board members. All board actions require six concurring votes.

(4) The decisions of the board shall be made in good faith and are final, binding, and conclusive on all parties. The decisions of the board shall be subject to judicial review as provided by law.

(5) A law enforcement officers' and firefighters' retirement system plan 2 expense fund is established for the purpose of defraying the expenses of the board. The board shall cause an annual budget to be prepared consistent with the requirements of chapter 43.88 RCW and shall draw the funding for the budget from the investment income of the trust. Board members shall be reimbursed for travel and education expenses as provided in RCW 43.03.050 and 43.03.060. The board shall make an annual report to the governor, legislature, and state auditor setting forth a summary of the costs and expenditures of the plan for the preceding year. The board shall also retain the services of an independent, certified public accountant who shall annually audit the expenses of the fund and whose report shall be included in the board's annual report. [2008 c 99 § 5; 2003 c 2 § 5 (Initiative Measure No. 790, approved November 5, 2002).]

Findings—Purpose—2008 c 99: See note following RCW 41.26.800.

41.26.725 Board of trustees—Contributions—Minimum and increased benefits. (1) The board of trustees shall establish contributions as set forth in this section. The cost of the minimum benefits as defined in this plan shall be funded on the following ratio:

Employee contributions	50%
Employer contributions	30%
State contributions	20%

(2) The minimum benefits shall constitute a contractual obligation of the state and the contributing employers and may not be reduced below the levels in effect on July 1, 2003. The state and the contributing employers shall maintain the minimum benefits on a sound actuarial basis in accordance with the actuarial standards adopted by the board.

(3) Increased benefits created as provided for in RCW 41.26.720 are granted on a basis not to exceed the contributions provided for in this section. In addition to the contributions necessary to maintain the minimum benefits, for any increased benefits provided for by the board, the employee contribution shall not exceed fifty percent of the actuarial cost of the benefit. In no instance shall the employee cost exceed ten percent of covered payroll without the consent of a majority of the affected employees. Employer contributions shall not exceed thirty percent of the cost, but in no instance shall the employer contribution exceed six percent of covered payroll. State contributions shall not exceed twenty percent

of the cost, but in no instance shall the state contribution exceed four percent of covered payroll. Employer contributions may not be increased above the maximum under this section without the consent of the governing body of the employer. State contributions may not be increased above the maximum provided for in this section without the consent of the legislature. In the event that the cost of maintaining the increased benefits on a sound actuarial basis exceeds the aggregate contributions provided for in this section, the board shall submit to the affected members of the plan the option of paying the increased costs or of having the increased benefits reduced to a level sufficient to be maintained by the aggregate contributions. The reduction of benefits in accordance with this section shall not be deemed a violation of the contractual rights of the members, provided that no reduction may result in benefits being lower than the level of the minimum benefits.

(4) The board shall manage the trust in a manner that maintains reasonable contributions and administrative costs. Providing additional benefits to members and beneficiaries is the board's priority. [2003 c 93 § 1; 2003 c 2 § 6 (Initiative Measure No. 790, approved November 5, 2002).]

Additional notes found at www.leg.wa.gov

41.26.730 Joint committee on pension policy—Pension funding council. The joint committee on pension policy established in *RCW 44.44.050, and the pension funding council created in RCW 41.45.100, shall have no applicability or authority over matters relating to this plan. [2003 c 2 § 7 (Initiative Measure No. 790, approved November 5, 2002).]

*Reviser's note: RCW 44.44.050 was repealed by 2003 c 295 § 15.

41.26.732 Plan 2 expense fund—Board oversight and administration—State investment board. (1) A law enforcement officers' and firefighters' retirement system plan 2 expense fund is created within the law enforcement officers' and firefighters' retirement system plan 2 fund.

(2) The state investment board has the full power to invest, reinvest, manage, contract, sell, or exchange investment money in the expense fund. The state investment board is authorized to adopt investment policies for the money in the expense fund. All investment and operating costs associated with the investment of money shall be paid pursuant to RCW 43.33A.160 and 43.84.160. With the exception of these expenses, the earnings from the investment of the money shall be retained by the law enforcement officers' and firefighters' retirement system plan 2 fund.

(3) All investments made by the investment board shall be made with the exercise of that degree of judgment and care pursuant to RCW 43.33A.140 and the investment policy established by the state investment board.

(4) When appropriate for investment purposes, the state investment board may commingle money in the expense fund with other funds.

(5) The authority to establish all policies relating to the expense fund, other than the investment policies as set forth in subsections (2) through (4) of this section, resides with the law enforcement officers' and firefighters' plan 2 retirement board. With the exception of investments by, and expenses of, the state investment board set forth in subsection (2) of this section, disbursements from this expense fund may be

made only on the authorization of the law enforcement officers' and firefighters' plan 2 retirement board, and money in the expense fund may be spent only for the purposes of defraying the expenses of the law enforcement officers' and firefighters' plan 2 retirement board as provided in section 5, chapter 2, Laws of 2003.

(6) The state investment board shall routinely consult and communicate with the law enforcement officers' and firefighters' plan 2 retirement board on the investment policy, earnings of the trust, and related needs of the expense fund.

(7) The law enforcement officers' and firefighters' plan 2 retirement board shall administer the expense fund in a manner reasonably designed to be actuarially sound. The assets of the expense fund must be sufficient to defray the obligations of the account including the costs of administration. Money used for administrative expenses is subject to the allotment of all expenditures pursuant to chapter 43.88 RCW. However, an appropriation is not required for expenditures. Administrative expenses include, but are not limited to, the salaries and expenses of law enforcement officers' and firefighters' plan 2 retirement board personnel including lease payments, travel, and goods and services necessary for operation of the board, audits, and other general costs of conducting the business of the board.

(8) The state investment board shall allocate from the law enforcement officers' and firefighters' retirement system plan 2 fund to the expense fund the amount necessary to cover the expenses of the law enforcement officers' and firefighters' plan 2 retirement board. [2003 c 92 § 6.]

41.26.735 Asset management. Assets of the plan shall be managed by the state investment board as provided by law. [2003 c 2 § 8 (Initiative Measure No. 790, approved November 5, 2002).]

41.26.740 Reimbursement for expenses. All expenses of the department and the office of the state actuary related to the implementation of chapter 2, Laws of 2003 shall be reimbursed from the law enforcement officers' and firefighters' retirement system expense fund under RCW 39.34.130. [2003 c 92 § 7.]

41.26.800 Local public safety enhancement account—Creation—Distribution—Uses. The local public safety enhancement account is created in the state treasury. Moneys in the account may be spent only after appropriation. All receipts from RCW 41.26.802 must be deposited into the account. Expenditures from the account may be used as follows:

(1) Following appropriation, fifty percent of the money in the account shall be transferred to the law enforcement officers' and firefighters' retirement system benefits improvement account established in RCW 41.26.805.

(2) Following appropriation, the balance shall be distributed by the state treasurer to all jurisdictions with law enforcement officers' and firefighters' plan 2 members. Each year, the department of retirement systems will determine each jurisdiction's proportionate share of funds based on the number of plan 2 members each jurisdiction has on June 1st of the prior year divided by the total number of plan 2 members in the system. The department of retirement systems

shall provide the distribution allocation to the state treasurer. Distributions by the state treasurer shall be made annually each January 1st with one-half of the appropriation being distributed in the first year of the appropriation and any remainder the following year. If an appropriation is made for a single fiscal year, the entire appropriation shall be distributed the following January 1st. Jurisdictions that contract with other eligible jurisdictions for law enforcement services or fire protection services must agree on the distribution of funds between the contracting parties and must inform the department of retirement systems as to how the distribution is to be made. Distributions will continue to be made under the terms of the agreement until the department of retirement systems is notified by the eligible jurisdiction of any agreement revisions. If there is no agreement within six months of the distribution date, the moneys lapse to the state treasury. Moneys distributed from the balance of the public safety enhancement account may be used for the following purposes: (a) Criminal justice, including those where an ancillary benefit to the civil justice occurs, and includes domestic violence programs; (b) information and assistance to parents and families dealing with at-risk or runaway youth; or (c) public safety. Money distributed from the account shall not supplant existing funds used for these purposes. For purposes of this subsection, "existing funds" means the actual operating expenditures for the calendar year prior to the first distribution from the account. Actual operating expenditures excludes lost federal funds, lost or expired state grants or loans, extraordinary events not likely to reoccur, change in contract provisions beyond the control of the jurisdiction receiving the services, and major capital expenditures. [2008 c 99 § 2.]

Findings—Purpose—2008 c 99: "The legislature finds that local governments need additional revenues to provide public safety resources in order to protect the citizens of Washington from fire and crime. The legislature finds that the current benefit formula and contributions for the law enforcement officers' and firefighters' plan 2 are inadequate to modify that formula in recognition of the shorter working careers for firefighters and police officers. The legislature recognizes that although some officers and firefighters are able to work comfortably beyond twenty-five years, the combat nature of fire suppression and law enforcement generally require earlier retirement ages. In recognition of the physical demands of the professions and the inherent risks faced by law enforcement officers and firefighters, eligibility for retirement in the law enforcement officers' and firefighters' plan 2 system has been set at age fifty-three. However, the benefit formula is designed for careers of thirty-five to forty years, making retirement at age fifty-three an unrealistic option for many.

Therefore, the legislature declares that it is the purpose of this act to provide local government public safety employers and the law enforcement officers' and firefighters' plan 2 pension plan with additional shared revenues when general state revenues exceed by more than five percent the previous fiscal biennium's revenue." [2008 c 99 § 1.]

41.26.802 Local public safety enhancement account—Transfers into account. (1) By September 30, 2011, if the prior fiscal biennium's general state revenues exceed the previous fiscal biennium's revenues by more than five percent, subject to appropriation by the legislature, the state treasurer shall transfer five million dollars to the local public safety enhancement account.

(2) By September 30, 2015, if the prior fiscal biennium's general state revenues exceed the previous fiscal biennium's revenues by more than five percent, subject to appropriation

by the legislature, the state treasurer shall transfer twenty million dollars to the local public safety enhancement account.

(3) By September 30, 2017, and by September 30 of each odd-numbered year thereafter, if the prior fiscal biennium's general state revenues exceed the previous fiscal biennium's revenues by more than five percent, subject to appropriation by the legislature, the state treasurer shall transfer the lesser of one-third of the increase, or fifty million dollars, to the local public safety enhancement account. [2013 2nd sp.s. c 4 § 969; 2008 c 99 § 4.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Findings—Purpose—2008 c 99: See note following RCW 41.26.800.

41.26.805 Local law enforcement officers' and firefighters' retirement system benefits improvement account—Creation—Use—Administration—Investments. (1) The local law enforcement officers' and firefighters' retirement system benefits improvement account (benefits account) is created within the law enforcement officers' and firefighters' retirement system plan 2 fund. All receipts from RCW 41.26.800(1) must be deposited into the account.

(2) The funds in the benefits account shall not be included by the actuary retained by the board in the calculation of the market value of assets of the law enforcement officers' and firefighters' retirement system plan 2 fund until the board directs the actuary retained by the board in writing to do so for purposes of financing benefits enacted by the legislature. The board shall, in consultation with the state investment board and within ninety days of the transfer of funds into the benefits account, provide the actuary retained by the board, in writing, the market value of the amount directed from the benefits account for inclusion in the calculation of the market value of assets of the law enforcement officers' and firefighters' retirement system plan 2 fund. The market value of the amount directed from the benefits account shall be an amount determined by the state actuary to sufficiently offset the unfunded actuarial accrued liabilities of benefit improvements financed from this account. The market value of the amount directed from the benefits account shall be determined as of the date of the direction from the board to include this amount for purposes of financing benefits enacted by the legislature.

(3) The law enforcement officers' and firefighters' plan 2 retirement board shall administer the fund in an actuarially sound manner.

(4) The state investment board has the full power to invest, reinvest, manage, contract, sell, or exchange investment money in the benefits account. The state investment board is authorized to adopt investment policies for the money in the benefits account. All investment and operating costs associated with the investment of money within the benefits account shall be paid pursuant to RCW 43.33A.160 and 43.84.160. With the exception of these expenses, the earnings from the investment of the money shall be retained by the benefits account.

(5) All investments made by the state investment board shall be made with the exercise of that degree of judgment and care pursuant to RCW 43.33A.140 and the investment policy established by the state investment board.

(6) When appropriate for investment purposes, the state investment board may commingle money in the fund with other funds.

(7) The authority to establish all policies relating to the benefits account, other than the investment policies set forth in this section, resides with the law enforcement officers' and firefighters' plan 2 retirement board. Other than investments by and expenses of the state investment board, disbursements from this fund may be made only on the authorization of the law enforcement officers' and firefighters' plan 2 retirement board for purposes of funding the member, employer, and state cost of financing benefits enacted by the legislature.

(8) The state investment board shall routinely consult with and communicate with the law enforcement officers' and firefighters' plan 2 retirement board on the investment policy, earnings of the trust, and related needs of the benefits account.

(9) Funds in the benefits account cannot be used to finance future benefit improvements if the state actuary determines that the actuarial present value of fully projected benefits for current and future members for all benefits being financed from this account exceeds the actuarial present value of the revenue provided under RCW 41.26.802 and the accrued earnings of the benefits account. When making the determination under this subsection, the state actuary shall select assumptions and methods to reduce the risk that the actual revenue received is less than the assumed revenue. [2008 c 99 § 3.]

Findings—Purpose—2008 c 99: See note following RCW 41.26.800.

41.26.901 Severability—1977 ex.s. c 294. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 294 § 26.]

41.26.902 Severability—2003 c 2 (Initiative Measure No. 790). If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2003 c 2 § 9 (Initiative Measure No. 790, approved November 5, 2002).]

41.26.903 Captions not law—2003 c 2 (Initiative Measure No. 790). Captions used in this act are not any part of the law. [2003 c 2 § 10 (Initiative Measure No. 790, approved November 5, 2002).]

41.26.904 Effective date—2003 c 2 (Initiative Measure No. 790). Except for section 11 of this act, the remainder of this act takes effect July 1, 2003. [2003 c 2 § 13 (Initiative Measure No. 790, approved November 5, 2002).]

41.26.905 Severability—2003 c 92. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2003 c 92 § 11.]

41.26.906 Effective date—2003 c 92. This act is necessary for the immediate preservation of the public peace,

health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 23, 2003]. [2003 c 92 § 12.]

41.26.921 Effective date—1977 ex.s. c 294. This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect October 1, 1977. [1977 ex.s. c 294 § 27.]

41.26.922 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 93.]

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

Chapter 41.28 RCW RETIREMENT OF PERSONNEL IN CERTAIN FIRST-CLASS CITIES

Sections

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41.28.910	Repeal.
41.28.920	Effective date—1939 c 207.
41.28.930	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Portability of public retirement benefits: Chapter 41.54 RCW.

Statewide city employees' retirement system: Chapter 41.44 RCW.

41.28.005 Establishment of retirement and pension systems authorized. Any city attaining the status of a first-class city after July 1, 1939, is empowered by this chapter to establish retirement and pension systems for superannuated or totally and permanently disabled officers and employees of cities of the first class. [1939 c 207 § 1; RRS § 9592-101. Formerly RCW 41.28.020, part.]

41.28.010 Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Accumulated additional contributions" shall mean the sum of all the additional contributions, deducted from the compensation of a member, standing to the credit of his or her individual account, together with regular interest thereon.

(2) "Accumulated contributions" shall mean accumulated normal contributions plus accumulated additional contributions.

(3) "Accumulated normal contribution" shall mean the sum of all normal contributions, deducted from the compensation of a member, standing to the credit of his or her individual account, together with regular interest thereon.

(4) "Additional contributions" shall mean the contributions provided for in RCW 41.28.040(4).

(5) "Annuity" shall mean payments derived from contributions made by a member as provided in RCW 41.28.130 and 41.28.150.

(6) "Beneficiary" shall mean any person in receipt of a pension, annuity, retirement allowance, disability allowance, or any other benefit provided in this chapter.

(7) "Board" shall mean "board of administration" as provided in RCW 41.28.080.

(8) "City" shall mean any city of the first class as described in RCW 41.28.005.

(9) "City service" shall mean service rendered to city for compensation, and for the purpose of this chapter, a member shall be considered as being in city service only while he or she is receiving compensation from the city for such service.

(10) "Compensation" shall mean the compensation payable in cash, plus the monetary value, as determined by the board of administration, of any allowance in lieu thereof.

(11) "Compensation earnable" by a member shall mean the average compensation as determined by the board of administration upon the basis of the average period of employment of members in the same group or class of employment and at the same rate of pay.

(12) "Continuous service" shall mean uninterrupted employment by that city, except that discontinuance of city service of a member caused by layoff, leave of absence, suspension, or dismissal, followed by reentrance into city service within one year, shall not count as a break in the continuity of service: PROVIDED, That for the purpose of establishing membership in the retirement system continuous service shall mean six months' service in any one year.

(13) "Creditable service" shall mean such service as is evidenced by the record of normal contributions received from the employee plus prior service if credit for same is still

intact or not lost through withdrawal of accumulated normal contributions as provided in RCW 41.28.110.

(14) "Employee" shall mean any regularly appointed officer or regularly appointed employee of a first-class city as described in RCW 41.28.005, whose compensation in such employment is paid wholly by that city.

(15) "Final compensation" means the annual average of the greatest compensation earnable by a member during any consecutive five-year period of service for which service credit is allowed.

(16) "Fiscal year" shall mean any year commencing with January 1st, and ending with December 31st, next following.

(17) "Member" shall mean any person included in the membership of the retirement system as provided in RCW 41.28.030.

(18) "Normal contributions" shall mean contributions at the rate provided for in RCW 41.28.040(1).

(19) "Pension" shall mean payments derived from contributions made by the city as provided for in RCW 41.28.130 and 41.28.150.

(20) "Prior service" shall mean the service of a member for compensation rendered to the city prior to July 1, 1939, and shall also include military or naval service of a member to the extent specified in RCW 41.28.050.

(21) "Regular interest," unless changed by the board of administration as provided in RCW 41.28.060, shall mean interest at four percent per annum, compounded annually.

(22) "Retirement allowance" shall mean the pension plus the annuity.

(23) "Retirement fund" shall mean "employees' retirement fund" as created and established in RCW 41.28.070.

(24) "Retirement system" shall mean "employees' retirement system," provided for in RCW 41.28.020. [2012 c 117 § 43; 1967 c 185 § 1; 1963 c 91 § 1; 1939 c 207 § 2; RRS § 9592-102.]

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

41.28.020 Retirement system created—Adoption by cities. A retirement system is hereby created and established in each city of the first class in each county with a population of one hundred twenty-five thousand or more to be known as the "employees' retirement system". This chapter shall become effective as to any such city when by ordinance of the city duly enacted its terms are expressly accepted and made applicable thereto. This section shall not be construed as preventing performance before July 1, 1939, of any preliminary work which any city council, city commission or board of administration shall deem necessary. [1991 c 363 § 118; 1939 c 207 § 3; RRS § 9592-103. FORMER PART OF SECTION: 1939 c 207 § 1; RRS § 9592-101 now codified as RCW 41.28.005.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

41.28.030 Employees within or excluded from system. (1) With the exception of those employees who are excluded from membership as herein provided, all employees shall become members of the retirement system as follows:

(a) Every employee in city service as defined in this chapter, on July 1, 1939, shall become a member of the retirement system on that date.

(b) Every employee who enters or reenters city service after July 1, 1939, shall become a member of the retirement system upon the completion of six months of continuous service.

(2) The following shall be specifically exempted from the provisions of this chapter:

(a) Members of the police departments who are entitled to the benefits of the police relief and pension fund as established by state law.

(b) Members of the fire departments who are entitled to the benefits of the firefighters' relief and pension fund as established by state law.

(3) It shall be the duty of the head of each office or department to give immediate notice in writing to the board of administration of the change in status of any member of his or her office or department, resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal or death. The head of each office or department shall furnish such other information concerning any member as the board may require.

(4) Each member shall be subject to all the provisions of this chapter and to all the rules and regulations adopted by the board of administration. Should the service of any member, in any period of ten consecutive years, amount to less than five years, or should he or she withdraw more than one quarter of his or her accumulated contributions, or should he or she die or be retired, he or she shall thereupon cease to be a member. [2012 c 117 § 44; 1939 c 207 § 4; RRS § 9592-104.]

41.28.040 Rates of contribution—Deduction and payment into fund. (1) The normal rate of contribution of members shall be those adopted by the board of administration, subject to the approval of the city council or city commission, and for the first five-year period such rates shall be based on sex and on age of entry into the retirement system, which age shall be the age at the birthday nearest the time of entry into the system. The rates so adopted shall remain in full force and effect until revised or changed by the board of administration in the manner provided in RCW 41.28.060. The normal rates of contribution shall be so fixed as to provide an annuity which, together with the pension provided by the city, shall give as nearly as may be a retirement allowance at the age of sixty-two years of one and one-third percent of the final compensation multiplied by the number of years of service of the retiring employee. The normal rate established for age sixty-one shall be the rate for any member who has attained a greater age before entry into the retirement system. The normal rate of contribution for age twenty shall be the rate for any member who enters the retirement system at an earlier age.

(2) Subject to the provision of this chapter, the board of administration shall adopt rules and regulations governing the making of deductions from the compensation of employees and shall certify to the head of each office or department the normal rate of contribution for each member provided for in subdivision (1) of this section. The head of the department shall apply such rate of contribution, and shall certify to the

city comptroller on each and every payroll the amount to be contributed and shall furnish immediately to the board a copy of each and every payroll; and each of said amounts shall be deducted by the city comptroller and shall be paid into the retirement fund, hereinafter provided for, and shall be credited by the board together with regular interest to an individual account of the member for whom the contribution was made.

Every member shall be deemed to consent and agree to the contribution made and provided for herein, and shall receipt in full for his or her salary or compensation. Payment less said contribution shall be a full and complete discharge of all claims and demands whatsoever for the service rendered by such person during the period covered by such payment, except his or her claim to the benefits to which he or she may be entitled under the provisions of this chapter.

(3) At the end of each payroll period, the board shall determine the aggregate amount of the normal contributions for such period, and shall certify such aggregate to the city comptroller, who shall thereupon transfer to the retirement fund, hereinafter provided for, from the money appropriated for that purpose in the budget for the fiscal year, an amount equal to the aggregate normal contributions for the period received from members.

(4) Any member may elect to contribute at rates in excess of those provided for in subdivision (1) of this section, for the purpose of providing additional benefits, but the exercise of this privilege by a member shall not place on the city any additional financial obligation. The board of administration, upon application, shall furnish to such member information concerning the nature and amount of additional benefits to be provided by such additional contribution. [2012 c 117 § 45; 1967 c 185 § 2; 1939 c 207 § 5; RRS § 9592-105.]

41.28.050 Allowance of service credit. (1) Subject to the following and all other provisions of this chapter, including such rules and regulations as the board shall adopt in pursuance thereof, the board, subject to the approval of the city council or city commission, shall determine and may modify allowance for service.

Time during which a member is absent on leave without pay shall not be allowed in computing service: PROVIDED, HOWEVER, That any member shall be given credit for any period served by him or her in the national guard, or in the United States army, navy, or marine corps, upon the call of the president, if at the time of such service such member was a regular employee under leave of absence. Certificate of honorable discharge from and/or documentary evidence of such service shall be submitted to the board in order to obtain credit for such service.

Each member shall file with the board such information affecting his or her status as a member of the retirement system as the board may require.

(2) The board shall grant credit for prior service to each member entering the retirement system on July 1, 1939, and to each member entering after that date, if such entry is within one year after rendering service prior to July 1, 1939: PROVIDED, HOWEVER, That the board may grant credit for prior service to those entering the retirement system after July 1, 1939, where the employee, because of sickness or other disability, has been on leave of absence, regularly

granted, since discontinuance of city service, regardless of the length of such leave. No prior service credit shall be used as a basis for retirement or other benefit unless the membership continues until retirement on a retirement allowance or until the granting of other benefits. [2012 c 117 § 46; 1939 c 207 § 6; RRS § 9592-106.]

41.28.060 Board of administration to administer system—Powers and duties—Actuarial investigations and valuations—Reports, records, and accounts. The administration of the retirement system is hereby vested in the board of administration created in RCW 41.28.080. The board shall exercise the powers and duties conferred upon it by said section, and in addition thereto:

(1) The board shall keep in convenient form such data as shall be necessary for the actuarial valuation of the retirement fund created by this chapter. At the end of the five-year period beginning with the year 1939, and at the end of every five-year period thereafter, the board shall cause to be made an actuarial investigation into the mortality, service and compensation experience of the members, and beneficiaries as defined by this chapter; and shall further cause to be made an actuarial valuation of the assets and liabilities of the retirement fund, and upon the basis of such investigation and valuation and subject to the approval of the city council or city commission, shall:

- (a) Make any necessary changes in the rate of interest;
- (b) Adopt for the retirement system such mortality, service and other tables as shall be necessary;
- (c) Revise or change the rates of contribution by members on the basis of such mortality, service and other tables.

(2) The board shall promptly transmit to the city council or city commission a report covering the actuarial investigation and actuarial valuation provided for in subdivision (1) of this section.

(3) In addition to other records and accounts, the board shall keep such detailed reports and accounts as shall be necessary to show the financial condition of the retirement fund at all times.

(4) The board shall annually transmit to the city council or city commission a report showing the financial condition of the fund established by this chapter. [1939 c 207 § 7; RRS § 9592-107.]

41.28.070 Employees' retirement fund created—Composition. A fund is hereby created and established in all cities of the first class as under this chapter provided to be known as the "employees' retirement fund" and shall consist of all the moneys paid into it in accordance with the provisions of this chapter, whether such moneys shall take the form of cash, securities, or other assets. [1939 c 207 § 8; RRS § 9592-108.]

41.28.080 Board of administration—Members—Duties—Fiscal affairs. (1) There is hereby created and established a board of administration in each city coming under this chapter, which shall, under the provisions of this chapter and the direction of the city council or city commission, administer the retirement system and the retirement fund created by this chapter. Under and pursuant to the direction of the city council or city commission, the board shall

provide for the proper investment of the moneys in the said retirement fund.

(2) The board of administration shall consist of seven members, as follows: Three members appointed by the regular appointing authority of the city, and three employees who are eligible to membership in the retirement system, to be elected by the employees. The above six members shall appoint the seventh member.

(3) The investment of all or any part of the retirement fund shall be subject to chapter 35.39 RCW.

(4) Subject to such provisions as may be prescribed by law for the deposit of municipal funds in banks, cash belonging to the retirement fund may be deposited in any licensed national bank or in any bank, banks or corporations authorized or licensed to do a banking business and organized under the laws of the state of Washington.

(5) The city treasurer shall be the custodian of the retirement fund. All payments from said fund shall be made by the city treasurer but only upon warrant duly executed by the city comptroller.

(6) Except as herein provided, no member and no employee of the board of administration shall have any interest, direct or indirect, in the making of any investments from the retirement fund, or in the gains or profits accruing therefrom. And no member or employee of said board, directly or indirectly, for himself or herself or as an agent or partner of others, shall borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by said board; nor shall any member or employee of said board become an endorser or surety or become in any manner an obligor for moneys invested by the board. [2012 c 117 § 47; 1983 c 3 § 93; 1969 ex.s. c 211 § 2; 1939 c 207 § 9; RRS § 9592-109.]

41.28.085 Legislative intent—Investments. In order that the intent of the legislature may be made clear with respect to investments, but without restricting the necessary flexibility that must exist for successful investing of the retirement and pension funds, the legislature makes this declaration of its desire that the investment authority shall give primary consideration to dealing with brokerage firms which maintain offices in the state of Washington so that the investment programs may make a meaningful contribution to the economy of the state. It is further the desire of the legislature that the retirement and pension funds shall be used as much as reasonably possible to benefit and expand the business and economic climate within the state of Washington so long as such use would be consistent with sound investment policy. [1969 ex.s. c 211 § 3.]

41.28.090 Contributions by city. (1) There shall be paid into the retirement fund by contributions of the city, the amounts necessary to pay all pensions and all other benefits allowable under this chapter to members on account of prior service, and minimum allowances provided for in RCW 41.28.130. Until the amount accumulated in the retirement fund becomes at least as large as the present value of all amounts thereafter payable from said fund the amount annually due to the said fund under this section shall be the amount payable from said fund in the ensuing fiscal year on

account of prior service and minimum allowances. [1939 c 207 § 10; RRS § 9592-110.]

41.28.100 City obligated to contribute. The payments of the city due the retirement fund as provided for in this chapter are hereby made obligations of the city as defined in this chapter. The board shall annually, on or before the tenth day of July each year, prepare and submit to the city council or city commission an estimate of the amounts necessary to meet such obligations, and the city council or city commission shall provide for the raising of such amounts as are necessary to make such payments. [1939 c 207 § 11; RRS § 9592-111.]

41.28.110 Payments on discontinuance of service—Reemployment—Redeposit. (1) Should the service of a member be discontinued, except by death or retirement, he or she shall be paid not later than six months after the day of discontinuance such part of his or her accumulated contributions as he or she shall demand: PROVIDED, HOWEVER, That a member may appeal to the board and by unanimous vote, the board may grant a request for immediate withdrawal of contributions. If in the opinion of the board said member is permanently separated from service by reason of such discontinuance he or she shall be paid forthwith all of his or her accumulated contributions with interest: AND PROVIDED ALSO, That the board may, in its discretion, withhold for not more than one year after a member last rendered service all or part of his or her accumulated normal contributions if after a previous discontinuance of service he or she withdrew all or part of his or her accumulated normal contributions and failed to redeposit such withdrawn amount in the retirement fund as provided in this section: PROVIDED FURTHER, That the city shall receive credit for the full amount deposited by the city in the retirement fund for such member's benefit plus interest. Any member may redeposit in the retirement fund an amount equal to that which he or she previously withdrew therefrom at the last termination of his or her membership, such redeposit to be paid into the retirement fund in accordance with rules established by the board. If a member upon reentering the retirement system after a termination of his or her membership shall not make such a redeposit as hereinabove provided, the rate of his or her contributions for future years shall be the normal rate provided for in RCW 41.28.040(1) at his or her age of reentrance; otherwise his or her rate of contribution for future years shall be the same as his or her rate prior to the termination of his or her membership. In the event such redeposit is made by a member, an amount equal to the accumulated normal contributions so redeposited shall again be held for the benefit of said member, and shall no longer be included in the amounts available to meet the obligations of the city on account of benefits that have been granted or liabilities that have been assumed on account of prior service of members, and the city shall reinstate the prior service credit for such member. [2012 c 117 § 48; 1939 c 207 § 12; RRS § 9592-112.]

41.28.120 Retirement for service. Retirement of member for service shall be made by the board of administration as follows:

(1) Each member in the city service on June 8, 1967, who, on or before such effective date, has attained the age of sixty-five years or over, shall be forthwith retired on the first day of the calendar month next succeeding the month in which the employee shall have attained the age of sixty-five: PROVIDED, That none of such members shall be subject to compulsory retirement for a period of five years following said effective date, but during such period any member having attained the age of sixty-five may voluntarily retire after attaining such age. Members attaining the age of sixty-five after June 8, 1967 shall be retired on the first day of the calendar month next succeeding the month in which the member shall have attained the age of sixty-five, but none of such members shall be subject to compulsory retirement until five years after said effective date: PROVIDED, FURTHER, That any member attaining the age of seventy years during said five year period shall be forthwith retired on the first day of the calendar month next succeeding the month in which the employee shall have attained the age of seventy years, except as otherwise provided in this chapter. The board shall extend the time of retirement for any member hired prior to June 8, 1967 so as to enable said member to qualify for retirement benefits under this chapter, but in no event should such extension extend beyond the age of seventy years.

(2) Any member in the city service may retire by filing with the board a written application, stating when he or she desires to be retired, such application to be made at least thirty days prior to date of retirement: PROVIDED, HOWEVER, That said member, at the time specified for his or her retirement, shall have completed ten years of city service as defined in this chapter, and shall have attained the age of fifty-seven years, or shall have completed thirty years of city service as defined in this chapter. Permanent discontinuance of city service after age of fifty-seven shall entitle the member to his or her retirement allowance: PROVIDED, That such employee has had at least ten years of city service to his or her credit: AND PROVIDED FURTHER, That permanent discontinuance of city service after the completion of thirty years of city service shall entitle the member to his or her retirement allowance. [2012 c 117 § 49; 1967 c 185 § 3; 1939 c 207 § 13; RRS § 9592-113.]

41.28.130 Service retirement allowances. (1) A member, upon retirement from service, shall receive a retirement allowance subject to the provisions of paragraph (2) of this section, which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his or her accumulated contributions at the time of his or her retirement.

(b) A pension purchased by the contributions of the city, equal to the annuity purchased by the accumulated normal contributions of the member.

(c) For any member having credit for prior service an additional pension, purchased by the contributions of the city equal to one and one-third percent of the final compensation, multiplied by the number of years of prior service credited to said member, except that if a member shall retire before attaining the age of sixty-two years, the additional pension shall be reduced to an amount which shall be equal to a lesser percentage of final compensation, multiplied by the number of years of prior service credited to said member, which

lesser percentage shall be applied to the respective ages of retirement in accordance with the following tabulation:

Retirement age	Percentage
62	1.333
61	1.242
60	1.158
59	1.081
58	1.010
57	0.945
56	0.885
55	0.829
54	0.778
53	0.731
52	0.687
51	0.646
50	0.608

(2) If the retirement allowance of the member as provided in this section, exclusive of any annuity purchased by his or her accumulated additional contributions, is in excess of two-thirds of his or her final salary, the pension of the member, purchased by the contributions of the city, shall be reduced to such an amount as shall make the member's retirement allowance, exclusive of any annuity purchased by his or her accumulated additional contributions, equal to two-thirds of his or her final salary, and the actuarial equivalent of such reduction shall remain in the retirement fund to the credit of the city: PROVIDED, That the retired member will be granted a cost of living increase, in addition to the allowance provided in this section, of one percent commencing January 1, 1968 and an additional one percent on the first day of each even-numbered year thereafter if the U.S. Bureau of Labor Statistics' Cost of Living Index has increased one percent or more since the last cost of living increase in the member's retirement allowance; such increases shall apply only to retirement allowances approved on or after January 1, 1967.

(3) Any member, who enters the retirement system on July 1, 1939, or who enters after that date and who is given the credit for prior service, and who is retired by reason of attaining the age of seventy years, shall receive such additional pension on account of prior service, purchased by the contributions of the city, as will make his or her total retirement allowance not less than four hundred twenty dollars per year.

(4) Any member who, at the time of his or her retirement, has at least ten years of creditable service, as defined in this chapter, and who has attained the age of sixty-five years or over, shall receive such additional pension, purchased by the contributions of the city, as will make his or her total retirement allowance not less than nine hundred sixty dollars per year. [2012 c 117 § 50; 1969 c 31 § 1; 1967 c 185 § 4; 1961 c 260 § 1; 1939 c 207 § 14; RRS § 9592-114.]

Additional notes found at www.leg.wa.gov

41.28.140 Retirement for disability. Any member while in city service may be retired by the board of administration for permanent and total disability, either ordinary or accidental, upon examination, as follows:

(1) Any member who has not attained the age of sixty-five years and who has at least ten years of city service as

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defined in this chapter, to his or her credit: PROVIDED, That the required ten years of city service shall have been credited to the member over a period of not to exceed fifteen years immediately preceding retirement, within three months after the discontinuance of city service, or while physically or mentally incapacitated for the performance of duty, if such incapacity has been continuous from discontinuance of city service, shall be examined by a physician or surgeon, appointed by the board of administration upon the application of the head of the office or department in which said member is employed, or upon application of said member, or a person acting in his or her behalf, stating that said member is permanently and totally incapacitated, either physically or mentally, for the performance of duty and ought to be retired. If such medical examination shows, to the satisfaction of the board, that the said member is permanently and totally incapacitated either physically or mentally for the performance of duty and ought to be retired, the board shall retire the said member for disability forthwith.

(2) The board shall secure such medical services and advice as it may deem necessary to carry out the purpose of this section and of RCW 41.28.160, and shall pay for such medical services and advice such compensation as the board shall deem reasonable. [2012 c 117 § 51; 1939 c 207 § 15; RRS § 9592-115.]

41.28.150 Disability retirement allowances—Grounds for denial. (1) Upon retirement for disability, as hereinabove provided: PROVIDED, The disability is not due to intemperance, willful misconduct or violation of law, of which the board shall be the judge, a member shall receive a retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his or her accumulated contributions at the time of his or her retirement.

(b) A pension purchased by the contributions of the city, which, together with his or her annuity provided by his or her accumulated normal contributions, shall make the retirement allowance, exclusive of the annuity provided by his or her additional contributions equal to (i) one and one-fourth percent of his or her final compensation multiplied by the number of years of service which would be creditable to him or her were his or her services to continue until attainment by him or her of age sixty-two. The minimum disability retirement allowance shall be nine hundred sixty dollars per year.

(2) If disability is due to intemperance, willful misconduct or violation of law on the part of the member, the board of administration in its discretion may pay to said member in one lump sum, his or her accumulated contributions, in lieu of a retirement allowance, and such payment shall constitute full satisfaction of all obligations of the city to such member, and upon receipt of such payment he or she shall cease to be a member of the retirement system.

(3) Upon the death of a member while in receipt of a disability retirement allowance, his or her accumulated contributions, as they were at the date of his or her retirement, less any annuity payments made to him or her, shall be paid to his or her estate, or to such persons having an insurable interest in his or her life as he or she shall have nominated by written designation duly executed and filed with the board. [2012 c

117 § 52; 1963 c 91 § 2; 1961 c 260 § 2; 1939 c 207 § 16; RRS § 9592-116.]

41.28.160 Medical examination of disability beneficiaries—Reentry. (1) The board of administration may at its pleasure require any disability beneficiary under age sixty-two years to undergo medical examination to be made by a physician or surgeon appointed by the board, at a place to be designated by the board. Upon the basis of such examination the board shall determine whether such disability beneficiary is still totally and permanently incapacitated either mentally or physically for service in the office or department of the city where he or she was employed or in any other city service for which he or she is qualified. If the board of administration shall determine that said beneficiary is not so incapacitated, his or her retirement allowance shall be canceled and he or she shall be reinstated forthwith in the city service.

(2) Should a disability beneficiary reenter the city service and be eligible for membership in the retirement system in accordance with RCW 41.28.030(1), his or her retirement allowance shall be canceled and he or she shall immediately become a member of the retirement system, his or her rate of contribution for future years being that established for his or her age at the time of reentry. His or her individual account shall be credited with his or her accumulated contributions less the annuity payments made to him or her. An amount equal to the accumulated normal contributions so credited to him or her shall again be held for the benefit of said member and shall no longer be included in the amounts available to meet the obligations of the city on account of benefits that have been granted and on account of prior service of members. Such member shall receive credit for prior service in the same manner as if he or she had never been retired for disability.

(3) Should any disability beneficiary under age sixty-two years refuse to submit to medical examination, his or her pension may be discontinued until his or her withdrawal of such refusal, and should refusal continue for one year, his or her retirement allowance may be canceled. Should said disability beneficiary, prior to attaining age sixty-two years, engage in a gainful occupation not in city service, or should he or she reenter the city service and be ineligible for membership in the retirement system in accordance with RCW 41.28.030(2), the board of administration shall reduce the amount of his or her retirement allowance to an amount, which when added to the compensation earned by him or her in such occupation shall not exceed the amount of the final compensation on the basis of which his or her retirement allowance was determined. Should the earning capacity of such beneficiary be further altered, the board may further alter his or her retirement allowance to an amount which shall not exceed the amount upon which he or she was originally retired, but which, subject to such limitation shall equal, when added to the compensation earned by him or her, the amount of his or her final compensation on the basis of which his or her retirement allowance was determined. When said disability beneficiary reaches the age of sixty-two years, his or her retirement allowance shall be made equal to the amount upon which he or she was originally retired, and shall not again be modified for any cause except as provided in RCW 41.28.220.

(4) Should the retirement allowance of any disability beneficiary be canceled for any cause other than reentrance into the city service he or she shall be paid his or her accumulated contributions, less annuity payments made to him or her. [2012 c 117 § 53; 1939 c 207 § 17; RRS § 9592-117.]

41.28.170 Optional allowances. A member may elect to receive, in lieu of the retirement allowance provided for in RCW 41.28.130, its actuarial equivalent in the form of a lesser retirement allowance, payable in accordance with the terms and conditions of one of the options set forth below in this section. Election of any option must be made by written application filed with the board of administration at least thirty days in advance of retirement as provided in RCW 41.28.120, and shall not be effective unless approved by the board prior to retirement of the member.

Option A. The lesser retirement allowance shall be payable to the member throughout his or her life: PROVIDED, That if he or she die before he or she receive in annuity payments referred to in RCW 41.28.130(1)(a), a total amount equal to the amount of his or her accumulated contributions as it was at the date of his or her retirement, the balance of such accumulated contributions shall be paid in one sum to his or her estate or to such person having an insurable interest in his or her life as he or she shall nominate by written designation duly executed and filed with the board.

Option B. The lesser retirement allowance shall be payable to a member throughout his or her life: PROVIDED, That if he or she die before he or she receive in annuity payments referred to in RCW 41.28.130(1)(a), a total amount equal to the amount of his or her accumulated contributions as it was at the date of his or her retirement, the said annuity payments resulting from his or her accumulated contributions shall be continued and paid to his or her estate or such person, having an insurable interest in his or her life, as he or she shall nominate by written designation duly executed and filed with the board until the total amount of annuity payments shall equal the amount of his or her accumulated contributions as it was at the date of his or her retirement.

Option C. The member shall elect a "guaranteed period" of any number of years. If he or she dies before the lesser retirement allowance has been paid to him or her for the number of years elected by him or her as the "guaranteed period", the lesser retirement allowance shall be continued to the end of the "guaranteed period", and during such continuation shall be paid to his or her estate or to such person having an insurable interest in his or her life as he or she shall nominate by written designation duly executed and filed with the board.

Option D. The lesser retirement allowance shall be payable to the member throughout life, and after the death of the member, one-half of the lesser retirement allowance shall be continued throughout the life of and paid to the wife or husband of the member.

Option E. The lesser retirement allowance shall be payable to the member throughout life, and after death of the member it shall be continued throughout the life of and paid to the wife or husband of the member. [2012 c 117 § 54; 1967 c 185 § 5; 1963 c 91 § 3; 1939 c 207 § 18; RRS § 9592-118.]

41.28.180 Payments on death of unretired members.

Upon the death of any person who has not been retired, pursuant to the provisions of this chapter, there shall be paid to his or her estate, or to such persons having an insurable interest in his or her life as he or she shall have nominated by written designation duly executed and filed with the board, his or her accumulated contributions less any payments therefrom already made to him or her, if any. [2012 c 117 § 55; 1939 c 207 § 19; RRS § 9592-119.]

41.28.190 Payments to be made monthly. A pension annuity or a retirement allowance granted under the provisions of this chapter, unless otherwise specified herein, shall be payable in monthly installments, and each installment shall cover for the current calendar month. [1939 c 207 § 20; RRS § 9592-120.]

41.28.200 Exemption from process—Rights not assignable. The right of a person to a pension, an annuity or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter shall not be subject to execution, garnishment, attachment, or any other process whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable except as in this chapter specifically provided. [2012 c 159 § 22; 1939 c 207 § 21; RRS § 9592-121.]

41.28.205 Benefits payable in accordance with court decree or order of dissolution or legal separation. Benefits under this chapter shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation. [1979 ex.s. c 205 § 9.]

41.28.207 Payments to spouse or ex spouse pursuant to court order. (1) If the board of administration makes payments to a spouse or ex spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to a court decree of dissolution or legal separation, it shall be a sufficient answer to any claim of a beneficiary against the board of administration or the retirement system for the board of administration to show that the payments were made pursuant to a court decree.

(2) All payments made to a nonmember spouse or ex spouse pursuant to RCW 41.28.205 shall cease upon the death of such a nonmember spouse or ex spouse. Upon such a death, the board of administration shall pay to the member his or her full monthly entitlement of benefits.

(3) The provisions of RCW 41.28.205 and this section shall apply to all court decrees of dissolution or legal separation and court-approved property settlement agreements, regardless of when entered, but shall apply only to those persons who have actually retired or who have requested withdrawal of any or all of their accumulated contributions: PROVIDED, That the board of administration shall not be respon-

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sible for making court-ordered divisions of withdrawals unless the order is filed with the board at least thirty days before the withdrawal payment date. [1987 c 326 § 20.]

Mandatory assignment of retirement benefits to spouse or ex spouse: RCW 41.50.500 through 41.50.660.

Additional notes found at www.leg.wa.gov

41.28.210 Estimates of service, compensation, or age.

If it shall be impracticable for the board of administration to determine from the records the length of service, the compensation, or the age of any member, the said board may estimate for the purpose of this chapter, such length of service, compensation or age. [1939 c 207 § 22; RRS § 9592-122.]

41.28.220 Suspension of allowances during other public aid. The payment of any retirement allowance to a member who has been retired from service shall be suspended during the time that the beneficiary is in receipt of other pension or of other compensation for state or public service paid from direct or indirect state or municipal taxes or revenues of publicly owned utilities, except as to the amount by which such retirement allowance may exceed such compensation for the same period. [1939 c 207 § 23; RRS § 9592-123.]

41.28.230 Administrative expense. The city council or city commission shall appropriate annually from the retirement fund the amount it deems necessary for the purpose of paying the expenses of administering the retirement system. The board of administration shall annually submit to the city council or city commission its estimate of the amount necessary to pay such expenses. The preliminary cost of establishment of said retirement system, such as clerical help and actuarial survey costs, etc., shall be paid by the department or departments affected. [1939 c 207 § 24; RRS § 9592-124.]

41.28.240 Existing systems preserved. Nothing in this chapter shall repeal, supersede, alter, amend or be regarded as a substitute for any existing retirement or pension system, duly established by city ordinance. [1939 c 207 § 28; RRS § 9592-128.]

41.28.900 Severability—1939 c 207. If any one or more sections, subsections, subdivisions, sentences, clauses or phrases of this chapter are for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this chapter, but the same shall remain in full force and effect. [1939 c 207 § 25; RRS § 9592-125.]

41.28.910 Repeal. All laws and parts of laws in conflict herewith be and the same are hereby repealed. [1939 c 207 § 26.]

41.28.920 Effective date—1939 c 207. The retirement system shall become effective on July 1, 1939, as provided in RCW 41.28.020. [1939 c 207 § 27.]

41.28.930 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital,

husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 94.]

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

Chapter 41.31A RCW

EXTRAORDINARY INVESTMENT GAINS—PLAN 3

Sections

- 41.31A.020 Extraordinary investment gain—Credited to member accounts—Persons eligible—Calculation of amount—Contractual right not granted *(as amended by 2007 c 491)*.
- 41.31A.020 Extraordinary investment gain—Credited to member accounts—Persons eligible—Calculation of amount—Contractual right not granted *(as amended by 2007 c 492)*.
- 41.31A.020 Extraordinary investment gain—Credited to member accounts—Persons eligible—Calculation of amount—Contractual right not granted.

41.31A.020 Extraordinary investment gain—Credited to member accounts—Persons eligible—Calculation of amount—Contractual right not granted *(as amended by 2007 c 491)*. (1) On January 1, 2004, and on January 1st of even-numbered years thereafter, the member account of a person meeting the requirements of this section shall be credited by the extraordinary investment gain amount.

(2) The following persons, hired prior to July 1, 2007, shall be eligible for the benefit provided in subsection (1) of this section:

(a) Any member of the teachers' retirement system plan 3, the Washington school employees' retirement system plan 3, or the public employees' retirement system plan 3 who earned service credit during the twelve-month period from September 1st to August 31st immediately preceding the distribution and had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution; or

(b) Any person in receipt of a benefit pursuant to RCW 41.32.875, 41.35.680, or 41.40.820; or

(c) Any person who is a retiree pursuant to *RCW 41.34.020(8) and who:

(i) Completed ten service credit years; or

(ii) Completed five service credit years, including twelve service months after attaining age fifty-four; or

(d) Any teacher who is a retiree pursuant to *RCW 41.34.020(8) and who has completed five service credit years by July 1, 1996, under plan 2 and who transferred to plan 3 under RCW 41.32.817; or

(e) Any classified employee who is a retiree pursuant to *RCW 41.34.020(8) and who has completed five service credit years by September 1, 2000, and who transferred to plan 3 under RCW 41.35.510; or

(f) Any public employee who is a retiree pursuant to *RCW 41.34.020(8) and who has completed five service credit years by March 1, 2002, and who transferred to plan 3 under RCW 41.40.795; or

(g) Any person who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who:

(i) Completed ten service credit years; or

(ii) Completed five service credit years, including twelve service months after attaining age fifty-four; or

(h) Any teacher who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by July 1, 1996, under plan 2 and who transferred to plan 3 under RCW 41.32.817; or

(i) Any classified employee who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by September 1, 2000, and who transferred to plan 3 under RCW 41.35.510; or

(j) Any public employee who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by March 1, 2002, and who transferred to plan 3 under RCW 41.40.795.

(3) The extraordinary investment gain amount shall be calculated as follows:

(a) One-half of the sum of the value of the net assets held in trust for pension benefits in the teachers' retirement system combined plan 2 and 3 fund, the Washington school employees' retirement system combined plan 2 and 3 fund, and the public employees' retirement system combined plan 2 and 3 fund at the close of the previous state fiscal year not including the amount attributable to member accounts;

(b) Multiplied by the amount which the compound average of investment returns on those assets over the previous four state fiscal years exceeds ten percent;

(c) Multiplied by the proportion of:

(i) The sum of the service credit on August 31st of the previous year of all persons eligible for the benefit provided in subsection (1) of this section; to

(ii) The sum of the service credit on August 31st of the previous year of:

(A) All persons eligible for the benefit provided in subsection (1) of this section;

(B) Any person who earned service credit in the teachers' retirement system plan 2, the Washington school employees' retirement system plan 2, or the public employees' retirement system plan 2 during the twelve-month period from September 1st to August 31st immediately preceding the distribution;

(C) Any person in receipt of a benefit pursuant to RCW 41.32.765, 41.35.420, or 41.40.630; and

(D) Any person with five or more years of service in the teachers' retirement system plan 2, the Washington school employees' retirement system plan 2, or the public employees' retirement system plan 2;

(d) Divided proportionally among persons eligible for the benefit provided in subsection (1) of this section on the basis of their service credit total on August 31st of the previous year.

(4) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this distribution not granted prior to that time. [2007 c 491 § 1; 2003 c 294 § 4; 2000 c 247 § 408; 1998 c 341 § 312.]

***Reviser's note:** RCW 41.34.020 was amended by 2010 1st sp.s. c 7 § 31, changing subsection (8) to subsection (7).

Effective date—2007 c 491 §§ 1, 3, and 7: See note following RCW 41.32.835.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

41.31A.020 Extraordinary investment gain—Credited to member accounts—Persons eligible—Calculation of amount—Contractual right not granted *(as amended by 2007 c 492)*. (1) On January 1, 2004, and on January 1st of even-numbered years thereafter, the member account of a person meeting the requirements of this section shall be credited by the extraordinary investment gain amount.

(2) The following persons shall be eligible for the benefit provided in subsection (1) of this section:

(a) Any member of the teachers' retirement system plan 3, the Washington school employees' retirement system plan 3, or the public employees' retirement system plan 3 who earned service credit during the twelve-month period from September 1st to August 31st immediately preceding the distribution and had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution; or

(b) Any person in receipt of a benefit pursuant to RCW 41.32.875, 41.35.680, or 41.40.820; or

(c) Any person who is a retiree pursuant to *RCW 41.34.020(8) and who:

(i) Completed ten service credit years; or

(ii) Completed five service credit years, including twelve service months after attaining age (~~fifty-four~~) **forty-four**; or

(d) Any teacher who is a retiree pursuant to *RCW 41.34.020(8) and who has completed five service credit years by July 1, 1996, under plan 2 and who transferred to plan 3 under RCW 41.32.817; or

(e) Any classified employee who is a retiree pursuant to *RCW 41.34.020(8) and who has completed five service credit years by September 1, 2000, and who transferred to plan 3 under RCW 41.35.510; or

(f) Any public employee who is a retiree pursuant to *RCW 41.34.020(8) and who has completed five service credit years by March 1, 2002, and who transferred to plan 3 under RCW 41.40.795; or

(g) Any person who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who:

(i) Completed ten service credit years; or

(ii) Completed five service credit years, including twelve service months after attaining age (~~forty-four~~) **forty-four**; or

(h) Any teacher who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by July 1, 1996, under plan 2 and who transferred to plan 3 under RCW 41.32.817; or

(i) Any classified employee who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by September 1, 2000, and who transferred to plan 3 under RCW 41.35.510; or

(j) Any public employee who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by March 1, 2002, and who transferred to plan 3 under RCW 41.40.795.

(3) The extraordinary investment gain amount shall be calculated as follows:

(a) One-half of the sum of the value of the net assets held in trust for pension benefits in the teachers' retirement system combined plan 2 and 3 fund, the Washington school employees' retirement system combined plan 2 and 3 fund, and the public employees' retirement system combined plan 2 and 3 fund at the close of the previous state fiscal year not including the amount attributable to member accounts;

(b) Multiplied by the amount which the compound average of investment returns on those assets over the previous four state fiscal years exceeds ten percent;

(c) Multiplied by the proportion of:

(i) The sum of the service credit on August 31st of the previous year of all persons eligible for the benefit provided in subsection (1) of this section; to

(ii) The sum of the service credit on August 31st of the previous year of:

(A) All persons eligible for the benefit provided in subsection (1) of this section;

(B) Any person who earned service credit in the teachers' retirement system plan 2, the Washington school employees' retirement system plan 2, or the public employees' retirement system plan 2 during the twelve-month period from September 1st to August 31st immediately preceding the distribution;

(C) Any person in receipt of a benefit pursuant to RCW 41.32.765, 41.35.420, or 41.40.630; and

(D) Any person with five or more years of service in the teachers' retirement system plan 2, the Washington school employees' retirement system plan 2, or the public employees' retirement system plan 2;

(d) Divided proportionally among persons eligible for the benefit provided in subsection (1) of this section on the basis of their service credit total on August 31st of the previous year.

(4) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this distribution not granted prior to that time. [2007 c 492 § 10; 2003 c 294 § 4; 2000 c 247 § 408; 1998 c 341 § 312.]

Reviser's note: *(1) RCW 41.34.020 was amended by 2010 1st sp. s. c 7 § 31, changing subsection (8) to subsection (7).

(2) RCW 41.31A.020 was also repealed by 2007 c 491 § 13 without cognizance of its amendment by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Contingency—2007 c 492 § 10: "Section 10 of this act is null and void, if legislation is enacted during 2007 repealing RCW 41.31A.020." [2007 c 492 § 13.]

Additional notes found at www.leg.wa.gov

41.31A.020 Extraordinary investment gain—Credited to member accounts—Persons eligible—Calculation of amount—Contractual right not granted. [2003 c 294 § 4; 2000 c 247 § 408; 1998 c 341 § 312.]

Reviser's note: RCW 41.31A.020 was also repealed by 2007 c 491 § 13 without cognizance of its amendment by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

**Chapter 41.32 RCW
TEACHERS' RETIREMENT**

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- 41.32.895 Death benefits.

Prior acts relating to teachers' retirement: (1) 1943 c 116; 1941 c 97; 1939 c 86, 40; 1937 c 221 (repealed by 1947 c 80 § 70).
(2) 1931 c 115; 1923 c 187; 1919 c 150; 1917 c 163 (repealed by 1937 c 221 § 14).

Employee salary or compensation—Limitations respecting: RCW 28A.400.220.

Portability of public retirement benefits: Chapter 41.54 RCW.

Teachers in state correctional facilities as members of teachers' retirement fund: RCW 72.01.200.

Additional notes found at www.leg.wa.gov

"PROVISIONS APPLICABLE TO PLAN 1, PLAN 2, AND PLAN 3"

41.32.005 Provisions applicable to "plan 1," "plan 2," and "plan 3." RCW 41.32.010 through 41.32.067 shall apply to members of plan 1, plan 2, and plan 3. [1995 c 239 § 101; 1992 c 72 § 4; 1991 c 35 § 30; 1990 c 274 § 16. Prior: 1989 c 273 § 15; 1989 c 272 § 4; 1977 ex.s. c 293 § 19.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—Construction—1990 c 274: See notes following RCW 41.32.010.

Purpose—1989 c 272: "The legislature recognizes that inflation erodes the purchasing power of retirement benefits. Although the benefit provided to state retirees from social security is fully protected, the benefits provided by the public employees' retirement system, plan 1, and the teachers' retirement system, plan 1 provide an automatic cost-of-living adjustment only for persons who receive the minimum benefit.

The purpose of this act is to add provisions to the teachers' retirement system and the public employees' retirement system which will help mitigate the impact of inflation on retirees of those systems. These additional provisions are intended to reflect and implement the following policies:

(1) The minimum benefit is increased in order to provide a more adequate basic standard of living to persons who retired long ago under lower salaries and less generous retirement benefit formulas; and

(2) Retirees whose benefits have lost forty percent of their purchasing power are made eligible for automatic adjustments which are provided in a manner that is consistent with the retirement age and benefit provisions of plan 2 of the teachers' retirement system and the public employees' retirement system." [1989 c 272 § 1.]

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

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

(1)(a) "Accumulated contributions" for plan 1 members, means the sum of all regular annuity contributions and, except for the purpose of withdrawal at the time of retirement, any amount paid under RCW 41.50.165(2) with regular interest thereon.

(b) "Accumulated contributions" for plan 2 members, means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality tables and regulations as shall be adopted by the director and regular interest.

(3) "Adjustment ratio" means the value of index A divided by index B.

(4) "Annual increase" means, initially, fifty-nine cents per month per year of service which amount shall be increased each July 1st by three percent, rounded to the nearest cent.

(5) "Annuity" means the moneys payable per year during life by reason of accumulated contributions of a member.

(6) "Average final compensation" for plan 2 and plan 3 members, means the member's average earnable compensation of the highest consecutive sixty service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.32.810(2).

(7)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter.

(b) "Beneficiary" for plan 2 and plan 3 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(8) "Contract" means any agreement for service and compensation between a member and an employer.

(9) "Creditable service" means membership service plus prior service for which credit is allowable. This subsection shall apply only to plan 1 members.

(10) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(11) "Dependent" means receiving one-half or more of support from a member.

(12) "Director" means the director of the department.

(13) "Disability allowance" means monthly payments during disability. This subsection shall apply only to plan 1 members.

(14)(a) "Earnable compensation" for plan 1 members, means:

(i) All salaries and wages paid by an employer to an employee member of the retirement system for personal services rendered during a fiscal year. In all cases where compensation includes maintenance the employer shall fix the value of that part of the compensation not paid in money.

(ii) For an employee member of the retirement system teaching in an extended school year program, two consecutive extended school years, as defined by the employer school district, may be used as the annual period for determining earnable compensation in lieu of the two fiscal years.

(iii) "Earnable compensation" for plan 1 members also includes the following actual or imputed payments, which are not paid for personal services:

(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable

compensation and the individual shall receive the equivalent service credit.

(B) If a leave of absence, without pay, is taken by a member for the purpose of serving as a member of the state legislature, and such member has served in the legislature five or more years, the salary which would have been received for the position from which the leave of absence was taken shall be considered as compensation earnable if the employee's contribution thereon is paid by the employee. In addition, where a member has been a member of the state legislature for five or more years, earnable compensation for the member's two highest compensated consecutive years of service shall include a sum not to exceed thirty-six hundred dollars for each of such two consecutive years, regardless of whether or not legislative service was rendered during those two years.

(iv) For members employed less than full time under written contract with a school district, or community college district, in an instructional position, for which the member receives service credit of less than one year in all of the years used to determine the earnable compensation used for computing benefits due under RCW 41.32.497, 41.32.498, and 41.32.520, the member may elect to have earnable compensation defined as provided in RCW 41.32.345. For the purposes of this subsection, the term "instructional position" means a position in which more than seventy-five percent of the member's time is spent as a classroom instructor (including office hours), a librarian, a psychologist, a social worker, a nurse, a physical therapist, an occupational therapist, a speech language pathologist or audiologist, or a counselor. Earnable compensation shall be so defined only for the purpose of the calculation of retirement benefits and only as necessary to insure that members who receive fractional service credit under RCW 41.32.270 receive benefits proportional to those received by members who have received full-time service credit.

(v) "Earnable compensation" does not include:

(A) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(b) "Earnable compensation" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

"Earnable compensation" for plan 2 and plan 3 members also includes the following actual or imputed payments which, except in the case of (b)(ii)(B) of this subsection, are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compen-

sation, to the extent provided above, and the individual shall receive the equivalent service credit.

(ii) In any year in which a member serves in the legislature the member shall have the option of having such member's earnable compensation be the greater of:

(A) The earnable compensation the member would have received had such member not served in the legislature; or

(B) Such member's actual earnable compensation received for teaching and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions.

(c) In calculating earnable compensation under (a) or (b) of this subsection, the department of retirement systems shall include:

(i) Any compensation forgone by a member employed by a state agency or institution during the 2009-2011 fiscal biennium as a result of reduced work hours, mandatory or voluntary leave without pay, temporary reduction in pay implemented prior to December 11, 2010, or temporary layoffs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer; and

(ii) Any compensation forgone by a member during the 2011-2013 fiscal biennium as a result of reduced work hours, mandatory leave without pay, temporary layoffs, or reductions to current pay if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer. Reductions to current pay shall not include elimination of previously agreed upon future salary reductions.

(15)(a) "Eligible position" for plan 2 members from June 7, 1990, through September 1, 1991, means a position which normally requires two or more uninterrupted months of creditable service during September through August of the following year.

(b) "Eligible position" for plan 2 and plan 3 on and after September 1, 1991, means a position that, as defined by the employer, normally requires five or more months of at least seventy hours of earnable compensation during September through August of the following year.

(c) For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position.

(d) The elected position of the superintendent of public instruction is an eligible position.

(16) "Employed" or "employee" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

(17) "Employer" means the state of Washington, the school district, or any agency of the state of Washington by which the member is paid. Except as otherwise specifically provided in this chapter, "employer" does not include a government contractor. For purposes of this subsection, a "government contractor" is any entity, including a partnership,

limited liability company, for-profit or nonprofit corporation, or person, that provides services pursuant to a contract with an employer. The determination whether an employer-employee relationship has been established is not based on the relationship between a government contractor and an employer, but is based solely on the relationship between a government contractor's employee and an employer under this chapter.

(18) "Fiscal year" means a year which begins July 1st and ends June 30th of the following year.

(19) "Former state fund" means the state retirement fund in operation for teachers under chapter 187, Laws of 1923, as amended.

(20) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items compiled by the bureau of labor statistics, United States department of labor.

(21) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(22) "Index B" means the index for the year prior to index A.

(23) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

(24) "Local fund" means any of the local retirement funds for teachers operated in any school district in accordance with the provisions of chapter 163, Laws of 1917 as amended.

(25) "Member" means any teacher included in the membership of the retirement system who has not been removed from membership under RCW 41.32.878 or 41.32.768. Also, any other employee of the public schools who, on July 1, 1947, had not elected to be exempt from membership and who, prior to that date, had by an authorized payroll deduction, contributed to the member reserve.

(26) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3.

(27) "Member reserve" means the fund in which all of the accumulated contributions of members are held.

(28) "Membership service" means service rendered subsequent to the first day of eligibility of a person to membership in the retirement system: PROVIDED, That where a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered. The provisions of this subsection shall apply only to plan 1 members.

(29) "Pension" means the moneys payable per year during life from the pension reserve.

(30) "Pension reserve" is a fund in which shall be accumulated an actuarial reserve adequate to meet present and future pension liabilities of the system and from which all pension obligations are to be paid.

(31) "Plan 1" means the teachers' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(32) "Plan 2" means the teachers' retirement system, plan 2 providing the benefits and funding provisions covering per-

sons who first became members of the system on and after October 1, 1977, and prior to July 1, 1996.

(33) "Plan 3" means the teachers' retirement system, plan 3 providing the benefits and funding provisions covering persons who first become members of the system on and after July 1, 1996, or who transfer under RCW 41.32.817.

(34) "Prior service" means service rendered prior to the first date of eligibility to membership in the retirement system for which credit is allowable. The provisions of this subsection shall apply only to plan 1 members.

(35) "Prior service contributions" means contributions made by a member to secure credit for prior service. The provisions of this subsection shall apply only to plan 1 members.

(36) "Public school" means any institution or activity operated by the state of Washington or any instrumentality or political subdivision thereof employing teachers, except the University of Washington and Washington State University.

(37) "Regular contributions" means the amounts required to be deducted from the compensation of a member and credited to the member's individual account in the member reserve. This subsection shall apply only to plan 1 members.

(38) "Regular interest" means such rate as the director may determine.

(39) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(40)(a) "Retirement allowance" for plan 1 members, means monthly payments based on the sum of annuity and pension, or any optional benefits payable in lieu thereof.

(b) "Retirement allowance" for plan 2 and plan 3 members, means monthly payments to a retiree or beneficiary as provided in this chapter.

(41) "Retirement system" means the Washington state teachers' retirement system.

(42) "Separation from service or employment" occurs when a person has terminated all employment with an employer. Separation from service or employment does not occur, and if claimed by an employer or employee may be a violation of RCW 41.32.055, when an employee and employer have a written or oral agreement to resume employment with the same employer following termination. Mere expressions or inquiries about postretirement employment by an employer or employee that do not constitute a commitment to reemploy the employee after retirement are not an agreement under this section.

(43)(a) "Service" for plan 1 members means the time during which a member has been employed by an employer for compensation.

(i) If a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered.

(ii) As authorized by RCW 28A.400.300, up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(iii) As authorized in RCW 41.32.065, service earned in an out-of-state retirement system that covers teachers in pub-

lic schools may be applied solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(b) "Service" for plan 2 and plan 3 members, means periods of employment by a member for one or more employers for which earnable compensation is earned subject to the following conditions:

(i) A member employed in an eligible position or as a substitute shall receive one service credit month for each month of September through August of the following year if he or she earns earnable compensation for eight hundred ten or more hours during that period and is employed during nine of those months, except that a member may not receive credit for any period prior to the member's employment in an eligible position except as provided in RCW 41.32.812 and 41.50.132.

(ii) Any other member employed in an eligible position or as a substitute who earns earnable compensation during the period from September through August shall receive service credit according to one of the following methods, whichever provides the most service credit to the member:

(A) If a member is employed either in an eligible position or as a substitute teacher for nine months of the twelve month period between September through August of the following year but earns earnable compensation for less than eight hundred ten hours but for at least six hundred thirty hours, he or she will receive one-half of a service credit month for each month of the twelve month period;

(B) If a member is employed in an eligible position or as a substitute teacher for at least five months of a six-month period between September through August of the following year and earns earnable compensation for six hundred thirty or more hours within the six-month period, he or she will receive a maximum of six service credit months for the school year, which shall be recorded as one service credit month for each month of the six-month period;

(C) All other members employed in an eligible position or as a substitute teacher shall receive service credit as follows:

(I) A service credit month is earned in those calendar months where earnable compensation is earned for ninety or more hours;

(II) A half-service credit month is earned in those calendar months where earnable compensation is earned for at least seventy hours but less than ninety hours; and

(III) A quarter-service credit month is earned in those calendar months where earnable compensation is earned for less than seventy hours.

(iii) Any person who is a member of the teachers' retirement system and who is elected or appointed to a state elective position may continue to be a member of the retirement system and continue to receive a service credit month for each of the months in a state elective position by making the required member contributions.

(iv) When an individual is employed by two or more employers the individual shall only receive one month's service credit during any calendar month in which multiple service for ninety or more hours is rendered.

(v) As authorized by RCW 28A.400.300, up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.32.470. For purposes of plan 2 and plan 3 "forty-five

days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than eleven days equals one-quarter service credit month;

(B) Eleven or more days but less than twenty-two days equals one-half service credit month;

(C) Twenty-two days equals one service credit month;

(D) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month;

(E) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(vi) As authorized in RCW 41.32.065, service earned in an out-of-state retirement system that covers teachers in public schools may be applied solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(vii) The department shall adopt rules implementing this subsection.

(44) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(45) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(46) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(47) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(48) "Substitute teacher" means:

(a) A teacher who is hired by an employer to work as a temporary teacher, except for teachers who are annual contract employees of an employer and are guaranteed a minimum number of hours; or

(b) Teachers who either (i) work in ineligible positions for more than one employer or (ii) work in an ineligible position or positions together with an eligible position.

(49) "Teacher" means any person qualified to teach who is engaged by a public school in an instructional, administrative, or supervisory capacity. The term includes state, educational service district, and school district superintendents and their assistants and all employees certificated by the superintendent of public instruction; and in addition thereto any full time school doctor who is employed by a public school and renders service of an instructional or educational nature. [2012 c 236 § 3; 2011 1st sp.s. c 5 § 2. Prior: 2010 2nd sp.s. c 1 § 904; 2010 1st sp.s. c 32 § 7; prior: 2008 c 204 § 1; 2008 c 175 § 1; prior: 2007 c 398 § 3; 2007 c 50 § 1; prior: 2005 c 131 § 8; 2005 c 23 § 1; 2003 c 31 § 1; 1997 c 254 § 3; 1996 c 39 § 1; prior: 1995 c 345 § 9; 1995 c 239 § 102; prior: 1994 c 298 § 3; 1994 c 247 § 2; 1994 c 197 § 12; 1993 c 95 § 7; prior: 1992 c 212 § 1; 1992 c 3 § 3; prior: 1991 c 343 § 3; 1991 c 35 § 31; 1990 c 274 § 2; 1987 c 265 § 1; 1985 c 13 § 6; prior: 1984 c 256 § 1; 1984 c 5 § 1; 1983 c 5 § 1; 1982 1st ex.s. c 52 § 6; 1981 c 256 § 5; 1979 ex.s. c 249 § 5; 1977 ex.s. c 293 § 18; 1975 1st ex.s. c 275 § 149; 1974 ex.s. c 199 § 1; 1969 ex.s. c 176 § 95; 1967 c 50 § 11; 1965 ex.s. c 81 § 1; 1963 ex.s. c 14 § 1; 1955 c 274 § 1; 1947 c 80 § 1; Rem. Supp. 1947 § 4995-20; prior: 1941 c 97 § 1; 1939 c 86 § 1; 1937 c 221 § 1; 1931 c 115 § 1; 1923 c 187 § 1; 1917 c 163 § 1; Rem. Supp. 1941 § 4995-1.]

Purpose—Application—2012 c 236: See note following RCW 41.26.030.

Effective date—2011 1st sp.s. c 5: See note following RCW 41.26.030.

Effective date—2010 2nd sp.s. c 1: See note following RCW 38.52.105.

Intent—Conflict with federal requirements—Effective date—2010 1st sp.s. c 32: See notes following RCW 42.04.060.

Findings—2007 c 398: See note following RCW 28A.405.415.

Effective date—2005 c 131: See note following RCW 41.40.823.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Intent—1994 c 298: See note following RCW 41.40.010.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—1990 c 274: "(1) The current system for calculating service credit for school district employees is difficult and costly to administer. By changing from the current hours per month calculation to an hours per year calculation, the accumulation of service credit by school district employees will be easier to understand and to administer.

(2) The current system for granting service credit for substitute teachers is difficult and costly to administer. By notifying substitute teachers of their eligibility for service credit and allowing the substitute teacher to apply for service credit, the accumulation of service credit by substitute teachers will be easier to understand and to administer.

(3) Currently, temporary employees in eligible positions in the public employees' retirement system are exempted from membership in the system for up to six months. If the position lasts for longer than six months the employee is made a member retroactively. This conditional exemption causes tracking problems for the department of retirement systems and places a heavy financial burden for back contributions on a temporary employee who crosses the six-month barrier. Under the provisions of this act all persons, other than retirees, who are hired in an eligible position will become members immediately, thereby alleviating the problems described in this section.

(4) The legislature finds that retirees from the plan 2 systems of the law enforcement officers' and firefighters' retirement system, the teachers' retirement system, and the public employees' retirement system, may not work for a nonfederal public employer without suffering a suspension of their retirement benefits. This fails to recognize the current and projected demographics indicating the decreasing workforce and that the expertise possessed by retired workers can provide a substantial benefit to the state. At the same time, the legislature recognizes that a person who is working full time should have his or her pension delayed until he or she enters full or partial retirement. By allowing plan 2 retirees to work in ineligible positions, the competing concerns listed above are both properly addressed." [1990 c 274 § 1.]

Intent—Reservation—1990 c 274 §§ 2, 4: "(1) The 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450 are intended by the legislature to effect administrative, rather than substantive, changes to the affected retirement plan. The legislature therefore reserves the right to revoke or amend the 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450. No member is entitled to have his or her service credit calculated under the 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450 as a matter of contractual right.

(2) The department's retroactive application of the changes made in RCW 41.32.010(27)(b) to all service rendered between October 1, 1977, and August 31, 1990, is consistent with the legislative intent of the 1990 changes to RCW 41.32.010(27)(b)." [1994 c 177 § 10; 1990 c 274 § 18.]

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Purpose—Severability—1981 c 256: See notes following RCW 41.26.030.

Reviser's note: (1) "Subsection (3) of section 4 of this 1974 amendatory act" is codified as RCW 41.32.498(3).

(2) Sections 1 and 2 of 1974 ex.s. c 199 consist of amendments to RCW 41.32.010 and 41.32.260. For amendatory language, a portion of which was

vetoed, see the 1973-1974 session laws.

(3) "this 1974 amendatory act" [1974 ex.s. c 199] is codified in RCW 41.32.010, 41.32.260, 41.32.497, 41.32.498, and 41.32.4945. The effective date of 1974 ex.s. c 199 is May 6, 1974.

Additional notes found at www.leg.wa.gov

41.32.012 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 95. Formerly RCW 41.32.950.]

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

41.32.013 Substitute teachers—Application for service credit—Procedures. Substitute teachers may apply to the department to receive service credit or credit for earnable compensation or both after the end of the last day of instruction of the school year during which the service was performed.

(1) The application must:

(a) Include a list of the employers the substitute teacher has worked for;

(b) Include proof of hours worked and compensation earned; and

(c) Be made prior to retirement.

(2) If the department accepts the substitute teacher's application for service credit, the substitute teacher may obtain service credit by paying the required contribution to the retirement system. The employer must pay the required employer contribution upon notice from the department that the substitute teacher has made contributions under this section.

(3) The department shall charge interest prospectively on employee contributions that are submitted under this section more than six months after the end of the school year, as defined in *RCW 28A.150.040, for which the substitute teacher is seeking service credit. The interest rate charged to the employee shall take into account interest lost on employer contributions delayed for more than six months after the end of the school year.

(4) Each employer shall quarterly notify each substitute teacher it has employed during the school year of the number of hours worked by, and the compensation paid to, the substitute teacher.

(5) The department shall adopt rules implementing this section.

(6) If a substitute teacher as defined in **RCW 41.32.010(36)(b)(ii) applies to the department under this section for credit for earnable compensation earned from an employer the substitute teacher must make contributions for

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all periods of service for that employer. [1992 c 212 § 16; 1991 c 343 § 4; 1990 c 274 § 5.]

Reviser's note: *(1) RCW 28A.150.040 was repealed by 2009 c 548 § 710, effective September 1, 2011.

***(2) RCW 41.32.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (36)(b)(ii) to subsection (48)(b)(ii).

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Findings—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

41.32.020 Name of system. The name of the retirement system provided for in this chapter shall be the "Washington State Teachers' Retirement System" and by this name all of its business shall be transacted and all of its funds invested and all of its cash, securities and other property held. [1947 c 80 § 2; Rem. Supp. 1947 § 4995-21. Prior: 1937 c 221 § 2; Rem. Supp. 1941 § 4995-2.]

41.32.025 Department's power to determine eligibility. The department is empowered within the limits of this chapter and, with regard to restoration of service credit under RCW 41.50.165(2), to decide on all questions of eligibility covering membership, service credit, and benefits. [1994 c 197 § 13; 1991 c 35 § 35; 1955 c 274 § 3; 1947 c 80 § 16; Rem. Supp. 1947 § 4995-35. Prior: 1941 c 97 § 2, part; 1937 c 221 § 3, part; Rem. Supp. 1941 § 4995-3, part. Formerly RCW 41.32.160.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Intent—1991 c 35: See note following RCW 41.26.005.

41.32.032 Membership in system—Service credit of educational staff associates. (1) Any teacher, as defined under RCW 41.32.010, who is first employed by a public school on or after June 7, 1984, shall become a member of the retirement system if otherwise eligible.

(2) Any person who before June 7, 1984, has established service credit under chapter 41.40 RCW while employed in an educational staff associate position and who is employed in such a position on or after June 7, 1984, has the following options:

(a) To remain a member of the public employees' retirement system notwithstanding the provisions of RCW 41.32.240 or 41.32.780; or

(b) To irrevocably elect to join the retirement system under this chapter and to receive service credit for previous periods of employment in any position included under RCW 41.32.010. This service credit and corresponding employee contribution shall be computed as though the person had then been a member of the retirement system under this chapter. All employee contributions credited to a member under chapter 41.40 RCW for service now to be credited to the retirement system under this chapter shall be transferred to the system and the member shall not receive any credit nor enjoy any rights under chapter 41.40 RCW for those periods of service. The member shall pay any difference between the employee contributions made under chapter 41.40 RCW and transferred under this subsection and what would have been required under this chapter, including interest as set by the director. The member shall be given until July 1, 1989, to make the irrevocable election permitted under this section.

The election shall be made by submitting written notification as required by the department requesting credit under this section and by remitting any necessary proof of service or payments within the time set by the department.

Any person, not employed as an educational staff associate on June 7, 1984, may, before June 30 of the fifth school year after that person's return to employment as a teacher, request and establish membership and credit under this subsection. [1995 c 239 § 103; 1992 c 212 § 17; 1991 c 35 § 39; 1984 c 256 § 2. Formerly RCW 41.32.242.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Intent—1991 c 35: See note following RCW 41.26.005.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.033 Membership in system—Charter school employers and employees. This section designates charter schools established under chapter 28A.710 RCW as employers and charter school employees as members, and applies only if the department of retirement systems receives determinations from the internal revenue service and the United States department of labor that participation does not jeopardize the status of these retirement systems as governmental plans under the federal employees' retirement income security act and the internal revenue code. [2013 c 2 § 303 (Initiative Measure No. 1240, approved November 6, 2012).]

Findings—2013 c 2 (Initiative Measure No. 1240): See RCW 28A.710.005.

41.32.035 Employer contribution rates—Computation and payment. The amount paid by each employer shall be computed by applying the rates established under chapter 41.45 RCW to the total earnable compensation of the employer's members as shown on the current payrolls of the employer. The employer's contribution shall be paid at the end of each month in the amount due for that month, except as provided in RCW 41.32.013. [1990 c 274 § 8; 1989 c 273 § 18; 1984 c 236 § 3. Formerly RCW 41.32.403.]

Findings—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

Additional notes found at www.leg.wa.gov

41.32.042 Validity of deductions—Interest. The deductions from salaries of members of the retirement system for their contributions to the system are not considered diminution of pay and every member is conclusively presumed to consent thereto as a condition of employment. All contributions to the member reserve shall be credited to the individual for whose account the deductions from salary were made. Regular interest shall be credited to each member's account at least annually. [1992 c 212 § 9; 1982 1st ex.s. c 52 § 13; 1947 c 80 § 46; Rem. Supp. 1947 § 4995-65. Prior: 1941 c 97 § 5, part; 1939 c 86 § 5, part; 1937 c 221 § 6, part; Rem. Supp. 1941 § 4995-6, part. Formerly RCW 41.32.460.]

Additional notes found at www.leg.wa.gov

41.32.044 Retired teacher may reenter system—Benefit limitations. A retired teacher upon returning to service in the public schools of Washington may elect to again become a member of the retirement system: PROVIDED, That if such a retired teacher elects to be restored to member-

ship he or she must establish two full years of service credit before he or she will be eligible to retire under the provision of a formula other than the one in effect at the time of his or her previous retirement: PROVIDED FURTHER, That where any such right to again retire is exercised to become effective before a member has established two full years of service credit he or she may elect to retire only under the provisions of the formula in effect at the time of his or her previous retirement: AND PROVIDED FURTHER, That this section shall not apply to any individual who has returned to service and is presently in service on *the effective date of this 1973 amendatory act. [2012 c 117 § 56; 1973 2nd ex.s. c 32 § 5; 1947 c 80 § 58; Rem. Supp. 1947 § 4995-77. Formerly RCW 41.32.580.]

***Reviser's note:** "the effective date of this 1973 amendatory act," because of the emergency clause footnoted to RCW 41.32.310, is September 27, 1973, the date of approval by the governor.

Additional notes found at www.leg.wa.gov

41.32.052 Exemption from taxation and judicial process—Exceptions—Nonassignability—Deductions authorized. (1) Subject to subsections (2) and (3) of this section, the right of a person to a pension, an annuity, a retirement allowance, or disability allowance, to the return of contributions, any optional benefit or death benefit, any other right accrued or accruing to any person under the provisions of this chapter and the moneys in the various funds created by this chapter shall be unassignable, and are hereby exempt from any state, county, municipal or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever whether the same be in actual possession of the person or be deposited or loaned.

(2) This section shall not be deemed to prohibit a beneficiary of a retirement allowance who is eligible:

(a) Under RCW 41.05.080 from authorizing monthly deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions;

(b) Under a group health care benefit plan approved pursuant to RCW 28A.400.350 or 41.05.065 from authorizing monthly deductions therefrom, of the amount or amounts of subscription payments, premiums, or contributions to any person, firm, or corporation furnishing or providing medical, surgical, and hospital care or other health care insurance; or

(c) Under this system from authorizing monthly deductions therefrom for payment of dues and other membership fees to any retirement association composed of retired teachers and/or public employees pursuant to a written agreement between the director and the retirement association.

Deductions under (a) and (b) of this subsection shall be made in accordance with rules that may be adopted by the director.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order

directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law. [2012 c 159 § 20. Prior: 1991 c 365 § 21; 1991 c 35 § 63; 1989 c 360 § 25; 1987 c 326 § 23; 1982 c 135 § 1; 1981 c 294 § 13; 1979 ex.s. c 205 § 5; 1971 c 63 § 1; 1961 c 132 § 5; 1947 c 80 § 59; Rem. Supp. 1947 § 4995-78; prior: 1937 c 22 § 9; 1917 c 163 § 19. Formerly RCW 41.32.590.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.32.053 Death benefit—Course of employment—Occupational disease or infection. (1) A one hundred fifty thousand dollar death benefit shall be paid to the member's estate, or such person or persons, trust or organization as the member has nominated by written designation duly executed and filed with the department. If no such designated person or persons are still living at the time of the member's death, the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's legal representatives.

(2) The benefit under this section shall be paid only where death occurs as a result of (a) injuries sustained in the course of employment; or (b) an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050. [2007 c 487 § 3; 2003 c 402 § 2.]

41.32.054 Disability retirement—Criminal conduct. A member shall not receive a disability retirement benefit under RCW 41.32.540, 41.32.550, 41.32.790, or 41.32.880 if the disability is the result of criminal conduct by the member committed after April 21, 1997. [1997 c 103 § 2.]

Additional notes found at www.leg.wa.gov

41.32.055 Falsification—Penalty. (1) Any person who shall knowingly make false statements or shall falsify or permit to be falsified any record or records of the retirement system, except under subsection (2) of this section, in any attempt to defraud such system as a result of such act, is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(2) Any person who shall knowingly make false statements or shall falsify or permit to be falsified any record or records of the retirement systems related to a member's separation from service and qualification for a retirement allowance under RCW 41.32.480 in any attempt to defraud that system as a result of such an act, is guilty of a gross misdemeanor. [2007 c 50 § 2; 2003 c 53 § 218; 1947 c 80 § 67; Rem. Supp. 1947 § 4995-86. Prior: 1937 c 221 § 10. Formerly RCW 41.32.670.]

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

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41.32.062 Effect of certain accumulated vacation leave on retirement benefits. RCW 43.01.044 shall not result in any increase in retirement benefits. The rights extended to state officers and employees under RCW 43.01.044 are not intended to and shall not have any effect on retirement benefits under this chapter. [1983 c 283 § 3. Formerly RCW 41.32.850.]

41.32.063 Benefit calculation—Limitation. (1) The annual compensation taken into account in calculating retiree benefits under this system shall not exceed the limits imposed by section 401(a)(17) of the federal internal revenue code for qualified trusts.

(2) The department shall adopt rules as necessary to implement this section. [1995 c 145 § 2.]

41.32.064 Establishing, restoring service credit. Notwithstanding any provision to the contrary, persons who fail to:

(1) Establish allowable membership service not previously credited;

(2) Restore all or a part of that previously credited membership service represented by withdrawn contributions; or

(3) Restore service credit represented by a lump sum payment in lieu of benefits, before the deadline established by statute, may do so under the conditions set forth in RCW 41.50.165. [1998 c 17 § 2.]

41.32.0641 Disabled in the line of duty—Continuation of service credit—Conditions. Those members subject to this chapter who became disabled in the line of duty and who received or are receiving benefits under Title 51 RCW or a similar federal workers' compensation program shall receive or continue to receive service credit subject to the following:

(1) No member may receive more than one month's service credit in a calendar month.

(2) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(3) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(4) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(5) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred. If contribution payments are made retroactively, interest shall be charged at the rate set by the director on both employee and employer contributions. Service credit shall not be granted until the employee contribution has been paid.

(6) The service and compensation credit shall not be granted for a period to exceed twenty-four consecutive months.

(7) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right. [2007 c 49 § 2.]

41.32.065 Election to use out-of-state service credit to calculate time at which the member may retire. A member who has not purchased service credit under the provisions of RCW 41.32.813 or 41.32.868 may elect under this section to apply service credit earned in an out-of-state retirement system that covers teachers in public schools solely for the purpose of determining the time at which the member may retire. The benefit shall be actuarially reduced to recognize the difference between the age a member would have first been able to retire based on service in the state of Washington and the member's retirement age. [2006 c 257 § 3; 1991 c 278 § 1.]

Effective date—2006 c 257: See note following RCW 41.32.813.

41.32.066 Purchase of additional service credit—Costs—Rules. (1) A member eligible to retire under RCW 41.32.480, 41.32.765, or 41.32.875 may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service and shall be used exclusively to provide the member with a monthly annuity that is paid in addition to the member's retirement allowance. [2006 c 214 § 2.]

Effective date—2006 c 214: See note following RCW 41.40.034.

41.32.067 Purchase of additional benefits—Conditions. A member may purchase additional benefits subject to the following:

(1) The member shall pay all reasonable administrative and clerical costs; and

(2) The member shall make a member reserve contribution to be actuarially converted to a monthly benefit at the time of retirement. [1992 c 212 § 13; 1991 c 278 § 2.]

"PLAN 1"

41.32.215 Provisions applicable to plan 1. RCW 41.32.240 through *41.32.575 shall apply only to members of plan 1. [1992 c 72 § 5; 1991 c 35 § 103.]

*Reviser's note: RCW 41.32.575 was repealed by 1995 c 345 § 11.

Intent—1991 c 35: See note following RCW 41.26.005.

41.32.240 Membership in system. (1) All teachers employed full time in the public schools shall be members of the system except alien teachers who have been granted a temporary permit to teach as exchange teachers.

(2) A minimum of ninety days or the equivalent of ninety days of employment during a fiscal year shall be required to establish membership. A teacher shall be considered as employed full time if serving regularly for four-fifths or more of a school day or if assigned to duties which are the equivalent of four-fifths or more of a full time assignment. A teacher who is employed for less than full time service may become a member by filing an application with the retirement system, submitting satisfactory proof of teaching service and making the necessary payment before June 30 of the school year immediately following the one during which the service was rendered.

(3) After June 30th of the school year immediately following the one during which the less than full-time service was rendered, the necessary payment may be made under RCW 41.50.165(2). [1994 c 197 § 14; 1991 c 35 § 38; 1979 ex.s. c 45 § 3; 1965 ex.s. c 81 § 3; 1963 ex.s. c 14 § 4; 1961 c 132 § 1; 1955 c 274 § 7; 1947 c 80 § 24; Rem. Supp. 1947 § 4995-43. Prior: 1941 c 97 § 3, part; 1939 c 86 § 2, part; 1937 c 221 § 4, part; 1931 c 115 § 3, part; 1923 c 187 § 10, part; Rem. Supp. 1941 § 4995-4, part.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Intent—1991 c 35: See note following RCW 41.26.005.

Eligibility for retirement allowance: RCW 41.32.470.

Additional notes found at www.leg.wa.gov

41.32.260 Credit for military service or as state legislator. Any member whose public school service is interrupted by active service to the United States as a member of its uniformed services, or to the state of Washington, as a member of the legislature, may upon becoming reemployed in the public schools, receive credit for that service upon presenting satisfactory proof, and contributing to the member reserve, either in a lump sum or installments, amounts determined by the director. Except that no military service credit in excess of five years shall be established or reestablished after July 1, 1961, unless the service was actually rendered during time of war. This section shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(1) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(a) Provides to the director proof of the member's death while serving in the uniformed services;

(b) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(c) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first.

(2) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(a) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(b) The member provides to the director proof of honorable discharge from the uniformed services; and

(c) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first. [2005 c 64 § 6; 1992 c 212 § 8; 1991 c 35 § 40; 1974 ex.s. c 199 § 2; 1973 1st ex.s. c 189 § 1; 1971 ex.s. c 271 § 1; 1967 c 50 § 2; 1961 c 132 § 2; 1955 c 274 § 8; 1947 c 80 § 26; Rem. Supp. 1947 § 4995-45. Prior: 1941 c 97 § 4, part; 1939 c 86 § 4, part; 1937 c 221 § 1, part; Rem. Supp. 1941 § 4995-5, part.]

Intent—1991 c 35: See note following RCW 41.26.005.

Members' retirement contributions—Payment by employer: RCW 41.04.445.

Additional notes found at www.leg.wa.gov

41.32.263 State legislators and state officials eligible for retirement benefits. A member of the retirement system who is a member of the state legislature or a state official eligible for the combined pension and annuity provided by RCW 41.32.497, or 41.32.498, as now or hereafter amended shall have deductions taken from his or her salary in the amount of seven and one-half percent of earnable compensation and that service credit shall be established with the retirement system while such deductions are reported to the retirement system, unless he or she has by reason of his or her employment become a contributing member of another public retirement system in the state of Washington. Such elected official who has retired or otherwise terminated his or her public school service may then elect to terminate his or her membership in the retirement system and receive retirement benefits while continuing to serve as an elected official. A member of the retirement system who had previous service as an elected or appointed official, for which he or she did not contribute to the retirement system, may receive credit for such legislative service unless he or she has received credit for that service in another state retirement system, upon making contributions in such amounts as shall be determined by the board of trustees. [1991 c 35 § 41.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.32.267 Service credit for paid leave of absence—Application to elected officials of labor organizations. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided under the provisions of RCW 41.32.240 through *41.32.575.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as

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an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement. [1993 c 95 § 5.]

*Reviser's note: RCW 41.32.575 was repealed by 1995 c 345 § 11.

Additional notes found at www.leg.wa.gov

41.32.270 Teaching service, how credited. Service rendered for four-fifths or more of the official school year of the school district or institution in which a teacher is employed shall be credited as a year's service regardless of the length of the school term, but in no case shall more than one year of service be creditable for service rendered in one fiscal year. Service rendered for less than four-fifths of the official school year shall be credited for that portion of the school year for which it was rendered: PROVIDED, That no service of less than twenty days in any school year shall be creditable. [1947 c 80 § 27; Rem. Supp. 1947 § 4995-46. Prior: 1941 c 97 § 4, part; 1939 c 86 § 4, part; 1937 c 221 § 5, part; Rem. Supp. 1941 § 4995-5, part.]

41.32.300 Limitation on credit for out-of-state service. (1) Henceforth a total of not more than four years of service outside of the state shall be credited to a member who establishes or reestablishes credit for out-of-state public school employment in this state subsequent to July 1, 1961. Foreign public school teaching service shall be creditable as out-of-state service.

(2) No out-of-state service credit shall be established or reestablished subsequent to July 1, 1964, except that a member who has been granted official leave of absence by his or her employer may, upon return to public school service in this state, establish out-of-state membership service credit, within the limitations of this section and conditioned upon satisfactory proof and upon contributions to the member reserve, for public school service rendered in another state or in another country.

(3) No member who establishes out-of-state service credit after July 1, 1947, shall at retirement for pension payment purposes be allowed credit for out-of-state service in excess of the number of years credit which he or she shall have earned in the public schools of the state of Washington. [1992 c 212 § 14; 1991 c 35 § 42; 1963 ex.s. c 14 § 5; 1961 c 132 § 7; 1955 c 274 § 11; 1947 c 80 § 30; Rem. Supp. 1947 § 4995-49.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.32.310 Time limit for claiming service credit—Payments. (1) Any member desiring to establish credit for services previously rendered, must present proof and make the necessary payments on or before June 30 of the fifth school year of membership. Payments covering all types of

membership service credit must be made in a lump sum when due, or in annual installments. The first annual installment of at least twenty percent of the amount due must be paid before the above deadline date, and the final payment must be made by June 30th of the fourth school year following that in which the first installment was made. The amount of payment and the interest thereon, whether lump sum or installments, shall be made by a method and in an amount established by the department.

(2) A member who had the opportunity under chapter 41.32 RCW prior to July 1, 1969, to establish credit for active United States military service or credit for professional preparation and failed to do so shall be permitted to establish additional credit within the provisions of RCW 41.32.260 and 41.32.330. A member who was not permitted to establish credit pursuant to section 2, chapter 32, Laws of 1973 2nd ex. sess., for Washington teaching service previously rendered, must present proof and make the necessary payment to establish such credit as membership service credit. Payment for such credit must be made in a lump sum on or before June 30, 1974. Any member desiring to establish credit under the provisions of this subsection must present proof and make the necessary payment before June 30, 1974; or, if not employed on the effective date of this amendment, before June 30th of the fifth school year upon returning to public school employment in this state.

(3) After June 30th of the fifth school year of membership, any member desiring to establish credit for services previously rendered, must present proof and make the necessary payments under RCW 41.50.165(2) but prior to retirement. [1994 c 197 § 15; 1992 c 72 § 6. Prior: 1991 c 35 § 43; 1974 ex.s. c 193 § 1; 1973 2nd ex.s. c 32 § 2; 1969 ex.s. c 150 § 9; 1965 ex.s. c 81 § 8; 1955 c 274 § 12; 1947 c 80 § 31; Rem. Supp. 1947 § 4995-50.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.32.330 Credit for professional preparation subsequent to becoming teacher. The department may allow credit for professional preparation to a member for attendance at institutions of higher learning, or for a scholarship or grant under an established foundation, subsequent to becoming a public school teacher; but not more than two years of such credit may be granted to any member. [1991 c 35 § 44; 1969 ex.s. c 150 § 10; 1955 c 274 § 14; 1947 c 80 § 33; Rem. Supp. 1947 § 4995-52.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.32.340 Creditable service, what to consist of. Creditable service of a member at retirement shall consist of the membership service rendered for which credit has been allowed, and also, if a prior service certificate is in full force and effect, the amount of the service certified on the prior service certificate. No pension payments shall be made for service credits established or reestablished after July 1, 1955, if such credits entitle the member to retirement benefits from any other public state or local retirement system or fund. No pension payments shall be made for service credits estab-

lished or reestablished after July 1, 1961, if such credits entitle the member to retirement benefits from a public federal retirement system or fund for services rendered under a civilian program: PROVIDED, That no pension payments shall be made for service credits established or reestablished after July 1, 1969, if credit for the same service is retained for benefits under any other retirement system or fund. [1991 c 35 § 45; 1969 ex.s. c 150 § 11; 1961 c 132 § 3; 1955 c 274 § 15; 1947 c 80 § 34; Rem. Supp. 1947 § 4995-53. Prior: 1941 c 97 § 4, part; 1939 c 86 § 4, part; 1937 c 221 § 5, part; Rem. Supp. 1941 § 4995-5, part.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.32.345 "Earnable compensation" defined for certain part-time employees—Adoption of rules. (1) Subject to the limitations contained in this section, for the purposes of *RCW 41.32.010(10)(a)(ii), earnable compensation means the compensation the member would have received in the same position if employed on a regular full-time basis for the same contract period.

(2) In order to ensure that the benefit provided by this section is not used to unfairly inflate a member's retirement allowance, the department shall adopt rules having the force of law to govern the application of this section.

(3)(a) In adopting rules which apply to a member employed by a school district, the department may consult the district's salary schedule and related workload provisions, if any, adopted pursuant to RCW 28A.405.200. The rules may require that, in order to be eligible for this benefit, a member's position must either be included on the district's schedule, or the position must have duties, responsibilities, and method of pay which are similar to those found on the district's schedule.

(b) In adopting rules which apply to a member employed by a community college district, the department may consult the district's salary schedule and workload provisions contained in an agreement negotiated pursuant to chapter 28B.52 RCW, or similar documents. The rules may require that, in order to be eligible for this benefit, a member's position must either be included on the district's agreement, or the position must have duties, responsibilities, and method of pay which are similar to those found on the district's agreement. The maximum full-time work week used in calculating the benefit for community college employees paid on an hourly rate shall in no case exceed fifteen credit hours, twenty classroom contact hours, or thirty-five assigned hours.

(4) If the legislature amends or revokes the benefit provided by this section, no affected employee who thereafter retires is entitled to receive the benefit as a matter of contractual right. [1992 c 212 § 18; 1990 c 33 § 570; 1987 c 265 § 2. Formerly RCW 41.32.011.]

***Reviser's note:** RCW 41.32.010 was amended by 1994 c 298 § 3, changing subsection (10)(a)(ii) to subsection (10)(a)(iii). RCW 41.32.010 was subsequently amended by 2003 c 31 § 1, changing subsection (10)(a)(iii) to subsection (10)(a)(iv). RCW 41.32.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (10)(a)(iv) to subsection (14)(a)(iv).

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

41.32.350 Purchase of additional annuity. A member may make an additional lump sum payment at date of retirement, not to exceed the member's accumulated contributions, to purchase additional annuity. A contribution of six percent of earnable compensation is required from each member, except as provided under RCW 41.32.013. [1991 c 35 § 46; 1990 c 274 § 7; 1973 1st ex.s. c 189 § 6; 1963 ex.s. c 14 § 7; 1955 c 274 § 16; 1947 c 80 § 35; Rem. Supp. 1947 § 4995-54. Prior: 1941 c 97 § 5, part; 1939 c 86 § 5, part; 1937 c 221 § 6, part; 1931 c 115 § 4, part; 1923 c 115 § 11, part; 1917 c 163 § 10, part; Rem. Supp. 1941 § 4995-6, part.]

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

Members' retirement contributions—Payment by employer: RCW 41.04.445.

Additional notes found at www.leg.wa.gov

41.32.380 Source of pension reserve—Contributions. There shall be placed in the pension reserve all appropriations made by the legislature for the purpose of paying pensions and survivors' benefits and of establishing and maintaining an actuarial reserve and all gifts and bequests to the pension reserve, and contributions of persons entering the retirement system who have established prior service credit. Members establishing prior service credit shall contribute to the pension reserve as follows:

For the first ten years of prior service fifteen dollars per year;

For the second ten years of prior service thirty dollars per year;

For the third ten years of prior service forty-five dollars per year. [1992 c 212 § 10; 1982 1st ex.s. c 52 § 8; 1947 c 80 § 38; Rem. Supp. 1947 § 4995-57.]

Additional notes found at www.leg.wa.gov

41.32.390 Contributions for prior service credits. At least twenty percent of the total amount due for prior service credit must be paid before an application for credit may be presented to the department for approval. The balance is not due until date of retirement and may be paid at that time without additional charge. Any unpaid installments at the time the member is retired for service or disability shall constitute a first, paramount, and prior lien against his or her retirement allowance. [1991 c 35 § 49; 1955 c 274 § 18; 1947 c 80 § 39; Rem. Supp. 1947 § 4995-58. Prior: 1941 c 97 § 5, part; 1939 c 86 § 5, part; 1937 c 221 § 6, part; Rem. Supp. 1941 § 4995-6, part.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.32.470 Eligibility for retirement allowance. A member who is not a dual member under RCW 41.54.010 must have established or reestablished with the retirement system at least five years of credit for public school service in this state to be entitled to a retirement allowance. [1994 c 298 § 4; 1965 ex.s. c 81 § 4; 1963 ex.s. c 14 § 15; 1947 c 80 § 47; Rem. Supp. 1947 § 4995-66. Prior: 1941 c 97 § 7, part; 1939 c 86 § 7, part; 1937 c 221 § 8, part; 1931 c 115 § 7, part; 1923 c 187 § 17, part; Rem. Supp. 1941 § 4995-8, part.]

Intent—1994 c 298: See note following RCW 41.40.010.

Additional notes found at www.leg.wa.gov

41.32.480 Qualifications for retirement. (1) Any member who separates from service after having completed thirty years of creditable service may retire upon the approval by the department of an application for retirement filed on the prescribed form. Upon retirement the member shall receive a retirement allowance consisting of an annuity which shall be the actuarial equivalent of his or her accumulated contributions at his or her age of retirement and a pension as provided in RCW 41.32.497. Effective July 1, 1967, anyone then receiving a retirement allowance or a survivor retirement allowance under this chapter, based on thirty-five years of creditable service, and who has established more than thirty-five years of service credit with the retirement system, shall thereafter receive a retirement allowance based on the total years of service credit established.

(2) Any member who has attained age sixty years, but who has completed less than thirty years of creditable service, upon separation from service, may retire upon the approval by the department of an application for retirement filed on the prescribed form. Upon retirement the member shall receive a retirement allowance consisting of an annuity which shall be the actuarial equivalent of his or her accumulated contributions at his or her age of retirement and a pension as provided in RCW 41.32.497.

(3) Any member who has attained age fifty-five years and who has completed not less than twenty-five years of creditable service, upon separation from service, may retire upon the approval by the department of an application for retirement filed on the prescribed form. Upon retirement the member shall receive a retirement allowance which shall be the actuarial equivalent of his or her accumulated contributions at his or her age of retirement and a pension as provided in RCW 41.32.497. An individual who has retired pursuant to this subsection, on or after July 1, 1969, shall not suffer an actuarial reduction in his or her retirement allowance, except as the allowance may be actuarially reduced pursuant to the options contained in RCW 41.32.530. The chapter 193, Laws of 1974 ex. sess. amendment to this section shall be retroactive to July 1, 1969. [1997 c 254 § 4; 1991 c 35 § 53; 1974 ex.s. c 193 § 2; 1972 ex.s. c 147 § 1; 1970 ex.s. c 35 § 2; 1969 ex.s. c 150 § 14; 1967 c 151 § 1; 1955 c 274 § 21; 1947 c 80 § 48; Rem. Supp. 1947 § 4995-67. Prior: 1941 c 97 § 7, part; 1939 c 86 § 7, part; 1937 c 221 § 8, part; 1931 c 115 § 7, part; 1923 c 187 § 17, part; Rem. Supp. 1941 § 4995-8, part.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.32.483 Annual increase amount—Legislature's rights reserved—No additional increases after June 30, 2011. (1) Beginning July 1, 2009, the annual increase amount as defined in RCW 41.32.010(4) shall be increased by an amount equal to \$0.40 per month per year of service minus the 2008 gain-sharing increase amount under *RCW 41.31.010 as it exists on July 22, 2007. This adjustment shall not decrease the annual increase amount, and is not to exceed \$0.20 per month per year of service. The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has the contractual right to receive

this adjustment to the annual increase amount not granted prior to that time.

(2) The adjustment to the annual increase amount as set forth in section 5, chapter 491, Laws of 2007 was intended by the legislature as a replacement benefit for gain-sharing. If the repeal of **chapter 41.31 RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then this adjustment to the annual increase amount shall not be included in future annual increase amounts paid on or after the date of such reinstatement.

(3) No additional annual increase under this section shall be provided after June 30, 2011. [2011 c 362 § 2; 2007 c 491 § 5.]

Reviser's note: *(1) RCW 41.31.010 was repealed by 2007 c 491 § 13, effective January 2, 2008.

***(2) Chapter 41.31 RCW was repealed by 2007 c 491 § 13, effective January 2, 2008.

Finding—Intent—2011 c 362: "Chapter 561, Laws of 2009 made necessary changes to the funding plan for the fiscal integrity of the teachers' retirement system, plan 1 and the public employees' retirement system, plan 1, and provides a basis for improvements in the financial soundness of the pension plans. The legislature now finds that changing economic conditions have also made necessary the amendatory provisions contained in this act. Due to the current extraordinary economic recession and due to the financial demands of other core responsibilities of government, it is not feasible for public employers of this state to fund the annual increase amount and continue to ensure the fiscal integrity of these pension funds. The legislature further clarifies and affirms that the intent of the legislature in section 5, chapter 345, Laws of 1995 and this act is to not create any contractual rights to the annual increase amount on the part of the public employees' retirement system, plan 1 and the teachers' retirement system, plan 1 members or retirees. Having reserved the right to amend or repeal these provisions in RCW 41.32.489(6) and 41.40.197(5), the legislature is now exercising that right through this act." [2011 c 362 § 1.]

Effective date—2011 c 362: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2011." [2011 c 362 § 10.]

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

41.32.485 Minimum retirement allowance—Cost-of-living adjustment—Post-retirement adjustment—Computation. (1) Notwithstanding any provision of law to the contrary, effective July 1, 1989, as a cost-of-living adjustment, no beneficiary receiving a retirement allowance pursuant to this chapter shall receive, as the pension portion of that retirement allowance, less than fourteen dollars and eighty-two cents per month for each year of service creditable to the person whose service is the basis of the pension. Portions of a year shall be treated as fractions of a year and the decimal equivalent shall be multiplied by fourteen dollars and eighty-two cents. Where the pension payable was adjusted at the time benefit payments to the beneficiary commenced, the minimum pension provided in this section shall be adjusted in a manner consistent with that adjustment.

(2) Notwithstanding any provision of law to the contrary, effective July 1, 1979, the retirement allowance of each beneficiary who either is receiving benefits pursuant to RCW 41.32.520 or 41.32.550 as of December 31, 1978, or commenced receiving a monthly retirement allowance under this chapter as of a date no later than July 1, 1974, shall be permanently increased by a post-retirement adjustment. This adjustment shall be in lieu of any adjustments provided under

*RCW 41.32.499(6) as of July 1, 1979, or July 1, 1980, for the affected beneficiaries. Such adjustment shall be calculated as follows:

(a) Retirement allowances to which this subsection and subsection (1) of this section are both applicable shall be determined by first applying subsection (1) and then applying this subsection. The department shall determine the total years of creditable service and the total dollar benefit base accrued as of December 31, 1978, except that this determination shall take into account only those beneficiaries to whom this subsection applies;

(b) The department shall multiply the total benefits determined in (a) of this subsection by six percent and divide the dollar value thus determined by the total service determined in (a) of this subsection. The resultant figure shall then be a post-retirement increase factor which shall be applied as specified in (c) of this subsection;

(c) Each beneficiary to whom this subsection applies shall receive an increase which is the product of the factor determined in (b) of this subsection multiplied by the years of creditable service.

(3) The provisions of subsections (1) and (2) of this section shall not be applicable to those receiving benefits pursuant to RCW 41.32.540 or 41.32.760 through 41.32.825. [1989 c 272 § 5; 1987 c 455 § 1; 1986 c 306 § 2; 1979 ex.s. c 96 § 2.]

***Reviser's note:** RCW 41.32.499 was repealed by 1995 c 345 § 11.

Purpose—1989 c 272: See note following RCW 41.32.005.

Additional notes found at www.leg.wa.gov

41.32.4851 Minimum retirement allowance—Annual adjustment—Persons who become beneficiaries after June 30, 1995. (1) No one who becomes a beneficiary after June 30, 1995, shall receive a monthly retirement allowance of less than twenty-four dollars and twenty-two cents times the number of years of service creditable to the person whose service is the basis of such retirement allowance.

(2) If the retirement allowance payable was adjusted at the time benefit payments to the beneficiary commenced, the minimum allowance provided in this section shall be adjusted in a manner consistent with that adjustment.

(3) Beginning July 1, 1996, the minimum benefit set forth in subsection (1) of this section shall be adjusted annually by the annual increase.

(4) Those receiving a temporary disability benefit under RCW 41.32.540 shall not be eligible for the benefit provided by this section.

(5) Beginning July 1, 2011, the minimum benefit set forth in subsection (1) of this section, prior to adjustments set forth in subsection (2) of this section, for a beneficiary with either (a) at least twenty years of service and who has been retired at least twenty-five years, or (b) at least twenty-five years of service and who has been retired at least twenty years, shall be one thousand five hundred dollars per month. On July 1, 2011, and each year thereafter, the minimum benefit in this subsection shall be increased by three percent, rounded to the nearest cent. [2011 c 362 § 4; 2006 c 244 § 1; 2004 c 85 § 1; 1995 c 345 § 3.]

Finding—Intent—Effective date—2011 c 362: See notes following RCW 41.32.483.

Effective date—2006 c 244: "This act takes effect July 1, 2006." [2006 c 244 § 3.]

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.32.4872 Permanent increase for specified beneficiaries age seventy or over. (1) The amount of the July 1, 1993, increase to the retirement allowance of beneficiaries under this chapter as a result of the temporary adjustment authorized by section 2, chapter 519, Laws of 1993, shall be made a permanent adjustment on July 1, 1995.

(2) Beneficiaries receiving a benefit under RCW 41.32.485 who are at least age seventy-nine shall receive on July 1, 1995, a permanent adjustment of one dollar and eighteen cents per month per year of service.

(3) Beneficiaries under this chapter who are not subject to subsection (1) of this section and not receiving a benefit under RCW 41.32.485 shall receive the following permanent adjustment to their retirement allowance on July 1, 1995:

(a) Those who are age seventy, thirty-nine cents per month per year of service;

(b) Those who are age seventy-one, seventy-nine cents per month per year of service; and

(c) Those who are at least age seventy-two, one dollar and eighteen cents per month per year of service. [1995 c 345 § 4.]

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.32.489 Retirement allowance—Annual increases restricted after July 1, 2010—Eligibility. (1) Beginning July 1, 1995, and annually thereafter through July 1, 2010, the retirement allowance of a person meeting the requirements of this section shall be increased by the annual increase amount.

(a) After July 1, 2010, those currently receiving benefits under this section will receive no additional annual increase amounts above the amount in effect on July 1, 2010, except for those who qualify under subsections (2)(b) and (3)(a) of this section. This subsection shall not reduce retirement allowances below the amounts in effect on June 30, 2011.

(b) After July 1, 2010, no annual increase amounts may be provided to any beneficiaries who are not already receiving benefits under this section, except for those who qualify under subsections (2)(b) and (3)(a) of this section.

(2) The following persons shall be eligible for the benefit provided in subsection (1) of this section:

(a) A beneficiary who has received a retirement allowance for at least one year by July 1st in the calendar year in which the annual increase is given and has attained at least age sixty-six by December 31st in the calendar year in which the annual increase is given; or

(b) A beneficiary whose retirement allowance is lower than the minimum benefit provided under RCW 41.32.4851.

(3) The following persons shall also be eligible for the benefit provided in subsection (1) of this section:

(a) A beneficiary receiving the minimum benefit on June 30, 1995, under RCW 41.32.485; or

(b) A recipient of a survivor benefit on June 30, 1995, which has been increased by *RCW 41.32.575.

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(4) If otherwise eligible, those receiving an annual adjustment under RCW 41.32.530(1)(d) shall be eligible for the annual increase adjustment in addition to the benefit that would have been received absent this section.

(5) Those receiving a temporary disability benefit under RCW 41.32.540 shall not be eligible for the benefit provided by this section.

(6) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this postretirement adjustment not granted prior to that time. [2011 c 362 § 3; 2007 c 89 § 2; 1995 c 345 § 2.]

*Reviser's note: RCW 41.32.575 was repealed by 1995 c 345 § 11.

Finding—Intent—Effective date—2011 c 362: See notes following RCW 41.32.483.

Effective date—2007 c 89: See note following RCW 41.40.197.

Intent—1995 c 345: "The intent of this act is to:

(1) Simplify the calculation of postretirement adjustments so that they can be more easily communicated to plan 1 active and retired members;

(2) Provide postretirement adjustments based on years of service rather than size of benefit;

(3) Provide postretirement adjustments at an earlier age;

(4) Provide postretirement adjustments to a larger segment of plan 1 retirees; and

(5) Simplify administration by reducing the number of plan 1 postretirement adjustments to one." [1995 c 345 § 1.]

Additional notes found at www.leg.wa.gov

41.32.4931 Additional special pension for former members not receiving social security. (1) The benefits provided under subsection (2) of this section shall be available only to former members who have reached age sixty-five or are disabled for further public school service and are not receiving federal old age, survivors or disability benefit payments (social security) and are not able to qualify for such benefits.

(2) Effective July 1, 1987, former members who receive the minimum retirement allowance provided by RCW 41.32.485(1) and who meet the requirements of subsection (1) of this section shall receive an additional special pension of ten dollars per month per year of service credit. [1987 c 455 § 6; 1973 2nd ex.s. c 32 § 3; 1967 c 151 § 6.]

Additional notes found at www.leg.wa.gov

41.32.4945 Limitation as to earnable compensation of member as member of the legislature. Notwithstanding any other provision of RCW 41.32.010, 41.32.260, 41.32.497, 41.32.498 and this section, when the salary of any member as a member of the legislature is increased beyond the amount provided for in Initiative Measure No. 282 then earnable compensation for the purposes of this chapter shall be based solely on the sum of (1) the compensation actually received from the salary for the job from which such leave of absence may have been taken and (2) such member's salary as a legislator during the two highest compensated consecutive years. [1991 c 35 § 54; 1974 ex.s. c 199 § 6.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.32.497 Retirement allowance for members entering system before April 25, 1973—Election. Any person who became a member on or before April 25, 1973 and who qualifies for a retirement allowance shall, at time of retire-

ment, make an irrevocable election to receive either the retirement allowance by RCW 41.32.498 as now or hereafter amended or to receive a retirement allowance pursuant to this section consisting of: (1) An annuity which shall be the actuarial equivalent of his or her accumulated contributions at his or her age of retirement, (2) A basic service pension of one hundred dollars per annum, and (3) A service pension which shall be equal to one one-hundredth of his or her average earnable compensation for his or her two highest compensated consecutive years of service times the total years of creditable service established with the retirement system: PROVIDED, That no beneficiary now receiving benefits or who receives benefits in the future, except those beneficiaries receiving reduced benefits pursuant to RCW 41.32.520(1)(a) or 41.32.530, shall receive a pension of less than six dollars and fifty cents per month for each year of creditable service established with the retirement system. Pension benefits payable under the provisions of this section shall be prorated on a monthly basis and paid at the end of each month. [2012 c 117 § 57; 1990 c 249 § 12; 1974 ex.s. c 199 § 3; 1973 1st ex.s. c 189 § 2; 1970 ex.s. c 35 § 3; 1969 ex.s. c 150 § 15; 1963 ex.s. c 14 § 16.]

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.32.498 Retirement allowance for members entering system after April 25, 1973, or in lieu of allowance under RCW 41.32.497. Any person who becomes a member subsequent to April 25, 1973 or who has made the election, provided by RCW 41.32.497, to receive the benefit provided by this section, shall receive a retirement allowance consisting of:

(1) An annuity which shall be the actuarial equivalent of his or her additional contributions on full salary as provided by chapter 274, Laws of 1955 and his or her lump sum payment in excess of the required contribution rate made at date of retirement, pursuant to RCW 41.32.350, if any; and

(2) A combined pension and annuity service retirement allowance which shall be equal to two percent of his or her average earnable compensation for his or her two highest compensated consecutive years of service times the total years of creditable service established with the retirement system, to a maximum of sixty percent of such average earnable compensation: PROVIDED, That any member may irrevocably elect, at time of retirement, to withdraw all or a part of his or her accumulated contributions, other than any amount paid under RCW 41.50.165(2), and to receive, in lieu of the full retirement allowance provided by this subsection, a reduction in the standard two percent allowance, of the actuarially determined amount of monthly annuity which would have been purchased by said contributions: PROVIDED FURTHER, That no member may withdraw an amount of accumulated contributions which would lower his or her retirement allowance below the minimum allowance provided by RCW 41.32.497 as now or hereafter amended: AND PROVIDED FURTHER, That said reduced amount may be reduced even further pursuant to the options provided in RCW 41.32.530;

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, the retirement allowance payable for service of a member who was state superintendent of public

instruction on January 1, 1973 shall be equal to three percent of the average earnable compensation of his two highest consecutive years of service for each year of such service. [1994 c 197 § 16; 1991 c 35 § 55; 1990 c 249 § 4; 1988 c 116 § 1; 1987 c 143 § 1; 1974 ex.s. c 199 § 4; 1973 1st ex.s. c 189 § 3.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—1990 c 249: See note following RCW 2.10.146.

Reviser's note: The reference to "subsection (3) of section 3" appears to be erroneous. Section 13 of the original bill (House Bill No. 419) referred to equivalent language in subsection (3) of section 12 and the last proviso in section 4, amending RCW 41.32.497. The language referred to in section 4 remains in section 2 of the final bill which amends RCW 41.32.497, but was deleted by senate committee amendment from section 3 (formerly section 12 of the original bill) of the engrossed substitute bill, codified herein as RCW 41.32.498.

Additional notes found at www.leg.wa.gov

41.32.4986 Members with thirty years of service—Irrevocable election. A member may make the irrevocable election under this section no later than six months after attaining thirty years of service. The election shall become effective at the beginning of the calendar month following department receipt of employee notification.

(1) The sum of member contributions made for periods of service after the effective date of the election plus seven and one-half percent interest shall be paid to the member at retirement without a reduction in the member's monthly retirement benefit as determined under RCW 41.32.498.

(2) Upon retirement, the member's benefit shall be calculated using only the earnable compensation credited prior to the effective date of the member's election. Calculation of the member's average earnable compensation shall include eligible cash outs of annual leave based on the member's salary and leave accumulations at the time of retirement, except that the amount of a member's average earnable compensation cannot be higher than if the member had not taken advantage of the election offered under this section.

(3) Members who have already earned thirty years of service credit prior to July 25, 1999, may participate in the election by notifying the department in writing of their intention by December 31, 1999.

The department shall continue to collect employer contributions as required in RCW 41.45.060. [1999 c 362 § 1.]

41.32.4991 Permanent retirement allowance adjustment. The dollar amount of the temporary postretirement allowance adjustment granted by section 1, chapter 519, Laws of 1993 shall be provided as a permanent retirement allowance adjustment as of July 1, 1995. [1994 c 247 § 1.]

Additional notes found at www.leg.wa.gov

41.32.500 Termination of membership. Membership in the retirement system is terminated when a member retires for service or disability, dies, or withdraws his or her accumulated contributions.

The prior service certificate becomes void when a member dies or withdraws the accumulated contributions, and any prior administrative interpretation of the board of trustees, consistent with this section, is hereby ratified, affirmed and approved. [1995 c 134 § 13. Prior: 1994 c 197 § 17; 1994 c

177 § 5; 1991 c 35 § 57; 1986 c 317 § 2; 1983 c 233 § 1; 1974 ex.s. c 193 § 3; 1969 ex.s. c 150 § 16; 1967 c 50 § 6; 1965 ex.s. c 81 § 5; 1955 c 274 § 23; 1947 c 80 § 50; Rem. Supp. 1947 § 4995-69.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—1994 c 177: See note following RCW 41.50.125.

Intent—1991 c 35: See note following RCW 41.26.005.

Legislative findings—Intent—Severability—1986 c 317: See notes following RCW 41.40.150.

Additional notes found at www.leg.wa.gov

41.32.510 Payment on withdrawal—Reentry. (1)

Should a member cease to be employed by an employer and request upon a form provided by the department a refund of the member's accumulated contributions with interest, this amount shall be paid to the individual less any withdrawal fee which may be assessed by the director which shall be deposited in the department of retirement systems expense fund.

(2) A member who files a request for a refund and subsequently enters into employment with an employer prior to the refund being made shall not be eligible for a refund. For purposes of this section, a written or oral employment agreement shall be considered entering into employment. [1994 c 197 § 18; 1994 c 177 § 6; 1982 1st ex.s. c 52 § 15; 1969 ex.s. c 150 § 17; 1963 ex.s. c 14 § 17; 1955 c 274 § 24; 1947 c 80 § 51; Rem. Supp. 1947 § 4995-70. Prior: 1941 c 97 § 6, part; 1939 c 86 § 6, part; 1937 c 221 § 7, part; Rem. Supp. 1941 § 4995-7, part.]

Reviser's note: This section was amended by 1994 c 177 § 6 and by 1994 c 197 § 18, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—1994 c 177: See note following RCW 41.50.125.

Additional notes found at www.leg.wa.gov

41.32.520 Payment on death before retirement or within sixty days following application for disability retirement—Military service. (1)

Except as specified in subsection (3) of this section, upon receipt of proper proofs of death of any member before retirement or before the first installment of his or her retirement allowance shall become due his or her accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, and/or other benefits payable upon his or her death shall be paid to his or her estate or to such persons, trust, or organization as he or she shall have nominated by written designation duly executed and filed with the department. If a member fails to file a new beneficiary designation subsequent to marriage, divorce, or reestablishment of membership following termination by withdrawal, lapsation, or retirement, payment of his or her accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, and/or other benefits upon death before retirement shall be made to the surviving spouse, if any; otherwise, to his or her estate. If a member had established ten or more years of Washington membership service credit or was eligible for retirement, the beneficiary or the

surviving spouse if otherwise eligible may elect, in lieu of a cash refund of the member's accumulated contributions, the following survivor benefit plan actuarially reduced, except under subsection (4) of this section, by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670:

(a) A widow or widower, without a child or children under eighteen years of age, may elect a monthly payment of fifty dollars to become effective at age fifty, provided the member had fifteen or more years of Washington membership service credit. A benefit paid under this subsection (1)(a) shall terminate at the marriage of the beneficiary.

(b) The beneficiary, if a surviving spouse or a dependent (as that term is used in computing the dependent exemption for federal internal revenue purposes) may elect to receive a joint and one hundred percent retirement allowance under RCW 41.32.530.

(i) In the case of a dependent child the allowance shall continue until attainment of majority or so long as the department judges that the circumstances which created his or her dependent status continue to exist. In any case, if at the time dependent status ceases, an amount equal to the amount of accumulated contributions of the deceased member has not been paid to the beneficiary, the remainder shall then be paid in a lump sum to the beneficiary.

(ii) If at the time of death, the member was not then qualified for a service retirement allowance, the benefit shall be based upon the actuarial equivalent of the sum necessary to pay the accrued regular retirement allowance commencing when the deceased member would have first qualified for a service retirement allowance.

(2) If no qualified beneficiary survives a member, at his or her death his or her accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to his or her estate, or his or her dependents may qualify for survivor benefits under benefit plan (1)(b) in lieu of a cash refund of the members accumulated contributions in the following order: Widow or widower, guardian of a dependent child or children under age eighteen, or dependent parent or parents.

(3) If a member dies within sixty days following application for disability retirement under RCW 41.32.550, the beneficiary named in the application may elect to receive the benefit provided by:

(a) This section; or

(b) RCW 41.32.550, according to the option chosen under RCW 41.32.530 in the disability application.

(4) The retirement allowance of a member who is killed in the course of employment, as determined by the director of the department of labor and industries, or the retirement allowance of a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction. The member's retirement allowance is computed under RCW 41.32.480. [2009 c 226 § 5; 2003 c 155 § 1; 1997 c 73 § 1; 1995 c 144 § 9; 1993 c 16 § 1; 1992 c 212 § 7. Prior: 1991 c 365 § 29; 1991 c 35 § 58; 1990 c 249 § 15; 1974 ex.s. c 193

§ 5; 1973 2nd ex.s. c 32 § 4; 1973 1st ex.s. c 154 § 76; 1967 c 50 § 7; 1965 ex.s. c 81 § 6; 1957 c 183 § 3; 1955 c 274 § 25; 1947 c 80 § 52; Rem. Supp. 1947 § 4995-71; prior: 1941 c 97 § 6; 1939 c 86 § 6; 1937 c 221 § 7; 1923 c 187 § 22; 1917 c 163 § 21; Rem. Supp. 1941 § 4995-7.]

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.32.522 Death benefits. (1) The department shall pay a death benefit of six hundred dollars to a member's estate or to the persons, trust, or organization the member nominates by written designation duly executed and filed with the department or to the persons as may otherwise qualify as the beneficiary pursuant to RCW 41.32.520 upon receipt of proper proof of death of the member if he or she:

(a) Was employed on a full time basis during the fiscal year in which his or her death occurs;

(b) Was under contract for full time employment in a Washington public school;

(c) Submits an application for a retirement allowance to be approved by the department immediately following termination of his or her full-time Washington public school service and who dies before the first installment of his or her retirement allowance becomes due;

(d) Is receiving or is entitled to receive temporary disability payments; or

(e) Upon becoming eligible for a disability retirement allowance submits an application for an allowance to be approved by the department immediately following the date of his or her eligibility for a disability retirement allowance and dies before the first installment of such allowance becomes due.

(2) In order to receive a death benefit under this section a deceased member:

(a) Must have established at least one year of credit with the retirement system for full time Washington membership service;

(b) Who was not employed full time in Washington public school service during the fiscal year immediately preceding the year of his or her death must have been employed full time in Washington public school service for at least fifty consecutive days during the fiscal year of his or her death. [1995 c 144 § 10; 1992 c 212 § 4; 1991 c 35 § 59; 1974 ex.s. c 193 § 4; 1969 ex.s. c 150 § 18; 1967 c 50 § 8; 1963 ex.s. c 14 § 20.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.32.523 Death benefits—Members not qualified for benefits under RCW 41.32.522 and retired former members. Upon receipt of proper proof of death of a member who does not qualify for the death benefit of six hundred dollars under RCW 41.32.522, or a former member who was retired for age, service, or disability, a death benefit of four hundred dollars shall be paid to the member's estate or to the persons, trust, or organization as he or she shall have nominated by written designation duly executed and filed with the department or to the persons as may otherwise qualify as the beneficiary pursuant to RCW 41.32.520: PROVIDED, That

the member or the retired former member had established not less than ten years of credit with the retirement system for full time Washington membership service. [1995 c 144 § 11; 1992 c 212 § 5; 1991 c 35 § 60; 1974 ex.s. c 193 § 6; 1969 ex.s. c 150 § 19; 1967 c 50 § 9; 1965 ex.s. c 81 § 7; 1963 ex.s. c 14 § 21.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.32.530 Options available—Retirement allowance adjustment—Court-approved property settlement. (1)

Upon an application for retirement for service under RCW 41.32.480 or retirement for disability under RCW 41.32.550, approved by the department, every member shall receive the maximum retirement allowance available to him or her throughout life unless prior to the time the first installment thereof becomes due he or she has elected, by executing the proper application therefor, to receive the actuarial equivalent of his or her retirement allowance in reduced payments throughout his or her life with the following options:

(a) Standard allowance. If he or she dies before he or she has received the present value of his or her accumulated contributions at the time of his or her retirement in annuity payments, the unpaid balance shall be paid to his or her estate or to such person, trust, or organization as he or she shall have nominated by written designation executed and filed with the department.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person who has an insurable interest in the member's life. Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(c) Such other benefits shall be paid to a member receiving a retirement allowance under RCW 41.32.497 as the member may designate for himself, herself, or others equal to the actuarial value of his or her retirement annuity at the time of his retirement: PROVIDED, That the board of trustees shall limit withdrawals of accumulated contributions to such sums as will not reduce the member's retirement allowance below one hundred and twenty dollars per month.

(d) A member whose retirement allowance is calculated under RCW 41.32.498 may also elect to receive a retirement allowance based on options available under this subsection that includes the benefit provided under RCW 41.32.770. This retirement allowance option shall also be calculated so as to be actuarially equivalent to the maximum retirement allowance and to the options available under this subsection.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department will pay the member a joint and fifty percent survivor benefit and record the member's spouse as

the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

(4) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a non-spouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(5) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.32.470 and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the age provided in RCW 41.32.480(2) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (4) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) The separate single life benefits of the member and the nonmember ex spouse are not (i) subject to the minimum benefit provisions of RCW 41.32.4851, or (ii) the minimum benefit annual increase amount eligibility provisions of RCW 41.32.489 (2)(b) and (3)(a).

(d) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution. [2002 c 158 § 8; 2000 c 186 § 2; 1998 c 340 § 6; 1996 c 175 § 4; 1995 c 144 § 12; 1990 c 249 § 5; 1955 c 274 § 26; 1947 c 80 § 53; Rem. Supp. 1947 § 4995-72. Prior: 1941 c 97 § 7, part; 1939 c 86 § 7, part; 1937 c 221 § 8, part; Rem. Supp. 1941 § 4995-8, part.]

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.32.540 Disability allowance—Temporary. Upon application of a member in service or of his or her employer or of his or her legal guardian or of the legal representative of a deceased member who was eligible to apply for a temporary disability allowance based on the final illness a member shall be granted a temporary disability allowance by the department if the medical director, after a medical examination of the member, certifies that the member is mentally or physically incapacitated for the further performance of duty. Any member receiving a temporary disability allowance on July 1, 1964 or who qualifies for a temporary disability allowance

effective on or after July 1, 1964 shall receive a temporary disability allowance of one hundred eighty dollars per month for a period not to exceed two years, but no payments shall be made for a disability period of less than sixty days: PROVIDED, That a member who is not employed full time in Washington public school service for consecutive fiscal years shall have been employed for at least fifty consecutive days during the fiscal year in which he or she returns to full time Washington public school service before he or she may qualify for temporary disability benefits: PROVIDED FURTHER, That no temporary disability benefits shall be paid on the basis of an application received more than four calendar years after a member became eligible to apply for such benefits. [1992 c 212 § 3; 1991 c 35 § 61; 1974 ex.s. c 193 § 7; 1963 ex.s. c 14 § 18; 1959 c 37 § 1; 1955 c 274 § 27; 1947 c 80 § 54; Rem. Supp. 1947 § 4995-73. Prior: 1941 c 97 § 7, part; 1939 c 86 § 7, part; 1937 c 221 § 8, part; Rem. Supp. 1941 § 4995-8, part.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.32.550 Options and allowances on report that disability will be permanent—Reexamination. (1) Should the director determine from the report of the medical director that a member employed under an annual contract with an employer has become permanently disabled for the performance of his or her duties or at any time while a member is receiving temporary disability benefits that a member's disability will be permanent, a member shall have the option of then receiving (a) all of the accumulated contributions in a lump sum payment and canceling his or her membership, or (b) of accepting a retirement allowance based on service or age, if eligible under RCW 41.32.480, or (c) if the member had five or more years of Washington membership service credit established with the retirement system, a retirement allowance because of disability.

(2) Any member applying for a retirement allowance who is eligible for benefits on the basis of service or age shall receive a retirement allowance based on the provision of law governing retirement for service or age. If the member qualifies to receive a retirement allowance because of disability he or she shall be paid the maximum annuity which shall be the actuarial equivalent of the accumulated contributions at his or her age of retirement and a pension equal to the service pension to which he or she would be entitled under RCW 41.32.497. If the member dies before he or she has received in annuity payments the present value of the accumulated contributions at the time of retirement, the unpaid balance shall be paid to the estate or to the persons, trust, or organization nominated by written designation executed and filed with the department.

(3) A member retired for disability may be required at any time to submit to reexamination. If medical findings reveal that the individual is no longer disabled for the performance of public school service, the retirement allowance granted because of disability may be terminated by action of the director or upon written request of the member. In case of termination, the individual shall be restored to full membership in the retirement system. [1995 c 144 § 13; 1991 sp.s. c 11 § 6. Prior: 1991 c 365 § 33; 1991 c 35 § 62; 1970 ex.s. c 35 § 4; 1969 ex.s. c 150 § 20; 1967 c 50 § 10; 1963 ex.s. c 14

§ 19; 1961 c 132 § 4; 1959 c 37 § 2; 1955 c 274 § 28; 1947 c 80 § 55; Rem. Supp. 1947 § 4995-74; prior: 1941 c 97 § 7, part; 1939 c 86 § 7, part; 1937 c 221 § 8, part; 1931 c 115 § 8; 1923 c 187 § 18; 1917 c 163 § 17, part; Rem. Supp. 1941 § 4995-8, part.]

Purpose—Effective dates—1991 sp.s. c 11: See notes following RCW 41.26.090.

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.32.555 Persons with annual half-time contracts—Eligibility for benefits under RCW 41.32.550. Persons who were under an annual half-time contract with an employer anytime during the period of September 1, 1986, through August 31, 1987, shall be eligible for benefits provided by RCW 41.32.550, as amended by chapter 365, Laws of 1991, effective beginning the month following when they left service due to their disability if during that period they were medically determined to be permanently disabled for the performance of their duty.

A member who qualifies for benefits under this section who has not begun receiving benefits prior to June 11, 1992, shall be permitted to select a survivor option pursuant to RCW 41.32.530. [1992 c 212 § 19; 1991 c 365 § 34.]

Additional notes found at www.leg.wa.gov

41.32.570 Postretirement employment—Reduction or suspension of pension payments. (1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every seven hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred forty hours per month. Any monthly benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) Any retired teacher or retired administrator who enters service in any public educational institution in Washington state at least one calendar month after his or her accrual date shall cease to receive pension payments while engaged in such service, after the retiree has rendered service for more than eight hundred sixty-seven hours in a school year.

(3) The department shall collect and provide the state actuary with information relevant to the use of this section for the select committee on pension policy.

(4) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to be employed for more than five hundred twenty-five hours per year without a reduction of his or her pension. [2011 1st sp.s. c 47 § 10; 2007 c 50 § 3; 2003 c 295 § 6. Prior: 2001 2nd sp.s. c 10 § 3; (2001 c 317 § 1 repealed by 2003 c 412 § 3); 1999 c 387 § 1; 1997 c 254 § 5; 1995 c 264 § 1; 1994 c 69 § 2; 1989 c 273 § 29; 1986 c 237 § 1; 1967 c 151 § 5; 1959 c 37 § 3; 1955 c 274 § 30; 1947 c 80 § 57; Rem. Supp. 1947 § 4995-76.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Findings—1994 c 69: "The legislature finds that there is a shortage of certificated substitute teachers in many regions of the state, and that this shortage will likely increase in the coming years. The legislature further finds that one method of reducing this shortage of substitute teachers is to encourage retired teachers to serve as substitutes by increasing the number of days they can work without affecting their retirement payments." [1994 c 69 § 1.]

Contract rights of retirees hired for postretirement employment: RCW 28A.405.900.

Additional notes found at www.leg.wa.gov

41.32.581 End of participation in judicial retirement account plan—Newly elected or appointed judges. Beginning January 1, 2007, any newly elected or appointed supreme court justice, court of appeals judge, or superior court judge, who is a member of plan 1, shall not participate in the judicial retirement account plan under chapter 2.14 RCW in lieu of prospective contribution and benefit provisions under chapter 189, Laws of 2006. [2006 c 189 § 3.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.32.584 Additional benefit for justices or judges—One-time irrevocable election. (1) Between January 1, 2007, and December 31, 2007, a member of plan 1 employed as a supreme court justice, court of appeals judge, or superior court judge may make a one-time irrevocable election, filed in writing with the member's employer, the department, and the administrative office of the courts, to accrue an additional benefit equal to one and one-half percent of average final compensation for each year of future service credit from the date of the election.

(2)(a) A member who chooses to make the election under subsection (1) of this section may apply to the department to increase the member's benefit multiplier by one and one-half percent per year of service for the period in which the member served as a justice or judge prior to the election. The member may purchase, beginning with the most recent judicial service, the higher benefit multiplier for up to seventy percent of that portion of the member's prior judicial service that would ensure that the member has no more than a seventy-five percent of average final compensation benefit accrued by age sixty-four. The member shall pay five percent of the salary earned for each month of service for which the higher benefit multiplier is being purchased, plus interest as determined by the director. The purchase price shall not exceed the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier. This payment must be made prior to retirement and prior to December 31, 2007. After December 31, 2007, a member may purchase the higher benefit multiplier for any of the member's prior judicial service at the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier, as determined by the director.

(b) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-

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trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law. [2007 c 123 § 5; 2006 c 189 § 7.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.32.587 Justices or judges retirement allowance—In lieu of RCW 41.32.498. (1) In lieu of the retirement allowance provided under RCW 41.32.498, the retirement allowance payable for service as a supreme court justice, court of appeals judge, or superior court judge, for those justices or judges who elected to participate under RCW 41.32.584(1), shall be equal to three and one-half percent of average final compensation for each year of service earned after the date of the election. The total retirement benefit accrued or purchased under chapter 189, Laws of 2006 in combination with benefits accrued during periods served prior to the election shall not exceed seventy-five percent of average final compensation.

(2) In lieu of the retirement allowance provided under RCW 41.32.498, the retirement allowance payable for service as a supreme court justice, court of appeals judge, or superior court judge, for those justices or judges newly elected or appointed after January 1, 2007, shall be equal to three and one-half percent of average final compensation for each year of service after January 1, 2007. The total retirement benefits accrued under chapter 189, Laws of 2006 in combination with benefits accrued during periods served prior to January 1, 2007, shall not exceed seventy-five percent of average final compensation. [2006 c 189 § 11.]

Effective date—2006 c 189: See note following RCW 2.14.115.

"PLAN 2"

41.32.755 Provisions applicable to plan 2. RCW 41.32.760 through 41.32.825 shall apply only to plan 2 members. [1992 c 72 § 7; 1977 ex.s. c 293 § 2.]

Additional notes found at www.leg.wa.gov

41.32.760 Computation of the retirement allowance. A member of the retirement system shall receive a retirement allowance equal to two percent of such member's average final compensation for each year of service. [1977 ex.s. c 293 § 3.]

Additional notes found at www.leg.wa.gov

41.32.762 Lump sum retirement allowance—Reentry—Conditions for reinstatement of service. (1) On or after June 10, 1982, the director may pay a beneficiary, subject to the provisions of subsection (5) of this section, a lump sum payment in lieu of a monthly benefit if the initial monthly benefit computed in accordance with RCW 41.32.760 would be less than fifty dollars. The lump sum payment shall be the greater of the actuarial equivalent of

such monthly benefits or an amount equal to the individual's accumulated contributions plus accrued interest.

(2) A beneficiary, subject to the provisions of subsection (5) of this section, who is receiving a regular monthly benefit of less than fifty dollars may request, in writing, to convert from a monthly benefit to a lump sum payment. If the director approves the conversion, the calculation of the actuarial equivalent of the total estimated regular benefit will be computed based on the beneficiary's age at the time the benefit initially accrued. The lump sum payment will be reduced to reflect any payments received on or after the initial benefit accrual date.

(3) Persons covered under the provisions of subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to re-retiring, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(4) If a member fails to meet the time limitations under subsection (3) of this section, reinstatement of all previous service will occur if the member pays the amount required under RCW 41.50.165(2). The amount, however, shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(5) Only persons entitled to or receiving a service retirement allowance under RCW 41.32.760 or an earned disability allowance under RCW 41.32.790 qualify for participation under this section.

(6) It is the intent of the legislature that any member who receives a settlement under this section shall be deemed to be retired from this system. [1994 c 197 § 19; 1982 c 144 § 2.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

41.32.765 Retirement for service. (1) **NORMAL RETIREMENT.** Any member with at least five service credit years of service who has attained at least age sixty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.760.

(2) **EARLY RETIREMENT.** Any member who has completed at least twenty service credit years of service who has attained at least age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.760, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(3) **ALTERNATE EARLY RETIREMENT.**

(a) Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.760, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(b) On or after September 1, 2008, any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.760, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced as follows:

Retirement Age	Percent Reduction
55	20%
56	17%
57	14%
58	11%
59	8%
60	5%
61	2%
62	0%
63	0%
64	0%

Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of RCW 41.32.802(2) until the retired member has reached sixty-five years of age. For purposes of this subsection, employment with an employer also includes any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of RCW 41.32.800(1).

The subsidized reductions for alternate early retirement in this subsection as set forth in section 2, chapter 491, Laws of 2007 were intended by the legislature as replacement benefits for gain-sharing. Until there is legal certainty with respect to the repeal of *chapter 41.31A RCW, the right to retire under this subsection is noncontractual, and the legislature reserves the right to amend or repeal this subsection. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, eligible members may still retire under this subsection, and upon receipt of the first installment of a retirement allowance computed under this subsection, the resulting benefit becomes contractual for the recipient. If the repeal of *chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then retirement benefits for any member who has completed at least thirty service credit years and has attained age fifty-five but has not yet received the first installment of a retirement allowance under this subsection shall be computed using the reductions in (a) of this subsection.

(c) Members who first become employed by an employer in an eligible position on or after May 1, 2013, are not eligible for the alternate early retirement provisions of (a) or (b) of this subsection. Any member who first becomes employed by an employer in an eligible position on or after

May 1, 2013, and has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.760, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by five percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five. [2012 1st sp.s. c 7 § 1; 2007 c 491 § 2; 2000 c 247 § 902; 1991 c 343 § 5; 1977 ex.s. c 293 § 4.]

***Reviser's note:** Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

Benefits not contractual right until September 1, 2008—2007 c 491: "The new benefits provided pursuant to sections 2(3)(b), 4(3)(b), 6(3)(b), and 8(3)(b), chapter 491, Laws of 2007 are not provided to employees as a matter of contractual right prior to September 1, 2008, and will not become a contractual right thereafter if the repeal of chapter 41.31A RCW is held to be invalid in a final determination of a court of law. The legislature retains the right to alter or abolish these benefits at any time prior to September 1, 2008." [2007 c 491 § 15.]

Severability—2007 c 491: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 491 § 18.]

Conflict with federal requirements—2007 c 491: "If any part of this act is found to be in conflict with a final determination by the federal internal revenue service that is a prescribed condition to favorable tax treatment of one or more of the retirement plans, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the individual members directly affected. This finding does not affect the operation of the remainder of this act in its application to the members concerned. The legislature reserves the right to amend or repeal this act in the future as may be required to comply with a final federal determination that amendment or repeal is necessary to maintain the favorable tax treatment of a plan." [2007 c 491 § 14.]

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Additional notes found at www.leg.wa.gov

41.32.768 Member with terminal illness—Removal from system. (1) Upon application of the member, a member who is diagnosed with a terminal illness shall be removed from the system subject to the following conditions:

(a) That the medical adviser, after a medical examination of the member made by or under the direction of the medical adviser, has certified in writing that the member has a terminal illness with a life expectancy of five or fewer years; and

(b) That the director concurs in the recommendation of the medical adviser.

(2) Members removed from the system shall not make contributions and shall not accumulate additional service credit.

(3) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to this benefit not granted prior to that amendment or repeal. [2005 c 131 § 5.]

Effective date—2005 c 131: See note following RCW 41.40.823.

41.32.770 Post-retirement cost-of-living. Beginning July 1, 1979, and every year thereafter, the department shall determine the following information for each retired member or beneficiary whose retirement allowance has been in effect for at least one year:

(1) The original dollar amount of the retirement allowance;

(2) The index for the calendar year prior to the effective date of the retirement allowance, to be known as "index A";

(3) The index for the calendar year prior to the date of determination, to be known as "index B"; and

(4) The ratio obtained when index B is divided by index A.

The value of the ratio obtained shall be the annual adjustment to the original retirement allowance and shall be applied beginning with the July payment. In no event, however, shall the annual adjustment:

(a) Produce a retirement allowance which is lower than the original retirement allowance;

(b) Exceed three percent in the initial annual adjustment; or

(c) Differ from the previous year's annual adjustment by more than three percent.

For the purposes of this section, "index" means, for any calendar year, that year's average consumer price index—Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor. [1977 ex.s. c 293 § 5.]

Additional notes found at www.leg.wa.gov

41.32.780 Teachers required to be members. All teachers who become employed by an employer in an eligible position on or after October 1, 1977, shall be members of the retirement system and shall be governed by the provisions of RCW 41.32.755 through 41.32.825. [1991 c 35 § 67; 1990 c 274 § 15; 1979 ex.s. c 45 § 5; 1977 ex.s. c 293 § 7.]

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—Construction—1990 c 274: See notes following RCW 41.32.010.

Additional notes found at www.leg.wa.gov

41.32.785 Options for payment of retirement allowances—Retirement allowance adjustment—Court-approved property settlement. (1) Upon retirement for service as prescribed in RCW 41.32.765 or retirement for disability under RCW 41.32.790, a member shall elect to have the retirement allowance paid pursuant to the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the

member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a designated person. Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and member's spouse do not give written consent to an option under this section, the department will pay the member a joint and fifty percent survivor benefit and record the member's spouse as the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

(4) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments

pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a non-spouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(5) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.32.815 and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the age provided in RCW 41.32.765(1) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (4) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution. [2002 c 158 § 9; 2000 c 186 § 4; 1998 c 340 § 7; 1996 c 175 § 5; 1995 c 144 § 14; 1990 c 249 § 6; 1977 ex.s. c 293 § 8.]

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.32.790 Earned disability allowance—Eligibility—Disposition upon death of recipient. (1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the

department upon recommendation of the department shall be eligible to receive an allowance under the provisions of RCW 41.32.755 through 41.32.825. The member shall receive a monthly disability allowance computed as provided for in RCW 41.32.760 and shall have the allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

Any member who receives an allowance under the provisions of this section shall be subject to comprehensive medical examinations as required by the department. If medical examinations reveal that a member has recovered from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, the member shall cease to be eligible for the allowance.

(2)(a) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or the person or persons, trust, or organization as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no designated person or persons still living at the time of the recipient's death, then to the surviving spouse, or, if there is neither a designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative.

(b) If a recipient of a monthly retirement allowance under this section died before April 27, 1989, and before the total of the retirement allowance paid to the recipient equaled the amount of his or her accumulated contributions at the date of retirement, then the department shall pay the balance of the accumulated contributions to the member's surviving spouse or, if there is no surviving spouse, then in equal shares to the member's children. If there is no surviving spouse or children, the department shall retain the contributions. [1995 c 144 § 15; 1991 c 35 § 68; 1990 c 249 § 20; 1989 c 191 § 2; 1977 ex.s. c 293 § 9.]

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.32.795 Application for and effective date of retirement allowances. Any member or beneficiary eligible to receive a retirement allowance under the provisions of RCW 41.32.765, 41.32.790, or 41.32.805 shall be eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members under the provisions of RCW 41.32.765 shall accrue from the first day of the calendar month immediately following such member's separation from employment.

(2) Retirement allowances paid to vested members no longer in service, but qualifying for such an allowance pursuant to RCW 41.32.765, shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members under the provisions of RCW 41.32.790 shall accrue from the first day of the calendar month immediately following such member's separation from employment for disability.

(4) Retirement allowances paid as death benefits under the provisions of RCW 41.32.805 shall accrue from the first

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day of the calendar month immediately following the member's death. [1977 ex.s. c 293 § 10.]

Additional notes found at www.leg.wa.gov

41.32.800 Suspension of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Reinstatement. (1) Except as provided in RCW 41.32.802, no retiree under the provisions of plan 2 shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010, 41.32.010, 41.37.010, or 41.35.010, or as a law enforcement officer or firefighter as defined in RCW 41.26.030, or in a position covered by annuity and retirement income plans offered by institutions of higher education pursuant to RCW 28B.10.400.

If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(2) The department shall adopt rules implementing this section. [2011 1st sp.s. c 47 § 11; 2004 c 242 § 55; 1998 c 341 § 605; 1997 c 254 § 6; 1990 c 274 § 13; 1977 ex.s. c 293 § 11.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Effective date—2004 c 242: See RCW 41.37.901.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Findings—Construction—1990 c 274: See notes following RCW 41.32.010.

Additional notes found at www.leg.wa.gov

41.32.802 Reduction of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Reestablishment of membership. (1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every seven hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred forty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) A retiree who has satisfied the break in employment requirement of subsection (1) of this section, may work up to eight hundred sixty-seven hours per calendar year in an eligible position, as defined in RCW 41.32.010, 41.35.010, 41.37.010, or 41.40.010, or as a firefighter or law enforcement officer, as defined in RCW 41.26.030, or in a position covered by annuity and retirement income plans offered by institutions of higher education pursuant to RCW 28B.10.400, without suspension of his or her benefit.

(3) If the retiree opts to reestablish membership under RCW 41.32.044, he or she terminates his or her retirement status and immediately becomes a member. Retirement ben-

efits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible. [2011 1st sp.s. c 47 § 12; 2004 c 242 § 61; 2001 2nd sp.s. c 10 § 8; 1997 c 254 § 8.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Effective date—2004 c 242: See RCW 41.37.901.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Additional notes found at www.leg.wa.gov

41.32.805 Death benefits. (1) Except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, at the time of such member's death shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 41.32.765, actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.32.785 and, except under subsection (4) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.32.765; if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance share and share alike calculated as herein provided making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies after October 1, 1977, and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To an estate, a person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, or a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction under RCW 41.32.765. The member's retirement allowance is computed under RCW 41.32.760. [2009 c 226 § 6; 2003 c 155 § 2; 2000 c 247 § 1002; 1995 c 144 § 16; 1993 c 236 § 4; 1991 c 365 § 30; 1990 c 249 § 16; 1977 ex.s. c 293 § 12.]

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.32.810 Service credit for paid leave of absence, officers of labor organizations, unpaid leave of absence, military service. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.32.755 through 41.32.825.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (6) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if the member makes both the employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner.

(4) If a member fails to meet the time limitations of subsection (3) of this section, the member may receive a maximum of two years of service credit during a member's work-

ing career for those periods when a member is on unpaid leave of absence authorized by an employer. This may be done by paying the amount required under RCW 41.50.165(2) prior to retirement.

(5) For the purpose of subsection (3) of this section, the contribution shall not include the contribution for the unfunded supplemental present value as required by *RCW 41.32.775. The contributions required shall be based on the average of the member's earnable compensation at both the time the authorized leave of absence was granted and the time the member resumed employment.

(6) A member who leaves the employ of an employer to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services; and

(ii) The member makes the employee contributions required under *RCW 41.32.775 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2); or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(b) Upon receipt of member contributions under (a)(ii), (d)(iii), or (e)(iii) of this subsection, or adequate proof under (a)(iv), (d)(iv), or (e)(iv) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under *RCW 41.32.775 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii), (d)(iii), or (e)(iii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(d) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serv-

ing in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection. [2009 c 205 § 6; 2005 c 64 § 7; 1996 c 61 § 2; 1994 c 197 § 20; 1993 c 95 § 6; 1992 c 119 § 2; 1977 ex.s. c 293 § 13.]

*Reviser's note: RCW 41.32.775 was repealed by 1995 c 239 § 326, effective July 1, 1996.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Additional notes found at www.leg.wa.gov

41.32.812 Service credit for half-time employment from October 1, 1977, through December 31, 1986. The department of retirement systems shall credit at least one-half service credit month for each month of each school year, as defined by *RCW 28A.150.040, from October 1, 1977, through December 31, 1986, to a member of the teachers' retirement system plan 2 who was employed by an employer, as defined by RCW 41.32.010, under a contract for half-time employment as determined by the department for such school year and from whose compensation contributions were paid by the employee or picked up by the employer. Any withdrawn contributions shall be restored under **RCW 41.32.500(1) or 41.50.165 prior to crediting any service. [1994 c 197 § 21; 1992 c 212 § 20; 1991 c 343 § 12.]

Reviser's note: *(1) RCW 28A.150.040 was repealed by 2009 c 548 § 710, effective September 1, 2011.

***(2) RCW 41.32.500(1) was renumbered by 1994 c 197 § 17 and deleted in large part by 1994 c 177 § 5.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

41.32.813 One-time purchase of service credit—Conditions—Payment—Rules. (1) An active member who has completed a minimum of two years of creditable service in the teachers' retirement system may, upon written application to the department, make a one-time purchase of up to seven years of service credit for public education experience outside the Washington state retirement system, subject to the following limitations:

(a) The public education experience being claimed must have been performed as a teacher in a public school in another state or with the federal government;

(b) The public education experience being claimed must have been covered by a retirement or pension plan provided by a state or political subdivision of a state, or by the federal government; and

(c) The member is not currently receiving a benefit or currently eligible to receive an unreduced retirement benefit from a retirement or pension plan of a state or political subdivision of a state or the federal government that includes the service credit to be purchased.

(2) The service credit purchased shall be membership service, and may be used to qualify the member for retirement.

(3) The member shall pay the actuarial value of the resulting increase in the member's benefit calculated in a manner consistent with the department's method for calculating payments for reestablishing service credit under RCW 41.50.165.

(4) The member may pay all or part of the cost of the service credit to be purchased with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The

rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free roll-over treatment or other treatment under federal income tax law.

(5) The employer also may pay all or a portion of the member's cost of the service credit purchased under this section. [2008 c 101 § 1; 2006 c 257 § 1.]

Effective date—2006 c 257: "This act takes effect January 1, 2007." [2006 c 257 § 4.]

41.32.815 Vested membership. A member who separates or has separated after having completed at least five years of service may remain a member during the period of such member's absence from service for the exclusive purpose only of receiving a retirement allowance under the provisions of RCW 41.32.765 if such member maintains the member's accumulated contributions intact. [1977 ex.s. c 293 § 14.]

Additional notes found at www.leg.wa.gov

41.32.817 Transfer to plan 3—Irrevocable option.

(1) Every plan 2 member employed by an employer in an eligible position may make an irrevocable option to transfer to plan 3.

(2) Any plan 2 member who is a substitute teacher may make an irrevocable option to transfer to plan 3 at the time the member purchases substitute service credit pursuant to RCW 41.32.013, pursuant to time lines and procedures established by the department.

(3) Any plan 2 member, other than a substitute teacher, who wishes to transfer to plan 3 after December 31, 1997, may transfer during the month of January in any following year, provided that the member earns service credit for that month.

(4) All service credit in plan 2 shall be transferred to the defined benefit portion of plan 3.

(5) The accumulated contributions in plan 2 less fifty percent of any contributions made pursuant to RCW 41.50.165(2) shall be transferred to the member's account in the defined contribution portion established in chapter 41.34 RCW, pursuant to procedures developed by the department and subject to RCW 41.34.090. Contributions made pursuant to RCW 41.50.165(2) that are not transferred to the member's account shall be transferred to the fund created in RCW 41.50.075(2), except that interest earned on all such contributions shall be transferred to the member's account.

(6) The legislature reserves the right to discontinue the right to transfer under this section.

(7) Anyone previously retired from plan 2 is prohibited from transferring to plan 3. [1996 c 39 § 2; 1995 c 239 § 303.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.818 Public employees' retirement system members who previously declined membership in the teachers' retirement system—Transfer to plan 3—Irrevocable option. Any member of the public employees' retirement

system plan 2 who is employed in an eligible position as an educational staff associate and who elected pursuant to RCW 41.32.032(2)(a) to remain a member of the public employees' retirement system under chapter 41.40 RCW may make an irrevocable option before January 1, 1998, to transfer to plan 3 pursuant to RCW 41.32.817, PROVIDED THAT:

(1) Only service credit for previous periods of employment in a position covered by RCW 41.32.010 is transferred to plan 3;

(2) Equivalent accumulated employee and employer contributions attributable to service covered by subsection (1) of this section are transferred to plan 3;

(3) Employer contributions transferred under this section shall be paid into the teachers' retirement system combined plan 2 and 3 fund. [1996 c 39 § 3; 1995 c 239 § 304.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.820 Refund of contributions on termination. A member who ceases to be an employee of an employer except by service or disability retirement may request a refund of the member's accumulated contributions. The refund shall be made within ninety days following the receipt of the request and notification of termination through the contribution reporting system by the employer; except that in the case of death, an initial payment shall be made within thirty days of receipt of request for such payment and notification of termination through the contribution reporting system by the employer. A member who files a request for refund and subsequently enters into employment with another employer prior to the refund being made shall not be eligible for a refund. The refund of accumulated contributions shall terminate membership and all benefits under the provisions of RCW 41.32.755 through 41.32.825. [1988 c 117 § 1; 1982 1st ex.s. c 52 § 17; 1977 ex.s. c 293 § 15.]

Additional notes found at www.leg.wa.gov

41.32.825 Reentry. (1) A member, who had left service and withdrawn the member's accumulated contributions, shall, upon reestablishment of membership under RCW 41.32.240, receive service credit for such prior service if the member restores all withdrawn accumulated contributions together with interest since the time of withdrawal as determined by the department. The restoration of such funds must be completed within five years of the resumption of service or prior to retirement, whichever occurs first.

(2) If a member fails to meet the time limitations of subsection (1) of this section, the member may receive service credit destroyed by the withdrawn contributions if the amount required under RCW 41.50.165(2) is paid. [1994 c 197 § 22; 1988 c 117 § 2; 1977 ex.s. c 293 § 16.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Additional notes found at www.leg.wa.gov

"PLAN 3"

41.32.831 Provisions applicable to plan 3—Plan 3 elements. (1) RCW 41.32.831 through 41.32.895 shall apply only to plan 3 members.

(2014 Ed.)

(2) Plan 3 shall consist of two separate elements: (a) A defined benefit portion covered under this subchapter; and (b) a defined contribution portion covered under chapter 41.34 RCW.

(3) Unless otherwise specified, all references to "plan 3" in this subchapter refer to the defined benefit portion of plan 3. [1996 c 39 § 10; 1995 c 239 § 104.]

Intent—Purpose—1995 c 239: "The legislature recognizes that teachers, principals, and district administrators need the ability to make transitions to other public or private sector careers, and that the retirement system should not be a barrier to exercise of employee choice. The legislature also recognizes that teachers, principals, and district administrators need a secure and viable retirement benefit, not only for their own financial protection, but also that public funds are spent prudently for their intended purpose.

It is the legislative intent to create a new public retirement system that balances flexibility with stability, provides both increased employee control of investments and responsible protection of the public's investment in employee benefits, and encourages the pursuit of public sector careers without preventing employees from transitioning into other public or private sector employment.

Therefore, the purpose of chapter 239, Laws of 1995 is to continue to provide teachers, principals, and district administrators with a guaranteed pension at retirement age based on years of public service with an element of inflation protection. It is further the purpose of chapter 239, Laws of 1995 to create a parallel retirement plan where employees have options regarding the investment of their retirement contributions and have the opportunity, along with the accompanying risk, to receive a full rate of return on their investments and where employees who leave public employment prior to retirement receive a fair and reasonable value from the retirement system." [1995 c 239 § 1.]

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.835 Choice of membership in plan 2 or plan 3.

(1) All teachers who first become employed by an employer in an eligible position on or after July 1, 2007, shall have a period of ninety days to make an irrevocable choice to become a member of plan 2 or plan 3. At the end of ninety days, if the member has not made a choice to become a member of plan 2, he or she becomes a member of plan 3.

(2) For administrative efficiency, until a member elects to become a member of plan 3, or becomes a member of plan 3 by default under subsection (1) of this section, the member shall be reported to the department in plan 2, with member and employer contributions. Upon becoming a member of plan 3 by election or by default, all service credit shall be transferred to the member's plan 3 defined benefit, and all employee accumulated contributions shall be transferred to the member's plan 3 defined contribution account.

(3) The plan choice provision as set forth in section 3, chapter 491, Laws of 2007 was intended by the legislature as a replacement benefit for gain-sharing. Until there is legal certainty with respect to the repeal of *chapter 41.31A RCW, the right to plan choice under this section is noncontractual, and the legislature reserves the right to amend or repeal this section. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, all teachers who first become employed by an employer in an eligible position on or after July 1, 2007, may choose either plan 2 or plan 3 under this section. If the repeal of *chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or

other alternate benefits as a remedy, then all teachers who first become employed by an employer in an eligible position on or after the date of such reinstatement shall be members of plan 3. [2007 c 491 § 3; 1995 c 239 § 105.]

***Reviser's note:** Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

Effective date—2007 c 491 §§ 1, 3, and 7: "Sections 1, 3, and 7 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2007." [2007 c 491 § 19.]

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.836 Higher education faculty—Option to transfer to plan 3—Limitation on supplemental benefits under RCW 28B.10.400. (1) All faculty members who are first employed by an institution of higher education in a position eligible for participation in old age annuities or retirement income plans under chapter 28B.10 RCW on or after July 1, 2011, have a period of thirty days to make an irrevocable choice to:

(a) Become a member of the teachers' retirement system plan 3 under this chapter; or

(b) Participate in the annuities or retirement income plan provided by the institution.

(2) At the end of thirty days, if the member has not made a choice to become a member of the teachers' retirement system, he or she becomes a participant in the institution's plan under RCW 28B.10.400, but does not become eligible for any supplemental benefit under RCW 28B.10.400(1)(c). [2011 1st sp.s. c 47 § 9.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

41.32.837 Right to waive benefit—Irrevocable choice. Any member receiving or having received a distribution under chapter 41.34 RCW may make an irrevocable choice to waive all rights to a benefit under RCW 41.32.840 by notifying the department in writing of their intention. [2003 c 349 § 1.]

Additional notes found at www.leg.wa.gov

41.32.840 Computation of the retirement allowance. (1) A member of the retirement system shall receive a retirement allowance equal to one percent of such member's average final compensation for each service credit year.

(2) The retirement allowance payable under RCW 41.32.875 to a member who separates after having completed at least twenty service credit years shall be increased by twenty-five one-hundredths of one percent, compounded for each month from the date of separation to the date that the retirement allowance commences. [1996 c 39 § 4; 1995 c 239 § 106.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.8401 Additional payment. (1) Anyone who requests to transfer under RCW 41.32.817 before January 1, 1998, and establishes service credit for January 1998, shall have their member account increased by forty percent of:

(a) Plan 2 accumulated contributions as of January 1, 1996, less fifty percent of any payments made pursuant to RCW 41.50.165(2); or

(b) All amounts withdrawn after January 1, 1996, which are completely restored before January 1, 1998.

(2) A further additional payment of twenty-five percent, for a total of sixty-five percent, shall be paid subject to the conditions contained in subsection (1) of this section on July 1, 1998.

(3) Substitute teachers shall receive the additional payment provided in subsection (1) of this section if they:

(a) Establish service credit for January 1998; and

(b) Establish any service credit from July 1996 through December 1997; and

(c) Elect to transfer on or before March 1, 1999.

(4) If a member who requests to transfer dies before January 1, 1998, the additional payment provided by this section shall be paid to the member's estate, or the person or persons, trust, or organization the member nominated by written designation duly executed and filed with the department.

(5) The legislature reserves the right to modify or discontinue the right to an incentive payment under this section for any plan 2 members who have not previously transferred to plan 3. [1998 c 341 § 701; 1997 c 10 § 1; 1996 c 39 § 8.]

Additional notes found at www.leg.wa.gov

41.32.845 Postretirement cost-of-living allowance. Retirement allowances paid under the defined benefit portion of plan 3 shall have a postretirement cost-of-living allowance calculated and paid as provided in RCW 41.32.770. [1995 c 239 § 107.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.851 Options for payment of retirement allowances—Court-approved property settlement. (1) Upon retirement for service as prescribed in RCW 41.32.875 or retirement for disability under RCW 41.32.880, a member shall elect to have the retirement allowance paid pursuant to one of the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. Upon the death of the retired member, all benefits shall cease.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to such person or persons as the retiree shall have nominated by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty-percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a non-spouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(4) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.32.875(1) and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the age provided in RCW 41.32.875(1) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (3) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) Any benefit distributed pursuant to *chapter 41.31A RCW after the date of the dissolution order creating separate benefits for a member and nonmember ex spouse shall be paid solely to the member.

(d) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution. [2002 c 158 § 10; 2000 c 186 § 5; 1995 c 239 § 108.]

**Reviser's note:* Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.855 Application for and effective date of retirement allowances. Any member or beneficiary eligible to receive a retirement allowance under the provisions of RCW 41.32.875, 41.32.880, or 41.32.895 shall be eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members shall accrue from the first day of the calendar month immediately following such member's separation from employment.

(2) Retirement allowances payable to eligible members no longer in service, but qualifying for such an allowance pursuant to RCW 41.32.875 shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members shall accrue from the first day of the calendar month immediately following such member's separation from employment for disability.

(4) Retirement allowances paid as death benefits shall accrue from the first day of the calendar month immediately following the member's death. [1996 c 39 § 5; 1995 c 239 § 109.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.860 Suspension of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Reinstatement. (1) Except under RCW 41.32.862, no retiree shall be eligible to receive such retiree's

monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010, 41.32.010, 41.35.010, or 41.37.010, or as a law enforcement officer or firefighter as defined in RCW 41.26.030, or in a position covered by annuity and retirement income plans offered by institutions of higher education pursuant to RCW 28B.10.400.

(2) If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused the suspension of benefits. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department. [2011 1st sp.s. c 47 § 13; 2005 c 327 § 2; 2001 2nd sp.s. c 10 § 9; 1997 c 254 § 7; 1995 c 239 § 110.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.862 Reduction of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Reestablishment of membership. (1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every seven hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred forty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) A retiree who has satisfied the break in employment requirement of subsection (1) of this section, may work up to eight hundred sixty-seven hours per calendar year in an eligible position, as defined in RCW 41.32.010, 41.35.010, 41.37.010, or 41.40.010, or as a firefighter or law enforcement officer, as defined in RCW 41.26.030, or in a position covered by annuity and retirement income plans offered by institutions of higher education pursuant to RCW 28B.10.400, without suspension of his or her benefit.

(3) If the retiree opts to reestablish membership under RCW 41.32.044, he or she terminates his or her retirement status and immediately becomes a member. Retirement benefits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible. [2011 1st sp.s. c 47 § 14; 2004 c 242 § 62; 2001 2nd sp.s. c 10 § 10; 1997 c 254 § 9.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Effective date—2004 c 242: See RCW 41.37.901.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Additional notes found at www.leg.wa.gov

41.32.865 Service credit for paid leave of absence, officers of labor organizations, unpaid leave of absence, military service. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes the contribution on behalf of the employer, plus interest, as determined by the department; and

(b) The member makes the employee contribution, plus interest, as determined by the department, to the defined contribution portion.

The contributions required shall be based on the average of the member's earnable compensation at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service if within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

The department shall establish the member's service credit and shall bill the employer for its contribution required under chapter 239, Laws of 1995 for the period of military service, plus interest as determined by the department. Service credit under this subsection may be obtained only if the member makes the employee contribution to the defined contribution portion as determined by the department, or prior to retirement, the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interrup-

tive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

The contributions required shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(a) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under this subsection within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(b) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under this subsection within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form pro-

vided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection. [2009 c 205 § 7; 2005 c 64 § 8; 1996 c 61 § 3; 1995 c 239 § 111.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.867 Purchased service credit—Allocation. (1)

Contributions on behalf of the employer paid by the employee to purchase plan 3 service credit shall be allocated to the defined benefit portion of plan 3 and shall not be refundable when paid to the fund described in RCW 41.50.075(2). Contributions on behalf of the employee shall be allocated to the member account. If the member fails to meet the statutory time limitations to purchase plan 3 service credit, it may be purchased under the provisions of RCW 41.50.165(2). One-half of the purchase payments under RCW 41.50.165(2), plus interest, shall be allocated to the member's account.

(2) No purchased plan 3 membership service will be credited until all payments required of the member are made, with interest. Upon receipt of all payments owed by the member, the department shall bill the employer for any contributions, plus interest, required to purchase membership service. [1996 c 39 § 11.]

Additional notes found at www.leg.wa.gov

41.32.868 One-time purchase of service credit—Conditions—Payment—Rules. (1)

An active member who has completed a minimum of two years of creditable service in the teachers' retirement system may, upon written application to the department, make a one-time purchase of up to seven years of service credit for public education experience outside the Washington state retirement system, subject to the following limitations:

(a) The public education experience being claimed must have been performed as a teacher in a public school in another state or with the federal government;

(b) The public education experience being claimed must have been covered by a retirement or pension plan provided by a state or political subdivision of a state, or by the federal government; and

(c) The member is not currently receiving a benefit or currently eligible to receive an unreduced retirement benefit from a retirement or pension plan of a state or political subdivision of a state or the federal government that includes the service credit to be purchased.

(2) The service credit purchased shall be membership service, and may be used to qualify the member for retirement.

(3) The member shall pay the actuarial value of the resulting increase in the member's benefit calculated in a manner consistent with the department's method for calculating payments for reestablishing service credit under RCW 41.50.165.

(4) The member may pay all or part of the cost of the service credit to be purchased with a lump sum payment, eligi-

ble rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(5) The employer also may pay all or a portion of the member's cost of the service credit purchased under this section. [2008 c 101 § 2; 2006 c 257 § 2.]

Effective date—2006 c 257: See note following RCW 41.32.813.

41.32.870 Lump sum payments—Reentry. (1) The director may pay a member eligible to receive a retirement allowance or the member's beneficiary a lump sum payment in lieu of a monthly benefit if the initial monthly benefit would be less than one hundred dollars. The one hundred dollar limit shall be increased by three percent compounded annually on January 1. The lump sum payment shall be the actuarial equivalent of the monthly benefit.

(2) Persons covered under the provisions of subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to retiring again, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(3) Any member who receives a settlement under this section shall be deemed to be retired from this system. [1995 c 239 § 112.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.875 Retirement eligibility. (1) **NORMAL RETIREMENT.** Any member who is at least age sixty-five and who has:

- (a) Completed ten service credit years; or
 - (b) Completed five service credit years, including twelve service credit months after attaining age forty-four; or
 - (c) Completed five service credit years by July 1, 1996, under plan 2 and who transferred to plan 3 under RCW 41.32.817;
- shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840.

(2) **EARLY RETIREMENT.** Any member who has attained at least age fifty-five and has completed at least ten years of service shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(3) **ALTERNATE EARLY RETIREMENT.**

(a) Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(b) On or after September 1, 2008, any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced as follows:

Retirement Age	Percent Reduction
55	20%
56	17%
57	14%
58	11%
59	8%
60	5%
61	2%
62	0%
63	0%
64	0%

Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of RCW 41.32.862(2) until the retired member has reached sixty-five years of age. For purposes of this subsection, employment with an employer also includes any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of RCW 41.32.860(1).

The subsidized reductions for alternate early retirement in this subsection as set forth in section 4, chapter 491, Laws of 2007 were intended by the legislature as replacement benefits for gain-sharing. Until there is legal certainty with respect to the repeal of *chapter 41.31A RCW, the right to retire under this subsection is noncontractual, and the legislature reserves the right to amend or repeal this subsection. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, eligible members may still retire under this subsection, and upon receipt of the first installment of a retirement allowance computed under this subsection, the resulting benefit becomes contractual for the recipient. If the repeal of *chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then retirement benefits for any member who has completed at least thirty service credit years and

has attained age fifty-five but has not yet received the first installment of a retirement allowance under this subsection shall be computed using the reductions in (a) of this subsection.

(c) Members who first become employed by an employer in an eligible position on or after May 1, 2013, are not eligible for the alternate early retirement provisions of (a) or (b) of this subsection. Any member who first becomes employed by an employer in an eligible position on or after May 1, 2013, and has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by five percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five. [2012 1st sp.s. c 7 § 2; 2007 c 491 § 4; 2006 c 33 § 1; 2000 c 247 § 903; 1996 c 39 § 6; 1995 c 239 § 113.]

***Reviser's note:** Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

Benefits not contractual right until September 1, 2008—2007 c 491: See note following RCW 41.32.765.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.878 Member with terminal illness—Removal from system. (1) Upon application of the member, a member who is diagnosed with a terminal illness shall be removed from membership in the system subject to the following conditions:

(a) That the medical adviser, after a medical examination of the member made by or under the direction of the medical adviser, has certified in writing that the member has a terminal illness with a life expectancy of five or fewer years; and

(b) That the director concurs in the recommendation of the medical adviser.

(2) Members removed from the system shall not make contributions toward a defined contribution account as defined in chapter 41.34 RCW and shall not accumulate additional service credit.

(3) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to this benefit not granted prior to that amendment or repeal. [2005 c 131 § 2.]

Effective date—2005 c 131: See note following RCW 41.40.823.

41.32.880 Earned disability allowance—Eligibility—Disposition upon death of recipient. (1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the department shall be eligible to receive an allowance under the provisions of plan 3. The member shall receive a monthly disability allowance computed as provided for in RCW 41.32.840 and shall have this allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

(2014 Ed.)

Any member who receives an allowance under the provisions of this section shall be subject to comprehensive medical examinations as required by the department. If these medical examinations reveal that a member has recovered from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, the member shall cease to be eligible for the allowance.

(2) If the recipient of a monthly retirement allowance under this section dies, any further benefit payments shall be conditioned by the payment option selected by the retiree as provided in RCW 41.32.851. [1995 c 239 § 114.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.892 Restored, purchased service credit under plan 2—Transfer to plan 3. (1) Any member who elects to transfer to plan 3 and has eligible unrestored withdrawn contributions in plan 2, may restore such contributions under the provisions of RCW 41.32.825(1) with interest as determined by the department. The restored plan 2 service credit will be automatically transferred to plan 3. Restoration payments will be transferred to the member account in plan 3. If the member fails to meet the time limitations of RCW 41.32.825(1), they may restore such contributions under the provisions of RCW 41.50.165(2). The restored plan 2 service credit will be automatically transferred to plan 3. One-half of the restoration payments under RCW 41.50.165(2) plus interest shall be allocated to the member's account.

(2) Any member who elects to transfer to plan 3 may purchase plan 2 service credit under RCW 41.32.810(3). Purchased plan 2 service credit will be automatically transferred to plan 3. Contributions on behalf of the employer paid by the employee shall be allocated to the defined benefit portion of plan 3 and shall not be refundable when paid to the fund described in RCW 41.50.075(2). Contributions on behalf of the employee shall be allocated to the member account. If the member fails to meet the time limitations of RCW 41.32.810(3), they may subsequently restore such contributions under the provisions of RCW 41.50.165(2). Purchased plan 2 service credit will be automatically transferred to plan 3. One-half of the payments under RCW 41.50.165(2), plus interest, shall be allocated to the member's account. [1996 c 39 § 9.]

Additional notes found at www.leg.wa.gov

41.32.895 Death benefits. (1) If a member dies prior to retirement, the surviving spouse or eligible child or children shall receive a retirement allowance computed as provided in RCW 41.32.851 actuarially reduced to reflect a joint and one hundred percent survivor option and, except under subsection (2) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.32.875.

If the surviving spouse who is receiving the retirement allowance dies leaving a child or children under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority.

If there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance, share and share alike. The allowance shall be calculated with the assumption that the age of the spouse and member were equal at the time of the member's death.

(2) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, or a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction under RCW 41.32.875. The member's retirement allowance is computed under RCW 41.32.840. [2009 c 226 § 7; 2003 c 155 § 3; 2000 c 247 § 1003; 1996 c 39 § 7; 1995 c 239 § 117.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

Chapter 41.33 RCW TEACHERS' RETIREMENT— FEDERAL SOCIAL SECURITY

Sections

41.33.010	Plan for covering members under OASI approved.
41.33.020	Terms and provisions of plan.
41.33.030	Effective date for coverage of members.
41.33.900	Severability—1957 c 183.

41.33.010 Plan for covering members under OASI approved. The plan for covering the members of the teachers' retirement system under the old age and survivor insurance provisions of Title II of the federal social security act as amended, required by RCW 41.48.050 as amended by section 5, chapter 4, Laws of the Extraordinary Session of 1955, approved by the board of trustees of the teachers' retirement system on October 8, 1956, and by the governor of the state of Washington on November 19, 1956, is hereby approved. [1957 c 183 § 1.]

41.33.020 Terms and provisions of plan. The terms and provisions of the plan are as follows:

(1) Each political subdivision of the state employing members of the teachers' retirement system and the members of the teachers' retirement system, after the approval of this plan by the legislature, and by the eligible employees through a referendum as provided in RCW 41.48.030 (3) and (4), shall be deemed to have accepted and agreed to be bound by the following terms and conditions in consideration of extension of the existing agreement between the secretary of health, education, and welfare and the governor to make the protection of the federal old age and survivors insurance program available and applicable to such employees.

(2) As used in this plan the terms quoted below shall have the meanings assigned thereto in this section.

"Political subdivision" means any political subdivision, or instrumentality of one or more subdivisions, or proprietary enterprise acquired, purchased or originated by one or more such subdivisions after December, 1950, which employs members of the teachers' retirement system. The state, its

agencies, instrumentalities, and institutions of higher learning shall be grouped and considered as a single political subdivision.

"Employee" means any person who is a member of the teachers' retirement system and is employed by a political subdivision.

"Wages" shall have the meaning given in *RCW 41.48.020(1) and section 209 of the social security act (42 U.S.C.A. Sec. 409).

"State" where not otherwise clearly indicated by the context, means the commissioner of employment security or other officer designated by the governor to administer the plan at the state level for all participating political subdivisions.

(3) The terms and conditions of this plan are intended and shall be construed to be in conformity with the requirements of the federal social security act as amended and with the requirements of chapter 41.48 RCW, and particularly RCW 41.48.050, as amended by chapter 4, Laws of 1955 extraordinary session.

(4) The rights and benefits accruing to employees from membership in the teachers' retirement system shall in no way be altered or impaired by this plan or by the additional and supplementary OASI coverage which such employees may receive hereunder, other than the elimination of (1), (2) and (3) of section 52, chapter 80, Laws of 1947 and RCW 41.32.520 as each are amended, with the exception of that part of (1) which permits a widow or widower without a child or children under age eighteen to receive a monthly payment of fifty dollars at age fifty, provided that the member had fifteen or more years of Washington membership service credit at date of death.

(5) There shall be no additional cost to or involvement of the state or a political subdivision with respect to OASI coverage of members of the teachers' retirement system until this plan has been approved by the legislature.

(6) Each employee to whom OASI coverage is made applicable under this plan pursuant to an extension or modification under RCW 41.48.030 of the existing agreement between the secretary of health, education, and welfare and the governor shall be required to pay into the OASI contribution account established by RCW 41.48.060 during the period of such coverage contributions with respect to his or her wages in an amount equal to the employee tax imposed by the federal insurance contributions act (section 3101, Internal Revenue Code of 1954), in consideration of the employee's retention in service by the political subdivision. The subdivision shall withhold such contributions from the wages paid to the employee; and shall remit the contributions so withheld in each calendar quarter to the state for deposit in the contribution account not later than the twentieth calendar day of the month following that quarter.

(7) Each political subdivision shall pay into the contribution account with respect to the wages of its employees during the period of their OASI coverage pursuant to this plan contributions in an amount equal to the employer tax imposed by the federal insurance contributions act (section 3111, Internal Revenue Code of 1954), from the fund of the subdivision from which such employees' wages are paid. The subdivision shall remit such contributions to the state for deposit in the contribution account on a quarterly basis, not

later than the twentieth calendar day of the month following each calendar quarter.

(8) If any political subdivision other than that comprising the state, its agencies, instrumentalities, and institutions of higher learning fails to remit as provided herein employer contributions or employee contributions, or any part of either, such delinquent contributions may be recovered with interest at the rate of six percent per annum by action in a court of competent jurisdiction against the political subdivision; or such delinquent contributions may at the request of the governor be deducted from any moneys payable to such subdivision by the state.

(9) Each political subdivision shall be charged with a share of the cost of administration of this plan by the state, to be computed as that proportion of the overall cost of administration which its total annual contributions bear to the total annual contributions paid by all subdivisions on behalf of employees covered by the plan. The state shall compute the share of cost allocable to each subdivision and bill the subdivision therefor at the end of each fiscal year. The subdivision shall within ninety days thereafter remit its share of the cost to the state for deposit in the general fund of the state.

(10) Each political subdivision shall submit to the state, through the employment security department, P.O. Box 367, Olympia, Washington, or such other officer or agency as the governor may subsequently designate, on forms furnished by the state, not later than the twentieth calendar day of the month following the end of each calendar quarter, the following information:

A. The social security account number of each employee;

B. The name of each employee;

C. The amount of wages subject to contributions as required hereunder paid to each employee during the quarter;

D. The total amount of wages subject to contributions paid to all employees during the quarter;

E. The total amount of employee contributions withheld and remitted for the quarter; and

F. The total amount of employer contributions paid by the subdivision for the quarter.

(11) Each political subdivision shall furnish in the same manner as provided in subsection (10) of this section, upon reasonable notice, such other and further reports or information as the governor may from time to time require. Each subdivision shall comply with such requirements as the secretary of health, education, and welfare or the governor may from time to time establish with respect to any or all of the reports or information which are or may be provided for under subsection (10) of this section or this subsection in order to assure the correctness and verification thereof.

(12) The governing body of each political subdivision shall designate an officer of the subdivision to administer such accounting, reporting, and other functions as will be required for the effective operation of this plan within the subdivision, as provided herein. The commissioner of employment security or such other officer as the governor may designate, shall perform or supervise those functions with respect to employees of the subdivision comprising the state, its agencies, instrumentalities, and institutions of higher learning; and shall serve as the representative of the partici-

pating political subdivisions in the administration of this plan with the secretary of health, education, and welfare.

(13) The legislature shall designate the first day of any month beginning with January, 1956, as the effective date of OASI coverage for such employees, except that after January 1, 1958, the effective date may not be prior to the first day of the current year.

The employer's contribution for any retroactive coverage shall be transferred by the board of trustees from the teachers' retirement pension reserve to the official designated by the governor to administer the plan at the state level.

Each employee's contributions for any retroactive coverage shall be transferred by the board of trustees from his or her accumulated contributions in the teachers' retirement fund, to the official designated above. Each employee, if he or she so desires, may, within one year from the date of transfer, reimburse his or her accumulated contributions for the amount so transferred.

(14) The governor may terminate the operation of this plan in its entirety with respect to any political subdivision, in his or her discretion, if he or she finds that the subdivision has failed to comply substantially with any requirement or provision of this plan. The plan shall not be so terminated until reasonable notice and opportunity for hearing thereon have been given to the subdivision under such conditions, consistent with the provisions of the social security act, as shall have been established in regulations by the governor. [2012 c 117 § 58; 1992 c 212 § 12; 1973 1st ex.s. c 154 § 77; 1957 c 183 § 2.]

*Reviser's note: RCW 41.48.020 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (1) to subsection (6).

Additional notes found at www.leg.wa.gov

41.33.030 Effective date for coverage of members.

The effective date of OASI coverage for members of the teachers' retirement system shall be January 1, 1956: PROVIDED, That should the agreement between the governor and the secretary of health, education and welfare be executed subsequent to December 31, 1957, the effective date of coverage shall be that specified in the agreement. [1957 c 183 § 5.]

41.33.900 Severability—1957 c 183. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1957 c 183 § 6.]

Chapter 41.34 RCW

PLAN 3 RETIREMENT SYSTEM CONTRIBUTIONS

(Formerly: Contributions under teachers' retirement system plan 3)

Sections

41.34.010	Purpose.
41.34.020	Definitions.
41.34.030	Application of chapter—Plan 3 elements.
41.34.040	Contributions—Rate structures—Annual option.
41.34.050	Legislature may contribute to members' accounts.
41.34.060	Members' accounts—Investment—Election.
41.34.070	Distribution options.
41.34.080	Benefits exempt from taxation, garnishment, other processes of law—Exceptions.
41.34.090	Administration of chapter—Construction—Severability.
41.34.100	Benefits not contractual right until date specified.

- 41.34.110 Reentry.
 41.34.120 Money, property, income held in trust.
 41.34.130 Self-directed investment—Default investment options—
 Duties of state investment board and department—
 Expenses—Recordkeeping.
 41.34.140 Liability for loss or deficiencies—Limitations.
 41.34.900 Construction—Chapter applicable to state registered domestic
 partnerships—2009 c 521.

41.34.010 Purpose. The purpose of chapter 239, Laws of 1995 is to:

(1) Provide a fair and reasonable value from the retirement system for those who leave public employment before retirement;

(2) Increase flexibility for such employees to make transitions into other public or private sector employment;

(3) Increase employee options for addressing retirement needs, personal financial planning, and career transitions; and

(4) Continue the legislature's established policy of having employees contribute toward their retirement benefits. [1995 c 239 § 201.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Additional notes found at www.leg.wa.gov

41.34.020 Definitions. As used in this chapter, the following terms have the meanings indicated:

(1) "Actuary" means the state actuary or the office of the state actuary.

(2) "Department" means the department of retirement systems.

(3)(a) "Compensation" for teachers for purposes of this chapter is the same as "earnable compensation" for plan 3 in chapter 41.32 RCW except that the compensation may be reported when paid, rather than when earned.

(b) "Compensation" for classified employees for purposes of this chapter is the same as "compensation earnable" for plan 3 in RCW 41.35.010, except that the compensation may be reported when paid, rather than when earned.

(c) "Compensation" for public employees for purposes of this chapter is the same as "compensation earnable" for plan 3 in RCW 41.40.010, except that the compensation may be reported when paid, rather than when earned.

(4)(a) "Employer" for teachers for purposes of this chapter means the same as "employer" for plan 3 in chapter 41.32 RCW.

(b) "Employer" for classified employees for purposes of this chapter means the same as "employer" for plan 3 in RCW 41.35.010.

(c) "Employer" for public employees for purposes of this chapter means the same as "employer" for plan 3 in RCW 41.40.010.

(5) "Member" means any employee included in the membership of a retirement system as provided for in chapter 41.32 RCW of plan 3, chapter 41.35 RCW of plan 3, or chapter 41.40 RCW of plan 3.

(6) "Member account" or "member's account" means the sum of the contributions and earnings on behalf of the member.

(7) "Retiree" means any member in receipt of an allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(8) "Teacher" means a member of the teachers' retirement system plan 3 as defined in *RCW 41.32.010(29).

(9) "Classified employee" means a member of the school employees' retirement system plan 3 as defined in RCW 41.35.010.

(10) "Public employee" means a member of the public employees' retirement system plan 3 as defined in RCW 41.40.010. [2010 1st sp.s. c 7 § 31; 2000 c 247 § 401; 1998 c 341 § 301; 1996 c 39 § 13; 1995 c 239 § 202.]

*Reviser's note: RCW 41.32.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (29) to subsection (49).

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Additional notes found at www.leg.wa.gov

41.34.030 Application of chapter—Plan 3 elements.

(1) This chapter applies only to members of plan 3 retirement systems created under chapters 41.32, 41.35, and 41.40 RCW.

(2) Plan 3 consists of two separate elements:

(a) A defined benefit portion covered under:

(i) Sections 101 through 117, chapter 239, Laws of 1995;

or

(ii) Sections 1 through 25 and 201 through 213, chapter 341, Laws of 1998; or

(iii) Sections 101 through 316, chapter 247, Laws of 2000; and

(b) A defined contribution portion covered under this chapter. Unless specified otherwise, all references to "plan 3" in this chapter refer to the defined contribution portion of plan 3. [2000 c 247 § 402; 1998 c 341 § 302; 1995 c 239 § 203.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Additional notes found at www.leg.wa.gov

41.34.040 Contributions—Rate structures—Annual option. (1) A member shall contribute from his or her compensation according to one of the following rate structures in addition to the mandatory minimum five percent:

Option	Contribution Rate
Option A	Contribution Rate
All Ages	0.0% fixed
Option B	
Up to Age 35	0.0%
Age 35 to 44	1.0%
Age 45 and above	2.5%
Option C	
Up to Age 35	1.0%
Age 35 to 44	2.5%
Age 45 and above	3.5%
Option D	
All Ages	2.0%
Option E	
All Ages	5.0%
Option F	
All Ages	10.0%

(2) The department shall have the right to offer contribution rate options in addition to those listed in subsection (1) of this section, provided that no significant additional administrative costs are created. All options offered by the department shall conform to the requirements stated in subsections (3) and (5) of this section.

(3)(a) For members of the teachers' retirement system entering plan 3 under RCW 41.32.835 or members of the school employees' retirement system entering plan 3 under RCW 41.35.610, within ninety days of becoming a member he or she has an option to choose one of the above contribution rate structures. If the member does not select an option within the ninety-day period, he or she shall be assigned option A.

(b) For members of the public employees' retirement system entering plan 3 under RCW 41.40.785, within the ninety days described in RCW 41.40.785 an employee who irrevocably chooses plan 3 shall select one of the above contribution rate structures. If the member does not select an option within the ninety-day period, he or she shall be assigned option A.

(c) For members of the teachers' retirement system transferring to plan 3 under RCW 41.32.817, members of the school employees' retirement system transferring to plan 3 under RCW 41.35.510, or members of the public employees' retirement system transferring to plan 3 under RCW 41.40.795, upon election to plan 3 he or she must choose one of the above contribution rate structures.

(d) Within ninety days of the date that an employee changes employers, he or she has an option to choose one of the above contribution rate structures. If the member does not select an option within this ninety-day period, he or she shall be assigned option A.

(4) Each year, through January of 2015, members of plan 3 of the teachers' retirement system may change their contribution rate option by notifying their employer in writing during the month of January. After January of 2015, a member of plan 3 of the teachers' retirement system may only change their contribution rate option under subsection (3)(d) of this section. The termination of this annual contribution rate change option in January 2015 is required to meet the plan qualification requirements in section 401(a) of the internal revenue code. Consistent with plan qualification requirements in the internal revenue code, this annual contribution rate change has never been available to plan 3 members of the public employees' retirement system and the school employees' retirement system.

(5) Contributions shall begin the first day of the pay cycle in which the rate option is made, or the first day of the pay cycle in which the end of the ninety-day period occurs. [2014 c 95 § 1; 2010 1st sp.s. c 7 § 32; 2003 c 156 § 1; 2000 c 247 § 403; 1996 c 39 § 14; 1995 c 239 § 204.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Additional notes found at www.leg.wa.gov

41.34.050 Legislature may contribute to members' accounts. The legislature may authorize contributions to the members' accounts for a biennium through budget appropriation. [1995 c 239 § 205.]

(2014 Ed.)

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Additional notes found at www.leg.wa.gov

41.34.060 Members' accounts—Investment—Election. (1) Members may select investments as provided in subsections (2) and (4) of this section. If a member of the public employees' retirement system entering plan 3 under RCW 41.40.785, a member of the teachers' retirement system entering plan 3 under RCW 41.32.835, or a member of the school employees' retirement system entering plan 3 under RCW 41.35.610 does not select investments, the member's account shall be invested in the default investment option of the retirement strategy fund that is closest to the retirement target date of the member. Retirement strategy fund means one of several diversified asset allocation portfolios managed by investment advisors under contract to the state investment board. The asset mix of the portfolios adjusts over time depending on a target retirement date.

(2) Members may elect to have their account invested by the state investment board. In order to reduce transaction costs and address liquidity issues, based upon recommendations of the state investment board, the department may require members to provide up to ninety days' notice prior to moving funds from the state investment board portfolio to self-directed investment options provided under subsection (4) of this section.

(a) For members of the retirement system as provided for in chapter 41.32 RCW of plan 3, investment shall be in the same portfolio as that of the teachers' retirement system combined plan 2 and 3 fund under RCW 41.50.075(2).

(b) For members of the retirement system as provided for in chapter 41.35 RCW of plan 3, investment shall be in the same portfolio as that of the school employees' retirement system combined plan 2 and 3 fund under RCW 41.50.075(4).

(c) For members of the retirement system as provided for in chapter 41.40 RCW of plan 3, investment shall be in the same portfolio as that of the public employees' retirement system combined plan 2 and 3 fund under RCW 41.50.075(3).

(3) The state investment board shall declare monthly unit values for the portfolios or funds, or portions thereof, utilized under subsection (2)(a), (b), and (c) of this section. The declared values shall be an approximation of portfolio or fund values, based on internal procedures of the state investment board. Such declared unit values and internal procedures shall be in the sole discretion of the state investment board. The state investment board may delegate any of the powers and duties under this subsection, including discretion, pursuant to RCW 43.33A.030. Member accounts shall be credited by the department with a rate of return based on changes to such unit values.

(4) Members may elect to self-direct their investments as set forth in RCW 41.34.130 and 43.33A.190. [2011 c 80 § 2; 2001 c 180 § 2; 2000 c 247 § 404; 1999 c 265 § 1; 1998 c 341 § 303; 1996 c 39 § 15; 1995 c 239 § 206.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Additional notes found at www.leg.wa.gov

41.34.070 Distribution options. (1) If the member retires, becomes disabled, or otherwise terminates employ-

ment, the balance in the member's account may be distributed in accordance with an option selected by the member either as a lump sum or pursuant to other options authorized by the department.

(2) If the member dies while in service, the balance of the member's account may be distributed in accordance with an option selected by the member either as a lump sum or pursuant to other options authorized by the department. The distribution is as follows:

(a) The distribution shall be made to such person or persons as the member shall have nominated by written designation duly executed and filed with the department;

(b) If there be no such designated person or persons still living at the time of the member's death, the balance of the member's account in the retirement system, less any amount identified as owing to an obligee upon withdrawal of such account balance pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation;

(c) If there is no surviving spouse, then to such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(d) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(3) If a member has a terminal illness and terminates from employment, the member may choose to have the balance in the member's account distributed as a lump sum payment based on the most recent valuation in order to expedite the distribution. The department shall make this payment within ten working days after receipt of notice of termination of employment, documentation verifying the terminal illness, and an application for payment.

(4) The distribution under subsections (1), (2), or (3) of this section shall be less any amount identified as owing to an obligee upon withdrawal pursuant to a court order filed under RCW 41.50.670. [2010 1st sp.s. c 7 § 33; 2005 c 327 § 3; 1998 c 117 § 1; 1995 c 239 § 207.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Additional notes found at www.leg.wa.gov

41.34.080 Benefits exempt from taxation, garnishment, other processes of law—Exceptions. (1) Subject to subsections (2) and (3) of this section, the right of a person to a pension, an annuity, a retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the various funds created by chapter 239, Laws of 1995; chapter 341, Laws of 1998; and chapter 247, Laws of 2000 and all moneys and investments and income thereof, is hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2) This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions

therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and that has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department. This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law. [2012 c 159 § 23; 2000 c 247 § 405; 1998 c 341 § 304; 1995 c 239 § 208.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Additional notes found at www.leg.wa.gov

41.34.090 Administration of chapter—Construction—Severability. (1) The retirement plan created by this chapter shall be administered so as to comply with the federal Internal Revenue Code, Title 26 U.S.C., and specifically with plan qualification requirements imposed on governmental plans by section 401(a) of the Internal Revenue Code.

(2) Any section or provision of this chapter which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy requirements imposed by section 401(a) of the Internal Revenue Code.

(3) If any section or provision of this chapter is found to be in conflict with the plan qualification requirements for governmental plans in section 401(a) of the Internal Revenue Code, the conflicting part of this chapter is hereby inoperative solely to the extent of the conflict, and such finding shall not affect the operation of the remainder of this chapter. [1995 c 239 § 209.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Additional notes found at www.leg.wa.gov

41.34.100 Benefits not contractual right until date specified. (1) The benefits provided pursuant to chapter 239, Laws of 1995 are not provided to employees as a matter of contractual right prior to July 1, 1996. The legislature retains the right to alter or abolish these benefits at any time prior to July 1, 1996.

(2) The benefits provided pursuant to chapter 341, Laws of 1998 are not provided to employees as a matter of contractual right prior to September 1, 2000. The legislature retains the right to alter or abolish these benefits at any time prior to September 1, 2000.

(3) The benefits provided pursuant to chapter 247, Laws of 2000 are not provided to employees as a matter of contractual right prior to March 1, 2002. The legislature retains the right to alter or abolish these benefits at any time prior to March 1, 2002. [2000 c 247 § 406; 1998 c 341 § 305; 1995 c 239 § 325.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Additional notes found at www.leg.wa.gov

41.34.110 Reentry. A member who separates from service and then reestablishes membership may restore contributions to the member account. [1996 c 39 § 12.]

Additional notes found at www.leg.wa.gov

41.34.120 Money, property, income held in trust. All moneys in members' accounts, all property and rights purchased therewith, and all income attributable thereto, shall be held in trust by the state investment board, as set forth under RCW 43.33A.030, for the exclusive benefit of the members and their beneficiaries. [1998 c 341 § 306.]

Additional notes found at www.leg.wa.gov

41.34.130 Self-directed investment—Default investment options—Duties of state investment board and department—Expenses—Recordkeeping. (1) The state investment board has the full authority to invest all self-directed investment moneys in accordance with RCW 43.84.150 and 43.33A.140, the default investment options set forth in RCW 41.34.060(1), and cumulative investment directions received pursuant to RCW 41.34.060 and this section. In carrying out this authority the state investment board, after consultation with the department regarding any recommendations made pursuant to RCW 41.50.088(1)(b), shall provide a set of options for members to choose from for self-directed investment.

(2) All investment and operating costs of the state investment board associated with making self-directed investments or the default investment options set forth in RCW 41.34.060(1) shall be paid by members and recovered under procedures agreed to by the department and the state investment board pursuant to the principles set forth in RCW 43.33A.160 and 43.84.160. All other expenses caused by self-directed investment shall be paid by the member in accordance with rules established by the department under RCW 41.50.088. With the exception of these expenses, all earnings from self-directed investments shall accrue to the member's account.

(3)(a)(i) The department shall keep or cause to be kept full and adequate accounts and records of each individual member's account. The department shall account for and report on the investment of defined contribution assets or may enter into an agreement with the state investment board for such accounting and reporting under this chapter.

(ii) The department's duties related to individual participant accounts include conducting the activities of trade instruction, settlement activities, and direction of cash movement and related wire transfers with the custodian bank and outside investment firms.

(iii) The department has sole responsibility for contracting with any recordkeepers for individual participant

accounts and shall manage the performance of recordkeepers under those contracts.

(b)(i) The department's duties under (a)(ii) of this subsection do not limit the authority of the state investment board to conduct its responsibilities for asset management and balancing of the deferred compensation funds.

(ii) The state investment board has sole responsibility for contracting with outside investment firms to provide investment management for the deferred compensation funds and shall manage the performance of investment managers under those contracts.

(c) The state treasurer shall designate and define the terms of engagement for the custodial banks. [2011 c 80 § 1; 2010 1st sp.s. c 7 § 34; 2001 c 181 § 3; 1998 c 341 § 307.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Additional notes found at www.leg.wa.gov

41.34.140 Liability for loss or deficiencies—Limitations. (1) A state board or commission, agency, or any officer, employee, or member thereof is not liable for any loss or deficiency resulting from member defined contribution investments selected, made, or required pursuant to RCW 41.34.060 (1), (2), or (4).

(2) Neither the department, nor director or any employee, nor the state investment board, nor any officer, employee, or member thereof is liable for any loss or deficiency resulting from a member investment in the default option pursuant to RCW 41.34.060(1) or reasonable efforts to implement investment directions pursuant to RCW 41.34.060 (1), (2), or (4).

(3) The state investment board, or any officer, employee, or member thereof is not liable with respect to any declared monthly unit valuations or crediting of rates of return, or any other exercise of powers or duties, including discretion, under RCW 41.34.060(3).

(4) The department, or any officer or employee thereof, is not liable for crediting rates of return which are consistent with the state investment board's declaration of monthly unit valuations pursuant to RCW 41.34.060(3). [2011 c 80 § 3; 2010 1st sp.s. c 7 § 35; 1999 c 265 § 2; 1998 c 341 § 308.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Additional notes found at www.leg.wa.gov

41.34.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 96.]

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

Chapter 41.35 RCW
WASHINGTON SCHOOL EMPLOYEES'
RETIREMENT SYSTEM

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Additional notes found at www.leg.wa.gov

PROVISIONS APPLICABLE TO PLAN 2 AND PLAN 3

41.35.005 Intent. The legislature recognizes that teachers and school district employees share the same educational work environment and academic calendar.

It is the intent of the legislature to achieve similar retirement benefits for all educational employees by transferring the membership of classified school employees in the public employees' retirement system plan 2 to the Washington school employees' retirement system plan 2. The transfer of membership to the Washington school employees' retirement system plan 2 is not intended to cause a diminution or expansion of benefits for affected members. It is enacted solely to provide public employees working under the same conditions with the same options for retirement planning.

As members of the Washington school employees' retirement system plan 2, classified employees will have the same opportunity to transfer to the Washington school employees' retirement system plan 3 as their certificated coworkers. The ability to transfer to the Washington school employees' retirement system plan 3 offers members a new public retirement system that balances flexibility with stability; provides increased employee control of investments and responsible protection of the public's investment in employee benefits; and encourages the pursuit of public sector careers without creating barriers to other public or private sector employment. [1998 c 341 § 1.]

41.35.010 Definitions. The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(3) "Adjustment ratio" means the value of index A divided by index B.

(4) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(5)(a) "Average final compensation" for plan 2 and plan 3 members means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may

not be used in the calculation of average final compensation except under RCW 41.40.710(2).

(b) In calculating average final compensation under (a) of this subsection, the department of retirement systems shall include any compensation forgone by a member during the 2011-2013 fiscal biennium as a result of reduced work hours, mandatory leave without pay, temporary layoffs, or reductions to current pay if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer. Reductions to current pay shall not include elimination of previously agreed upon future salary reductions.

(6) "Beneficiary" for plan 2 and plan 3 members means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(7) "Classified employee" means an employee of a school district or an educational service district who is not eligible for membership in the teachers' retirement system established under chapter 41.32 RCW.

(8)(a) "Compensation earnable" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States internal revenue code, but shall exclude nonmoney maintenance compensation and lump sum or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

(b) "Compensation earnable" for plan 2 and plan 3 members also includes the following actual or imputed payments, which are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement, which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided in this subsection, and the individual shall receive the equivalent service credit;

(ii) In any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(A) The compensation earnable the member would have received had such member not served in the legislature; or

(B) Such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under this (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions;

(iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(iv) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(v) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(vi) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(9) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(10) "Director" means the director of the department.

(11) "Eligible position" means any position that, as defined by the employer, normally requires five or more months of service a year for which regular compensation for at least seventy hours is earned by the occupant thereof. For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position.

(12) "Employee" or "employed" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

(13) "Employer," for plan 2 and plan 3 members, means a school district or an educational service district. Except as otherwise specifically provided in this chapter, "employer" does not include a government contractor. For purposes of this subsection, a "government contractor" is any entity, including a partnership, limited liability company, for-profit or nonprofit corporation, or person, that provides services pursuant to a contract with an employer. The determination whether an employer-employee relationship has been established is not based on the relationship between a government contractor and an employer, but is based solely on the relationship between a government contractor's employee and an employer under this chapter.

(14) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(15) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(16) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(17) "Index B" means the index for the year prior to index A.

(18) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (22) of this section.

(19) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

(20) "Member" means any employee included in the membership of the retirement system, as provided for in RCW 41.35.030.

(21) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earn-

ings on behalf of the member in the defined contribution portion of plan 3.

(22) "Membership service" means all service rendered as a member.

(23) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(24) "Plan 2" means the Washington school employees' retirement system plan 2 providing the benefits and funding provisions covering persons who first became members of the public employees' retirement system on and after October 1, 1977, and transferred to the Washington school employees' retirement system under RCW 41.40.750.

(25) "Plan 3" means the Washington school employees' retirement system plan 3 providing the benefits and funding provisions covering persons who first became members of the system on and after September 1, 2000, or who transfer from plan 2 under RCW 41.35.510.

(26) "Regular interest" means such rate as the director may determine.

(27) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(28) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(29) "Retirement allowance" for plan 2 and plan 3 members means monthly payments to a retiree or beneficiary as provided in this chapter.

(30) "Retirement system" means the Washington school employees' retirement system provided for in this chapter.

(31) "Separation from service" occurs when a person has terminated all employment with an employer.

(32) "Service" for plan 2 and plan 3 members means periods of employment by a member in an eligible position or positions for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month except as provided in RCW 41.35.180. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

(a) Service in any state elective position shall be deemed to be full-time service.

(b) A member shall receive a total of not more than twelve service credit months of service for such calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(c) For purposes of plan 2 and 3 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(i) Less than eleven days equals one-quarter service credit month;

(ii) Eleven or more days but less than twenty-two days equals one-half service credit month;

(iii) Twenty-two days equals one service credit month;

(iv) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month; and

(v) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(33) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(34) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(35) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(36) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(37) "State treasurer" means the treasurer of the state of Washington.

(38) "Substitute employee" means a classified employee who is employed by an employer exclusively as a substitute for an absent employee. [2012 c 236 § 4. Prior: 2011 1st sp.s. c 5 § 3; 2003 c 157 § 1; 2001 c 180 § 3; 1998 c 341 § 2.]

Purpose—Application—2012 c 236: See note following RCW 41.26.030.

Effective date—2011 1st sp.s. c 5: See note following RCW 41.26.030.

41.35.015 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 97.]

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

41.35.020 System created—Administration. A retirement system is hereby created for the employees of school districts or educational service districts. The administration and management of the retirement system, the responsibility for making effective the provisions of this chapter, and the authority to make all rules necessary therefor are hereby vested in the department. All such rules shall be governed by the provisions of chapter 34.05 RCW. This retirement system shall be known as the Washington school employees' retirement system. [1998 c 341 § 3.]

41.35.030 Membership. Membership in the retirement system shall consist of all regularly compensated classified

employees and appointive and elective officials of employers, as defined in this chapter, with the following exceptions:

- (1) Persons in ineligible positions;
- (2)(a) Persons holding elective offices or persons appointed directly by the governor: PROVIDED, That such persons shall have the option of applying for membership during such periods of employment: AND PROVIDED FURTHER, That any persons holding or who have held elective offices or persons appointed by the governor who are members in the retirement system and who have, prior to becoming such members, previously held an elective office, and did not at the start of such initial or successive terms of office exercise their option to become members, may apply for membership to be effective during such term or terms of office, and shall be allowed to establish the service credit applicable to such term or terms of office upon payment of the employee contributions therefor by the employee with interest as determined by the director and employer contributions therefor by the employer or employee with interest as determined by the director: AND PROVIDED FURTHER, That all contributions with interest submitted by the employee under this subsection shall be placed in the employee's individual account in the employee's savings fund and be treated as any other contribution made by the employee, with the exception that any contributions submitted by the employee in payment of the employer's obligation, together with the interest the director may apply to the employer's contribution, shall not be considered part of the member's annuity for any purpose except withdrawal of contributions;
- (b) A member holding elective office who has elected to apply for membership pursuant to (a) of this subsection and who later wishes to be eligible for a retirement allowance shall have the option of ending his or her membership in the retirement system. A member wishing to end his or her membership under this subsection must file on a form supplied by the department a statement indicating that the member agrees to irrevocably abandon any claim for service for future periods served as an elected official. A member who receives more than fifteen thousand dollars per year in compensation for his or her elective service, adjusted annually for inflation by the director, is not eligible for the option provided by this subsection (2)(b);
- (3) Retirement system retirees: PROVIDED, That following reemployment in an eligible position, a retiree may elect to prospectively become a member of the retirement system if otherwise eligible;
- (4) Persons enrolled in state-approved apprenticeship programs, authorized under chapter 49.04 RCW, and who are employed by employers to earn hours to complete such apprenticeship programs, if the employee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or if the employee is a member of a Taft-Hartley retirement plan;
- (5) Persons rendering professional services to an employer on a fee, retainer, or contract basis or when the income from these services is less than fifty percent of the gross income received from the person's practice of a profession;
- (6) Substitute employees, except for the purposes of the purchase of service credit under RCW 41.35.033. Upon the

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return or termination of the absent employee a substitute employee is replacing, that substitute employee shall no longer be ineligible under this subsection;

(7) Employees who (a) are not citizens of the United States, (b) do not reside in the United States, and (c) perform duties outside of the United States;

(8) Employees who (a) are not citizens of the United States, (b) are not covered by chapter 41.48 RCW, (c) are not excluded from membership under this chapter or chapter 41.04 RCW, (d) are residents of this state, and (e) make an irrevocable election to be excluded from membership, in writing, which is submitted to the director within thirty days after employment in an eligible position;

(9) Employees who are citizens of the United States and who reside and perform duties for an employer outside of the United States: PROVIDED, That unless otherwise excluded under this chapter or chapter 41.04 RCW, the employee may apply for membership (a) within thirty days after employment in an eligible position and membership service credit shall be granted from the first day of membership service, and (b) after this thirty-day period, but membership service credit shall be granted only if payment is made for the non-credited membership service under RCW 41.50.165(2), otherwise service shall be from the date of application; and

(10) Employees who are removed from membership under RCW 41.35.683 or 41.35.423. [2005 c 131 § 9; 2003 c 157 § 2; 1998 c 341 § 4.]

Effective date—2005 c 131: See note following RCW 41.40.823.

41.35.033 Membership—Service credit—Substitute employees—Rules. (1) A substitute employee who works five or more months of seventy or more hours for which earnable compensation is paid in a school year may apply to the department to establish membership after the end of the school year during which the work was performed. The application must:

(a) Include a list of the employers the substitute employee has worked for;

(b) Include proof of hours worked and compensation earned; and

(c) Be made prior to retirement.

(2) Substitute employees who are members may apply to the department to receive service after the end of the last day of instruction of the school year during which the service was performed. The application must:

(a) Include a list of the employers the substitute employee has worked for;

(b) Include proof of hours worked and compensation earned; and

(c) Be made prior to retirement.

(3) If the department accepts the substitute employee's application for service credit, the substitute employee may obtain service credit by paying the required contribution to the retirement system. The employer must pay the required employer contribution upon notice from the department that the substitute employee has made contributions under this section.

(4) The department shall charge interest prospectively on employee contributions that are submitted under this section more than six months after the end of the school year, as defined in *RCW 28A.150.040, for which the substitute

employee is seeking service credit. The interest rate charged to the employee shall take into account interest lost on employer contributions delayed for more than six months after the end of the school year.

(5) Each employer shall quarterly notify each substitute employee it has employed during the school year of the number of hours worked by, and the compensation paid to, the substitute employee.

(6) If a substitute employee, as defined in RCW 41.35.010(38), applies to the department under this section for credit for earnable compensation earned from an employer, the substitute employee must make contributions for all periods of service for that employer.

(7) The department shall adopt rules implementing this section. [2003 c 157 § 3.]

***Reviser's note:** RCW 28A.150.040 was repealed by 2009 c 548 § 710, effective September 1, 2011.

41.35.035 Membership in system—Charter school employers and employees. This section designates charter schools established under chapter 28A.710 RCW as employers and charter school employees as members, and applies only if the department of retirement systems receives determinations from the internal revenue service and the United States department of labor that participation does not jeopardize the status of these retirement systems as governmental plans under the federal employees' retirement income security act and the internal revenue code. [2013 c 2 § 304 (Initiative Measure No. 1240, approved November 6, 2012).]

Findings—2013 c 2 (Initiative Measure No. 1240): See RCW 28A.710.005.

41.35.040 Nonelective position held for at least nine months—Deemed to be eligible position, when. Any person who has been employed in a nonelective position for at least nine months and who has made member contributions required under this chapter throughout such period, shall be deemed to have been in an eligible position during such period of employment. [1998 c 341 § 5.]

41.35.060 Reduction of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Reestablishment of membership. (1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every eight hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred sixty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) A retiree who has satisfied the break in employment requirement of subsection (1) of this section may work up to eight hundred sixty-seven hours per calendar year in an eligible position, as defined in RCW 41.32.010, 41.35.010, 41.37.010, or 41.40.010, or as a firefighter or law enforcement officer, as defined in RCW 41.26.030, or in a position

covered by annuity and retirement income plans offered by institutions of higher education pursuant to RCW 28B.10.400, without suspension of his or her benefit.

(3) If the retiree opts to reestablish membership under RCW 41.35.030, he or she terminates his or her retirement status and becomes a member. Retirement benefits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible in accordance with RCW 41.35.420 or 41.35.680. However, if the right to retire is exercised to become effective before the member has rendered two uninterrupted years of service, the retirement formula and survivor options the member had at the time of the member's previous retirement shall be reinstated. [2011 1st sp.s. c 47 § 15; 2004 c 242 § 64; 2001 2nd sp.s. c 10 § 11; 1998 c 341 § 7.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Effective date—2004 c 242: See RCW 41.37.901.

Additional notes found at www.leg.wa.gov

41.35.070 Duty disability retirement recipients—Continued service credit. Those members subject to this chapter who became disabled in the line of duty and who received or are receiving benefits under Title 51 RCW or a similar federal workers' compensation program shall receive or continue to receive service credit subject to the following:

(1) No member may receive more than one month's service credit in a calendar month.

(2) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(3) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(4) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(5) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred. If contribution payments are made retroactively, interest shall be charged at the rate set by the director on both employee and employer contributions. No service credit shall be granted until the employee contribution has been paid.

(6) The service and compensation credit shall not be granted for a period to exceed twenty-four consecutive months.

(7) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right. [2007 c 49 § 3; 1998 c 341 § 8.]

41.35.080 Members agree to deductions. The deductions from the compensation of members, provided for in RCW 41.35.430, shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for in this chapter and receipt in full for his or her salary or compensation, and payment, less the deductions, shall be a full and complete discharge and acquittance of all claims and

demands whatsoever for the services rendered by the person during the period covered by the payment, except as to benefits provided for under this chapter. [1998 c 341 § 9.]

41.35.090 Employer's contribution—Computation—Billing. (1) The director shall report to each employer the contribution rates required for the ensuing biennium or fiscal year, whichever is applicable.

(2) Beginning September 1, 1990, the amount to be collected as the employer's contribution shall be computed by applying the applicable rates established in chapter 41.45 RCW to the total compensation earnable of employer's members as shown on the current payrolls of the employer. Each employer shall compute at the end of each month the amount due for that month and the same shall be paid as are its other obligations.

(3) In the event of failure, for any reason, of an employer other than a political subdivision of the state to have remitted amounts due for membership service of any of the employer's members rendered during a prior biennium, the director shall bill such employer for such employer's contribution together with such charges as the director deems appropriate in accordance with RCW 41.50.120. Such billing shall be paid by the employer as, and the same shall be, a proper charge against any moneys available or appropriated to such employer for payment of current biennial payrolls. [1998 c 341 § 10.]

41.35.100 Exemption from taxation and judicial process—Exceptions—Assignability—Deductions authorized. (1) Subject to subsections (2) and (3) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, are hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2) This section does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and which has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department. This section also does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(3) Subsection (1) of this section does not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits

assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law. [2012 c 159 § 24; 1998 c 341 § 11.]

41.35.110 Disability retirement—Criminal conduct. A member shall not receive a disability retirement benefit under RCW 41.35.440 or 41.35.690 if the disability is the result of criminal conduct by the member committed after April 21, 1997. [1998 c 341 § 12.]

41.35.115 Death benefit—Course of employment—Occupational disease or infection. (1) A one hundred fifty thousand dollar death benefit shall be paid to the member's estate, or such person or persons, trust or organization as the member has nominated by written designation duly executed and filed with the department. If no such designated person or persons are still living at the time of the member's death, the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's legal representatives.

(2) The benefit under this section shall be paid only where death occurs as a result of (a) injuries sustained in the course of employment; or (b) an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050. [2007 c 487 § 4; 2003 c 402 § 3.]

41.35.120 False statements—Penalty. Any person who knowingly makes any false statements, or falsifies or permits to be falsified any record or records of this retirement system in any attempt to defraud the retirement system as a result of such act, is guilty of a gross misdemeanor. [1998 c 341 § 13.]

41.35.130 Transfer of service credit from statewide city employees' retirement system. (1) Any person who was a member of the statewide city employees' retirement system governed by chapter 41.44 RCW and who was never reemployed by an employer as defined in RCW 41.40.010 and who is employed by an employer as defined in RCW 41.35.010, may, in a writing filed with the director, elect to:

(a) Transfer to this retirement system all service currently credited under chapter 41.44 RCW;

(b) Reestablish and transfer to this retirement system all service which was previously credited under chapter 41.44 RCW but which was canceled by discontinuance of service and withdrawal of accumulated contributions as provided in RCW 41.44.190. The service may be reestablished and transferred only upon payment by the member to the employees' savings fund of this retirement system of the amount withdrawn plus interest thereon from the date of withdrawal until the date of payment at a rate determined by the director. No

additional payments are required for service credit described in this subsection if already established under this chapter; and

(c) Establish service credit for the initial period of employment not to exceed six months, prior to establishing membership under chapter 41.44 RCW, upon payment in full by the member of the total employer's contribution to the benefit account fund of this retirement system that would have been made under this chapter when the initial service was rendered. The payment shall be based on the first month's compensation earnable as a member of the statewide city employees' retirement system and as defined in *RCW 41.44.030(13). However, a person who has established service credit under **RCW 41.40.010(13) (c) or (d) shall not establish additional credit under this subsection nor may anyone who establishes credit under this subsection establish any additional credit under **RCW 41.40.010(13) (c) or (d). No additional payments are required for service credit described in this subsection if already established under this chapter.

(2) The written election must be filed and the payments must be completed in full within one year after employment by an employer.

(3) Upon receipt of the written election and payments required by subsection (1) of this section from any retiree described in subsection (1) of this section, the department shall recompute the retiree's allowance in accordance with this section and shall pay any additional benefit resulting from such recomputation retroactively to the date of retirement from the system governed by this chapter.

(4) Any person who was a member of the statewide city employees' retirement system under chapter 41.44 RCW and also became a member of the public employees' retirement system established under chapter 41.40 RCW or the Washington school employees' retirement system established under this chapter, and did not make the election under RCW 41.40.058 or subsection (1) of this section because he or she was not a member of the public employees' retirement system prior to July 27, 1987, or did not meet the time limitations of RCW 41.40.058 or subsection (2) of this section, may elect to do any of the following:

(a) Transfer to this retirement system all service currently credited under chapter 41.44 RCW;

(b) Reestablish and transfer to this retirement system all service that was previously credited under chapter 41.44 RCW but was canceled by discontinuance of service and withdrawal of accumulated contributions as provided in RCW 41.44.190; and

(c) Establish service credit for the initial period of employment not to exceed six months, prior to establishing membership under chapter 41.44 RCW.

To make the election or elections, the person must pay the amount required under RCW 41.50.165(2) prior to retirement from this retirement system. [1998 c 341 § 14.]

Reviser's note: *(1) RCW 41.44.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (13) to subsection (10).

***(2) RCW 41.40.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (13) to subsection (23).

41.35.140 Hearing prior to appeal required—Notice.

Any person aggrieved by any decision of the department affecting his or her legal rights, duties, or privileges must, before he or she appeals to the courts, file with the director by

mail or personally within sixty days from the day the decision was communicated to the person, a notice for a hearing before the director's designee. The notice of hearing shall set forth in full detail the grounds upon which the person considers the decision unjust or unlawful and shall include every issue to be considered by the department, and it must contain a detailed statement of facts upon which the person relies in support of the appeal. These persons shall be deemed to have waived all objections or irregularities concerning the matter on which the appeal is taken, other than those specifically set forth in the notice of hearing or appearing in the records of the retirement system. [1998 c 341 § 15.]

41.35.150 Hearing prior to appeal required—Conduct of hearing. Following its receipt of a notice for hearing in accordance with RCW 41.35.140, a hearing shall be held by the director or a duly authorized representative, in the county of the residence of the claimant at a time and place designated by the director. Such hearing shall be conducted and governed in all respects by the provisions of chapter 34.05 RCW. [1998 c 341 § 16.]

41.35.160 Judicial review in accordance with administrative procedure act. Judicial review of any final decision and order by the director is governed by the provisions of chapter 34.05 RCW. [1998 c 341 § 17.]

41.35.170 Appeal—No bond required. No bond of any kind shall be required of a claimant appealing to the superior court, the court of appeals, or the supreme court from a finding of the department affecting the claimant's right to retirement or disability benefits. [1998 c 341 § 18.]

41.35.180 Service credit—Computation. (1) Except for any period prior to the member's employment in an eligible position, a plan 2 or plan 3 member who is employed by a school district or districts or an educational service district:

(a) Shall receive a service credit month for each month of the period from September through August of the following year if he or she is employed in an eligible position, earns compensation earnable for eight hundred ten hours or more during that period, and is employed during nine months of that period;

(b) Who earns earnable compensation in an eligible position during the period from September through August, except under (a) of this subsection, shall receive service credit according to one of the following methods, whichever provides the most service credit to the member:

(i) If a member in an eligible position for each month of the period from September through August of the following year does not meet the hours requirements of (a) of this subsection, the member is entitled to one-half service credit month for each month of the period if he or she earns earnable compensation for at least six hundred thirty hours but less than eight hundred ten hours during that period, and is employed nine months of that period;

(ii) A member employed in an eligible position for at least five months of a six-month period between September through August of the following year who earns earnable compensation for six hundred thirty or more hours within the six-month period will receive a maximum of six service

credit months for the school year, recorded as one service credit month for each month of the six-month period;

(iii) In all other instances, a member in an eligible position is entitled to service credit months as follows:

(A) One service credit month for each month in which compensation is earned for ninety or more hours;

(B) One-half service credit month for each month in which compensation is earned for at least seventy hours but less than ninety hours; and

(C) One-quarter service credit month for each month in which compensation is earned for less than seventy hours.

(2) The department shall adopt rules implementing this section. [2008 c 204 § 2; 1998 c 341 § 19.]

41.35.1801 Prior service—One-half service credit.

(1) By no later than December 31, 2010, the department shall recalculate service credit for periods of qualifying prior service by an eligible member, as provided for in this section.

(2) An eligible member is a member who is active in the retirement system and who earns service credit after June 10, 2010, and before September 1, 2010.

(3) A qualifying period of prior service is a school year prior to January 1, 1987, in which the member:

(a) Was employed in an eligible position by a school district or districts, educational service district, the state school for the deaf, the state school for the blind, an institution of higher education, or a community college;

(b) Earned earnable compensation for at least six hundred thirty hours as determined by the department;

(c) Received less than six months of service credit; and

(d) Has not withdrawn service credit for the school year or has restored any withdrawn service credit for the school year.

(4) The department shall recalculate service credit for qualifying periods of prior service for an eligible member as follows:

(a) The member shall receive one-half service credit month for each month of the period from September through August of the following year if he or she earned earnable compensation during that period for at least six hundred thirty hours as determined by the department, and was employed nine months of that period; and

(b) A member's service credit shall not be reduced under this section for a qualifying period of prior service. [2010 c 103 § 1.]

41.35.183 Purchase of additional service credit—

Costs—Rules. (1) A member eligible to retire under RCW 41.35.420 or 41.35.680 may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers

comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service and shall be used exclusively to provide the member with a monthly annuity that is paid in addition to the member's retirement allowance. [2006 c 214 § 3.]

Effective date—2006 c 214: See note following RCW 41.40.034.

41.35.190 Effect of certain accumulated vacation leave on retirement benefits. RCW 43.01.044 shall not result in any increase in retirement benefits. The rights extended to state officers and employees under RCW 43.01.044 are not intended to and shall not have any effect on retirement benefits under this chapter. [1998 c 341 § 20.]

41.35.200 Benefit calculation—Limitation. (1) The annual compensation taken into account in calculating retiree benefits under this system shall not exceed the limits imposed by section 401(a)(17) of the federal internal revenue code for qualified trusts.

(2) The department shall adopt rules as necessary to implement this section. [1998 c 341 § 21.]

41.35.210 Post-retirement cost-of-living. Beginning July 1, 1979, and every year thereafter, the department shall determine the following information for each retired member or beneficiary whose retirement allowance has been in effect for at least one year:

(1) The original dollar amount of the retirement allowance;

(2) The index for the calendar year prior to the effective date of the retirement allowance, to be known as "index A";

(3) The index for the calendar year prior to the date of determination, to be known as "index B"; and

(4) The ratio obtained when index B is divided by index A.

The value of the ratio obtained shall be the annual adjustment to the original retirement allowance and shall be applied beginning with the July payment. In no event, however, shall the annual adjustment:

(a) Produce a retirement allowance which is lower than the original retirement allowance;

(b) Exceed three percent in the initial annual adjustment; or

(c) Differ from the previous year's annual adjustment by more than three percent.

For the purposes of this section, "index" means, for any calendar year, that year's average consumer price index—Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor. [1998 c 341 § 22.]

41.35.220 Options for payment of retirement allowances—Court-approved property settlement. (1) Upon

retirement for service as prescribed in RCW 41.35.420 or 41.35.680 or retirement for disability under RCW 41.35.440 or 41.35.690, a member shall elect to have the retirement allowance paid pursuant to one of the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life.

(i) For members of plan 2, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(ii) For members of plan 3, upon the death of the retired member, the member's benefits shall cease.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments

pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a non-spouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(4) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member of plan 2 who meets the length of service requirements of RCW 41.35.420, or a member of plan 3 who meets the length of service requirements of RCW 41.35.680(1), and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the ages provided in RCW 41.35.420(1) for members of plan 2, or RCW 41.35.680(1) for members of plan 3, and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (3) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) Any benefit distributed pursuant to *chapter 41.31A RCW after the date of the dissolution order creating separate benefits for a member and nonmember ex spouse shall be paid solely to the member.

(d) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution. [2002 c 158 § 11; 2000 c 186 § 6; 1998 c 341 § 23.]

*Reviser's note: Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

Additional notes found at www.leg.wa.gov

41.35.230 Suspension of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Exceptions—Reinstatement. (1) Except as provided in RCW 41.35.060, no retiree under the provisions of plan 2 shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.35.010, 41.40.010, 41.37.010, or 41.32.010, or as a law enforcement officer or firefighter as defined in RCW 41.26.030, or in a position covered by annuity and retirement income plans offered by institutions of higher education pursuant to RCW 28B.10.400, except that a retiree who ends his or her membership in the retirement system pursuant to RCW 41.40.023(3)(b) is not subject to this section if the retiree's only employment is as an elective official.

(2) If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(3) The department shall adopt rules implementing this section. [2011 1st sp.s. c 47 § 16; 2004 c 242 § 56; 1998 c 341 § 24.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Effective date—2004 c 242: See RCW 41.37.901.

41.35.399 Provisions applicable to plan 2 and plan 3. RCW 41.35.005 through 41.35.230 apply to members of plan 2 and plan 3. [1998 c 341 § 25.]

PLAN 2

41.35.400 Computation of retirement allowance. A member of the retirement system shall receive a retirement allowance equal to two percent of such member's average final compensation for each service credit year of service. [1998 c 341 § 101.]

41.35.410 Lump sum retirement allowance—Reentry—Reinstatement of service. (1) The director may pay a member eligible to receive a retirement allowance or the member's beneficiary, subject to the provisions of subsection (5) of this section, a lump sum payment in lieu of a monthly benefit if the initial monthly benefit computed in accordance with RCW 41.35.400 would be less than fifty dollars. The lump sum payment shall be the greater of the actuarial equivalent of the monthly benefits or an amount equal to the individual's accumulated contributions plus accrued interest.

(2) A retiree or a beneficiary, subject to the provisions of subsection (5) of this section, who is receiving a regular monthly benefit of less than fifty dollars may request, in writing, to convert from a monthly benefit to a lump sum payment. If the director approves the conversion, the calculation of the actuarial equivalent of the total estimated regular ben-

efit will be computed based on the beneficiary's age at the time the benefit initially accrued. The lump sum payment will be reduced to reflect any payments received on or after the initial benefit accrual date.

(3) Persons covered under the provisions of RCW 41.40.625 or subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to rereading, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(4) If a member fails to meet the time limitations under subsection (3) of this section, reinstatement of all previous service will occur if the member pays the amount required under RCW 41.50.165(2). The amount, however, shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(5) Only persons entitled to or receiving a service retirement allowance under RCW 41.35.400 or an earned disability allowance under RCW 41.35.440 qualify for participation under this section.

(6) It is the intent of the legislature that any member who receives a settlement under this section shall be deemed to be retired from this system. [1998 c 341 § 102.]

41.35.420 Retirement eligibility. (1) **NORMAL RETIREMENT.** Any member with at least five service credit years who has attained at least age sixty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.400.

(2) **EARLY RETIREMENT.** Any member who has completed at least twenty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.400, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(3) **ALTERNATE EARLY RETIREMENT.**

(a) Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.400, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(b) On or after September 1, 2008, any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.400, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced as follows:

Retirement Age	Percent Reduction
55	20%
56	17%
57	14%
58	11%
59	8%
60	5%
61	2%
62	0%
63	0%
64	0%

Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of RCW 41.35.060(2) until the retired member has reached sixty-five years of age. For purposes of this subsection, employment with an employer also includes any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of RCW 41.35.230(1).

The subsidized reductions for alternate early retirement in this subsection as set forth in section 6, chapter 491, Laws of 2007 were intended by the legislature as replacement benefits for gain-sharing. Until there is legal certainty with respect to the repeal of *chapter 41.31A RCW, the right to retire under this subsection is noncontractual, and the legislature reserves the right to amend or repeal this subsection. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, eligible members may still retire under this subsection, and upon receipt of the first installment of a retirement allowance computed under this subsection, the resulting benefit becomes contractual for the recipient. If the repeal of *chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then retirement benefits for any member who has completed at least thirty service credit years and has attained age fifty-five but has not yet received the first installment of a retirement allowance under this subsection shall be computed using the reductions in (a) of this subsection.

(c) Members who first become employed by an employer in an eligible position on or after May 1, 2013, are not eligible for the alternate early retirement provisions of (a) or (b) of this subsection. Any member who first becomes employed by an employer in an eligible position on or after May 1, 2013, and has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.400, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by five percent per year to reflect the difference in the number of years between age at retirement and

the attainment of age sixty-five. [2012 1st sp.s. c 7 § 3; 2007 c 491 § 6; 2000 c 247 § 905; 1998 c 341 § 103.]

*Reviser's note: Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

Benefits not contractual right until September 1, 2008—2007 c 491: See note following RCW 41.32.765.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

Additional notes found at www.leg.wa.gov

41.35.423 Member with terminal illness—Removal from system. (1) Upon application of the member, a member who is diagnosed with a terminal illness shall be removed from the system subject to the following conditions:

(a) That the medical adviser, after a medical examination of the member made by or under the direction of the medical adviser, has certified in writing that the member has a terminal illness with a life expectancy of five or fewer years; and

(b) That the director concurs in the recommendation of the medical adviser.

(2) Members removed from the system shall not make contributions and shall not accumulate additional service credit.

(3) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to this benefit not granted prior to that amendment or repeal. [2005 c 131 § 6.]

Effective date—2005 c 131: See note following RCW 41.40.823.

41.35.430 Employer and member contribution rates. The required contribution rates to the retirement system for both members and employers shall be established by the director from time to time as may be necessary upon the advice of the state actuary. The state actuary shall use the aggregate actuarial cost method to calculate contribution rates. The employer contribution rate calculated under this section shall be used only for the purpose of determining the amount of employer contributions to be deposited in the plan 2 fund from the total employer contributions collected under RCW 41.35.090.

Contribution rates required to fund the costs of the retirement system shall always be equal for members and employers, except as herein provided. Any adjustments in contribution rates required from time to time for future costs shall likewise be shared equally by the members and employers.

Any increase in the contribution rate required as the result of a failure of an employer to make any contribution required by this section shall be borne in full by the employer not making the contribution.

The director shall notify all employers of any pending adjustment in the required contribution rate and such increase shall be announced at least thirty days prior to the effective date of the change.

Members contributions required by this section shall be deducted from the members compensation earnable each payroll period. The members contribution and the employers contribution shall be remitted directly to the department within fifteen days following the end of the calendar month during which the payroll period ends. [1998 c 341 § 104.]

41.35.440 Earned disability allowance—Disposition upon death of recipient. (1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the department upon recommendation of the department shall be eligible to receive an allowance under the provisions of RCW 41.35.400 through 41.35.599. The member shall receive a monthly disability allowance computed as provided for in RCW 41.35.400 and shall have this allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

Any member who receives an allowance under the provisions of this section shall be subject to comprehensive medical examinations as required by the department. If these medical examinations reveal that a member has recovered from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, the member shall cease to be eligible for the allowance.

(2) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or the person or persons, trust, or organization as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no designated person or persons still living at the time of the recipient's death, then to the surviving spouse, or, if there is no designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative. [1998 c 341 § 105.]

41.35.450 Application for and effective date of retirement allowances. Any member or beneficiary eligible to receive a retirement allowance under the provisions of RCW 41.35.420, 41.35.440, or 41.35.460 shall be eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members under the provisions of RCW 41.35.420 shall accrue from the first day of the calendar month immediately following such member's separation from employment.

(2) Retirement allowances paid to vested members no longer in service, but qualifying for such an allowance pursuant to RCW 41.35.420, shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members under the provisions of RCW 41.35.440 shall accrue from the first day of the calendar month immediately following such member's separation from employment for disability.

(4) Retirement allowances paid as death benefits under the provisions of RCW 41.35.460 shall accrue from the first day of the calendar month immediately following the member's death. [1998 c 341 § 106.]

41.35.460 Death benefits. (1) Except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system at the time of such member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court

order filed under RCW 41.50.670, shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 41.35.420, actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.35.220 and, except under subsection (4) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.35.420; if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance, share and share alike, calculated as herein provided making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To a person or persons, estate, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, or a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in

RCW 41.04.005, is not subject to an actuarial reduction under RCW 41.35.420. The member's retirement allowance is computed under RCW 41.35.400. [2009 c 226 § 8; 2003 c 155 § 4; 1998 c 341 § 107.]

Additional notes found at www.leg.wa.gov

41.35.470 Leaves of absence, military service. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.35.400 through 41.35.599.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The compensation earnable reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes both the plan 2 employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner; or

(b) If not within five years of resumption of service but prior to retirement, pay the amount required under RCW 41.50.165(2).

The contributions required under (a) of this subsection shall be based on the average of the member's compensation earnable at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services; and

(ii) The member makes the employee contributions required under RCW 41.35.430 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2); or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(b) Upon receipt of member contributions under (a)(ii), (d)(iii), or (e)(iii) of this subsection, or adequate proof under (a)(iv), (d)(iv), or (e)(iv) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.35.430 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii), (d)(iii), or (e)(iii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(d) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection. [2009 c 205 § 4; 2005 c 64 § 4; 1998 c 341 § 108.]

41.35.480 Vested membership. A member who separates or has separated after having completed at least five years of service may remain a member during the period of such member's absence from service for the exclusive purpose only of receiving a retirement allowance under the provisions of RCW 41.35.420 if such member maintains the member's accumulated contributions intact. [1998 c 341 § 109.]

41.35.490 Refund of contributions. A member who ceases to be an employee of an employer except by service or disability retirement may request a refund of the member's accumulated contributions. The refund shall be made within ninety days following the receipt of the request and notification of termination through the contribution reporting system by the employer; except that in the case of death, an initial payment shall be made within thirty days of receipt of request for such payment and notification of termination through the contribution reporting system by the employer. A member who files a request for refund and subsequently enters into employment with another employer prior to the refund being made shall not be eligible for a refund. The refund of accumulated contributions shall terminate all rights to benefits under RCW 41.35.400 through 41.35.599. [1998 c 341 § 110.]

41.35.500 Reentry. (1) A member, who had left service and withdrawn the member's accumulated contributions, shall receive service credit for such prior service if the member restores all withdrawn accumulated contributions

together with interest since the time of withdrawal as determined by the department.

The restoration of such funds must be completed within five years of the resumption of service or prior to retirement, whichever occurs first.

(2) If a member fails to meet the time limitations of subsection (1) of this section, the member may receive service credit destroyed by the withdrawn contributions if the amount required under RCW 41.50.165(2) is paid. [1998 c 341 § 111.]

41.35.510 Transfer to plan 3—Irrevocable option.

(1) Every plan 2 member employed by an employer in an eligible position has the option to make an irrevocable transfer to plan 3.

(2) All service credit in plan 2 shall be transferred to the defined benefit portion of plan 3.

(3) Any plan 2 member who wishes to transfer to plan 3 after February 28, 2001, may transfer during the month of January in any following year, provided that the member earns service credit for that month.

(4) The accumulated contributions in plan 2, less fifty percent of any contributions made pursuant to RCW 41.50.165(2) shall be transferred to the member's account in the defined contribution portion established in chapter 41.34 RCW, pursuant to procedures developed by the department and subject to RCW 41.34.090. Contributions made pursuant to RCW 41.50.165(2) that are not transferred to the member's account shall be transferred to the fund created in RCW 41.50.075(4), except that interest earned on all such contributions shall be transferred to the member's account.

(5) The legislature reserves the right to discontinue the right to transfer under this section.

(6) Anyone previously retired from plan 2 is prohibited from transferring to plan 3. [2002 c 26 § 7; 1998 c 341 § 114.]

41.35.599 Provisions applicable to plan 2. RCW 41.35.400 through 41.35.510 apply only to plan 2 members. [1998 c 341 § 112.]

PLAN 3

41.35.600 Provisions applicable to plan 3—Plan 3 elements. (1) RCW 41.35.600 through 41.35.720 apply only to plan 3 members.

(2) Plan 3 consists of two separate elements: (a) A defined benefit portion covered under this subchapter; and (b) a defined contribution portion covered under chapter 41.34 RCW.

(3) Unless otherwise specified, all references to "plan 3" in this subchapter refer to the defined benefit portion of plan 3. [1998 c 341 § 201.]

41.35.610 Choice of membership in plan 2 or plan 3.

(1) All classified employees who first become employed by an employer in an eligible position on or after July 1, 2007, shall have a period of ninety days to make an irrevocable choice to become a member of plan 2 or plan 3. At the end of ninety days, if the member has not made a choice to become a member of plan 2, he or she becomes a member of plan 3.

(2) For administrative efficiency, until a member elects to become a member of plan 3, or becomes a member of plan 3 by default under subsection (1) of this section, the member shall be reported to the department in plan 2, with member and employer contributions. Upon becoming a member of plan 3 by election or by default, all service credit shall be transferred to the member's plan 3 defined benefit, and all employee accumulated contributions shall be transferred to the member's plan 3 defined contribution account.

(3) The plan choice provision as set forth in section 7, chapter 491, Laws of 2007 was intended by the legislature as a replacement benefit for gain-sharing. Until there is legal certainty with respect to the repeal of *chapter 41.31A RCW, the right to plan choice under this section is noncontractual, and the legislature reserves the right to amend or repeal this section. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, all classified employees who first become employed by an employer in an eligible position on or after July 1, 2007, may choose either plan 2 or plan 3 under this section. If the repeal of *chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then all classified employees who first become employed by an employer in an eligible position on or after the date of such reinstatement shall be members of plan 3. [2007 c 491 § 7; 1998 c 341 § 202.]

***Reviser's note:** Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

Effective date—2007 c 491 §§ 1, 3, and 7: See note following RCW 41.32.835.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

41.35.612 Right to waive benefit—Irrevocable choice. Any member receiving or having received a distribution under chapter 41.34 RCW may make an irrevocable choice to waive all rights to a benefit under RCW 41.35.620 by notifying the department in writing of their intention. [2003 c 349 § 2.]

Additional notes found at www.leg.wa.gov

41.35.620 Computation of retirement allowance. (1) A member of the retirement system shall receive a retirement allowance equal to one percent of such member's average final compensation for each service credit year.

(2) The retirement allowance payable under RCW 41.35.680 to a member who separates after having completed at least twenty service credit years shall be increased by twenty-five one-hundredths of one percent, compounded for each month from the date of separation to the date that the retirement allowance commences. [1998 c 341 § 203.]

41.35.630 Additional payment. (1) Anyone who requests to transfer under RCW 41.35.510 before March 1, 2001, and establishes service credit for January 2001, shall

have their member account increased by one hundred thirty percent of:

(a) The member's public employees' retirement system plan 2 accumulated contributions as of January 1, 2000, less fifty percent of any payments made pursuant to RCW 41.50.165(2); or

(b) All amounts withdrawn after January 1, 2000, which are completely restored before March 1, 2001.

(2) If a member who requests to transfer dies before January 1, 2001, the additional payment provided by this section shall be paid to the member's estate, or the person or persons, trust, or organization the member nominated by written designation duly executed and filed with the department.

(3) The legislature reserves the right to modify or discontinue the right to an additional payment under this section for any plan 2 members who have not previously transferred to plan 3. [2000 c 230 § 1; 1998 c 341 § 204.]

Additional notes found at www.leg.wa.gov

41.35.640 Application for and effective date of retirement allowances. Any member or beneficiary eligible to receive a retirement allowance under the provisions of RCW 41.35.680, 41.35.690, or 41.35.710 is eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members shall accrue from the first day of the calendar month immediately following such member's separation from employment.

(2) Retirement allowances payable to eligible members no longer in service, but qualifying for such an allowance pursuant to RCW 41.35.680 shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members shall accrue from the first day of the calendar month immediately following such member's separation from employment for disability.

(4) Retirement allowances paid as death benefits shall accrue from the first day of the calendar month immediately following the member's death. [2003 c 294 § 5; 1998 c 341 § 205.]

41.35.650 Leaves of absence, military service. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years

service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes the contribution on behalf of the employer, plus interest, as determined by the department; and

(b) The member makes the employee contribution, plus interest, as determined by the department, to the defined contribution portion.

The contributions required shall be based on the average of the member's earnable compensation at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service if within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

The department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.35.720 for the period of military service, plus interest as determined by the department. Service credit under this subsection may be obtained only if the member makes the employee contribution to the defined contribution portion as determined by the department, or prior to retirement, the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

The contributions required shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(a) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under this subsection within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(b) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under this subsection within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection. [2009 c 205 § 5; 2005 c 64 § 5; 1998 c 341 § 206.]

41.35.660 Purchased service credit—Allocation. (1) Contributions on behalf of the employer paid by the employee to purchase plan 3 service credit shall be allocated to the defined benefit portion of plan 3 and shall not be refundable when paid to the fund described in RCW 41.50.075(4). Contributions on behalf of the employee shall be allocated to the member account. If the member fails to meet the statutory time limitations to purchase plan 3 service credit, it may be purchased under the provisions of RCW 41.50.165(2). One-half of the purchase payments under

RCW 41.50.165(2), plus interest, shall be allocated to the member's account.

(2) No purchased plan 3 membership service will be credited until all payments required of the member are made, with interest. Upon receipt of all payments owed by the member, the department shall bill the employer for any contributions, plus interest, required to purchase membership service. [1998 c 341 § 207.]

41.35.670 Lump sum payments—Reentry. (1) The director may pay a member eligible to receive a retirement allowance or the member's beneficiary a lump sum payment in lieu of a monthly benefit if the initial monthly benefit would be less than one hundred dollars. The one hundred dollar limit shall be increased annually as determined by the director. The lump sum payment shall be the actuarial equivalent of the monthly benefit.

(2) Persons covered under the provisions of subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to retiring again, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(3) Any member who receives a settlement under this section is deemed to be retired from this system. [1998 c 341 § 208.]

41.35.680 Retirement eligibility. (1) NORMAL RETIREMENT. Any member who is at least age sixty-five and who has:

(a) Completed ten service credit years; or

(b) Completed five service credit years, including twelve service credit months after attaining age forty-four; or

(c) Completed five service credit years by September 1, 2000, under the public employees' retirement system plan 2 and who transferred to plan 3 under RCW 41.35.510; shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.620.

(2) EARLY RETIREMENT. Any member who has attained at least age fifty-five and has completed at least ten years of service shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.620, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(3) ALTERNATE EARLY RETIREMENT.

(a) Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.620, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(b) On or after September 1, 2008, any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.620, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced as follows:

Retirement Age	Percent Reduction
55	20%
56	17%
57	14%
58	11%
59	8%
60	5%
61	2%
62	0%
63	0%
64	0%

Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of RCW 41.35.060(2) until the retired member has reached sixty-five years of age. For purposes of this subsection, employment with an employer also includes any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of RCW 41.35.230(1).

The subsidized reductions for alternate early retirement in this subsection as set forth in section 8, chapter 491, Laws of 2007 were intended by the legislature as replacement benefits for gain-sharing. Until there is legal certainty with respect to the repeal of *chapter 41.31A RCW, the right to retire under this subsection is noncontractual, and the legislature reserves the right to amend or repeal this subsection. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, eligible members may still retire under this subsection, and upon receipt of the first installment of a retirement allowance computed under this subsection, the resulting benefit becomes contractual for the recipient. If the repeal of *chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then retirement benefits for any member who has completed at least thirty service credit years and has attained age fifty-five but has not yet received the first installment of a retirement allowance under this subsection shall be computed using the reductions in (a) of this subsection.

(c) Members who first become employed by an employer in an eligible position on or after May 1, 2013, are not eligible for the alternate early retirement provisions of (a) or (b) of this subsection. Any member who first becomes employed by an employer in an eligible position on or after

May 1, 2013, and has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.620, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by five percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five. [2012 1st sp.s. c 7 § 4; 2007 c 491 § 8; 2006 c 33 § 2; 2000 c 247 § 906; 1998 c 341 § 209.]

***Reviser's note:** Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

Benefits not contractual right until September 1, 2008—2007 c 491: See note following RCW 41.32.765.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

Additional notes found at www.leg.wa.gov

41.35.683 Member with terminal illness—Removal from system. (1) Upon application of the member, a member who is diagnosed with a terminal illness shall be removed from membership in the system subject to the following conditions:

(a) That the medical adviser, after a medical examination of the member made by or under the direction of the medical adviser, has certified in writing that the member has a terminal illness with a life expectancy of five or fewer years; and

(b) That the director concurs in the recommendation of the medical adviser.

(2) Members removed from the system shall not make contributions toward a defined contribution account as defined in chapter 41.34 RCW and shall not accumulate additional service credit.

(3) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to this benefit not granted prior to that amendment or repeal. [2005 c 131 § 3.]

Effective date—2005 c 131: See note following RCW 41.40.823.

41.35.690 Earned disability allowance—Disposition upon death of recipient. (1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the department shall be eligible to receive an allowance under the provisions of plan 3. The member shall receive a monthly disability allowance computed as provided for in RCW 41.35.620 and shall have this allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

Any member who receives an allowance under the provisions of this section shall be subject to comprehensive medical examinations as required by the department. If these medical examinations reveal that a member has recovered from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, the member shall cease to be eligible for the allowance.

(2) If the recipient of a monthly retirement allowance under this section dies, any further benefit payments shall be conditioned by the payment option selected by the retiree as provided in RCW 41.35.220. [1998 c 341 § 210.]

(2014 Ed.)

41.35.700 Restored, purchased service credit under plan 2—Transfer to plan 3. (1) Any member who elects to transfer to plan 3 and has eligible unrestored withdrawn contributions in plan 2, may restore such contributions under the provisions of RCW 41.35.500 with interest as determined by the department. The restored plan 2 service credit will be automatically transferred to plan 3. Restoration payments will be transferred to the member account in plan 3. If the member fails to meet the time limitations of RCW 41.35.500, they may restore such contributions under the provisions of RCW 41.50.165(2). The restored plan 2 service credit will be automatically transferred to plan 3. One-half of the restoration payments under RCW 41.50.165(2) plus interest shall be allocated to the member's account.

(2) Any member who elects to transfer to plan 3 may purchase plan 2 service credit under RCW 41.35.500. Purchased plan 2 service credit will be automatically transferred to plan 3. Contributions on behalf of the employer paid by the employee shall be allocated to the defined benefit portion of plan 3 and shall not be refundable when paid to the fund described in RCW 41.50.075(4). Contributions on behalf of the employee shall be allocated to the member account. If the member fails to meet the time limitations of RCW 41.35.500, they may subsequently restore such contributions under the provisions of RCW 41.50.165(2). Purchased plan 2 service credit will be automatically transferred to plan 3. One-half of the payments under RCW 41.50.165(2), plus interest, shall be allocated to the member's account. [2002 c 26 § 6; 1998 c 341 § 211.]

41.35.710 Death benefits. (1) If a member dies prior to retirement, the surviving spouse or eligible child or children shall receive a retirement allowance computed as provided in RCW 41.35.620 actuarially reduced to reflect a joint and one hundred percent survivor option and, except under subsection (2) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.35.680.

If the surviving spouse who is receiving the retirement allowance dies leaving a child or children under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority.

If there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance, share and share alike. The allowance shall be calculated with the assumption that the age of the spouse and member were equal at the time of the member's death.

(2) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, or a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction under RCW 41.35.680. The member's retirement allowance is computed under RCW 41.35.620. [2009 c 226 § 9; 2003 c 155 § 5; 1998 c 341 § 212.]

Additional notes found at www.leg.wa.gov

41.35.720 Employer contribution rates. The required contribution rates to the retirement system for employers shall be established by the director from time to time as may be necessary upon the advice of the state actuary. The state actuary shall use the aggregate actuarial cost method to calculate contribution rates. The employer contribution rate calculated under this section shall be used only for the purpose of determining the amount of employer contributions to be deposited in the plan 2 fund from the total employer contributions collected under RCW 41.35.090.

Any increase in the contribution rate required as the result of a failure of an employer to make any contribution required by this section shall be borne in full by the employer not making the contribution.

The director shall notify all employers of any pending adjustment in the required contribution rate and such increase shall be announced at least thirty days prior to the effective date of the change.

The employer's contribution shall be remitted directly to the department within fifteen days following the end of the calendar month during which the payroll period ends. [1998 c 341 § 213.]

41.35.900 Benefits not contractual right until September 1, 2000. The benefits provided pursuant to chapter 341, Laws of 1998 are not provided to employees as a matter of contractual right prior to September 1, 2000. The legislature retains the right to alter or abolish these benefits at any time prior to September 1, 2000. [1998 c 341 § 713.]

Additional notes found at www.leg.wa.gov

41.35.901 Effective date—1998 c 341. Except for sections 303, 306 through 309, 404, 505, 507, 515, 701, 707, and 710 through 713 of this act, this act takes effect September 1, 2000. [1998 c 341 § 714.]

Chapter 41.37 RCW

WASHINGTON PUBLIC SAFETY EMPLOYEES' RETIREMENT SYSTEM

Sections

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41.37.900	Benefits not contractual right until July 1, 2006.
41.37.901	Effective date—2004 c 242.
41.37.902	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

41.37.005 Intent. It is the intent of the legislature to establish a separate public safety employees' retirement system for certain public employees whose jobs contain a high degree of physical risk to their own personal safety and who provide public protection of lives and property, but who are not eligible for membership in the law enforcement officers' and firefighters' retirement system. [2006 c 309 § 1; 2004 c 242 § 1.]

Effective date—2006 c 309: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 29, 2006]." [2006 c 309 § 6.]

41.37.010 Definitions. The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(3) "Adjustment ratio" means the value of index A divided by index B.

(4) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(5)(a) "Average final compensation" means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.37.290.

(b) In calculating average final compensation under (a) of this subsection, the department of retirement systems shall include:

(i) Any compensation forgone by a member employed by a state agency or institution during the 2009-2011 fiscal biennium as a result of reduced work hours, mandatory or voluntary leave without pay, temporary reduction in pay implemented prior to December 11, 2010, or temporary lay-

offs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer; and

(ii) Any compensation forgone by a member employed by the state or a local government employer during the 2011-2013 fiscal biennium as a result of reduced work hours, mandatory leave without pay, temporary layoffs, or reductions to current pay if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer. Reductions to current pay shall not include elimination of previously agreed upon future salary increases.

(6) "Beneficiary" means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(7)(a) "Compensation earnable" for members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States internal revenue code, but shall exclude non-money maintenance compensation and lump sum or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

(b) "Compensation earnable" for members also includes the following actual or imputed payments, which are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement, which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided in this subsection, and the individual shall receive the equivalent service credit;

(ii) In any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(A) The compensation earnable the member would have received had such member not served in the legislature; or

(B) Such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions;

(iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(iv) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.37.060;

(v) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(vi) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared

to report immediately for work, if the need arises, although the need may not arise.

(8) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(9) "Director" means the director of the department.

(10) "Eligible position" means any permanent, full-time position included in subsection (19) of this section.

(11) "Employee" or "employed" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

(12) "Employer" means the Washington state department of corrections, the Washington state parks and recreation commission, the Washington state gambling commission, the Washington state patrol, the Washington state department of natural resources, and the Washington state liquor control board; any county corrections department; any city corrections department not covered under chapter 41.28 RCW; and any public corrections entity created under RCW 39.34.030 by counties, cities not covered under chapter 41.28 RCW, or both. Except as otherwise specifically provided in this chapter, "employer" does not include a government contractor. For purposes of this subsection, a "government contractor" is any entity, including a partnership, limited liability company, for-profit or nonprofit corporation, or person, that provides services pursuant to a contract with an employer. The determination whether an employer-employee relationship has been established is not based on the relationship between a government contractor and an employer, but is based solely on the relationship between a government contractor's employee and an employer under this chapter.

(13) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(14) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(15) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(16) "Index B" means the index for the year prior to index A.

(17) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (10) of this section.

(18) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

(19) "Member" means any employee employed by an employer on a full-time basis:

(a) Who is in a position that requires completion of a certified criminal justice training course and is authorized by their employer to arrest, conduct criminal investigations, enforce the criminal laws of the state of Washington, and carry a firearm as part of the job;

(b) Whose primary responsibility is to ensure the custody and security of incarcerated or probationary individuals as a corrections officer, probation officer, or jailer;

(c) Who is a limited authority Washington peace officer, as defined in RCW 10.93.020, for an employer; or

(d) Whose primary responsibility is to supervise members eligible under this subsection.

(20) "Membership service" means all service rendered as a member.

(21) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(22) "Plan" means the Washington public safety employees' retirement system plan 2.

(23) "Regular interest" means such rate as the director may determine.

(24) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(25) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(26) "Retirement allowance" means monthly payments to a retiree or beneficiary as provided in this chapter.

(27) "Retirement system" means the Washington public safety employees' retirement system provided for in this chapter.

(28) "Separation from service" occurs when a person has terminated all employment with an employer.

(29) "Service" means periods of employment by a member on or after July 1, 2006, for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

(a) Service in any state elective position shall be deemed to be full-time service.

(b) A member shall receive a total of not more than twelve service credit months of service for such calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(30) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(31) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(32) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(33) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(34) "State treasurer" means the treasurer of the state of Washington. [2012 c 236 § 5. Prior: 2011 1st sp.s. c 5 § 4; 2011 c 68 § 1; prior: 2010 2nd sp.s. c 1 § 905; 2010 1st sp.s.

c 32 § 8; prior: 2007 c 492 § 11; 2007 c 294 § 1; 2006 c 309 § 2; 2005 c 327 § 4; 2004 c 242 § 2.]

Purpose—Application—2012 c 236: See note following RCW 41.26.030.

Effective date—2011 1st sp.s. c 5: See note following RCW 41.26.030.

Retroactive application—2011 c 68: "This act applies retroactively to any public corrections entity existing on or after January 1, 2011." [2011 c 68 § 2.]

Effective date—2010 2nd sp.s. c 1: See note following RCW 38.52.105.

Intent—Conflict with federal requirements—Effective date—2010 1st sp.s. c 32: See notes following RCW 42.04.060.

Effective date—2006 c 309: See note following RCW 41.37.005.

Effective date—2005 c 327 §§ 4-7: "Sections 4 through 7 of this act take effect July 1, 2006." [2005 c 327 § 12.]

41.37.015 System created—Administration. A retirement system is hereby created for public safety employees of the Washington state department of corrections, the Washington state parks and recreation commission, the Washington state gambling commission, the Washington state patrol, the Washington state liquor control board, county corrections departments, and city corrections departments not covered under chapter 41.28 RCW. The administration and management of the retirement system, the responsibility for making effective the provisions of this chapter, and the authority to make all rules necessary therefor are hereby vested in the department. All rules shall be governed by chapter 34.05 RCW. This retirement system shall be known as the Washington public safety employees' retirement system. [2004 c 242 § 3.]

41.37.020 Membership. Membership in the retirement system shall consist of all regularly compensated public safety employees who are members as defined in *RCW 41.37.010(5), with the following exceptions:

(1) Persons in ineligible positions;

(2)(a) Persons holding elective offices or persons appointed directly by the governor to statewide elective offices: PROVIDED, That such persons shall have the option of continuing membership during such periods of employment: AND PROVIDED FURTHER, That any persons holding or who have held elective offices or persons appointed by the governor who are members in the retirement system and who have, prior to becoming such members, previously held an elective office, and did not at the start of such initial or successive terms of office exercise their option to become members, may apply for membership to be effective during such term or terms of office, and shall be allowed to establish the service credit applicable to such term or terms of office upon payment of the employee contributions therefor by the employee with interest as determined by the director and employer contributions therefor by the employer or employee with interest as determined by the director: AND PROVIDED FURTHER, That all contributions with interest submitted by the employee under this subsection shall be placed in the employee's individual account in the employee's savings fund and be treated as any other contribution made by the employee, with the exception that any contributions submitted by the employee in payment of the employer's obligation, together with the interest the director may apply to the

employer's contribution, shall not be considered part of the member's annuity for any purpose except withdrawal of contributions;

(b) A member holding elective office who has elected to apply for membership pursuant to (a) of this subsection and who later wishes to be eligible for a retirement allowance shall have the option of ending his or her membership in the retirement system. A member wishing to end his or her membership under this subsection must file on a form supplied by the department a statement indicating that the member agrees to irrevocably abandon any claim for service for future periods served as an elected official. A member who receives more than fifteen thousand dollars per year in compensation for his or her elective service, adjusted annually for inflation by the director, is not eligible for the option provided by this subsection (2)(b);

(3) Retirement system retirees: PROVIDED, That following reemployment in an eligible position, a retiree may elect to prospectively become a member of the retirement system if otherwise eligible;

(4) Persons enrolled in state-approved apprenticeship programs, authorized under chapter 49.04 RCW, and who are employed by employers to earn hours to complete such apprenticeship programs, if the employee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or if the employee is a member of a Taft-Hartley retirement plan;

(5) Persons rendering professional services to an employer on a fee, retainer, or contract basis or when the income from these services is less than fifty percent of the gross income received from the person's practice of a profession; and

(6) Employees who (a) are not citizens of the United States, (b) are not covered by chapter 41.48 RCW, (c) are not excluded from membership under this chapter or chapter 41.04 RCW, (d) are residents of this state, and (e) make an irrevocable election to be excluded from membership, in writing, which is submitted to the director within thirty days after employment in an eligible position. [2005 c 327 § 5; 2004 c 242 § 4.]

***Reviser's note:** RCW 41.37.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (5) to subsection (19).

Effective date—2005 c 327 §§ 4-7: See note following RCW 41.37.010.

41.37.030 Nonelective position—Eligible position, when. Any person who has been employed in a nonelective position for at least nine months and who has made member contributions required under this chapter throughout such period, shall be deemed to have been in an eligible position during such period of employment. [2004 c 242 § 6.]

41.37.050 Reduction of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Reinstatement of membership. (1)(a) If a retiree enters employment in an eligible position with an employer as defined in this chapter sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every eight hours worked during that month. This reduction will be applied each month until the retiree remains

absent from employment with an employer for one full calendar month.

(b) If a retiree enters employment in an eligible position with an employer as defined in chapter 41.32, 41.35, or 41.40 RCW sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every eight hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(c) The benefit reduction provided in (a) and (b) of this subsection will accrue for a maximum of one hundred sixty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) A retiree who has satisfied the break in employment requirement of subsection (1) of this section may work up to eight hundred sixty-seven hours per calendar year in an eligible position as defined in RCW 41.32.010, 41.35.010, or 41.40.010, or as a law enforcement officer or firefighter as defined in RCW 41.26.030, or in a position covered by annuity and retirement income plans offered by institutions of higher education pursuant to RCW 28B.10.400, without suspension of his or her benefit.

(3) If the retiree opts to reestablish membership under this chapter, he or she terminates his or her retirement status and becomes a member. Retirement benefits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible in accordance with this chapter. However, if the right to retire is exercised to become effective before the member has rendered two uninterrupted years of service, the retirement formula and survivor options the member had at the time of the member's previous retirement shall be reinstated.

(4) The department shall collect and provide the state actuary with information relevant to the use of this section for the select committee on pension policy. [2011 1st sp.s. c 47 § 17; 2005 c 327 § 6; 2004 c 242 § 8.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Effective date—2005 c 327 §§ 4-7: See note following RCW 41.37.010.

41.37.060 Duty disability retirement recipients—Continued service credit. Those members subject to this chapter who became disabled in the line of duty and who received or are receiving benefits under Title 51 RCW or a similar federal workers' compensation program shall receive or continue to receive service credit subject to the following:

(1) No member may receive more than one month's service credit in a calendar month.

(2) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(3) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(4) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(5) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred. If contribution payments are made retroactively, interest shall be charged at the rate set by the director on both employee and employer contributions. Service credit shall not be granted until the employee contribution has been paid.

(6) The service and compensation credit shall not be granted for a period to exceed twenty-four consecutive months.

(7) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right. [2007 c 49 § 4; 2004 c 242 § 9.]

41.37.070 Members agree to deductions. The deductions from the compensation of members, provided for in RCW 41.37.220, shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for in this chapter and receipt in full for his or her salary or compensation, and payment, less the deductions, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by the person during the period covered by the payment, except as to benefits provided for under this chapter. [2004 c 242 § 10.]

41.37.080 Employer's contribution—Computation—Billing. (1) The director shall report to each employer the contribution rates required for the ensuing biennium or fiscal year, whichever is applicable.

(2) Beginning July 1, 2006, the amount to be collected as the employer's contribution shall be computed by applying the applicable rates established in chapter 41.45 RCW to the total compensation earnable of employer's members as shown on the current payrolls of the employer. Each employer shall compute at the end of each month the amount due for that month and the same shall be paid as are its other obligations.

(3) In the event of failure, for any reason, of an employer other than a political subdivision of the state to have remitted amounts due for membership service of any of the employer's members rendered during a prior biennium, the director shall bill that employer for the employer's contribution together with the charges the director deems appropriate in accordance with RCW 41.50.120. This billing shall be paid by the employer as, and the same shall be, a proper charge against any moneys available or appropriated to the employer for payment of current biennial payrolls. [2004 c 242 § 11.]

41.37.090 Exemption from taxation and judicial process—Exemptions—Assignability—Deductions authorized. (1) Subject to subsections (2) and (3) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, are hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy

or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2) This section does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and which has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department. This section also does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more retired employees have authorized the deduction for payment to the same retirement association or organization.

(3) Subsection (1) of this section does not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law. [2012 c 159 § 25; 2004 c 242 § 12.]

41.37.100 Disability retirement—Criminal conduct. A member shall not receive a disability retirement benefit under RCW 41.37.230 if the disability is the result of criminal conduct by the member committed after July 1, 2006. [2004 c 242 § 13.]

41.37.110 Death benefit—Course of employment—Occupational disease or infection. (1) A one hundred fifty thousand dollar death benefit shall be paid to the member's estate, or the person or persons, trust, or organization the member has nominated by written designation duly executed and filed with the department. If the designated person or persons are not still living at the time of the member's death, the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's legal representatives.

(2) The benefit under this section shall be paid only where death occurs as a result of (a) injuries sustained in the course of employment; or (b) an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050. [2007 c 487 § 5; 2004 c 242 § 14.]

41.37.120 False statements—Penalty. Any person who knowingly makes any false statements, or falsifies or

permits to be falsified any record or records of this retirement system in any attempt to defraud the retirement system as a result of such an act, is guilty of a gross misdemeanor. [2004 c 242 § 15.]

41.37.130 Hearing prior to appeal required—Notice.

Any person aggrieved by any decision of the department affecting his or her legal rights, duties, or privileges must, before he or she appeals to the courts, file with the director by mail or personally within sixty days from the day the decision was communicated to the person, a notice for a hearing before the director's designee. The notice of hearing shall set forth in full detail the grounds upon which the person considers the decision unjust or unlawful and shall include every issue to be considered by the department, and it must contain a detailed statement of facts upon which the person relies in support of the appeal. These persons shall be deemed to have waived all objections or irregularities concerning the matter on which the appeal is taken, other than those specifically set forth in the notice of hearing or appearing in the records of the retirement system. [2004 c 242 § 16.]

41.37.135 Hearing prior to appeal required—Conduct of hearing. Following its receipt of a notice for hearing in accordance with RCW 41.37.130, a hearing shall be held by the director or an authorized representative, in the county of the residence of the claimant at a time and place designated by the director. This hearing shall be conducted and governed in all respects by chapter 34.05 RCW. [2004 c 242 § 17.]

41.37.140 Judicial review of final decision. Judicial review of any final decision and order by the director is governed by chapter 34.05 RCW. [2004 c 242 § 18.]

41.37.145 Appeal—No bond required. A bond of any kind shall not be required of a claimant appealing to the superior court, the court of appeals, or the supreme court from a finding of the department affecting the claimant's right to retirement or disability benefits. [2004 c 242 § 19.]

41.37.150 Effect of certain accumulated vacation leave on retirement benefits. RCW 43.01.044 shall not result in any increase in retirement benefits. The rights extended to state officers and employees under RCW 43.01.044 are not intended to and shall not have any effect on retirement benefits under this chapter. [2004 c 242 § 20.]

41.37.155 Benefit calculation—Limitation. (1) The annual compensation taken into account in calculating retiree benefits under this system shall not exceed the limits imposed by section 401(a)(17) of the federal internal revenue code for qualified trusts.

(2) The department shall adopt rules as necessary to implement this section. [2004 c 242 § 21.]

41.37.160 Postretirement cost-of-living. Beginning July 1, 2006, and every year thereafter, the department shall determine the following information for each retired member or beneficiary whose retirement allowance has been in effect for at least one year:

(1) The original dollar amount of the retirement allowance;

(2) The index for the calendar year prior to the effective date of the retirement allowance, to be known as "index A";

(3) The index for the calendar year prior to the date of determination, to be known as "index B"; and

(4) The ratio obtained when index B is divided by index A.

The value of the ratio obtained shall be the annual adjustment to the original retirement allowance and shall be applied beginning with the July payment. In no event, however, shall the annual adjustment:

(a) Produce a retirement allowance which is lower than the original retirement allowance;

(b) Exceed three percent in the initial annual adjustment; or

(c) Differ from the previous year's annual adjustment by more than three percent.

For the purposes of this section, "index" means, for any calendar year, that year's average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor. [2004 c 242 § 22.]

41.37.170 Options for payment of retirement allowances—Court-approved property settlement.

(1) Upon retirement for service as prescribed in RCW 41.37.210 or retirement for disability under RCW 41.37.230, a member shall elect to have the retirement allowance paid pursuant to one of the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout the member's life. If the retiree dies before the total of the retirement allowance paid to the retiree equals the amount of the retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or the person or persons, trust, or organization the retiree nominated by written designation duly executed and filed with the department; or if there is no designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there is neither a designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, the portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent sur-

vivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3) The department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a non-spouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(4) The department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.37.210 and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the age provided in RCW 41.37.210(1) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (3) of this section. Any actuarial reductions subsequent to the division into two separate

benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution. [2004 c 242 § 23.]

41.37.180 Suspension of retirement allowance upon reemployment—Exceptions—Reinstatement. (1) Except as provided in RCW 41.37.050, a retiree shall not be eligible to receive the retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.37.010, or RCW 41.35.010, 41.40.010, or 41.32.010, or as a law enforcement officer or firefighter as defined in RCW 41.26.030, except that a retiree who ends his or her membership in the retirement system pursuant to RCW 41.37.020(2)(b) is not subject to this section if the retiree's only employment is as an elective official.

(2) If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(3) The department shall adopt rules implementing this section. [2004 c 242 § 24.]

41.37.190 Computation of retirement allowance. A member of the retirement system shall receive a retirement allowance equal to two percent of such member's average final compensation for each service credit year of service. [2004 c 242 § 25.]

41.37.200 Lump sum retirement allowance—Reentry—Reinstatement of service. (1) The director may pay a member eligible to receive a retirement allowance or the member's beneficiary, subject to subsection (5) of this section, a lump sum payment in lieu of a monthly benefit if the initial monthly benefit computed in accordance with RCW 41.37.190 would be less than fifty dollars. The lump sum payment shall be the greater of the actuarial equivalent of the monthly benefits or an amount equal to the individual's accumulated contributions plus accrued interest.

(2) A retiree or a beneficiary, subject to subsection (5) of this section, who is receiving a regular monthly benefit of less than fifty dollars may request, in writing, to convert from a monthly benefit to a lump sum payment. If the director approves the conversion, the calculation of the actuarial equivalent of the total estimated regular benefit will be computed based on the beneficiary's age at the time the benefit initially accrued. The lump sum payment will be reduced to reflect any payments received on or after the initial benefit accrual date.

(3) Persons covered under subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with

interest as computed by the director, within two years of returning to service or prior to rereading, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(4) If a member fails to meet the time limitations under subsection (3) of this section, reinstatement of all previous service will occur if the member pays the amount required under RCW 41.50.165(2). The amount, however, shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(5) Only persons entitled to or receiving a service retirement allowance under RCW 41.37.210 or an earned disability allowance under RCW 41.37.230 qualify for participation under this section.

(6) It is the intent of the legislature that any member who receives a settlement under this section shall be deemed to be retired from this system. [2004 c 242 § 26.]

41.37.210 Retirement eligibility. (1) **NORMAL RETIREMENT.** Any member with at least five service credit years who has attained at least age sixty-five shall be eligible to retire and to receive a retirement allowance computed according to RCW 41.37.190.

(2) **UNREDUCED RETIREMENT.** Any member who has completed at least ten service credit years in the public safety employees' retirement system and has attained age sixty shall be eligible to retire and to receive a retirement allowance computed according to RCW 41.37.190.

(3) **EARLY RETIREMENT.** Any member who has completed at least twenty service credit years and has attained age fifty-three shall be eligible to retire and to receive a retirement allowance computed according to RCW 41.37.190, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty. [2004 c 242 § 27.]

41.37.220 Employer and member contribution rates. The required contribution rates to the retirement system for both members and employers shall be established by the director from time to time as may be necessary upon the advice of the state actuary. The state actuary shall use the aggregate actuarial cost method to calculate contribution rates. The employer contribution rate calculated under this section shall be used only for the purpose of determining the amount of employer contributions to be deposited in the plan 2 fund from the total employer contributions collected under RCW 41.37.080.

Contribution rates required to fund the costs of the retirement system shall always be equal for members and employers, except under this section. Any adjustments in contribution rates required from time to time for future costs shall likewise be shared equally by the members and employers.

Any increase in the contribution rate required as the result of a failure of an employer to make any contribution required by this section shall be borne in full by the employer not making the contribution.

The director shall notify all employers of any pending adjustment in the required contribution rate and the increase shall be announced at least thirty days prior to the effective date of the change.

A member's contributions required by this section shall be deducted from the member's compensation earnable each payroll period. The member's contribution and the employer's contribution shall be remitted directly to the department within fifteen days following the end of the calendar month during which the payroll period ends. [2004 c 242 § 28.]

41.37.230 Disability allowance—Actuarial reduction—Disposition upon death of recipient. (1)(a) A member of the retirement system with at least ten years of service in the public safety employees' retirement system who becomes totally incapacitated for continued employment as an employee by an employer, as determined by the department, shall be eligible to receive an allowance under RCW 41.37.190 through 41.37.290. The member shall receive a monthly disability allowance computed as provided for in RCW 41.37.190 and shall have this allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty.

(b) A member of the retirement system with less than ten years of service who becomes totally incapacitated for continued employment by an employer, as determined by the department, shall be eligible to receive an allowance under RCW 41.37.190 through 41.37.290. The member shall receive a monthly disability allowance computed as provided for in RCW 41.37.190 and shall have this allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

(2) Any member who receives an allowance under this section shall be subject to comprehensive medical examinations as required by the department. If these medical examinations reveal that a member has recovered from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, the member shall cease to be eligible for the allowance.

(3) If the recipient of a monthly allowance under this section dies before the total of the allowance payments equal the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or the person or persons, trust, or organization the recipient has nominated by written designation duly executed and filed with the director. If there is no designated person or persons still living at the time of the recipient's death, then to the surviving spouse, or, if there is no designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative. [2004 c 242 § 29.]

41.37.240 Application for and effective date of retirement allowances. Any member or beneficiary eligible to receive a retirement allowance under RCW 41.37.210, 41.37.230, or 41.37.250 shall be eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members under RCW 41.37.210 shall accrue from the first day of the calendar

month immediately following the member's separation from employment.

(2) Retirement allowances paid to vested members no longer in service, but qualifying for an allowance pursuant to RCW 41.37.210, shall accrue from the first day of the calendar month immediately following the qualification.

(3) Disability allowances paid to disabled members under RCW 41.37.230 shall accrue from the first day of the calendar month immediately following the member's separation from employment for disability.

(4) Retirement allowances paid as death benefits under RCW 41.37.250 shall accrue from the first day of the calendar month immediately following the member's death. [2004 c 242 § 30.]

41.37.250 Death benefits. (1) Except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to that member's credit in the retirement system at the time of the member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's estate, or the person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there is no designated person or persons still living at the time of the member's death, the member's accumulated contributions standing to the member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact that spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 41.37.210, actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.37.170 and, except under subsection (4) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.37.210; if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then the child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until the child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, the member's child or children under the age of majority shall receive an allowance, share and share alike, calculated under this section making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To a person or persons, estate, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, or a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to reduction under RCW 41.37.210. The member's retirement allowance is computed under RCW 41.37.190. [2009 c 226 § 10; 2005 c 327 § 7; 2004 c 242 § 31.]

Effective date—2005 c 327 §§ 4-7: See note following RCW 41.37.010.

41.37.260 Leaves of absence, military service. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under RCW 41.37.190 through 41.37.290.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The compensation earnable reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. This credit may be obtained only if:

(a) The member makes both the employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner; or

(b) If not within five years of resumption of service but prior to retirement, pay the amount required under RCW 41.50.165(2).

The contributions required under (a) of this subsection shall be based on the average of the member's compensation earnable at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services; and

(ii) The member makes the employee contributions required under RCW 41.37.220 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2); or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(b) Upon receipt of member contributions under (a)(ii), (d)(iii), or (e)(iii) of this subsection, or adequate proof under (a)(iv), (d)(iv), or (e)(iv) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.37.220 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii), (d)(iii), or (e)(iii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(d) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased

member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection. [2009 c 205 § 3; 2005 c 64 § 11; 2004 c 242 § 32.]

Effective date—2005 c 64 § 11: "Section 11 of this act takes effect July 1, 2006." [2005 c 64 § 12.]

41.37.265 Purchase of additional service credit—Costs—Rules. (1) A member eligible to retire under RCW 41.37.210 may, at the time of filing a written application for retirement with the department, apply to the department to

make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service and shall be used exclusively to provide the member with a monthly annuity that is paid in addition to the member's retirement allowance. [2006 c 214 § 4.]

Effective date—2006 c 214: See note following RCW 41.40.034.

41.37.270 Vested membership. A member who separates or has separated after having completed at least five years of service may remain a member during the period of the member's absence from service for the exclusive purpose only of receiving a retirement allowance under RCW 41.37.210 if the member maintains the member's accumulated contributions intact. [2004 c 242 § 33.]

41.37.280 Refund of contributions. A member who ceases to be an employee of an employer except by service or disability retirement may request a refund of the member's accumulated contributions. The refund shall be made within ninety days following the receipt of the request and notification of termination through the contribution reporting system by the employer; except that in the case of death, an initial payment shall be made within thirty days of receipt of request for such payment and notification of termination through the contribution reporting system by the employer. A member who files a request for refund and subsequently enters into employment with another employer prior to the refund being made shall not be eligible for a refund. The refund of accumulated contributions shall terminate all rights to benefits under RCW 41.37.190 through 41.37.290. [2004 c 242 § 34.]

41.37.290 Reentry. (1) A member, who had left service and withdrawn the member's accumulated contributions, shall receive service credit for prior service if the member restores all withdrawn accumulated contributions together with interest since the time of withdrawal as determined by the department.

The restoration of funds must be completed within five years of the resumption of service or prior to retirement, whichever occurs first.

(2) If a member fails to meet the time limitations of subsection (1) of this section, the member may receive service

credit destroyed by the withdrawn contributions if the amount required under RCW 41.50.165(2) is paid. [2004 c 242 § 35.]

41.37.900 Benefits not contractual right until July 1, 2006. The benefits provided pursuant to chapter 242, Laws of 2004 are not provided to employees as a matter of contractual right prior to July 1, 2006. The legislature retains the right to alter or abolish these benefits at any time prior to July 1, 2006. [2004 c 242 § 66.]

41.37.901 Effective date—2004 c 242. This act takes effect July 1, 2006. [2004 c 242 § 65.]

41.37.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 98.]

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

Chapter 41.40 RCW WASHINGTON PUBLIC EMPLOYEES' RETIREMENT SYSTEM

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- 41.40.932 Subchapter headings not law—2000 c 247.

Portability of public retirement benefits: Chapter 41.54 RCW.

Transfer of membership to judges' retirement system: RCW 2.12.100.

Additional notes found at www.leg.wa.gov

"PROVISIONS APPLICABLE TO PLAN 1, PLAN 2,
AND PLAN 3"

41.40.005 Provisions applicable to "plan 1," "plan 2," and "plan 3." RCW 41.40.010 through *41.40.112 shall apply to members of plan 1, plan 2, and plan 3. [2000 c 247 § 101; 1992 c 72 § 8; 1991 c 35 § 69; 1989 c 273 § 20; 1989 c 272 § 7; 1979 ex.s. c 249 § 6; 1977 ex.s. c 295 § 21.]

*Reviser's note: RCW 41.40.112 was decodified August 1993.

Intent—1991 c 35: See note following RCW 41.26.005.

Purpose—1989 c 272: See note following RCW 41.32.005.

Additional notes found at www.leg.wa.gov

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

(1) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(3) "Adjustment ratio" means the value of index A divided by index B.

(4) "Annual increase" means, initially, fifty-nine cents per month per year of service which amount shall be increased each July 1st by three percent, rounded to the nearest cent.

(5) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(6)(a) "Average final compensation" for plan 1 members, means the annual average of the greatest compensation earnable by a member during any consecutive two year period of service credit months for which service credit is allowed; or if the member has less than two years of service credit months then the annual average compensation earnable during the total years of service for which service credit is allowed.

(b) "Average final compensation" for plan 2 and plan 3 members, means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.40.710(2) or (c) of this subsection.

(c) In calculating average final compensation under this subsection for a member of plan 1, 2, or 3, the department of retirement systems shall include:

(i) Any compensation forgone by the member during the 2009-2011 fiscal biennium as a result of reduced work hours, voluntary leave without pay, temporary reduction in pay implemented prior to December 11, 2010, or temporary furloughs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer; and

(ii) Any compensation forgone by a member employed by the state or a local government during the 2011-2013 fiscal biennium as a result of reduced work hours, mandatory leave without pay, temporary layoffs, or reductions to current pay if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer. Reductions to current pay shall not include elimination of previously agreed upon future salary increases.

(7)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance, pension or other benefit provided by this chapter.

(b) "Beneficiary" for plan 2 and plan 3 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(8)(a) "Compensation earnable" for plan 1 members, means salaries or wages earned during a payroll period for personal services and where the compensation is not all paid in money, maintenance compensation shall be included upon the basis of the schedules established by the member's employer.

(i) "Compensation earnable" for plan 1 members also includes the following actual or imputed payments, which are not paid for personal services:

(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable and the individual shall receive the equivalent service credit;

(B) If a leave of absence is taken by an individual for the purpose of serving in the state legislature, the salary which would have been received for the position from which the leave of absence was taken, shall be considered as compensation earnable if the employee's contribution is paid by the employee and the employer's contribution is paid by the employer or employee;

(C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(D) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(E) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(F) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared

to report immediately for work, if the need arises, although the need may not arise.

(ii) "Compensation earnable" does not include:

(A) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(b) "Compensation earnable" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude nonmoney maintenance compensation and lump sum or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

"Compensation earnable" for plan 2 and plan 3 members also includes the following actual or imputed payments, which are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided above, and the individual shall receive the equivalent service credit;

(ii) In any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(A) The compensation earnable the member would have received had such member not served in the legislature; or

(B) Such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions;

(iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(iv) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(v) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(vi) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(9) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(10) "Director" means the director of the department.

(11) "Eligible position" means:

(a) Any position that, as defined by the employer, normally requires five or more months of service a year for which regular compensation for at least seventy hours is

earned by the occupant thereof. For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position;

(b) Any position occupied by an elected official or person appointed directly by the governor, or appointed by the chief justice of the supreme court under RCW 2.04.240(2) or 2.06.150(2), for which compensation is paid.

(12) "Employee" or "employed" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

(13)(a) "Employer" for plan 1 members, means every branch, department, agency, commission, board, and office of the state, any political subdivision or association of political subdivisions of the state admitted into the retirement system, and legal entities authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and the term shall also include any labor guild, association, or organization the membership of a local lodge or division of which is comprised of at least forty percent employees of an employer (other than such labor guild, association, or organization) within this chapter. The term may also include any city of the first class that has its own retirement system.

(b) "Employer" for plan 2 and plan 3 members, means every branch, department, agency, commission, board, and office of the state, and any political subdivision and municipal corporation of the state admitted into the retirement system, including public agencies created pursuant to RCW 35.63.070, 36.70.060, and 39.34.030; except that after August 31, 2000, school districts and educational service districts will no longer be employers for the public employees' retirement system plan 2.

(c) Except as otherwise specifically provided in this chapter, "employer" does not include a government contractor. For purposes of this subsection, a "government contractor" is any entity, including a partnership, limited liability company, for-profit or nonprofit corporation, or person, that provides services pursuant to a contract with an "employer." The determination whether an employer-employee relationship has been established is not based on the relationship between a government contractor and an "employer," but is based solely on the relationship between a government contractor's employee and an "employer" under this chapter.

(14) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(15) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(16) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(17) "Index B" means the index for the year prior to index A.

(18) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

(19) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (11) of this section.

(20) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

(21) "Member" means any employee included in the membership of the retirement system, as provided for in RCW 41.40.023. RCW 41.26.045 does not prohibit a person otherwise eligible for membership in the retirement system from establishing such membership effective when he or she first entered an eligible position.

(22) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3.

(23) "Membership service" means:

(a) All service rendered, as a member, after October 1, 1947;

(b) All service after October 1, 1947, to any employer prior to the time of its admission into the retirement system for which member and employer contributions, plus interest as required by RCW 41.50.125, have been paid under RCW 41.40.056 or 41.40.057;

(c) Service not to exceed six consecutive months of probationary service rendered after April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of the total amount of the employer's contribution to the retirement fund which would have been required under the law in effect when such probationary service was rendered if the member had been a member during such period, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member;

(d) Service not to exceed six consecutive months of probationary service, rendered after October 1, 1947, and before April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of five percent of such member's salary during said period of probationary service, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member.

(24) "New member" means a person who becomes a member on or after April 1, 1949, except as otherwise provided in this section.

(25) "Original member" of this retirement system means:

(a) Any person who became a member of the system prior to April 1, 1949;

(b) Any person who becomes a member through the admission of an employer into the retirement system on and after April 1, 1949, and prior to April 1, 1951;

(c) Any person who first becomes a member by securing employment with an employer prior to April 1, 1951, provided the member has rendered at least one or more years of service to any employer prior to October 1, 1947;

(d) Any person who first becomes a member through the admission of an employer into the retirement system on or after April 1, 1951, provided, such person has been in the regular employ of the employer for at least six months of the twelve-month period preceding the said admission date;

(e) Any member who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement becomes entitled to be credited with ten years or more of membership service except that the provisions relating to the minimum amount of retirement allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member;

(f) Any member who has been a contributor under the system for two or more years and who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement has rendered five or more years of service for the state or any political subdivision prior to the time of the admission of the employer into the system; except that the provisions relating to the minimum amount of retirement allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member.

(26) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(27) "Plan 1" means the public employees' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(28) "Plan 2" means the public employees' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977, and are not included in plan 3.

(29) "Plan 3" means the public employees' retirement system, plan 3 providing the benefits and funding provisions covering persons who:

(a) First become a member on or after:

(i) March 1, 2002, and are employed by a state agency or institute of higher education and who did not choose to enter plan 2; or

(ii) September 1, 2002, and are employed by other than a state agency or institute of higher education and who did not choose to enter plan 2; or

(b) Transferred to plan 3 under RCW 41.40.795.

(30) "Prior service" means all service of an original member rendered to any employer prior to October 1, 1947.

(31) "Regular interest" means such rate as the director may determine.

(32) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(33) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(34) "Retirement allowance" means the sum of the annuity and the pension.

(35) "Retirement system" means the public employees' retirement system provided for in this chapter.

(36) "Separation from service" occurs when a person has terminated all employment with an employer. Separation from service or employment does not occur, and if claimed by an employer or employee may be a violation of RCW 41.40.055, when an employee and employer have a written or oral agreement to resume employment with the same employer following termination. Mere expressions or inqui-

ries about postretirement employment by an employer or employee that do not constitute a commitment to reemploy the employee after retirement are not an agreement under this subsection.

(37)(a) "Service" for plan 1 members, except as provided in RCW 41.40.088, means periods of employment in an eligible position or positions for one or more employers rendered to any employer for which compensation is paid, and includes time spent in office as an elected or appointed official of an employer. Compensation earnable earned in full time work for seventy hours or more in any given calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service except as provided in RCW 41.40.088. Only service credit months and one-quarter service credit months shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter. Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits. Time spent in standby status, whether compensated or not, is not service.

(i) Service by a state employee officially assigned by the state on a temporary basis to assist another public agency, shall be considered as service as a state employee: PROVIDED, That service to any other public agency shall not be considered service as a state employee if such service has been used to establish benefits in any other public retirement system.

(ii) An individual shall receive no more than a total of twelve service credit months of service during any calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for seventy or more hours is rendered.

(iii) A school district employee may count up to forty-five days of sick leave as creditable service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan 1 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than twenty-two days equals one-quarter service credit month;

(B) Twenty-two days equals one service credit month;

(C) More than twenty-two days but less than forty-five days equals one and one-quarter service credit month.

(b) "Service" for plan 2 and plan 3 members, means periods of employment by a member in an eligible position or positions for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

(i) Service in any state elective position shall be deemed to be full time service, except that persons serving in state elective positions who are members of the Washington school employees' retirement system, teachers' retirement system, public safety employees' retirement system, or law enforcement officers' and firefighters' retirement system at the time of election or appointment to such position may elect to continue membership in the Washington school employees' retirement system, teachers' retirement system, public safety employees' retirement system, or law enforcement officers' and firefighters' retirement system.

(ii) A member shall receive a total of not more than twelve service credit months of service for such calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(iii) Up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than eleven days equals one-quarter service credit month;

(B) Eleven or more days but less than twenty-two days equals one-half service credit month;

(C) Twenty-two days equals one service credit month;

(D) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month;

(E) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(38) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(39) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(40) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(41) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(42) "State treasurer" means the treasurer of the state of Washington.

(43) "Totally incapacitated for duty" means total inability to perform the duties of a member's employment or office or any other work for which the member is qualified by training or experience. [2012 c 236 § 6; 2011 1st sp.s. c 5 § 5. Prior: 2010 2nd sp.s. c 1 § 906; 2009 c 430 § 1; 2007 c 50 § 4; 2004 c 242 § 53; 2003 c 412 § 4; 2000 c 247 § 102; 1998 c 341 § 601; prior: 1997 c 254 § 10; 1997 c 88 § 6; prior: 1995 c 345 § 10; 1995 c 286 § 1; 1995 c 244 § 3; prior: 1994 c 298 § 2; 1994 c 247 § 5; 1994 c 197 § 23; 1994 c 177 § 8; 1993 c 95 § 8; prior: 1991 c 343 § 6; 1991 c 35 § 70; 1990 c 274 § 3; prior: 1989 c 309 § 1; 1989 c 289 § 1; 1985 c 13 § 7; 1983 c 69 § 1; 1981 c 256 § 6; 1979 ex.s. c 249 § 7; 1977 ex.s. c 295 § 16; 1973 1st ex.s. c 190 § 2; 1972 ex.s. c 151 § 1; 1971 ex.s.

c 271 § 2; 1969 c 128 § 1; 1965 c 155 § 1; 1963 c 225 § 1; 1963 c 174 § 1; 1961 c 291 § 1; 1957 c 231 § 1; 1955 c 277 § 1; 1953 c 200 § 1; 1951 c 50 § 1; 1949 c 240 § 1; 1947 c 274 § 1; Rem. Supp. 1949 § 11072-1.]

Purpose—Application—2012 c 236: See note following RCW 41.26.030.

Effective date—2011 1st sp.s. c 5: See note following RCW 41.26.030.

Effective date—2010 2nd sp.s. c 1: See note following RCW 38.52.105.

Effective date—2004 c 242: See RCW 41.37.901.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

Intent—1994 c 298: "(1) This act provides cross-references to existing statutes that affect calculation of pensions under the retirement systems authorized by chapters 41.40 and 41.32 RCW to the relevant definition sections of those chapters. Except as provided in subsection (2) of this section, this act is technical in nature and neither enhances nor diminishes existing pension rights. Except for the amendment to RCW 41.40.010(5), it is not the intent of the legislature to change the substance or effect of any statute previously enacted. Rather, this act provides cross-references to applicable statutes in order to aid with the administration of benefits authorized in chapters 41.40 and 41.32 RCW.

(2) The amendments to RCW 41.40.010 (5) and (29) contained in section 2, chapter 298, Laws of 1994, and to RCW 41.32.010(31) contained in section 3, chapter 298, Laws of 1994, clarify the status of certain persons as either members or retirees. RCW 41.04.275 and section 7, chapter 298, Laws of 1994, create the pension funding account in the state treasury and direct the transfer of moneys deposited in the budget stabilization account by the 1993-95 operating appropriations act, section 919, chapter 24, Laws of 1993 sp. sess., for the continuing costs of state retirement system benefits in effect on July 1, 1993, consistent with section 919, chapter 24, Laws of 1993 sp. sess. to the pension funding account." [1994 c 298 § 1.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—1994 c 177: See note following RCW 41.50.125.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Purpose—Severability—1981 c 256: See notes following RCW 41.26.030.

Additional notes found at www.leg.wa.gov

41.40.015 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 99.]

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

41.40.020 System created—Administration. A state employees' retirement system is hereby created for the employees of the state of Washington and its political subdivisions. The administration and management of the retirement system, the responsibility for making effective the provisions of this chapter, and the authority to make all rules and regulations necessary therefor are hereby vested in the department. All such rules and regulations shall be governed by the provisions of chapter 34.05 RCW, as now or hereafter amended. The retirement system herein provided for shall be known as the Washington Public Employees' Retirement System. [1991 c 35 § 71; 1969 c 128 § 2; 1967 c 127 § 1; 1949 c 240 § 2; 1947 c 274 § 2; Rem. Supp. 1949 § 11072-2.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.40.023 Membership. Membership in the retirement system shall consist of all regularly compensated employees and appointive and elective officials of employers, as defined in this chapter, with the following exceptions:

(1) Persons in ineligible positions;

(2) Employees of the legislature except the officers thereof elected by the members of the senate and the house and legislative committees, unless membership of such employees be authorized by the said committee;

(3)(a) Persons holding elective offices or persons appointed directly by the governor: PROVIDED, That such persons shall have the option of applying for membership during such periods of employment: AND PROVIDED FURTHER, That any persons holding or who have held elective offices or persons appointed by the governor who are members in the retirement system and who have, prior to becoming such members, previously held an elective office, and did not at the start of such initial or successive terms of office exercise their option to become members, may apply for membership to be effective during such term or terms of office, and shall be allowed to establish the service credit applicable to such term or terms of office upon payment of the employee contributions therefor by the employee with interest as determined by the director and employer contributions therefor by the employer or employee with interest as determined by the director: AND PROVIDED FURTHER, That all contributions with interest submitted by the employee under this subsection shall be placed in the employee's individual account in the employee's savings fund and be treated as any other contribution made by the employee, with the exception that any contributions submitted by the employee in payment of the employer's obligation, together with the interest the director may apply to the employer's contribution, shall not be considered part of the member's annuity for any purpose except withdrawal of contributions;

(b) A member holding elective office who has elected to apply for membership pursuant to (a) of this subsection and who later wishes to be eligible for a retirement allowance shall have the option of ending his or her membership in the retirement system. A member wishing to end his or her membership under this subsection must file, on a form supplied by

the department, a statement indicating that the member agrees to irrevocably abandon any claim for service for future periods served as an elected official. A member who receives more than fifteen thousand dollars per year in compensation for his or her elective service, adjusted annually for inflation by the director, is not eligible for the option provided by this subsection (3)(b);

(4) Employees holding membership in, or receiving pension benefits under, any retirement plan operated wholly or in part by an agency of the state or political subdivision thereof, or who are by reason of their current employment contributing to or otherwise establishing the right to receive benefits from any such retirement plan except as follows:

(a) In any case where the retirement system has in existence an agreement with another retirement system in connection with exchange of service credit or an agreement whereby members can retain service credit in more than one system, such an employee shall be allowed membership rights should the agreement so provide;

(b) An employee shall be allowed membership if otherwise eligible while receiving survivor's benefits;

(c) An employee shall not either before or after June 7, 1984, be excluded from membership or denied service credit pursuant to this subsection solely on account of: (i) Membership in the plan created under chapter 2.14 RCW; or (ii) enrollment under the relief and compensation provisions or the pension provisions of the volunteer firefighters' relief and pension fund under chapter 41.24 RCW;

(d) Except as provided in RCW 41.40.109, on or after July 25, 1999, an employee shall not be excluded from membership or denied service credit pursuant to this subsection solely on account of participation in a defined contribution pension plan qualified under section 401 of the internal revenue code;

(e) Employees who have been reported in the retirement system prior to July 25, 1999, and who participated during the same period of time in a defined contribution pension plan qualified under section 401 of the internal revenue code and operated wholly or in part by the employer, shall not be excluded from previous retirement system membership and service credit on account of such participation;

(5) Patient and inmate help in state charitable, penal, and correctional institutions;

(6) "Members" of a state veterans' home or state soldiers' home;

(7) Persons employed by an institution of higher learning or community college, primarily as an incident to and in furtherance of their education or training, or the education or training of a spouse;

(8) Employees of an institution of higher learning or community college during the period of service necessary to establish eligibility for membership in the retirement plans operated by such institutions;

(9) Persons rendering professional services to an employer on a fee, retainer, or contract basis or when the income from these services is less than fifty percent of the gross income received from the person's practice of a profession;

(10) Persons appointed after April 1, 1963, by the liquor control board as contract liquor store managers;

(11) Employees of a labor guild, association, or organization: PROVIDED, That elective officials and employees of a labor guild, association, or organization which qualifies as an employer within this chapter shall have the option of applying for membership;

(12) Retirement system retirees: PROVIDED, That following reemployment in an eligible position, a retiree may elect to prospectively become a member of the retirement system if otherwise eligible;

(13) Persons employed by or appointed or elected as an official of a first class city that has its own retirement system: PROVIDED, That any member elected or appointed to an elective office on or after April 1, 1971, shall have the option of continuing as a member of this system in lieu of becoming a member of the city system. A member who elects to continue as a member of this system shall pay the appropriate member contributions and the city shall pay the employer contributions at the rates prescribed by this chapter. The city shall also transfer to this system all of such member's accumulated contributions together with such further amounts as necessary to equal all employee and employer contributions which would have been paid into this system on account of such service with the city and thereupon the member shall be granted credit for all such service. Any city that becomes an employer as defined in RCW 41.40.010(13) as the result of an individual's election under this subsection shall not be required to have all employees covered for retirement under the provisions of this chapter. Nothing in this subsection shall prohibit a city of the first class with its own retirement system from: (a) Transferring all of its current employees to the retirement system established under this chapter, or (b) allowing newly hired employees the option of continuing coverage under the retirement system established by this chapter.

Notwithstanding any other provision of this chapter, persons transferring from employment with a first class city of over four hundred thousand population that has its own retirement system to employment with the state department of agriculture may elect to remain within the retirement system of such city and the state shall pay the employer contributions for such persons at like rates as prescribed for employers of other members of such system;

(14) Employees who (a) are not citizens of the United States, (b) do not reside in the United States, and (c) perform duties outside of the United States;

(15) Employees who (a) are not citizens of the United States, (b) are not covered by chapter 41.48 RCW, (c) are not excluded from membership under this chapter or chapter 41.04 RCW, (d) are residents of this state, and (e) make an irrevocable election to be excluded from membership, in writing, which is submitted to the director within thirty days after employment in an eligible position;

(16) Employees who are citizens of the United States and who reside and perform duties for an employer outside of the United States: PROVIDED, That unless otherwise excluded under this chapter or chapter 41.04 RCW, the employee may apply for membership (a) within thirty days after employment in an eligible position and membership service credit shall be granted from the first day of membership service, and (b) after this thirty-day period, but membership service credit shall be granted only if payment is made for the non-

credited membership service under RCW 41.50.165(2), otherwise service shall be from the date of application;

(17) The city manager or chief administrative officer of a city or town, other than a retiree, who serves at the pleasure of an appointing authority: PROVIDED, That such persons shall have the option of applying for membership within thirty days from date of their appointment to such positions. Persons serving in such positions as of April 4, 1986, shall continue to be members in the retirement system unless they notify the director in writing prior to December 31, 1986, of their desire to withdraw from membership in the retirement system. A member who withdraws from membership in the system under this section shall receive a refund of the member's accumulated contributions.

Persons serving in such positions who have not opted for membership within the specified thirty days, may do so by paying the amount required under RCW 41.50.165(2) for the period from the date of their appointment to the date of acceptance into membership;

(18) Persons serving as: (a) The chief administrative officer of a public utility district as defined in RCW 54.16.100; (b) the chief administrative officer of a port district formed under chapter 53.04 RCW; or (c) the chief administrative officer of a county who serves at the pleasure of an appointing authority: PROVIDED, That such persons shall have the option of applying for membership within thirty days from the date of their appointment to such positions. Persons serving in such positions as of July 25, 1999, shall continue to be members in the retirement system unless they notify the director in writing prior to December 31, 1999, of their desire to withdraw from membership in the retirement system. A member who withdraws from membership in the system under this section shall receive a refund of the member's accumulated contributions upon termination of employment or as otherwise consistent with the plan's tax qualification status as defined in internal revenue code section 401.

Persons serving in such positions who have not opted for membership within the specified thirty days, may do so at a later date by paying the amount required under RCW 41.50.165(2) for the period from the date of their appointment to the date of acceptance into membership;

(19) Persons enrolled in state-approved apprenticeship programs, authorized under chapter 49.04 RCW, and who are employed by local governments to earn hours to complete such apprenticeship programs, if the employee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or if the employee is a member of a Taft-Hartley retirement plan;

(20) Beginning on July 22, 2001, persons employed exclusively as trainers or trainees in resident apprentice training programs operated by housing authorities authorized under chapter 35.82 RCW, (a) if the trainer or trainee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or (b) if the employee is a member of a Taft-Hartley retirement plan;

(21) Employees who are removed from membership under RCW 41.40.823 or 41.40.633; and

(22) Persons employed as the state director of fire protection under RCW 43.43.938 who were previously members of the law enforcement officers' and firefighters' retirement

system plan 2 under chapter 41.26 RCW may continue as a member of the law enforcement officers' and firefighters' retirement system in lieu of becoming a member of this system. [2010 c 80 § 1. Prior: 2005 c 151 § 12; 2005 c 131 § 7; 2001 c 37 § 1; prior: 1999 c 286 § 2; 1999 c 244 § 1; 1997 c 254 § 11; prior: 1994 c 298 § 8; 1994 c 197 § 24; 1993 c 319 § 1; prior: 1990 c 274 § 10; 1990 c 192 § 4; 1988 c 109 § 25; 1987 c 379 § 1; 1986 c 317 § 5; 1984 c 184 § 13; 1984 c 121 § 1; 1982 1st ex.s. c 52 § 19; 1975 c 33 § 6; 1974 ex.s. c 195 § 2; 1973 1st ex.s. c 190 § 5; 1971 ex.s. c 271 § 4; 1969 c 128 § 5; 1967 c 127 § 3; 1965 c 155 § 2; 1963 c 225 § 2; 1963 c 210 § 1; 1957 c 231 § 2; 1955 c 277 § 2; 1953 c 200 § 5; 1951 c 50 § 2; 1949 c 240 § 7; 1947 c 274 § 13; Rem. Supp. 1949 § 11072-13. Formerly RCW 41.40.120.]

Effective date—2010 c 80: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 17, 2010]." [2010 c 80 § 2.]

Effective date—2005 c 131: See note following RCW 41.40.823.

Intent—1999 c 286: "It is the intent of the legislature that retirement benefits represent a valuable element of the total compensation and benefits employees receive for their service. The value of these benefits is contained in the retirement income and cost-of-living adjustments provided to employees who remain in public service until retirement. For the majority of public employees, this requires membership in the public employees' retirement system.

The legislature recognizes, however, that certain occupations display a pattern of interstate mobility which requires retirement benefits which are highly portable. Incumbents in these occupations gain little value from membership in the public employees' retirement system. In order to remove any barrier to employing qualified personnel in positions with high mobility, membership in the retirement system should be optional in those occupations." [1999 c 286 § 1.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Intent—1994 c 298: See note following RCW 41.40.010.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—Construction—1990 c 274: See notes following RCW 41.32.010.

Legislative findings—Intent—Severability—1986 c 317: See notes following RCW 41.40.150.

Pension benefits or annuity benefits for certain classifications of school district employees: RCW 28A.400.260.

Additional notes found at www.leg.wa.gov

41.40.025 Membership in system—Charter school employers and employees. This section designates charter schools established under chapter 28A.710 RCW as employers and charter school employees as members, and applies only if the department of retirement systems receives determinations from the internal revenue service and the United States department of labor that participation does not jeopardize the status of these retirement systems as governmental plans under the federal employees' retirement income security act and the internal revenue code. [2013 c 2 § 305 (Initiative Measure No. 1240, approved November 6, 2012).]

Findings—2013 c 2 (Initiative Measure No. 1240): See RCW 28A.710.005.

41.40.028 Nonelective position employees employed for at least nine months—Deemed in eligible position, when. Any person who has been employed in a nonelective position for at least nine months and who has made member

contributions required under this chapter throughout such period, shall be deemed to have been in an eligible position during such period of employment. [1980 c 112 § 2. Formerly RCW 41.40.123.]

41.40.034 Purchase of additional service credit—Costs—Rules. (1) A member eligible to retire under RCW 41.40.180, 41.40.630, or 41.40.820 may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service and shall be used exclusively to provide the member with a monthly annuity that is paid in addition to the member's retirement allowance. [2006 c 214 § 1.]

Effective date—2006 c 214: "This act takes effect July 1, 2006." [2006 c 214 § 8.]

41.40.035 Service credit prohibited for certain members of committees, boards, and commissions and for certain appointive and elective officials. (1) No person appointed to membership on any committee, board, or commission on or after July 1, 1976, who is compensated for service on such committee, board, or commission for fewer than ten days or seventy hours in any month, whichever amount is less, shall receive service credit for such service for that month: PROVIDED, That on and after October 1, 1977, appointive and elective officials who receive monthly compensation earnable from an employer in an amount equal to or less than ninety times the state minimum hourly wage shall not receive any service credit for such employment.

(2) This section does not apply to any person serving on a committee, board, or commission on June 30, 1976, who continued such service until subsequently appointed by the governor to a different committee, board, or commission. [1987 c 146 § 1; 1977 ex.s. c 295 § 17; 1975-'76 2nd ex.s. c 34 § 4. Formerly RCW 41.40.165.]

Additional notes found at www.leg.wa.gov

41.40.037 Service by retirees—Reduction of retirement allowance upon reemployment—Reestablishment of membership. (1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her

accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every eight hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred sixty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) A retiree from plan 1, plan 2, or plan 3 who enters employment with an employer at least one calendar month after his or her accrual date may continue to receive pension payments while engaged in such service for up to eight hundred sixty-seven hours of service in a calendar year without a reduction of pension. For purposes of this section, employment includes positions covered by annuity and retirement income plans offered by institutions of higher education pursuant to RCW 28B.10.400.

(3) If the retiree opts to reestablish membership under RCW 41.40.023(12), he or she terminates his or her retirement status and becomes a member. Retirement benefits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible in accordance with RCW 41.40.180. However, if the right to retire is exercised to become effective before the member has rendered two uninterrupted years of service, the retirement formula and survivor options the member had at the time of the member's previous retirement shall be reinstated.

(4) The department shall collect and provide the state actuary with information relevant to the use of this section for the select committee on pension policy.

(5) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to be employed for more than five months in a calendar year without a reduction of his or her pension. [2011 1st sp.s. c 47 § 19; 2007 c 50 § 5; 2005 c 319 § 103; 2004 c 242 § 63. Prior: 2003 c 412 § 5; 2003 c 295 § 7; 2001 2nd sp.s. c 10 § 4; (2001 2nd sp.s. c 10 § 12 repealed by 2002 c 26 § 9); 1997 c 254 § 14.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Effective date—2004 c 242: See RCW 41.37.901.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Additional notes found at www.leg.wa.gov

41.40.038 Duty disability retirement recipients—Continued service credit. Those members subject to this chapter who became disabled in the line of duty on or after March 27, 1984, and who received or are receiving benefits under Title 51 RCW or a similar federal workers' compensation program shall receive or continue to receive service credit subject to the following:

(1) No member may receive more than one month's service credit in a calendar month.

(2) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(3) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(4) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(5) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred. If contribution payments are made retroactively, interest shall be charged at the rate set by the director on both employee and employer contributions. No service credit shall be granted until the employee contribution has been paid.

(6) The service and compensation credit shall not be granted for a period to exceed twenty-four consecutive months.

(7) Nothing in this section shall abridge service credit rights granted in RCW 41.40.220(2) and 41.40.320.

(8) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right. [2005 c 363 § 1; 1987 c 118 § 1; 1986 c 176 § 2. Formerly RCW 41.40.223.]

41.40.042 Members agree to deductions. The deductions from the compensation of members, provided for in RCW 41.40.330, 41.45.060, 41.45.061, or 41.45.067, shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for in this chapter and receipt in full for his or her salary or compensation, and payment less the deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by the person during the period covered by the payment, except as to benefits provided for under this chapter. [2000 c 247 § 103; 1991 c 35 § 89; 1977 ex.s. c 295 § 18; 1947 c 274 § 35; Rem. Supp. 1947 § 11072-35. Formerly RCW 41.40.340.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.048 Employer's contribution—Computation—Billing. (1) The director shall report to each employer the contribution rates required for the ensuing biennium or fiscal year, whichever is applicable.

(2) Beginning September 1, 1990, the amount to be collected as the employer's contribution shall be computed by applying the applicable rates established in chapter 41.45 RCW to the total compensation earnable of employer's members as shown on the current payrolls of the said employer. In addition, the director shall determine and collect the additional employer contribution rate necessary to fund the benefits granted officials holding office pursuant to Articles II and III of the Constitution of the state of Washington and RCW 48.02.010. Each said employer shall compute at the end of each month the amount due for that month and the same shall be paid as are its other obligations. Effective January 1, 1987, however, no contributions are required for any calendar month in which the member is not granted service credit.

(3) In the event of failure, for any reason, of an employer other than a political subdivision of the state to have remitted amounts due for membership service of any of the employer's members rendered during a prior biennium, the director shall bill such employer for such employer's contribution together with such charges as the director deems appropriate in accordance with RCW 41.50.120. Such billing shall be paid by the employer as, and the same shall be, a proper charge against any moneys available or appropriated to such employer for payment of current biennial payrolls. [1989 c 273 § 23; 1986 c 268 § 5; 1985 c 138 § 1; 1982 1st ex.s. c 52 § 22; 1979 c 151 § 63; 1977 ex.s. c 295 § 20; 1963 c 126 § 1; 1961 c 291 § 12; 1949 c 240 § 26; 1947 c 274 § 38; Rem. Supp. 1947 § 11072-38. Formerly RCW 41.40.370.]

Additional notes found at www.leg.wa.gov

41.40.052 Exemption from taxation and judicial process—Exceptions—Assignability—Deductions authorized. (1) Subject to subsections (2) and (3) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, are hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2)(a) This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and which has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department, and this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(b) This section does not prohibit a beneficiary of a retirement allowance from authorizing deductions from that allowance for charitable purposes on the same terms as employees and public officers under RCW 41.04.035 and 41.04.036.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court

order expressly authorized by federal law. [2012 c 159 § 26; 1999 c 83 § 1. Prior: 1991 c 365 § 22; 1991 c 35 § 92; 1989 c 360 § 27; 1988 c 107 § 20; 1987 c 326 § 24; 1982 c 135 § 2; 1981 c 294 § 14; 1979 ex.s. c 205 § 6; 1974 ex.s. c 195 § 4; 1967 c 127 § 6; 1947 c 274 § 39; Rem. Supp. 1947 § 11072-39. Formerly RCW 41.40.380.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.40.054 Disability retirement—Criminal conduct.

A member shall not receive a disability retirement benefit under RCW 41.40.200, 41.40.220, 41.40.230, 41.40.235, 41.40.250, 41.40.670, or 41.40.825 if the disability is the result of criminal conduct by the member committed after April 21, 1997. [2000 c 247 § 104; 1997 c 103 § 3.]

Additional notes found at www.leg.wa.gov

41.40.055 Penalty for false statements. Any person who shall knowingly make any false statements, or shall falsify or permit to be falsified any record or records of this retirement system in any attempt to defraud the retirement system as a result of such act, shall be guilty of a gross misdemeanor. [1947 c 274 § 41; Rem. Supp. 1947 § 11072-41. Formerly RCW 41.40.400.]

41.40.056 Establishment of service credit—Former employees—Employers admitted before July 23, 1995.

Except as qualified by RCW 41.40.023, for employers that were admitted into the retirement system before July 23, 1995, membership service may be established for the employer's former employees who are active members of the system if the member or member's former employer pays an amount equal to the employer and member contributions which would have been paid to the retirement system on account of such service to the retirement system. Payment shall be made prior to the retirement of such member.

Payments submitted by the member under this section shall be placed in the member's individual account in the members' savings fund and be treated as any other contribution made by the member, with the exception that the contributions submitted by the member in payment of the employer's obligation, together with the interest the director may apply to the employer's contribution, shall be excluded from the calculation of the member's annuity in the event the member selects a benefit with an annuity option. [1995 c 286 § 2.]

41.40.057 Establishment of service credit—Current and former employees—Employers admitted after July 23, 1995.

(1) This section applies to the establishment of membership service with employers admitted to the retirement system after July 23, 1995.

(2) For current employees, membership service may be established for periods of employment with an employer prior to the employer's admission into the retirement system by making the payments required by this section.

The employer must select one of the options in this subsection and apply it uniformly, except as provided in subsection (3) of this section. The required payment shall include the total member and employer contributions that would have been required from the date of each current member's hire.

(a) Option A: The employer makes all the required payments within fifteen years from the date of the employer's admission.

(b) Option B: The employer makes a portion of the required payments and the member pays the balance. The employer shall not be required to make its payments until the member has made his or her payments. Each member shall have the option to purchase the membership service.

(c) Option C: The member makes all of the required payments. Each member shall have the option to purchase the membership service.

All payments under options B and C of this subsection must be completed within five years from the date of the employer's admission, or prior to the retirement of the member, whichever occurs sooner. A member may not receive membership service credit under option B or C of this subsection until all required payments have been made.

(3) An employer shall not be required to purchase membership service under option A or B for periods of employment for which the employer made contributions to a qualified retirement plan as defined by 26 U.S.C. Sec. 401(a), if the contributions plus interest accrued cannot be transferred to the retirement system. If the employer does not purchase the membership credit under this subsection, the member may purchase the membership service under subsection (2)(c) of this section.

(4) A former employee who is an active member of the system and is not covered by subsection (2) of this section may establish membership service by making the required payments under subsection (2)(c) of this section prior to the retirement of the member.

(5) All payments made by the member under this section shall be placed in the member's individual account in the members' savings fund or the member's account for those members entering plan 3. [2000 c 247 § 105; 1995 c 286 § 3.]

41.40.058 Transfer of service credit from statewide city employees' retirement system.

(1) Any person who was a member of the statewide city employees' retirement system governed by chapter 41.44 RCW and who also became a member of this retirement system on or before July 26, 1987, may, in a writing filed with the director, elect to:

(a) Transfer to this retirement system all service currently credited under chapter 41.44 RCW;

(b) Reestablish and transfer to this retirement system all service which was previously credited under chapter 41.44 RCW but which was canceled by discontinuance of service and withdrawal of accumulated contributions as provided in RCW 41.44.190. The service may be reestablished and transferred only upon payment by the member to the employees' savings fund of this retirement system of the amount withdrawn plus interest thereon from the date of withdrawal until the date of payment at a rate determined by the director. No additional payments are required for service credit described in this subsection if already established under this chapter; and

(c) Establish service credit for the initial period of employment not to exceed six months, prior to establishing membership under chapter 41.44 RCW, upon payment in full by the member of the total employer's contribution to the benefit account fund of this retirement system that would have

been made under this chapter when the initial service was rendered. The payment shall be based on the first month's compensation earnable as a member of the statewide city employees' retirement system and as defined in *RCW 41.44.030(13). However, a person who has established service credit under **RCW 41.40.010(13) (c) or (d) shall not establish additional credit under this subsection nor may anyone who establishes credit under this subsection establish any additional credit under **RCW 41.40.010(13) (c) or (d). No additional payments are required for service credit described in this subsection if already established under this chapter.

(2)(a) In the case of a member of this retirement system who is employed by an employer on July 26, 1987, the written election required by subsection (1) of this section must be filed and the payments required by subsection (1)(b) and (c) of this section must be completed in full within one year after July 26, 1987.

(b) In the case of a former member of this retirement system who is not employed by an employer on July 26, 1987, the written election must be filed and the payments must be completed in full within one year after reemployment by an employer.

(c) In the case of a retiree receiving a retirement allowance from this retirement system on July 26, 1987, or any person having vested rights as described in RCW 41.40.150 (4), the written election may be filed and the payments may be completed at any time.

(3) Upon receipt of the written election and payments required by subsection (1) of this section from any retiree described in subsection (2) of this section, the department shall recompute the retiree's allowance in accordance with this section and shall pay any additional benefit resulting from such recomputation retroactively to the date of retirement from the system governed by this chapter.

(4) Any person who was a member of the statewide city employees' retirement system under chapter 41.44 RCW and also became a member of this retirement system, and did not make the election under subsection (1) of this section because he or she was not a member of this retirement system prior to July 27, 1987, or did not meet the time limitations of subsection (2) (a) or (b) of this section, may elect to do any of the following:

(a) Transfer to this retirement system all service currently credited under chapter 41.44 RCW;

(b) Reestablish and transfer to this retirement system all service that was previously credited under chapter 41.44 RCW but was canceled by discontinuance of service and withdrawal of accumulated contributions as provided in RCW 41.44.190; and

(c) Establish service credit for the initial period of employment not to exceed six months, prior to establishing membership under chapter 41.44 RCW.

To make the election or elections, the person must pay the amount required under RCW 41.50.165(2) prior to retirement from this retirement system. [1994 c 197 § 25; 1987 c 417 § 1; 1984 c 184 § 9. Formerly RCW 41.40.403.]

Reviser's note: *(1) RCW 41.44.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (13) to subsection (10).

** (2) RCW 41.40.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (13) to subsection (23).

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

41.40.059 Credit for service in Seattle's police relief and pension fund system. Any active member of this retirement system who has previously established ten or more years' service credit in the city of Seattle's police relief and pension fund system, who withdrew his or her contributions from Seattle's police relief and pension fund system prior to July 1, 1961, and who has never been a member of the law enforcement officers' and firefighters' pension system created in chapter 41.26 RCW, may receive credit in this retirement system for such service, subject to the terms and conditions specified in RCW 41.40.061. [1992 c 157 § 3.]

41.40.061 Credit for service in Seattle's police relief and pension fund system—Terms and conditions. (1) A member who fulfills the requirements of RCW 41.40.059 may file a written declaration no later than September 30, 1992, with the department and the Seattle police relief and pension fund system indicating the member's desire to make an irrevocable transfer of credit from the Seattle system to this retirement system. The member shall restore his or her contributions, with interest since the date of withdrawal as determined by the director, no later than December 31, 1992.

(2) Upon receipt of the written declaration, the Seattle police relief and pension fund system shall send the department a report of the member's service credit. It shall also transfer to the department the portion of such member's contributions that was retained in the Seattle police relief and pension fund pursuant to RCW 41.20.150, plus a sum equal to such member's total contributions to the Seattle police relief and pension fund, which shall be treated as matching contributions by the employer, plus the compound interest that would have been generated by such sums, as determined by the Seattle city treasurer. The Seattle police relief and pension fund system shall send the service credit report and transfer the funds within ninety days of receiving the member's written declaration. [1992 c 157 § 4.]

41.40.062 Optional entry of system by political subdivisions or associations of political subdivisions—Procedure—School districts declared employers and eligible employees members of system—Exception. (1) The members and appointive and elective officials of any political subdivision or association of political subdivisions of the state may become members of the retirement system by the approval of the local legislative authority.

(2) On and after September 1, 1965, every school district of the state of Washington shall be an employer under this chapter. Every member of each school district who is eligible for membership under RCW 41.40.023 shall be a member of the retirement system and participate on the same basis as a person who first becomes a member through the admission of any employer into the retirement system on and after April 1, 1949, except that after August 31, 2000, school districts will no longer be employers for the public employees' retirement system plan 2 or plan 3. [2000 c 247 § 106; 1998 c 341 § 602; 1995 c 286 § 4; 1991 c 35 § 93; 1971 ex.s. c 271 § 12; 1969 c 128 § 13; 1965 c 84 § 1; 1963 c 174 § 16; 1961 c 291 § 13; 1953 c 200 § 19; 1951 c 50 § 13; 1949 c 240 § 27; 1947 c 274

§ 43; Rem. Supp. 1949 § 11072-42. Formerly RCW 41.40.410.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.40.068 Hearing prior to appeal—Required—

Notice. Any person aggrieved by any decision of the department affecting his or her legal rights, duties, or privileges must before he or she appeals to the courts, file with the director by mail or personally within sixty days from the day the decision was communicated to the person, a notice for a hearing before the director's designee. The notice of hearing shall set forth in full detail the grounds upon which the person considers the decision unjust or unlawful and shall include every issue to be considered by the department, and it must contain a detailed statement of facts upon which the person relies in support of the appeal. These persons shall be deemed to have waived all objections or irregularities concerning the matter on which the appeal is taken, other than those specifically set forth in the notice of hearing or appearing in the records of the retirement system. [1991 c 35 § 94; 1969 c 128 § 14; 1963 c 174 § 17; 1953 c 200 § 22. Formerly RCW 41.40.412.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.40.073 Hearing prior to appeal—Conduct of

hearing. Following its receipt of a notice for hearing in accordance with RCW 41.40.068, a hearing shall be held by the director or a duly authorized representative, in the county of the residence of the claimant at a time and place designated by the director. Such hearing shall be conducted and governed in all respects by the provisions of chapter 34.05 RCW. [1989 c 175 § 87; 1969 c 128 § 15; 1953 c 200 § 23. Formerly RCW 41.40.414.]

Additional notes found at www.leg.wa.gov

41.40.078 Judicial review in accordance with administrative procedure act. Judicial review of any final decision and order by the director is governed by the provisions of chapter 34.05 RCW. [1989 c 175 § 88; 1969 c 128 § 16; 1963 c 174 § 18; 1953 c 200 § 20; 1951 c 50 § 14. Formerly RCW 41.40.420.]

Additional notes found at www.leg.wa.gov

41.40.082 Appeal—No bond required. No bond of any kind shall be required of a claimant appealing to the superior court, the court of appeals, or the supreme court from a finding of the department affecting the claimant's right to retirement or disability benefits. [1991 c 35 § 95; 1971 c 81 § 105; 1951 c 50 § 16. Formerly RCW 41.40.440.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.088 Education employment—Service credit—Computation. (1) A plan 1 member who is employed by a school district or districts, an educational service district, the Washington state center for childhood deafness and hearing loss, the state school for the blind, institutions of higher education, or community colleges:

(a) Shall receive a service credit month for each month of the period from September through August of the following year if he or she is employed in an eligible position, earns compensation earnable for six hundred thirty hours or more during that period, and is employed during nine months of that period, except that a member may not receive credit for any period prior to the member's employment in an eligible position;

(b) If a member in an eligible position does not meet the requirements of (a) of this subsection, the member is entitled to a service credit month for each month of the period he or she earns earnable compensation for seventy or more hours; and the member is entitled to a one-quarter service credit month for those calendar months during which he or she earned compensation for less than seventy hours.

(2) Except for any period prior to the member's employment in an eligible position, a plan 2 or plan 3 member who is employed by a school district or districts, an educational service district, the state school for the blind, the Washington state center for childhood deafness and hearing loss, institutions of higher education, or community colleges:

(a) Shall receive a service credit month for each month of the period from September through August of the following year if he or she is employed in an eligible position, earns compensation earnable for eight hundred ten hours or more during that period, and is employed during nine months of that period;

(b) If a member in an eligible position for each month of the period from September through August of the following year does not meet the hours requirements of (a) of this subsection, the member is entitled to one-half service credit month for each month of the period if he or she earns earnable compensation for at least six hundred thirty hours but less than eight hundred ten hours during that period, and is employed nine months of that period;

(c) In all other instances, a member in an eligible position is entitled to service credit months as follows:

(i) One service credit month for each month in which compensation is earned for ninety or more hours;

(ii) One-half service credit month for each month in which compensation is earned for at least seventy hours but less than ninety hours; and

(iii) One-quarter service credit month for each month in which compensation is earned for less than seventy hours;

(d) After August 31, 2000, school districts and educational service districts will no longer be employers for the public employees' retirement system plan 2 or plan 3.

(3) The department shall adopt rules implementing this section. [2009 c 381 § 32; 2000 c 247 § 107; 1998 c 341 § 603. Prior: 1991 c 343 § 9; 1991 c 35 § 96; 1990 c 274 § 4; 1989 c 289 § 2; 1987 c 136 § 1; 1983 c 69 § 2; 1973 c 23 § 1. Formerly RCW 41.40.450.]

Findings—Intent—2009 c 381: See note following RCW 72.40.015.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—Intent—Reservation—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

Additional notes found at www.leg.wa.gov

41.40.092 Transfer of cadet service credit to Washington state patrol retirement system. (1) Active members of the Washington state patrol retirement system who have previously established service credit in the public employees' retirement system, plan 1 or plan 2 while employed by the state patrol as a cadet as defined in *RCW 43.43.120(6)(b) may have such service credit transferred to the state patrol retirement system subject to the terms and conditions specified in chapter 43.43 RCW, including reestablishment of such service for the sole purpose of transfer. Service reestablishment shall be subject to the interest requirements of RCW 41.40.150(2).

(2) Service credit established for employment other than that specified in subsection (1) of this section is not eligible for transfer. [2000 c 247 § 108; 1983 c 81 § 3. Formerly RCW 41.40.530.]

*Reviser's note: RCW 43.43.120 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (6)(b) to subsection (5)(b).

Additional notes found at www.leg.wa.gov

41.40.0931 Death benefit—Course of employment as a police officer—Occupational disease or infection. (1) A one hundred fifty thousand dollar death benefit for members who had the opportunity to transfer to the law enforcement officers' and firefighters' retirement system pursuant to chapter 502, Laws of 1993, but elected to remain in the public employees' retirement system, shall be paid to the member's estate, or such person or persons, trust, or organization as the member has nominated by written designation duly executed and filed with the department. If there is no designated person or persons still living at the time of the member's death, the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's legal representatives.

(2) Subject to subsection (3) of this section, the benefit under this section shall be paid only where death occurs as a result of (a) injuries sustained in the course of employment as a general authority police officer; or (b) an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050.

(3) The benefit under this section shall not be paid in the event the member was in the act of committing a felony when the fatal injuries were suffered. [2007 c 487 § 6; 1998 c 157 § 1.]

Additional notes found at www.leg.wa.gov

41.40.0932 Death benefit—Course of employment—Occupational disease or infection. (1) A one hundred fifty thousand dollar death benefit shall be paid to the member's estate, or such person or persons, trust or organization as the member has nominated by written designation duly executed and filed with the department. If no such designated person or persons are still living at the time of the member's death, the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by

written designation, or if there is no surviving spouse, then to the member's legal representatives.

(2) The benefit under this section shall be paid only where death occurs as a result of (a) injuries sustained in the course of employment; or (b) an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050. [2007 c 487 § 7; 2003 c 402 § 1.]

41.40.095 Transfer of membership from judicial retirement system. (1) Any member of the Washington judicial retirement system who wishes to transfer such membership to the retirement system provided for in this chapter shall file a written request with the director as required by RCW 2.10.040 on or before December 31, 1989, or within one year after reentering service as a judge.

Upon receipt of such request, the director shall transfer from the judicial retirement system to this retirement system: (a) An amount equal to the employee and employer contributions the judge would have made if the judge's service under chapter 2.10 RCW had originally been earned under this chapter, which employee contributions shall be credited to the member's account established under this chapter; and (b) a record of service credited to the member. The judge's accumulated contributions that exceed the amount credited to the judge's account under this subsection shall be deposited in the judge's retirement account created pursuant to chapter 2.14 RCW.

(2) The member shall be given year-for-year credit for years of service, as determined under *RCW 2.10.030(8), earned under the judicial retirement system. Service credit granted under the judicial retirement system pursuant to RCW 2.10.220 shall not be transferred under this section. The director instead shall reverse the transfer of contributions and service credit previously made under RCW 2.10.220 and shall credit the member for such periods of service and contributions under this chapter as though no transfer had ever occurred.

(3) All employee contributions transferred pursuant to this section shall be treated the same as other employee contributions made under this chapter. [1988 c 109 § 5. Formerly RCW 41.40.540.]

*Reviser's note: RCW 2.10.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (8) to subsection (11).

Additional notes found at www.leg.wa.gov

41.40.096 Law enforcement officers—Dual membership—Plan 1 exception. (1) An employee who was a member of the public employees' retirement system plan 2 or plan 3 on or before January 1, 2003, and on July 27, 2003, is employed by the department of fish and wildlife as a law enforcement officer as defined in RCW 41.26.030, shall become a member of the law enforcement officers' and firefighters' retirement system plan 2. All officers will be dual members as provided in chapter 41.54 RCW, and public employees' retirement system service credit may not be trans-

ferred to the law enforcement officers' and firefighters' retirement system plan 2.

(2) An employee who was a member of the public employees' retirement system plan 1 on or before January 1, 2003, and on or after July 27, 2003, is employed by the department of fish and wildlife as a law enforcement officer as defined in RCW 41.26.030, shall remain a member of the public employees' retirement system plan 1. [2003 c 388 § 1.]

41.40.098 Transfer of former service from judicial retirement system. A former member of the Washington judicial retirement system who: (1) Is not serving as a judge on July 1, 1988; (2) has not retired under the applicable provisions of chapter 2.10 RCW; and (3) subsequently reacquires membership in the public employees' retirement system may, by written request filed with the director of retirement systems, transfer to the public employees' retirement system all periods of time served as a judge, as defined in *RCW 2.10.030(2). Upon such membership transfer being made, the department of retirement systems shall transfer the employer contributions and the employee's contributions and service from the judicial retirement system to the public employees' retirement system. The service shall be transferred and credited to the member as though the service was originally earned as a member of the public employees' retirement system. [1988 c 109 § 6. Formerly RCW 41.40.542.]

*Reviser's note: RCW 2.10.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (2) to subsection (5).

Additional notes found at www.leg.wa.gov

41.40.102 Effect of certain accumulated vacation leave on retirement benefits. RCW 43.01.044 shall not result in any increase in retirement benefits. The rights extended to state officers and employees under RCW 43.01.044 are not intended to and shall not have any effect on retirement benefits under this chapter. [1983 c 283 § 4. Formerly RCW 41.40.800.]

41.40.103 Benefit calculation—Limitation. (1) The annual compensation taken into account in calculating retiree benefits under this system shall not exceed the limits imposed by section 401(a)(17) of the federal internal revenue code for qualified trusts.

(2) The department shall adopt rules as necessary to implement this section. [1995 c 145 § 3.]

41.40.104 Establishing, restoring service credit. Notwithstanding any provision to the contrary, persons who fail to:

(1) Establish allowable membership service not previously credited;

(2) Restore all or a part of that previously credited membership service represented by withdrawn contributions; or

(3) Restore service credit represented by a lump sum payment in lieu of benefits, before the deadline established by statute, may do so under the conditions set forth in RCW 41.50.165. [1998 c 17 § 3.]

(2014 Ed.)

41.40.1041 Prior service for plan 2 or 3 members—One-half service credit. (1) By no later than December 31, 2010, the department shall recalculate service credit for periods of qualifying prior service by an eligible member, as provided for in this section.

(2) An eligible member is a member of plan 2 or 3 who is active in the retirement system and who earns service credit after June 10, 2010, and before September 1, 2010.

(3) A qualifying period of prior service is a school year prior to January 1, 1987, in which the member:

(a) Was employed in an eligible position by a school district or districts, educational service district, the state school for the deaf, the state school for the blind, an institution of higher education, or a community college;

(b) Earned earnable compensation for at least six hundred thirty hours as determined by the department;

(c) Received less than six months of service credit; and

(d) Has not withdrawn service credit for the school year or has restored any withdrawn service credit for the school year.

(4) The department shall recalculate service credit for qualifying periods of prior service for an eligible member as follows:

(a) The member shall receive one-half service credit month for each month of the period from September through August of the following year if he or she earned earnable compensation during that period for at least six hundred thirty hours as determined by the department, and was employed nine months of that period; and

(b) A member's service credit shall not be reduced under this section for a qualifying period of prior service. [2010 c 103 § 2.]

41.40.105 Chapter not applicable to officers and employees of state convention and trade center. The provisions of this chapter shall not be applicable to the officers and employees of the nonprofit corporation formed under *chapter 67.40 RCW. [1984 c 210 § 6. Formerly RCW 41.40.810.]

*Reviser's note: A majority of chapter 67.40 RCW was repealed by 2010 1st sp.s. c 15 § 14, effective November 30, 2010. RCW 67.40.020 was repealed by 2010 1st sp.s. c 15 § 15, effective December 30, 2010.

Additional notes found at www.leg.wa.gov

41.40.108 Higher education classified employees—Membership in the public employees' retirement system.

(1) All classified employees employed by Washington State University on and after April 24, 1973, and otherwise eligible shall become members of the Washington public employees' retirement system to the exclusion of any other retirement benefit system at the institution unless otherwise provided by law.

(2) All classified employees employed by the University of Washington or each of the regional universities or The Evergreen State College on and after May 6, 1974, and otherwise eligible shall become members of the Washington public employees' retirement system at the institution unless otherwise provided by law: PROVIDED, That persons who, immediately prior to the date of their hiring as classified employees, have for at least two consecutive years held membership in a retirement plan underwritten by the private insurer of the retirement plan of their respective educational

institution may irrevocably elect to continue their membership in the retirement plan notwithstanding the provisions of this chapter, if the election is made within thirty days from the date of their hiring as classified employees. If these persons elect to become members of the public employees' retirement system, contributions by them and their employers shall be required from their first day of employment. [1991 c 35 § 107.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.109 Retirement system employer—Termination of status. (1) Employers that are organized pursuant to chapter 36.100, 36.102, or 81.112 RCW, who have become retirement system employers since 1993, and who have previously excluded some of their employees from retirement system membership pursuant to the limitation in RCW 41.40.023(4), shall have the option until December 31, 1999, to terminate their status as a retirement system employer with regard to persons employed after the date of their election.

(2) If a government unit terminates its status as an employer pursuant to this section its employees as of the date of the election who are members shall be eligible to continue their membership in the retirement system, if otherwise eligible under this chapter, for the duration of their continuous employment with that employer.

(3) If a government unit subject to this section does not elect to terminate its status as a retirement system employer it may either: (a) Continue to exclude from membership those employees who were excluded pursuant to the limitation in RCW 41.40.023(4) prior to July 25, 1999; or [(b)] include such employees in the retirement system, if otherwise eligible under this chapter, for service rendered on or after July 25, 1999, and after the employer's election. [1999 c 244 § 2.]

41.40.111 Retirement system employer—Unit of government. (1) When a unit of government has become a retirement system employer, all of its employees must be included in the plan membership, if otherwise eligible under this chapter, unless the employee is exempted from membership or qualifies for optional membership pursuant to RCW 41.40.023 or other provision of this chapter.

(2) A unit of government which has become a retirement system employer may not withdraw from the retirement system. [1999 c 244 § 3.]

41.40.113 Public safety employees' retirement system—Election—Membership. (1) An employee who was a member of the public employees' retirement system plan 2 or plan 3 before July 1, 2006, and on July 1, 2006, is employed by an employer as defined in *RCW 41.37.010(4) and is an employee in a job class included in *RCW 41.37.010(5), has the following options during the election period:

(a) Remain a member of the public employees' retirement system; or

(b) Become a member of the public safety employees' retirement system plan 2. All members will be dual members as provided in chapter 41.54 RCW, and public employees' retirement system service credit may not be transferred to the public safety employees' retirement system plan 2.

(2) The "election period" is the period between July 1, 2006, and September 30, 2006.

(3) During the election period, employees remain members of the public employees' retirement system plan 2 or plan 3 until they elect to join the public safety employees' retirement system. Members who elect to join the public safety employees' retirement system as described in subsection (1) of this section will have their membership begin prospectively from the date of their election.

(4) If after September 30, 2006, the member has not made an election to join the public safety employees' retirement system he or she will remain in the public employees' retirement system plan 2 or plan 3.

(5) An employee who was a member of the public employees' retirement system plan 1 on or before July 1, 2006, and on or after July 1, 2006, is employed by an employer as defined in *RCW 41.37.010(4) as an employee in a job class included in *RCW 41.37.010(5), shall remain a member of the public employees' retirement system plan 1.

(6) All new employees hired on or after July 1, 2006, who become employed by an employer as defined in *RCW 41.37.010(4) as an employee in a job class included in *RCW 41.37.010(5) will become members of the public safety employees' retirement system.

(7) An employee of the department of natural resources who was a member of the public employees' retirement system plan 2 or plan 3 before July 1, 2007, and on July 1, 2007, is performing the duties as defined in *RCW 41.37.010(5), has the following options during the election period defined in subsection (8) of this section:

(a) Remain in the public employees' retirement system; or

(b) Become a member of the public safety employees' retirement system plan 2 and be a dual member as provided in chapter 41.54 RCW, and public employees' retirement system service credit may not be transferred to the public safety employees' retirement system.

(8) The "election period" is the period between July 1, 2007, and September 30, 2007.

(9) During the election period, department of natural resources employees remain members of the public employees' retirement system plan 2 or plan 3 until they elect to join the public safety employees' retirement system. Members who elect to join the public safety employees' retirement system as described in subsection (7) of this section will have their membership begin prospectively from the date of their election.

(10) If after September 30, 2007, an employee has not made an election to join the public safety employees' retirement system, he or she will remain in the public employees' retirement system plan 2 or plan 3. [2007 c 294 § 2; 2004 c 242 § 5.]

***Reviser's note:** RCW 41.37.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsections (4) and (5) to subsections (12) and (19), respectively.

Effective date—2004 c 242: See RCW 41.37.901.

41.40.124 Discontinuing judicial retirement account plan contributions—Additional benefit—One-time irrevocable election—Justices and judges. (1) Between January 1, 2007, and December 31, 2007, a member of plan 1 or plan 2 employed as a supreme court justice, court of appeals judge, or superior court judge may make a one-time irrevoca-

ble election, filed in writing with the member's employer, the department, and the administrative office of the courts, to accrue an additional benefit equal to one and one-half percent of average final compensation for each year of future service credit from the date of the election in lieu of future employee and employer contributions to the judicial retirement account plan under chapter 2.14 RCW.

(2) A member who made the election under subsection (1) of this section may apply, at the time of filing a written application for retirement with the department, to the department to increase the member's benefit multiplier by an additional one and one-half percent per year of service for the period in which the member served as a justice or judge prior to the election. The member may purchase, beginning with the most recent judicial service, the higher benefit multiplier for that portion of the member's prior judicial service for which the higher benefit multiplier was not previously purchased, and that would ensure that the member has no more than a seventy-five percent of average final compensation benefit. The member shall pay five percent of the salary earned for each month of service for which the higher benefit multiplier is being purchased, plus five and one-half percent interest applied from the dates that the service was earned. The purchase price shall not exceed the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier. This payment must be made prior to retirement, subject to rules adopted by the department.

(3) From January 1, 2009, through June 30, 2009, the following members may apply to the department to increase their benefit multiplier by an additional one and one-half percent per year of service for the period in which they served as a justice or judge:

(a) Active members of plan 1 or plan 2 who are not currently employed as a supreme court justice, court of appeals judge, or superior court judge, and who have past service as a supreme court justice, court of appeals judge, or superior court judge; and

(b) Inactive vested members of plan 1 or plan 2 who have separated, have not yet retired, and who have past service as a supreme court justice, court of appeals judge, or superior court judge.

A member eligible under this subsection may purchase the higher benefit multiplier for all or part of the member's prior judicial service beginning with the most recent judicial service. The member shall pay, for the applicable period of service, the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier as determined by the director.

(4) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred

funds for tax-free rollover treatment or other treatment under federal income tax law. [2008 c 300 § 1; 2007 c 123 § 1; 2006 c 189 § 5.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.40.127 Additional benefit for district or municipal court judges—One-time irrevocable election. (1) Between January 1, 2007, and December 31, 2007, a member of plan 1 or plan 2 employed as a district court judge or municipal court judge may make a one-time irrevocable election, filed in writing with the member's employer and the department, to accrue an additional benefit equal to one and one-half percent of average final compensation for each year of future service credit from the date of the election.

(2) A member who made the election under subsection (1) of this section may apply, at the time of filing a written application for retirement with the department, to the department to increase the member's benefit multiplier by one and one-half percent per year of service for the period in which the member served as a judge prior to the election. The member may purchase, beginning with the most recent judicial service, the higher benefit multiplier for that portion of the member's prior judicial service for which the higher benefit multiplier was not previously purchased, and that would ensure that the member has no more than a seventy-five percent of average final compensation benefit. The member shall pay five percent of the salary earned for each month of service for which the higher benefit multiplier is being purchased, plus five and one-half percent interest applied from the dates that the service was earned. The purchase price shall not exceed the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier. This payment must be made prior to retirement, subject to rules adopted by the department.

(3) From January 1, 2009, through June 30, 2009, the following members may apply to the department to increase their benefit multiplier by an additional one and one-half percent per year of service for the period in which they served as a justice or judge:

(a) Active members of plan 1 or plan 2 who are not currently employed as a district court judge or municipal court judge, and who have past service as a district court judge or municipal court judge; and

(b) Inactive vested members of plan 1 or plan 2 who have separated, have not yet retired, and who have past service as a district court judge or municipal court judge.

A member eligible under this subsection may purchase the higher benefit multiplier for all or part of the member's prior judicial service beginning with the most recent judicial service. The member shall pay, for the applicable period of service, the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier as determined by the director.

(4) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal

revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law. [2008 c 300 § 2; 2007 c 123 § 2; 2006 c 189 § 6.]

Effective date—2006 c 189: See note following RCW 2.14.115.

"PLAN 1"

41.40.145 Provisions applicable to plan 1. RCW 41.40.150 through 41.40.363 shall apply only to members of plan 1. [1992 c 72 § 9; 1991 c 35 § 105.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.150 Termination of membership—Restoration of service credit. Should any member die, or should the individual separate or be separated from service without leave of absence before attaining age sixty years, or should the individual become a beneficiary, except a beneficiary of an optional retirement allowance as provided by RCW 41.40.188, the individual shall thereupon cease to be a member except;

(1) As provided in RCW 41.40.170.

(2) An employee not previously retired who reenters service shall upon completion of six months of continuous service and upon the restoration, in one lump sum or in annual installments, of all withdrawn contributions: (a) With interest as computed by the director, which restoration must be completed within a total period of five years of membership service following the member's first resumption of employment or (b) paying the amount required under RCW 41.50.165(2), be returned to the status, either as an original member or new member which the member held at time of separation.

(3)(a) Except as provided in (b) of this subsection, a member who separates or has separated after having completed at least five years of service shall remain a member during the period of absence from service for the exclusive purpose of receiving a retirement allowance to begin at attainment of age sixty-five, however, such a member may on written notice to the director elect to receive a reduced retirement allowance on or after age sixty which allowance shall be the actuarial equivalent of the sum necessary to pay regular retirement benefits as of age sixty-five: PROVIDED, That if such member should withdraw all or part of the member's accumulated contributions except those additional contributions made pursuant to RCW 41.40.330(2), the individual shall thereupon cease to be a member and this section shall not apply.

(b) A member who:

(i) Separates from service under this subsection on or after January 1, 2002; and

(ii) Attains the age of fifty with at least twenty years of service prior to separation; and

(iii) Is not retired as of June 13, 2002, shall remain a member during the period of absence from service for the exclusive purpose of receiving a retirement allowance to begin at attainment of age sixty.

If such a member should withdraw all or part of the member's accumulated contributions except those additional

contributions made pursuant to RCW 41.40.330(2), the individual shall thereupon cease to be a member and this section shall not apply.

(4) The recipient of a retirement allowance elected to office or appointed to office directly by the governor, and who shall apply for and be accepted in membership as provided in RCW 41.40.023(3) shall be considered to have terminated his or her retirement status and shall become a member of the retirement system with the status of membership the member held as of the date of retirement. Retirement benefits shall be suspended from the date of return to membership until the date when the member again retires and the member shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible in accordance with RCW 41.40.180: PROVIDED, That where any such right to retire is exercised to become effective before the member has rendered six uninterrupted months of service the type of retirement allowance the member had at the time of the member's previous retirement shall be reinstated, but no additional service credit shall be allowed: AND PROVIDED FURTHER, That if such a recipient of a retirement allowance does not elect to apply for reentry into membership as provided in RCW 41.40.023(3), the member shall be considered to remain in a retirement status and the individual's retirement benefits shall continue without interruption.

(5) Any member who leaves the employment of an employer and enters the employ of a public agency or agencies of the state of Washington, other than those within the jurisdiction of this retirement system, and who establishes membership in a retirement system or a pension fund operated by such agency or agencies and who shall continue membership therein until attaining age sixty, shall remain a member for the exclusive purpose of receiving a retirement allowance without the limitation found in RCW 41.40.180(1) to begin on attainment of age sixty-five; however, such a member may on written notice to the director elect to receive a reduced retirement allowance on or after age sixty which allowance shall be the actuarial equivalent of the sum necessary to pay regular retirement benefits commencing at age sixty-five: PROVIDED, That if such member should withdraw all or part of the member's accumulated contributions except those additional contributions made pursuant to RCW 41.40.330(2), the individual shall thereupon cease to be a member and this section shall not apply. [2002 c 62 § 1; 1997 c 254 § 12; 1994 c 197 § 26; 1992 195 § 1; 1990 c 249 § 17. Prior: 1987 c 384 § 1; 1987 c 88 § 1; 1986 c 317 § 3; 1983 c 233 § 2; 1982 1st ex.s. c 52 § 20; 1979 ex.s. c 249 § 10; 1974 ex.s. c 195 § 3; 1973 1st ex.s. c 190 § 6; 1969 c 128 § 6; 1967 c 127 § 4; 1965 c 155 § 3; 1963 c 174 § 8; 1955 c 277 § 3; 1953 c 200 § 7; 1951 c 50 § 3; 1949 c 240 § 10; 1947 c 274 § 16; Rem. Supp. 1949 § 11072-16.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—1990 c 249: See note following RCW 2.10.146.

Legislative findings—Intent—1986 c 317: "The legislature finds that in the past public employees and teachers who had terminated employment, withdrawn their retirement contributions, and subsequently returned to public employment or teaching either did not receive proper notification of the procedure to reinstate their withdrawn contributions or they did not fully

understand the limitation on such reinstatement. In 1973, the legislature recognized this fact and provided an extraordinary reinstatement period for such employees. Further in 1983, the legislature established clear notification procedures for the proper notification of the reinstatement policy for all such returning employees. Therefore, it is the intent of this 1986 act to provide one last opportunity for reinstatement of withdrawn contributions to those who may have not been properly informed or misunderstood the reinstatement procedure." [1986 c 317 § 1.]

Additional notes found at www.leg.wa.gov

41.40.160 Creditable service. (1) Subject to the provisions of RCW 41.40.150, at retirement the total service credited to a member shall consist of all membership service and, if he or she is an original member, all of the certified prior service.

(2) Employees of a public utility or other private enterprise all or any portion of which has been heretofore or may be hereafter acquired by a public agency as a matter of public convenience and necessity, where it is in the public interest to retain the trained personnel of such enterprise, all service to that enterprise shall, upon the acquiring public agency becoming an employer as defined in *RCW 41.40.010(4) be credited on the same basis as if rendered to the said employer: PROVIDED, That this shall apply only to those employees who were in the service of the enterprise at or prior to the time of acquisition by the public agency and who remain in the service of the acquiring agency until they attain membership in the state employees' retirement system; and to those employees who were in the service of the enterprise at the time of acquisition by the public agency and subsequently attain membership through employment with any participating agency: PROVIDED FURTHER, In the event that the acquiring agency is an employer at the time of the acquisition, employer's contributions in connection with members achieving service credit hereunder shall be made on the same basis as set forth in RCW **41.40.045 and 41.40.048 for an employer admitted after April 1, 1949, and before July 23, 1995, and on the same basis as set forth in RCW 41.40.057 for an employer admitted after July 23, 1995. [1995 c 286 § 5; 1991 c 35 § 77; 1989 c 273 § 27; 1965 c 155 § 4; 1963 c 174 § 9; 1953 c 200 § 8; 1951 c 50 § 4; 1949 c 240 § 11; 1947 c 274 § 17; Rem. Supp. 1949 § 11072-17.]

Reviser's note: *(1) RCW 41.40.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (4) to subsection (13).

***(2) RCW 41.40.045 was repealed by 1995 c 286 § 6.

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.40.163 Purchase of service credit—Service at Washington State University. Notwithstanding any provision to the contrary, employees of Washington State University who first established membership in the public employees' retirement system plan 1 under *RCW 41.40.500 through 41.40.507, as existing on July 28, 1991, and **RCW 41.40.508, as existing on June 7, 1990, may purchase, as set forth under RCW 41.50.165, plan 1 service credit for the period of service at Washington State University prior to his or her contributory membership in the Washington State University retirement system. [1998 c 17 § 4.]

Reviser's note: *(1) RCW 41.40.500 through 41.40.507 were decodified pursuant to 1991 c 35 § 4.

***(2) RCW 41.40.508 was repealed by 1990 c 249 § 22.

41.40.170 Credit for military service. (1) A member who has served or shall serve on active federal service in the military or naval forces of the United States and who left or shall leave an employer to enter such service shall be deemed to be on military leave of absence if he or she has resumed or shall resume employment as an employee within one year from termination thereof.

(2) If he or she has applied or shall apply for reinstatement of employment, within one year from termination of the military service, and is refused employment for reasons beyond his or her control, he or she shall, upon resumption of service within ten years have such service credited to him or her.

(3) In any event, after completing twenty-five years of creditable service, any member may have service in the armed forces credited to him or her as a member whether or not he or she left the employ of an employer to enter the armed service: PROVIDED, That in no instance, described in this section, shall military service in excess of five years be credited: AND PROVIDED FURTHER, That in each instance the member must restore all withdrawn accumulated contributions, which restoration must be completed within five years of membership service following the first resumption of employment or complete twenty-five years of creditable service: AND PROVIDED FURTHER, That this section will not apply to any individual, not a veteran within the meaning of RCW 41.04.005.

(4)(a) A member, after completing twenty-five years of creditable service, who would have otherwise become eligible for a retirement benefit as defined under this chapter while serving honorably in the armed forces as referenced in RCW 41.04.005, shall, upon application to the department, be eligible to receive credit for this service without returning to covered employment.

(b) Service credit granted under (a) of this subsection applies only to veterans as defined in RCW 41.40.005.

(5) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(a) Provides to the director proof of the member's death while serving in the uniformed services; and

(b) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death.

(6) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(a) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services; and

(b) The member provides to the director proof of honorable discharge from the uniformed services. [2005 c 247 § 2; 2005 c 64 § 1; 2002 c 27 § 2; 1991 c 35 § 78; 1981 c 294 § 12; 1973 1st ex.s. c 190 § 14; 1972 ex.s. c 151 § 3; 1969 c 128 § 7; 1967 c 127 § 8; 1963 c 174 § 10; 1953 c 200 § 9; 1949 c 240 § 12; 1947 c 274 § 18; Rem. Supp. 1949 § 11072-18.]

Reviser's note: This section was amended by 2005 c 64 § 1 and by 2005 c 247 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2005 c 247: See notes following RCW 41.04.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.40.175 Service credit for paid leave of absence—Application to elected officials of labor organizations. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided under the provisions of RCW 41.40.145 through 41.40.363.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The compensation earnable reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement. [1993 c 95 § 1.]

Additional notes found at www.leg.wa.gov

41.40.180 Retirement—Length of service. (1) Any member with five years of creditable service who has attained age sixty and any original member who has attained age sixty may retire on written application to the director, setting forth at what time the member desires to be retired: PROVIDED, That in the national interest, during time of war engaged in by the United States, the director may extend beyond age sixty, subject to the provisions of subsection (2) of this section, the age at which any member may be eligible to retire.

(2) Any member who has completed thirty years of service may retire on written application to the director setting forth at what time the member desires to be retired, subject to war measures.

(3) Any member who has completed twenty-five years of service and attained age fifty-five may retire on written application to the director setting forth at what time the member desires to be retired, subject to war measures.

(4) Any individual who is eligible to retire pursuant to subsections (1) through (3) of this section shall be allowed to retire while on any authorized leave of absence not in excess of one hundred and twenty days. [1982 1st ex.s. c 52 § 21; 1973 1st ex.s. c 190 § 7; 1972 ex.s. c 151 § 4; 1971 ex.s. c 271 § 7; 1967 c 127 § 5; 1963 c 174 § 11; 1955 c 277 § 4; 1953 c 200 § 10; 1951 c 81 § 1; 1949 c 240 § 13; 1947 c 274 § 19; Rem. Supp. 1949 § 11072-19.]

41.40.183 Annual increase amount—Legislature's rights reserved—No additional increases after June 30, 2011. (1) Beginning July 1, 2009, the annual increase amount as defined in RCW 41.40.010(4) shall be increased by an amount equal to \$0.40 per month per year of service minus the 2008 gain-sharing increase amount under *RCW 41.31.010 as it exists on July 22, 2007. This adjustment shall not decrease the annual increase amount, and is not to exceed \$0.20 per month per year of service. The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has the contractual right to receive this adjustment to the annual increase amount not granted prior to that time.

(2) The adjustment to the annual increase amount as set forth in section 11, chapter 491, Laws of 2007 was intended by the legislature as a replacement benefit for gain-sharing. If the repeal of **chapter 41.31 RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then this adjustment to the annual increase amount shall not be included in future annual increase amounts paid on or after the date of such reinstatement.

(3) No additional increase under this section shall be provided after June 30, 2011. [2011 c 362 § 5; 2007 c 491 § 11.]

Reviser's note: *(1) RCW 41.31.010 was repealed by 2007 c 491 § 13, effective January 2, 2008.

***(2) Chapter 41.31 RCW was repealed by 2007 c 491 § 13, effective January 2, 2008.

Finding—Intent—Effective date—2011 c 362: See notes following RCW 41.32.483.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

41.40.185 Retirement allowances—Members retiring after February 25, 1972. Upon retirement from service, as provided for in RCW 41.40.180 or 41.40.210, a member shall be eligible for a service retirement allowance computed on the basis of the law in effect at the time of retirement, together with such post-retirement pension increases as may from time to time be expressly authorized by the legislature. The service retirement allowance payable to members retiring on and after February 25, 1972 shall consist of:

(1) An annuity which shall be the actuarial equivalent of his or her additional contributions made pursuant to RCW 41.40.330(2).

(2) A membership service pension, subject to the provisions of subsection (4) of this section, which shall be equal to two percent of his or her average final compensation for each service credit year or fraction of a service credit year of membership service.

(3) A prior service pension which shall be equal to one-seventieth of his or her average final compensation for each year or fraction of a year of prior service not to exceed thirty years credited to his or her service accounts. In no event, except as provided in *this 1972 amendatory act, shall any member receive a retirement allowance pursuant to subsections (2) and (3) of this section of more than sixty percent of his or her average final compensation: PROVIDED, That no member shall receive a pension under this section of less than nine hundred dollars per annum if such member has twelve or

more years of service credit, or less than one thousand and two hundred dollars per annum if such member has sixteen or more years of service credit, or less than one thousand five hundred and sixty dollars per annum if such member has twenty or more years of service credit.

(4) Notwithstanding the provisions of subsections (1) through (3) of this section, the retirement allowance payable for service where a member was elected or appointed pursuant to Articles II or III of the Constitution of the state of Washington or RCW 48.02.010 and the implementing statutes shall be a combined pension and annuity. Said retirement allowance shall be equal to three percent of the average final compensation for each year of such service. Any member covered by this subsection who upon retirement has served ten or more years shall receive a retirement allowance of at least one thousand two hundred dollars per annum; such member who has served fifteen or more years shall receive a retirement allowance of at least one thousand eight hundred dollars per annum; and such member who has served twenty or more years shall receive a retirement allowance of at least two thousand four hundred dollars per annum: PROVIDED, That the initial retirement allowance of a member retiring only under the provisions of this subsection shall not exceed the average final compensation upon which the retirement allowance is based. The minimum benefits provided in this subsection shall apply to all retired members or to the surviving spouse of deceased members who were elected to the office of state senator or state representative. [1991 c 343 § 7; 1990 c 249 § 7; 1987 c 143 § 2; 1973 1st ex.s. c 190 § 8; 1972 ex.s. c 151 § 5.]

*Reviser's note: For codification of "this 1972 amendatory act" [1972 ex.s. c 151], see Codification Tables.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.40.188 Retirement allowance—Options—Retirement allowance adjustment—Court-approved property settlement. (1) Upon retirement for service as prescribed in RCW 41.40.180 or retirement for disability under RCW 41.40.210 or 41.40.230, a member shall elect to have the retirement allowance paid pursuant to one of the following options calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced

retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(c) A member may elect to include the benefit provided under RCW 41.40.640 along with the retirement options available under this section. This retirement allowance option shall be calculated so as to be actuarially equivalent to the options offered under this subsection.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

(4) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a non-spouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(5) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.40.180(1) and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the age provided in RCW 41.40.180(1) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (4) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) The separate single life benefits of the member and the nonmember ex spouse are not (i) subject to the minimum benefit provisions of RCW 41.40.1984, or (ii) the minimum benefit annual increase amount eligibility provisions of *RCW 41.40.197 (2)(b) and (3)(a).

(d) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits

provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution. [2002 c 158 § 12; 2000 c 186 § 7; 1998 c 340 § 8; 1996 c 175 § 6; 1995 c 144 § 1; 1990 c 249 § 9.]

*Reviser's note: RCW 41.40.197 was amended by 2005 c 327 § 8, deleting subsection (3)(a).

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.40.189 Retirement allowance—Adjustment eligibility. (1) A retiree who receives state-funded long-term care services on or after June 1, 1998, is not eligible for the increase provided by section 8, chapter 340, Laws of 1998, if the increase would make the retiree ineligible for state-funded long-term care services. For the purposes of this section "state-funded long-term care services" means a state-funded adult family home, adult residential care, assisted living, enhanced adult residential care, in-home care, or nursing home service, as defined in RCW 74.39A.009, for which the retiree is required to contribute all income other than a specified amount reserved for the retiree's personal maintenance needs. Retirees who are subject to this section shall notify the department in writing. The department has no affirmative duty to identify retirees who are subject to this subsection.

(2) This section applies to all payments under section 8, chapter 340, Laws of 1998, made on or after May 17, 1999, regardless of the date of retirement. [1999 c 362 § 3.]

Additional notes found at www.leg.wa.gov

41.40.190 Retirement allowance—In lieu of allowance provided in RCW 41.40.185. In lieu of the retirement allowance provided in RCW 41.40.185, an individual employed on or before April 25, 1973 may, after complying with RCW 41.40.180 or 41.40.210, make an irrevocable election to receive the retirement allowance provided by this section which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his or her accumulated contributions at the time of his or her retirement; and

(2) A basic service pension of one hundred dollars per annum; and

(3) A membership service pension, subject to the provisions of subdivision (4) of this section, which shall be equal to one one-hundredth of his or her average final compensation for each year or fraction of a year of membership service credited to his or her service account; and

(4) A prior service pension which shall be equal to one-seventieth of his or her average final compensation for each year or fraction of a year of prior service not to exceed thirty years credited to his or her service accounts. In no event shall any original member upon retirement at age seventy with ten or more years of service credit receive less than nine hundred dollars per annum as a retirement allowance, nor shall any member upon retirement at any age receive a retirement allowance of less than nine hundred dollars per annum if such member has twelve or more years of service credit, or less than one thousand and two hundred dollars per annum if such member has sixteen or more years of service credit, or less than one thousand five hundred and sixty dollars per annum if such member has twenty or more years of service credit. In the event that the retirement allowance as to such member

provided by subdivisions (1), (2), (3), and (4) hereof shall amount to less than the aforesaid minimum retirement allowance, the basic service pension of the member shall be increased from one hundred dollars to a sum sufficient to make a retirement allowance of the applicable minimum amount.

(5) Notwithstanding the provisions of subsections (1) through (4) of this section, the retirement allowance payable for service where a member was elected or appointed pursuant to Articles II or III of the Constitution of the state of Washington or RCW 48.02.010 and the implementing statutes shall be a combined pension and annuity. Said retirement allowance shall be equal to three percent of the average final compensation for each year of such service. Any member covered by this subsection who upon retirement has served ten or more years shall receive a retirement allowance of at least one thousand two hundred dollars per annum; such member who has served fifteen or more years shall receive a retirement allowance of at least one thousand eight hundred dollars per annum; and such member who has served twenty or more years shall receive a retirement allowance of at least two thousand four hundred dollars per annum: PROVIDED, That the initial retirement allowance of a member retiring only under the provisions of this subsection shall not exceed the average final compensation upon which the retirement allowance is based. The minimum benefits provided in this subsection shall apply to all retired members or to the surviving spouse of deceased members who were elected under the provisions of Article II of the Washington state Constitution.

(6) Unless payment shall be made under RCW 41.40.270, a joint and one hundred percent survivor benefit under RCW 41.40.188 shall automatically be given effect as if selected for the benefit of the surviving spouse upon the death in service, or while on authorized leave of absence for a period not to exceed one hundred and twenty days from the date of payroll separation, of any member who is qualified for a service retirement allowance or has completed ten years of service at the time of death, except that if the member is not then qualified for a service retirement allowance, such option II benefit shall be based upon the actuarial equivalent of the sum necessary to pay the accrued regular retirement allowance commencing when the deceased member would have first qualified for a service retirement allowance. [1990 c 249 § 8; 1987 c 143 § 3; 1973 1st ex.s. c 190 § 9; 1972 ex.s. c 151 § 6; 1971 ex.s. c 271 § 5; 1969 c 128 § 8; 1967 c 127 § 7; 1961 c 291 § 6; 1953 c 200 § 11; 1951 c 50 § 5; 1949 c 240 § 14; 1947 c 274 § 20; Rem. Supp. 1949 § 11072-20.]

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.40.191 Retirement allowance—Members with thirty years of service—Irrevocable election. A member may make the irrevocable election under this section no later than six months after attaining thirty years of service. The election shall become effective at the beginning of the calendar month following department receipt of employee notification.

(1) The sum of member contributions made for periods of service after the effective date of the election plus seven and one-half percent interest shall be paid to the member at

retirement without a reduction in the member's monthly retirement benefit as determined under RCW 41.40.185.

(2) Upon retirement, the member's benefit shall be calculated using only the compensation earnable credited prior to the effective date of the member's election. Calculation of the member's average final compensation shall include eligible cash outs of sick and annual leave based on the member's salary and leave accumulations at the time of retirement, except that the amount of a member's average final compensation cannot be higher than if the member had not taken advantage of the election offered under this section.

(3) Members who have already earned thirty years of service credit prior to July 25, 1999, may participate in the election by notifying the department in writing of their intention by December 31, 1999.

The department shall continue to collect employer contributions as required in RCW 41.45.060. [1999 c 362 § 2.]

41.40.193 Dates upon which retirement allowances accrue. Retirement allowances paid to members eligible to retire under the provisions of RCW 41.40.180, 41.40.200, 41.40.210, 41.40.220, 41.40.230, and 41.40.250 shall accrue from the first day of the calendar month immediately following the calendar month during which the member is separated from service. Retirement allowance paid to members eligible to retire under any other provisions of "this 1972 amendatory act shall accrue from the first day of a calendar month but in no event earlier than the first day of the calendar month immediately following the calendar month during which the member is separated from service. [1983 c 3 § 94; 1973 1st ex.s. c 190 § 10; 1972 ex.s. c 151 § 7.]

*Reviser's note: For codification of "this 1972 amendatory act" [1972 ex.s. c 151], see Codification Tables.

Additional notes found at www.leg.wa.gov

41.40.197 Retirement allowance—Annual increases restricted after July 1, 2010—Eligibility. (1) Beginning July 1, 1995, and annually thereafter through July 1, 2010, the retirement allowance of a person meeting the requirements of this section shall be increased by the annual increase amount.

(a) After July 1, 2010, those currently receiving benefits under this section will receive no additional annual increase amounts above the amount in effect on July 1, 2010, except for those who qualify under subsection (2)(b) of this section. This subsection shall not reduce retirement allowances below the amounts in effect on June 30, 2011.

(b) After July 1, 2010, no annual increase amounts may be provided to any beneficiaries who are not already receiving benefits under this section, except for those who qualify under subsection (2)(b) of this section.

(2) The following persons shall be eligible for the benefit provided in subsection (1) of this section:

(a) A beneficiary who has received a retirement allowance for at least one year by July 1st in the calendar year in which the annual increase is given and has attained at least age sixty-six by December 31st in the calendar year in which the annual increase is given; or

(b) A beneficiary whose retirement allowance is lower than the minimum benefit provided under RCW 41.40.1984.

(3) If otherwise eligible, those receiving an annual adjustment under RCW 41.40.188(1)(c) shall be eligible for the annual increase adjustment in addition to the benefit that would have been received absent this section.

(4) Those receiving a benefit under RCW 41.40.220(1), or a survivor of a disabled member under RCW 41.44.170(5) shall be eligible for the benefit provided by this section.

(5) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this postretirement adjustment not granted prior to that time. [2011 c 362 § 6; 2007 c 89 § 1; 2005 c 327 § 8; 1995 c 345 § 5.]

Finding—Intent—Effective date—2011 c 362: See notes following RCW 41.32.483.

Effective date—2007 c 89: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 89 § 3.]

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.40.1971 Definition—"Beneficiary." For the purposes of RCW 41.40.197, 41.40.1984, and 41.40.1986, "beneficiary" means a beneficiary under RCW 41.40.010 or 41.44.030, or both RCW 41.40.010 and 41.44.030. [1995 c 345 § 6.]

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.40.1984 Minimum retirement allowance—Annual adjustment—Persons who become beneficiaries after June 30, 1995. (1) Except as provided in subsections (4) and (5) of this section, no one who becomes a beneficiary after June 30, 1995, shall receive a monthly retirement allowance of less than twenty-four dollars and twenty-two cents times the number of years of service creditable to the person whose service is the basis of such retirement allowance.

(2) Where the retirement allowance payable was adjusted at the time benefit payments to the beneficiary commenced, the minimum allowance provided in this section shall be adjusted in a manner consistent with that adjustment.

(3) Beginning July 1, 1996, the minimum benefit set forth in subsection (1) of this section shall be adjusted annually by the annual increase.

(4) Those receiving a benefit under RCW 41.40.220(1) or under RCW 41.44.170 (3) and (5) shall not be eligible for the benefit provided by this section.

(5) For persons who served as elected officials and whose accumulated employee contributions and credited interest was less than seven hundred fifty dollars at the time of retirement, the minimum benefit under subsection (1) of this section shall be ten dollars per month per each year of creditable service.

(6) Beginning July 1, 2011, the minimum benefit set forth in subsection (1) of this section, prior to adjustments set forth in subsection (2) of this section, for a beneficiary with either (a) at least twenty years of service and who has been retired at least twenty-five years, or (b) at least twenty-five years of service and who has been retired at least twenty years, shall be one thousand five hundred dollars per month. On July 1, 2011, and each year thereafter, the minimum benefit in this subsection shall be increased by three percent,

rounded to the nearest cent. [2011 c 362 § 7; 2006 c 244 § 2; 2004 c 85 § 2; 1995 c 345 § 7.]

Finding—Intent—Effective date—2011 c 362: See notes following RCW 41.32.483.

Effective date—2006 c 244: See note following RCW 41.32.4851.

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.40.1985 Permanent retirement allowance adjustment. The dollar amount of the temporary postretirement allowance adjustment granted by section 1, chapter 519, Laws of 1993 shall be provided as a permanent retirement allowance adjustment as of July 1, 1995. [1994 c 247 § 4.]

Additional notes found at www.leg.wa.gov

41.40.1986 Permanent increase for specified beneficiaries age seventy or over. (1) The amount of the July 1, 1993, increase to the retirement allowance of beneficiaries under this chapter as a result of the temporary adjustment authorized by section 3, chapter 519, Laws of 1993, shall be made a permanent adjustment on July 1, 1995.

(2) Beneficiaries receiving a benefit under *RCW 41.40.198 who are at least age seventy-nine shall receive on July 1, 1995, a permanent adjustment of one dollar and eighteen cents per month per year of service.

(3) Beneficiaries under this chapter who are not subject to subsection (1) of this section and are not receiving a benefit under *RCW 41.40.198 shall receive the following permanent adjustment to their retirement allowance on July 1, 1995:

(a) Those who are age seventy, thirty-nine cents per month per year of service;

(b) Those who are age seventy-one, seventy-nine cents per month per year of service; and

(c) Those who are at least age seventy-two, one dollar and eighteen cents per month per year of service. [1995 c 345 § 8.]

*Reviser's note: RCW 41.40.198 was repealed by 1995 c 345 § 11.

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.40.200 Retirement for disability in line of duty—Applicability to certain judges. (1) Subject to the provisions of RCW 41.40.310 and 41.40.320, upon application of a member, or his or her employer, a member who becomes totally incapacitated for duty as the natural and proximate result of an accident occurring in the actual performance of duty or who becomes totally incapacitated for duty and qualifies to receive benefits under Title 51 RCW as a result of an occupational disease, as now or hereafter defined in RCW 51.08.140, while in the service of an employer, without willful negligence on his or her part, shall be retired subject to the following conditions:

(a) That the medical adviser, after a medical examination of such member made by or under the direction of the medical adviser, shall certify in writing that the member is mentally or physically totally incapacitated for the further performance of his or her duty and that such member should be retired;

(b) That the director concurs in the recommendation of the medical adviser;

(c) That no application shall be valid or a claim thereunder enforceable unless, in the case of an accident, the claim is filed within two years after the date upon which the injury occurred or, in the case of an occupational disease, the claim is filed within two years after the member separated from service with the employer; and

(d) That the coverage provided for occupational disease under this section may be restricted in the future by the legislature for all current and future members.

(2) The retirement for disability of a judge, who is a member of the retirement system, by the supreme court under Article IV, section 31 of the Constitution of the state of Washington (Amendment 71), with the concurrence of the director, shall be considered a retirement under subsection (1) of this section. [1991 c 35 § 80; 1986 c 207 § 1; 1982 c 18 § 3; 1955 c 277 § 5; 1951 c 50 § 6; 1949 c 240 § 15; 1947 c 274 § 21; Rem. Supp. 1949 § 11072-21.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.210 Duty disability retirement allowance for disability after age sixty. Upon retirement for disability, as provided in RCW 41.40.200, a member who has attained age sixty, regardless of his or her creditable service shall receive a service retirement allowance. [2012 c 117 § 59; 1972 ex.s. c 151 § 8; 1947 c 274 § 22; Rem. Supp. 1947 § 11072-22.]

41.40.220 Allowance on retirement for duty disability—Before sixty. Upon retirement for disability, as provided in RCW 41.40.200, a member who has not attained age sixty shall receive the following benefits, subject to the provisions of RCW 41.40.310 and 41.40.320:

(1) A disability retirement pension of two-thirds of his or her average final compensation to his or her attainment of age sixty, subject to the provisions of RCW 41.40.310. The disability retirement pension provided by the employer shall not exceed forty-two hundred dollars per annum, and

(2) Upon attainment of age sixty, the disabled member shall receive a service retirement allowance as provided in RCW 41.40.210. The department shall grant the disabled member membership service for the period of time prior to age sixty he or she was out of such service due to disability.

(3) During the period a disabled member is receiving a disability pension, as provided for in subsection (1) of this section, his or her contributions to the employees' savings fund shall be suspended and his or her balance in the employees' savings fund, standing to his or her credit as of the date his or her disability pension is to begin, shall remain in the employees' savings fund. If the disabled member should die before attaining age sixty, while a disability beneficiary, upon receipt by the department of proper proof of death, the member's accumulated contributions standing to his or her credit in the employees' savings fund, shall be paid to the member's estate, or such person or persons, trust, or organization as he or she shall have nominated by written designation duly executed and filed with the department. If there is no designated person or persons still living at the time of the member's death, the accumulated contributions standing to the member's credit in the employees' savings fund shall be paid to his or her surviving spouse, or if there is no surviving spouse, then to the member's legal representative. [1995 c 144 § 2; 1991 c 35 § 81; 1972 ex.s. c 151 § 9; 1971 ex.s. c 271

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§ 8; 1961 c 291 § 7; 1953 c 200 § 12; 1949 c 240 § 16; 1947 c 274 § 23; Rem. Supp. 1949 § 11072-23.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.40.230 Nonduty disability—Applicability to certain judges. (1) Subject to the provisions of RCW 41.40.310 and 41.40.320, upon application of a member, or his or her employer, a member who has been an employee at least five years, and who becomes totally and permanently incapacitated for duty as the result of causes occurring not in the performance of his or her duty, may be retired by the department, subject to the following conditions:

(a) That the medical adviser, after a medical examination of the member made by or under the direction of the medical adviser, shall certify in writing that the member is mentally or physically incapacitated for the further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired; and

(b) That the department concurs in the recommendation of the medical adviser.

(2) The retirement for disability of a judge, who is a member of the retirement system and who has been an employee at least five years, by the supreme court under Article IV, section 31 of the Constitution of the state of Washington (Amendment 71), with the concurrence of the department, shall be considered a retirement under subsection (1) of this section. [1991 c 35 § 82; 1982 c 18 § 4; 1969 c 128 § 9; 1951 c 50 § 7; 1949 c 240 § 17; 1947 c 274 § 24; Rem. Supp. 1949 § 11072-24.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.40.235 Nonduty disability retirement allowance—Amount—Maximum—Death benefit. (1) Upon retirement, a member shall receive a nonduty disability retirement allowance equal to two percent of average final compensation for each service credit year of service: PROVIDED, That this allowance shall be reduced by two percent of itself for each year or fraction thereof that his or her age is less than fifty-five years: PROVIDED FURTHER, That in no case may the allowance provided by this section exceed sixty percent of average final compensation.

(2) If the recipient of a retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or the person or persons, trust, or organization as the recipient has nominated by written designation duly executed and filed with the director or, if there is no designated person or persons still living at the time of the recipient's death, then to the surviving spouse or, if there is neither a designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative. [1995 c 144 § 3. Prior: 1991 c 343 § 8; 1991 c 35 § 83; 1986 c 176 § 4; 1972 ex.s. c 151 § 10.]

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.250 Allowance on retirement for nonduty disability—Election. An individual who was a member on February 25, 1972, may upon qualifying pursuant to RCW 41.40.230, make an irrevocable election to receive the nonduty disability retirement allowance provided in subsections (1) and (2) of this section subject to the provisions of RCW 41.40.310 and 41.40.320. Upon attaining or becoming disabled after age sixty the member shall receive a service retirement allowance as provided for in RCW 41.40.190 except that the annuity portion thereof shall consist of a continuation of the cash refund annuity previously provided to him or her. The disability retirement allowance prior to age sixty shall consist of:

(1) A cash refund annuity which shall be the actuarial equivalent of the member's accumulated contributions at the time of his or her retirement; and

(2) A pension, in addition to the annuity, equal to one one-hundredth of the member's average final compensation for each year of service. If the recipient of a retirement allowance under this section dies before the total of the annuity portions of the retirement allowance paid to him or her equals the amount of his or her accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or the person or persons, trust, or organization as he or she shall have nominated by written designation duly executed and filed with the department, or if there is no designated person or persons, still living at the time of his or her death, then to his or her surviving spouse, or if there is no designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representatives. [1995 c 144 § 4; 1991 c 35 § 84; 1972 ex.s. c 151 § 11; 1969 c 128 § 10; 1961 c 291 § 8; 1953 c 200 § 13; 1947 c 274 § 26; Rem. Supp. 1947 § 11072-26.]

Intent—1991 c 35: See note following RCW 41.26.005.

Nonduty disability retirement allowance—1972 act: See RCW 41.40.235.

Additional notes found at www.leg.wa.gov

41.40.260 Withdrawal from system—Refund of contributions—Waiver of allowance, when. Subject to the provisions of RCW 41.40.280, should a member cease to be an employee, he or she may request upon a form provided by the department a refund of all or part of the funds standing to his or her credit in the employees' savings fund and this amount shall be paid to him or her. Withdrawal of all or part of the funds, other than additional contributions under RCW 41.40.330(2) by a member who is eligible for a service retirement allowance in RCW 41.40.180 or a disability retirement allowance in RCW 41.40.200, 41.40.210, 41.40.220, 41.40.230, or 41.40.250 shall constitute a waiver of any service or disability retirement allowance. [1991 c 35 § 85; 1983 c 3 § 95; 1971 ex.s. c 271 § 9; 1963 c 174 § 12; 1949 c 240 § 18; 1947 c 274 § 27; Rem. Supp. 1949 § 11072-27.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.40.262 Elected officials—Restoration of withdrawn contributions. Any active member or separated member who was not eligible to restore contributions under section 3, chapter 317, Laws of 1986, solely because he or she was an elected official, other than an elected official under Articles II or III of the Constitution of the state of

Washington, shall be permitted to restore withdrawn contributions for periods of nonelected service no later than June 30, 1994, with interest as determined by the director. [1993 c 506 § 2.]

41.40.270 Death before retirement or within sixty days following application for disability retirement—Military service—Payment of contributions to nominee, surviving spouse, or legal representative—Waiver of payment, effect—Benefits. (1) Except as specified in subsection (4) of this section, should a member die before the date of retirement the amount of the accumulated contributions standing to the member's credit in the employees' savings fund, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, at the time of death:

(a) Shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there be no such designated person or persons still living at the time of the member's death, or if a member fails to file a new beneficiary designation subsequent to marriage, remarriage, dissolution of marriage, divorce, or reestablishment of membership following termination by withdrawal or retirement, such accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the surviving spouse as if in fact such spouse had been nominated by written designation as aforesaid, or if there be no such surviving spouse, then to the member's legal representatives.

(2) Upon the death of any member who is qualified but has not applied for a service retirement allowance or has completed ten years of service at the time of death, the designated beneficiary, or the surviving spouse as provided in subsection (1) of this section, may elect to waive the payment provided by subsection (1) of this section. Upon such an election, a joint and one hundred percent survivor option under RCW 41.40.188, calculated under the retirement allowance described in RCW 41.40.185 or 41.40.190, whichever is greater, actuarially reduced, except under subsection (5) of this section, by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 shall automatically be given effect as if selected for the benefit of the designated beneficiary. If the member is not then qualified for a service retirement allowance, such benefit shall be based upon the actuarial equivalent of the sum necessary to pay the accrued regular retirement allowance commencing when the deceased member would have first qualified for a service retirement allowance.

(3) Subsection (1) of this section, unless elected, shall not apply to any member who has applied for service retirement in RCW 41.40.180, as now or hereafter amended, and thereafter dies between the date of separation from service and the member's effective retirement date, where the member has selected a survivorship option under RCW 41.40.188. In those cases the beneficiary named in the member's final application for service retirement may elect to receive either a cash refund, less any amount identified as owing to an obli-

gee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, or monthly payments according to the option selected by the member.

(4) If a member dies within sixty days following application for disability retirement under RCW 41.40.230, the beneficiary named in the application may elect to receive the benefit provided by:

(a) This section; or

(b) RCW 41.40.235, according to the option chosen under RCW 41.40.188 in the disability application.

(5) The retirement allowance of a member who is killed in the course of employment, as determined by the director of the department of labor and industries, or the retirement allowance of a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction. The member's retirement allowance is computed under RCW 41.40.185. [2009 c 226 § 11; 2009 c 111 § 1; 2003 c 155 § 6; 1997 c 73 § 2; 1996 c 227 § 2; 1995 c 144 § 5; 1991 c 365 § 27; 1990 c 249 § 11; 1979 ex.s. c 249 § 11; 1972 ex.s. c 151 § 12; 1969 c 128 § 11; 1965 c 155 § 5; 1963 c 174 § 13; 1961 c 291 § 9; 1953 c 201 § 1; 1953 c 200 § 14; 1951 c 141 § 1; 1949 c 240 § 19; 1947 c 274 § 28; Rem. Supp. 1949 § 11072-28.]

Reviser's note: This section was amended by 2009 c 111 § 1 and by 2009 c 226 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.40.280 Department may withhold refunds of contributions. The department may, in its discretion, withhold payment of all or part of a member's contributions for not more than six months after a member has ceased to be an employee. A member who files a request for a refund and subsequently enters into employment with an employer prior to the refund being made shall not be eligible for a refund. For purposes of this section, a written or oral employment agreement shall be considered entering into employment. [1994 c 177 § 7; 1991 c 35 § 86; 1973 2nd ex.s. c 14 § 2; 1947 c 274 § 29; Rem. Supp. 1947 § 11072-29.]

Findings—1994 c 177: See note following RCW 41.50.125.

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.300 Benefits offset by workers' compensation or similar benefits. Any amounts which may be paid or payable under the provisions of any workers' compensation, or pension, or similar law on account of any disability shall be offset against and payable in lieu of any benefits payable from funds provided by the employer under the provisions of this chapter on account of the same disability. [1987 c 185 § 14; 1949 c 240 § 21; 1947 c 274 § 31; Rem. Supp. 1949 § 11072-31.]

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

41.40.310 Periodical examination of disability beneficiaries—Benefits upon resumption of gainful employ-

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ment. Once each year during the first five years following the retirement of a member on a disability pension or retirement allowance, and at least once in every three year period thereafter the department may, and upon the member's application shall, require any disability beneficiary, who has not attained age sixty years, to undergo a medical examination; such examination to be made by or under the direction of the medical adviser at the place of residence of the beneficiary, or other place mutually agreed upon. Should any disability beneficiary, who has not attained age sixty years, refuse to submit to a medical examination in any period, his or her disability pension or retirement allowance may be discontinued until his or her withdrawal of the refusal, and should the refusal continue for one year, all his or her rights in and to his or her disability pension, or retirement allowance, may be revoked by the department. If upon a medical examination of a disability beneficiary, the medical adviser reports and his or her report is concurred in by the department, that the disability beneficiary is no longer totally incapacitated for duty as the result of the injury or illness for which the disability was granted, or that he or she is engaged in a gainful occupation, his or her disability pension or retirement allowance shall cease.

If the disability beneficiary resumes a gainful occupation and his or her compensation is less than his or her compensation earnable at the date of disability, the department shall continue the disability benefits in an amount which when added to his or her compensation does not exceed his or her compensation earnable at the date of separation, but the disability benefit shall in no event exceed the disability benefit originally awarded. The compensation earnable at the date of separation shall be adjusted July 1 of each year by the ratio of the average consumer price index (Seattle, Washington area) for urban consumers, compiled by the United States department of labor, bureau of labor statistics, for the calendar year prior to the adjustment to the average consumer price index for the calendar year in which separation from service occurred but in no event shall the adjustment result in an amount lower than the original compensation earnable at the date of separation. [1991 c 35 § 87; 1984 c 184 § 14; 1965 c 155 § 7; 1963 c 174 § 14; 1955 c 277 § 7; 1951 c 50 § 9; 1949 c 240 § 22; 1947 c 274 § 32; Rem. Supp. 1949 § 11072-32.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.40.320 Disability beneficiary—Restoration to service. A disability beneficiary who has been or shall be reinstated to active service shall from the date of restoration again become a member of the retirement system; and shall contribute to the retirement system in the same manner as prior to the disability retirement. Any prior service and membership service, on the basis of which retirement allowances were computed at the time of retirement, shall be restored to full force and effect, and, except in the case of retirement for non-duty disability as provided in RCW 41.40.230, he or she shall be given membership service for the period of time out of service due to the disability. [1991 c 35 § 88; 1953 c 200 § 16; 1951 c 50 § 10; 1949 c 240 § 23; 1947 c 274 § 33; Rem. Supp. 1949 § 11072-33.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.330 Contributions. (1) Each employee who is a member of the retirement system shall contribute six percent of his or her total compensation earnable. Effective January 1, 1987, however, no contributions are required for any calendar month in which the member is not granted service credit. The officer responsible for making up the payroll shall deduct from the compensation of each member, on each and every payroll of such member for each and every payroll period subsequent to the date on which he or she became a member of the retirement system the contribution as provided by this section.

(2) Any member may, pursuant to regulations formulated from time to time by the department, provide for himself or herself, by means of an increased rate of contribution to his or her account in the employees' savings fund, an increased prospective retirement allowance pursuant to RCW 41.40.190 and 41.40.185.

(3) The officer responsible for making up the payroll shall deduct from the compensation of each member covered by the provisions of RCW 41.40.190(5) and 41.40.185(4) on each and every payroll of such member for each and every payroll period subsequent to the date on which he or she thereafter becomes a member of the retirement system, an amount equal to seven and one-half percent of such member's compensation earnable. [1990 c 8 § 4; 1986 c 268 § 3; 1973 1st ex.s. c 190 § 12; 1972 ex.s. c 151 § 13; 1971 ex.s. c 271 § 10; 1969 c 128 § 12; 1953 c 200 § 17; 1951 c 50 § 11; 1949 c 240 § 24; 1947 c 274 § 34; Rem. Supp. 1949 § 11072-34.]

Findings—1990 c 8: See note following RCW 41.50.065.

Members' retirement contributions—Payment by employer: RCW 41.04.445.

Additional notes found at www.leg.wa.gov

41.40.363 Employer's contributions—Labor guild, association or organization. Any labor guild, association, or organization qualifying as an employer under this chapter and which is required to make contributions for an elective official qualifying for membership under RCW 41.40.023(11) shall make contributions as any other employer within this chapter: PROVIDED, That the department shall cause an actuarial computation to be made of all prior service liability for which contributions are required from the employer to be computed on an actual dollar basis, and if the department determines that the contributions being made therefor under this chapter are insufficient to defray any cost to the state, the department shall require additional contributions from the employer in amounts and at times as will defray all costs to the state, the additional contributions to be completed within ten years from the date the elective official is accepted by the department. [1991 c 35 § 91; 1963 c 225 § 3.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.404 Justices or judges retirement allowance—In lieu of RCW 41.40.185. (1) In lieu of the retirement allowance provided under RCW 41.40.185, the retirement allowance payable for service as a supreme court justice, court of appeals judge, or superior court judge, for a member who elects to participate under RCW 41.40.124(1), shall be equal to three and one-half percent of average final compensation for each year of service earned after the date of the election. The total retirement benefit accrued or purchased

under chapter 189, Laws of 2006 in combination with benefits accrued during periods served prior to the election shall not exceed seventy-five percent of average final compensation.

(2) In lieu of the retirement allowance provided under RCW 41.40.185, the retirement allowance payable for service as a supreme court justice, court of appeals judge, or superior court judge, for those justices or judges newly elected or appointed after January 1, 2007, shall be equal to three and one-half percent of average final compensation for each year of service after January 1, 2007. The total retirement benefits accrued under chapter 189, Laws of 2006 in combination with benefits accrued during periods served prior to January 1, 2007, shall not exceed seventy-five percent of average final compensation. [2006 c 189 § 10.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.40.408 District or municipal court judges retirement allowances—In lieu of RCW 41.40.185. (1) In lieu of the retirement allowance provided under RCW 41.40.185, the retirement allowance payable for service as a district court judge or municipal court judge, for those judges who elected to participate under RCW 41.40.127(1), shall be equal to three and one-half percent of average final compensation for each year of service earned after the election. The total retirement benefit accrued or purchased under chapter 189, Laws of 2006 in combination with benefits accrued during periods served prior to the election shall not exceed seventy-five percent of average final compensation.

(2) In lieu of the retirement allowance provided under RCW 41.40.185, the retirement allowance payable for service as a district court judge, or municipal court judge, for those judges newly elected or appointed after January 1, 2007, and who are not eligible for membership under chapter 41.28 RCW, shall be equal to three and one-half percent of average final compensation for each year of service after January 1, 2007. The total retirement benefits accrued under chapter 189, Laws of 2006 in combination with benefits accrued during periods served prior to January 1, 2007, shall not exceed seventy-five percent of average final compensation. [2006 c 189 § 12.]

Effective date—2006 c 189: See note following RCW 2.14.115.

"PLAN 2"

41.40.610 Provisions applicable to plan 2. RCW 41.40.620 through 41.40.750 shall apply only to plan 2 members. [2000 c 247 § 201; 1991 c 35 § 97; 1977 ex.s. c 295 § 2.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.40.620 Computation of the retirement allowance. A member of the retirement system shall receive a retirement allowance equal to two percent of such member's average final compensation for each service credit year of service. [1991 c 343 § 10; 1977 ex.s. c 295 § 3.]

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Additional notes found at www.leg.wa.gov

41.40.625 Lump sum retirement allowance—Reentry—Conditions for reinstatement of service. (1) On or after June 10, 1982, the director may pay a member eligible to receive a retirement allowance or the member's beneficiary, subject to the provisions of subsection (5) of this section, a lump sum payment in lieu of a monthly benefit if the initial monthly benefit computed in accordance with RCW 41.40.620 would be less than fifty dollars. The lump sum payment shall be the greater of the actuarial equivalent of the monthly benefits or an amount equal to the individual's accumulated contributions plus accrued interest.

(2) A retiree or a beneficiary, subject to the provisions of subsection (5) of this section, who is receiving a regular monthly benefit of less than fifty dollars may request, in writing, to convert from a monthly benefit to a lump sum payment. If the director approves the conversion, the calculation of the actuarial equivalent of the total estimated regular benefit will be computed based on the beneficiary's age at the time the benefit initially accrued. The lump sum payment will be reduced to reflect any payments received on or after the initial benefit accrual date.

(3) Persons covered under the provisions of subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to re-retiring, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(4) If a member fails to meet the time limitations under subsection (3) of this section, reinstatement of all previous service will occur if the member pays the amount required under RCW 41.50.165(2). The amount, however, shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(5) Only persons entitled to or receiving a service retirement allowance under RCW 41.40.620 or an earned disability allowance under RCW 41.40.670 qualify for participation under this section.

(6) It is the intent of the legislature that any member who receives a settlement under this section shall be deemed to be retired from this system. [1994 c 197 § 27; 1991 c 35 § 98; 1982 c 144 § 3.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.630 Retirement for service. (1) **NORMAL RETIREMENT.** Any member with at least five service credit years who has attained at least age sixty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.620.

(2) **EARLY RETIREMENT.** Any member who has completed at least twenty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.620, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years

between age at retirement and the attainment of age sixty-five.

(3) **ALTERNATE EARLY RETIREMENT.**

(a) Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.620, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(b) On or after July 1, 2008, any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.620, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced as follows:

Retirement Age	Percent Reduction
55	20%
56	17%
57	14%
58	11%
59	8%
60	5%
61	2%
62	0%
63	0%
64	0%

Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of *RCW 41.40.037(2)(d) until the retired member has reached sixty-five years of age. For purposes of this subsection, employment with an employer also includes any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of RCW 41.40.690(1).

The subsidized reductions for alternate early retirement in this subsection as set forth in section 9, chapter 491, Laws of 2007 were intended by the legislature as replacement benefits for gain-sharing. Until there is legal certainty with respect to the repeal of **chapter 41.31A RCW, the right to retire under this subsection is noncontractual, and the legislature reserves the right to amend or repeal this subsection. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, eligible members may still retire under this subsection, and upon receipt of the first installment of a retirement allowance computed under this subsection, the resulting benefit becomes contractual for the recipient. If the repeal of **chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate

benefits as a remedy, then retirement benefits for any member who has completed at least thirty service credit years and has attained age fifty-five but has not yet received the first installment of a retirement allowance under this subsection shall be computed using the reductions in (a) of this subsection.

(c) Members who first become employed by an employer in an eligible position on or after May 1, 2013, are not eligible for the alternate early retirement provisions of (a) or (b) of this subsection. Any member who first becomes employed by an employer in an eligible position on or after May 1, 2013, and has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.620, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by five percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five. [2012 1st sp.s. c 7 § 5; 2007 c 491 § 9; 2000 c 247 § 901; 1991 c 343 § 11; 1977 ex.s. c 295 § 4.]

Reviser's note: *(1) RCW 41.40.037 was amended by 2011 1st sp.s. c 47 § 19, deleting subsection (2)(d).

***(2) Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

Benefits not contractual right until July 1, 2008—2007 c 491: "The new benefits provided pursuant to sections 9(3)(b) and 10(3)(b), chapter 491, Laws of 2007 are not provided to employees as a matter of contractual right prior to July 1, 2008, and will not become a contractual right thereafter if the repeal of chapter 41.31A RCW is held to be invalid in a final determination of a court of law. The legislature retains the right to alter or abolish these benefits at any time prior to July 1, 2008." [2007 c 491 § 16.]

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Additional notes found at www.leg.wa.gov

41.40.633 Member with terminal illness—Removal from system. (1) Upon application of the member, a member who is diagnosed with a terminal illness shall be removed from the system subject to the following conditions:

(a) That the medical adviser, after a medical examination of the member made by or under the direction of the medical adviser, has certified in writing that the member has a terminal illness with a life expectancy of five or fewer years; and

(b) That the director concurs in the recommendation of the medical adviser.

(2) Members removed from the system shall not make contributions and shall not accumulate additional service credit.

(3) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to this benefit not granted prior to that amendment or repeal. [2005 c 131 § 4.]

Effective date—2005 c 131: See note following RCW 41.40.823.

41.40.640 Post-retirement cost-of-living. Beginning July 1, 1979, and every year thereafter, the department shall determine the following information for each retired member or beneficiary whose retirement allowance has been in effect for at least one year:

(1) The original dollar amount of the retirement allowance;

(2) The index for the calendar year prior to the effective date of the retirement allowance, to be known as "index A";

(3) The index for the calendar year prior to the date of determination, to be known as "index B"; and

(4) The ratio obtained when index B is divided by index A.

The value of the ratio obtained shall be the annual adjustment to the original retirement allowance and shall be applied beginning with the July payment. In no event, however, shall the annual adjustment:

(a) Produce a retirement allowance which is lower than the original retirement allowance;

(b) Exceed three percent in the initial annual adjustment; or

(c) Differ from the previous year's annual adjustment by more than three percent.

For the purposes of this section, "index" means, for any calendar year, that year's average consumer price index—Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor. [1977 ex.s. c 295 § 5.]

Additional notes found at www.leg.wa.gov

41.40.660 Options for payment of retirement allowances—Retirement allowance adjustment—Court-approved property settlement. (1) Upon retirement for service as prescribed in RCW 41.40.630 or retirement for disability under RCW 41.40.670, a member shall elect to have the retirement allowance paid pursuant to one of the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a

member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

(4) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a non-spouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(5) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.40.720 and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the age provided in RCW 41.40.630(1) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (4) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution. [2003 c 294 § 6; 2002 c 158 § 13; 2000 c 186 § 8; 1998 c 340 § 9; 1996 c 175 § 7; 1995 c 144 § 6; 1990 c 249 § 10; 1977 ex.s. c 295 § 7.]

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.40.670 Earned disability allowance—Applicability to certain judges—Disposition upon death of recipient.

(1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the department upon recommendation of the department shall be eligible to receive an allowance under the provisions of RCW 41.40.610 through 41.40.740. The member shall receive a monthly disability allowance computed as provided for in RCW 41.40.620 and shall have this allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

Any member who receives an allowance under the provisions of this section shall be subject to comprehensive medical examinations as required by the department. If these

medical examinations reveal that a member has recovered from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, the member shall cease to be eligible for the allowance.

(2) The retirement for disability of a judge, who is a member of the retirement system, by the supreme court under Article IV, section 31 of the Constitution of the state of Washington (Amendment 71), with the concurrence of the department, shall be considered a retirement under subsection (1) of this section.

(3)(a) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or the person or persons, trust, or organization as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no designated person or persons still living at the time of the recipient's death, then to the surviving spouse, or, if there is no designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative.

(b) If a recipient of a monthly retirement allowance under this section died before April 27, 1989, and before the total of the retirement allowance paid to the recipient equaled the amount of his or her accumulated contributions at the date of retirement, then the department shall pay the balance of the accumulated contributions to the member's surviving spouse or, if there is no surviving spouse, then in equal shares to the member's children. If there is no surviving spouse or children, the department shall retain the contributions. [1995 c 144 § 7; 1991 c 35 § 99; 1990 c 249 § 21; 1989 c 191 § 3; 1982 c 18 § 5; 1977 ex.s. c 295 § 8.]

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.40.680 Application for and effective date of retirement allowances. Any member or beneficiary eligible to receive a retirement allowance under the provisions of RCW 41.40.630, 41.40.670, or 41.40.700 shall be eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members under the provisions of RCW 41.40.630 shall accrue from the first day of the calendar month immediately following such member's separation from employment.

(2) Retirement allowances paid to vested members no longer in service, but qualifying for such an allowance pursuant to RCW 41.40.630, shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members under the provisions of RCW 41.40.670 shall accrue from the first day of the calendar month immediately following such member's separation from employment for disability.

(4) Retirement allowances paid as death benefits under the provisions of RCW 41.40.700 shall accrue from the first day of the calendar month immediately following the member's death. [1977 ex.s. c 295 § 9.]

Additional notes found at www.leg.wa.gov

41.40.690 Suspension of retirement allowance upon reemployment—Exceptions—Reinstatement. (1) Except as provided in RCW 41.40.037, no retiree under the provisions of plan 2 shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010, 41.32.010, 41.37.010, or 41.35.010, or as a law enforcement officer or firefighter as defined in RCW 41.26.030, except that a retiree who ends his or her membership in the retirement system pursuant to RCW 41.40.023(3)(b) is not subject to this section if the retiree's only employment is as an elective official of a city or town.

(2) If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(3) The department shall adopt rules implementing this section. [2004 c 242 § 57; 1998 c 341 § 606; 1997 c 254 § 13; 1990 c 274 § 11; 1988 c 109 § 11; 1987 c 379 § 2; 1977 ex.s. c 295 § 10.]

Effective date—2004 c 242: See RCW 41.37.901.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Findings—Construction—1990 c 274: See notes following RCW 41.32.010.

Additional notes found at www.leg.wa.gov

41.40.700 Death benefits. (1) Except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system at the time of such member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible child or children shall elect to receive one of the following:

(a) A retirement allowance computed as provided for in RCW 41.40.630, actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.40.660 and, except under subsection (4) of this section, if the member was not eligible for normal retirement at

the date of death a further reduction as described in RCW 41.40.630; if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance share and share alike calculated as herein provided making the assumption that the ages of the spouse and member were equal at the time of the member's death;

(b) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670; or

(c) For a member who leaves the employ of an employer to enter the uniformed services of the United States and who dies after January 1, 2007, while honorably serving in the uniformed services of the United States in Operation Enduring Freedom or Persian Gulf, Operation Iraqi Freedom, an amount equal to two hundred percent of the member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies after October 1, 1977, and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To a person or persons, estate, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, or a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction under RCW 41.40.630. The member's retirement allowance is computed under RCW 41.40.620. [2009 c 226 § 12; 2007 c 487 § 8; 2003 c 155 § 7; 2000 c 247 § 1004; 1995 c 144 § 8; 1993 c 236 § 5; 1991 c 365 § 28; 1990 c 249 § 18; 1977 ex.s. c 295 § 11.]

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.40.710 Service credit for paid leave of absence, officers of labor organizations, unpaid leave of absence, military service. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.40.610 through 41.40.740.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The compensation earnable reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes both the plan 2 employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner; or

(b) If not within five years of resumption of service but prior to retirement, pay the amount required under RCW 41.50.165(2).

The contributions required under (a) of this subsection shall be based on the average of the member's compensation earnable at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services; and

(ii) The member makes the employee contributions required under RCW 41.45.061 and 41.45.067 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2); or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service in a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his

or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(b) Upon receipt of member contributions under (a)(ii), (d)(iii), or (e)(iii) of this subsection, or adequate proof under (a)(iv), (d)(iv), or (e)(iv) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.45.060, 41.45.061, and 41.45.067 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii), (d)(iii), or (e)(iii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(d) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or eligible child or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection. [2009 c 205 § 1; 2005 c 64 § 2; 2000 c 247 § 1106; 1996 c 61 § 4; 1994 c 197 § 28; 1993 c 95 § 2; 1992 c 119 § 3; 1991 c 35 § 100; 1977 ex.s. c 295 § 12.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.40.720 Vested membership. A member who separates or has separated after having completed at least five years of service may remain a member during the period of such member's absence from service for the exclusive purpose only of receiving a retirement allowance under the provisions of RCW 41.40.630 if such member maintains the member's accumulated contributions intact. [1977 ex.s. c 295 § 13.]

Additional notes found at www.leg.wa.gov

41.40.730 Refund of contributions. A member who ceases to be an employee of an employer except by service or disability retirement may request a refund of the member's accumulated contributions. The refund shall be made within ninety days following the receipt of the request and notification of termination through the contribution reporting system by the employer; except that in the case of death, an initial payment shall be made within thirty days of receipt of request for such payment and notification of termination through the contribution reporting system by the employer. A member who files a request for refund and subsequently enters into employment with another employer prior to the refund being made shall not be eligible for a refund. The refund of accumulated contributions shall terminate all rights to benefits under RCW 41.40.610 through 41.40.740. [1982 1st ex.s. c 52 § 23; 1977 ex.s. c 295 § 14.]

Additional notes found at www.leg.wa.gov

41.40.740 Reentry. (1) A member, who had left service and withdrawn the member's accumulated contributions, shall receive service credit for such prior service if the member restores all withdrawn accumulated contributions together with interest since the time of withdrawal as determined by the department.

The restoration of such funds must be completed within five years of the resumption of service or prior to retirement, whichever occurs first.

(2) If a member fails to meet the time limitations of subsection (1) of this section, the member may receive service credit destroyed by the withdrawn contributions if the amount required under RCW 41.50.165(2) is paid. [1994 c 197 § 29; 1977 ex.s. c 295 § 15.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Additional notes found at www.leg.wa.gov

41.40.748 Commercial vehicle enforcement officers—Limited optional transfer to Washington state patrol retirement system. (1) Active members of the Washington state patrol retirement system who have previously established service credit in the public employees' retirement system plan 2 while employed in the state patrol as a commercial vehicle enforcement officer, and who became a commissioned officer after July 1, 2000, and prior to June 30, 2001, have the following options:

(a) Remain a member of the public employees' retirement system; or

(b) Transfer service credit earned under the retirement system as a commercial vehicle enforcement officer to the Washington state patrol retirement system by making an irrevocable choice filed in writing with the department of retirement systems within one year of the department's announcement of the ability to make such a transfer.

(2)(a) Any commissioned officer choosing to transfer under this section shall have transferred from the retirement system to the Washington state patrol retirement system:

(i) All the employee's applicable accumulated contributions plus interest, and an equal amount of employer contributions attributed to such employee; and

(ii) All applicable months of service as a commercial vehicle enforcement officer credited to the employee under this chapter as though that service was rendered as a member of the Washington state patrol retirement system.

(b) For the applicable period of service, the employee shall pay:

(i) The difference between the contributions the employee paid to the retirement system, and the contributions which would have been paid by the employee had the employee been a member of the Washington state patrol retirement system, plus interest as determined by the director. This payment shall be made no later than December 31, 2010, or the date of retirement, whichever comes first;

(ii) The difference between the employer contributions paid to the public employees' retirement system, and the employer contributions which would have been payable to the Washington state patrol retirement system; and

(iii) An amount sufficient to ensure that the funding status of the Washington state patrol retirement system will not change due to this transfer.

(c) If the payment required by this subsection is not paid in full by the deadline, the transferred service credit shall not be used to determine eligibility for benefits nor to calculate benefits under the Washington state patrol retirement system. In such case, the employee's accumulated contributions plus interest transferred under this subsection, and any payments

made under this subsection, shall be refunded to the employee. The employer shall be entitled to a credit for the employer contributions transferred under this subsection.

(d) An individual who transfers service credit and contributions under this subsection is permanently excluded from the public employees' retirement system for all service as a commercial vehicle enforcement officer. [2003 c 294 § 7; 2002 c 269 § 1.]

41.40.749 Certain commissioned officers—Limited optional transfer to Washington state patrol retirement system. (1) Active members of the Washington state patrol retirement system who have previously established service credit in the public employees' retirement system plan 2 while employed in the state patrol as either (a) a commercial vehicle enforcement officer who then became a commissioned officer on or before July 16, 2000, or (b) a communications officer who then became a commissioned officer, have the following options:

(i) Remain a member of the public employees' retirement system; or

(ii) Transfer service credit earned under the retirement system as a communications officer or commercial vehicle enforcement officer to the Washington state patrol retirement system by making an irrevocable choice filed in writing with the department of retirement systems within one year of the department's announcement of the ability to make such a transfer.

(2)(a) Any commissioned officer choosing to transfer under this section shall have transferred from the retirement system to the Washington state patrol retirement system:

(i) All the employee's applicable accumulated contributions plus interest, and an equal amount of employer contributions attributed to that employee; and

(ii) All applicable months of service as a communications officer or commercial vehicle enforcement officer credited to the employee under this chapter as though that service was rendered as a member of the Washington state patrol retirement system.

(b) For the applicable period of service, the employee shall pay:

(i) The difference between the contributions the employee paid to the retirement system and the contributions that would have been paid by the employee had the employee been a member of the Washington state patrol retirement system, plus interest as determined by the director. This payment shall be made no later than December 31, 2019, or the date of retirement, whichever comes first;

(ii) The difference between the employer contributions paid to the public employees' retirement system, and the employer contributions that would have been payable to the Washington state patrol retirement system; and

(iii) An amount sufficient to ensure that the funding status of the Washington state patrol retirement system will not change due to this transfer.

(c) If the payment required by this subsection is not paid in full by the deadline, the transferred service credit shall not be used to determine eligibility for benefits nor to calculate benefits under the Washington state patrol retirement system. In such a case, the employee's accumulated contributions plus interest transferred under this subsection, and any pay-

ments made under this subsection, shall be refunded to the employee. The employer shall be entitled to a credit for the employer contributions transferred under this subsection.

(d) An individual who transfers service credit and contributions under this subsection is permanently excluded from the public employees' retirement system for all service as a communications officer or commercial vehicle enforcement officer. [2012 c 72 § 1.]

41.40.750 Transfer of membership and service credit—Restoration of contributions and service credit.

(1) Effective September 1, 2000, the membership of all plan 2 members currently employed in eligible positions in a school district or educational service district and all plan 2 service credit for such members, is transferred to the Washington school employees' retirement system plan 2. Plan 2 members who have withdrawn their member contributions for prior plan 2 service may restore contributions and service credit to the Washington school employees' retirement system plan 2 as provided under RCW 41.40.740.

(2)(a) The membership and previous service credit of a plan 2 member not employed in an eligible position on September 1, 2000, will be transferred to the Washington school employees' retirement system plan 2 when he or she becomes employed in an eligible position prior to August 1, 2009. Plan 2 members not employed in an eligible position on September 1, 2000, who have withdrawn their member contributions for prior plan 2 service may restore contributions and service credit to the Washington school employees' retirement system plan 2 as provided under RCW 41.40.740, if they first establish eligibility in the Washington school employees' retirement system plan 2 prior to August 1, 2009.

(b) The membership and previous service credit of a plan 2 member last employed by a school district or educational service district and retired prior to September 1, 2000, will be transferred to the Washington school employees' retirement system plan 2 if the member opts to reestablish membership prior to August 1, 2009.

(3) Members who restore contributions and service credit under subsection (1) or (2) of this section shall have their contributions and service credit transferred to the Washington school employees' retirement system.

(4) From September 1, 2009, through November 30, 2009, upon written request to the department, active and inactive members transferred under subsection (2) of this section who did not establish membership and earn service credit for employment with a school district or educational service district prior to the transfer, and who have not transferred to plan 3 of the Washington school employees' retirement system or plan 3 of the public employees' retirement system, may restore their transferred membership and previous service credit to plan 2. All previously transferred contributions and interest, and additional interest as determined by the department, shall be returned to plan 2. An additional amount shall be transferred from the Washington school employees' retirement system sufficient to offset the liabilities returned to plan 2 under this subsection, as determined by the state actuary. [2009 c 209 § 1; 2001 2nd sp.s. c 10 § 13; 1998 c 341 § 113.]

Additional notes found at www.leg.wa.gov

41.40.760 End of participation in judicial retirement account plan—Newly elected or appointed judges or justices. (1) Beginning January 1, 2007, any newly elected or appointed supreme court justice, court of appeals judge, or superior court judge shall not participate in the judicial retirement account plan under chapter 2.14 RCW and shall be subject to the benefit and contribution provisions under chapter 189, Laws of 2006.

(2) Beginning January 1, 2007, any newly elected or appointed supreme court justice, court of appeals judge, or superior court judge, who has not previously established membership in this system, shall become a member of plan 2 and shall be subject to the benefit and contribution provisions under chapter 189, Laws of 2006. [2006 c 189 § 2.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.40.763 End of participation in chapter 41.28 RCW—Newly elected or appointed judges. (1) Beginning January 1, 2007, any newly elected or appointed district court judge or municipal court judge, who is not eligible for membership under chapter 41.28 RCW, shall be subject to the benefit and contribution provisions under chapter 189, Laws of 2006.

(2) Beginning January 1, 2007, any newly elected or appointed district court judge, or municipal court judge, who has not previously established membership in this system, and who is not eligible for membership under chapter 41.28 RCW, shall become a member of plan 2 and shall be subject to the benefit and contribution provisions under chapter 189, Laws of 2006. [2006 c 189 § 4.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.40.767 Justices or judges retirement allowance—In lieu of RCW 41.40.620. (1) In lieu of the retirement allowance provided under RCW 41.40.620, the retirement allowance payable for service as a supreme court justice, court of appeals judge, or superior court judge, for those justices or judges who elected to participate under RCW 41.40.124(1), shall be equal to three and one-half percent of average final compensation for each year of service earned after the election. The total retirement benefit accrued or purchased under chapter 189, Laws of 2006 in combination with benefits accrued during periods served prior to the election shall not exceed seventy-five percent of average final compensation.

(2) In lieu of the retirement allowance provided under RCW 41.40.620, the retirement allowance payable for service as a supreme court justice, court of appeals judge, or superior court judge, for those justices or judges newly elected or appointed after January 1, 2007, shall be equal to three and one-half percent of average final compensation for each year of service after January 1, 2007. The total retirement benefits accrued under chapter 189, Laws of 2006 in combination with benefits accrued during periods served prior to January 1, 2007, shall not exceed seventy-five percent of average final compensation. [2006 c 189 § 13.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.40.770 District or municipal court judges retirement allowance—In lieu of RCW 41.40.620. (1) In lieu of the retirement allowance provided under RCW 41.40.620,

the retirement allowance payable for service as a district court judge or municipal court judge for those judges who elected to participate under RCW 41.40.127(1) shall be equal to three and one-half percent of the average final compensation for each year of such service earned after the election. The total retirement benefit accrued or purchased under chapter 189, Laws of 2006 in combination with benefits accrued during periods served prior to the election shall not exceed seventy-five percent of average final compensation.

(2) In lieu of the retirement allowance provided under RCW 41.40.620, the retirement allowance payable for service as a district court judge, or municipal court judge, for those judges newly elected or appointed after January 1, 2007, and who are not eligible for membership under chapter 41.28 RCW, shall be equal to three and one-half percent of average final compensation for each year of service after January 1, 2007. The total retirement benefits accrued under chapter 189, Laws of 2006 in combination with benefits accrued during periods served prior to January 1, 2007, shall not exceed seventy-five percent of average final compensation. [2006 c 189 § 14.]

Effective date—2006 c 189: See note following RCW 2.14.115.

"PLAN 3"

41.40.780 Provisions applicable to plan 3—Plan 3 elements. (1) RCW 41.40.780 through 41.40.850 and 41.40.930 apply only to plan 3 members.

(2) Plan 3 consists of two separate elements: (a) A defined benefit portion covered under this subchapter; and (b) a defined contribution portion covered under chapter 41.34 RCW.

(3) Unless otherwise specified, all references to "plan 3" in this subchapter refer to the defined benefit portion of plan 3. [2000 c 247 § 301.]

41.40.785 Membership in plan 2 or plan 3—Irrevocable choice—Default to plan 3. (1) All employees who first become employed by an employer in an eligible position on or after March 1, 2002, for state agencies or institutes of higher education, or September 1, 2002, for other employers, shall have a period of ninety days to make an irrevocable choice to become a member of plan 2 or plan 3. At the end of ninety days, if the member has not made a choice to become a member of plan 2, he or she becomes a member of plan 3.

(2) For administrative efficiency, until a member elects to become a member of plan 3, or becomes a member of plan 3 by default pursuant to subsection (1) of this section, the member shall be reported to the department in plan 2, with member and employer contributions. Upon becoming a member of plan 3 by election or by default, all service credit shall be transferred to the member's plan 3 defined benefit, and all employee accumulated contributions shall be transferred to the member's plan 3 defined contribution account. [2000 c 247 § 302.]

41.40.787 Right to waive benefit—Irrevocable choice. Any member receiving or having received a distribution under chapter 41.34 RCW may make an irrevocable choice to waive all rights to a benefit under RCW 41.40.790

by notifying the department in writing of their intention. [2003 c 349 § 3.]

Additional notes found at www.leg.wa.gov

41.40.790 Computation of retirement allowance. (1) A member of the retirement system shall receive a retirement allowance equal to one percent of such member's average final compensation for each service credit year.

(2) The retirement allowance payable under RCW 41.40.820 to a member who separates after having completed at least twenty service credit years shall be increased by twenty-five one-hundredths of one percent, compounded for each month from the date of separation to the date that the retirement allowance commences. [2000 c 247 § 303.]

41.40.795 Transfer period and basis—Additional transfer payment. (1) As used in this section, unless the context clearly requires otherwise:

(a) "Transfer period" means the time during which a member of one of the groups of plan 2 members identified in subsection (2) of this section may choose to irrevocably transfer from plan 2 to plan 3.

(b) "Transfer basis" means the accumulated contributions present in a member's savings fund on March 1, 2002, less fifty percent of any contributions made pursuant to RCW 41.50.165(2), which is the basis for calculation of the plan 2 to plan 3 additional transfer payment.

(c) "Additional transfer payment date" means June 1, 2003, the date of the additional transfer payment made according to subsection (6) of this section.

(2) Every plan 2 member employed by an employer in an eligible position has the option during their transfer period to make an irrevocable transfer to plan 3 according to the following schedule:

(a) For those members employed by state agencies and institutes of higher education the transfer period means the period between March 1, 2002, and September 1, 2002.

(b) For those members employed by other organizations the transfer period means the period between September 1, 2002, and June 1, 2003.

(c) For those members employed by more than one employer within the retirement system, and whose transfer period is different between one employer and another, the member's transfer period is the last period that is available from any of that member's employers within the retirement system.

(3) All service credit in plan 2 shall be transferred to the defined benefit portion of plan 3.

(4)(a) Anyone who first became a state or higher education member of plan 2 before March 1, 2002, or a local government member of plan 2 before September 1, 2002, who wishes to transfer to plan 3 after their transfer period may transfer during the month of January in any following year, provided that the member earns service credit for that month.

(b) Anyone who chose to become a state or higher education member of plan 2 on or after March 1, 2002, or a local government member of plan 2 on or after September 1, 2002, is prohibited from transferring to plan 3 under (a) of this subsection.

(5) The accumulated contributions in plan 2, less fifty percent of any contributions made pursuant to RCW

41.50.165(2) shall be transferred to the member's account in the defined contribution portion established in chapter 41.34 RCW, pursuant to procedures developed by the department and subject to RCW 41.34.090. Contributions made pursuant to RCW 41.50.165(2) that are not transferred to the member's account shall be transferred to the fund created in RCW 41.50.075(3), except that interest earned on all such contributions shall be transferred to the member's account.

(6) Those members employed by state agencies and institutions of higher education who request to transfer under this section during their transfer period and establish service credit for June 2002, and those members employed by other organizations and who establish service credit for either June 2002 or February 2003, shall have their member account:

(a) If a member's transfer period is that described in subsection (2)(a) of this section, increased by one hundred ten percent of the transfer basis;

(b) If a member's transfer period is that described in subsection (2)(b) of this section, increased by one hundred eleven percent of the transfer basis; and

(c) Deposited into the member's individual account on the additional transfer payment date.

(7) If a member who requests to transfer dies before June 1, 2003, the additional payment provided by this section shall be paid to the member's estate, or the person or persons, trust, or organization the member nominated by written designation duly executed and filed with the department.

(8) Anyone previously retired from plan 2 is prohibited from transferring to plan 3.

(9) The legislature reserves the right to discontinue the right to transfer under this section and to modify and to discontinue the right to an additional payment under this section for any plan 2 members who have not previously transferred to plan 3. [2002 c 159 § 1; 2000 c 247 § 304.]

41.40.798 Higher education employees—Option to transfer to plan 3—Limitation on supplemental benefits under RCW 28B.10.400. (1) All employees who are not qualified under RCW 41.32.836 and who are first employed by an institution of higher education in a position eligible for participation in old age annuities or retirement income plans under RCW 28B.10.400 on or after July 1, 2011, have a period of thirty days to make an irrevocable choice to:

(a) Become a member of the public employees' retirement system plan 3 under this chapter; or

(b) Participate in the annuities or retirement income plan provided by the institution.

(2) At the end of thirty days, if the member has not made a choice to become a member of the public employees' retirement system, he or she becomes a participant in the institution's plan under RCW 28B.10.400, but does not become eligible for any supplemental benefit under RCW 28B.10.400(1)(c). [2011 1st sp.s. c 47 § 18.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

41.40.801 Application for and effective date of retirement allowances. Any member or beneficiary eligible to receive a retirement allowance under the provisions of RCW 41.40.820, 41.40.825, or 41.40.835 is eligible to commence

receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members shall accrue from the first day of the calendar month immediately following such member's separation from employment.

(2) Retirement allowances payable to eligible members no longer in service, but qualifying for such an allowance pursuant to RCW 41.40.820 shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members shall accrue from the first day of the calendar month immediately following such member's separation from employment for disability.

(4) Retirement allowances paid as death benefits shall accrue from the first day of the calendar month immediately following the member's death. [2003 c 294 § 8; 2000 c 247 § 305.]

41.40.805 Leaves of absence—Military service. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes the contribution on behalf of the employer, plus interest, as determined by the department; and

(b) The member makes the employee contribution, plus interest, as determined by the department, to the defined contribution portion.

The contributions required shall be based on the average of the member's earnable compensation at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service if within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services. This subsection shall be administered in a manner consistent with the require-

ments of the federal uniformed services employment and reemployment rights act.

The department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.45.060 and 41.45.067 for the period of military service, plus interest as determined by the department. Service credit under this subsection may be obtained only if the member makes the employee contribution to the defined contribution portion as determined by the department, or prior to retirement, the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

The contributions required shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(a) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under this subsection within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(b) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is enti-

led to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under this subsection within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection. [2009 c 205 § 2; 2005 c 64 § 3; 2000 c 247 § 306.]

41.40.811 Purchased service credit—Allocation. (1) Contributions on behalf of the employer paid by the employee to purchase plan 3 service credit shall be allocated to the defined benefit portion of plan 3 and shall not be refundable when paid to the fund described in RCW 41.50.075(3). Contributions on behalf of the employee shall be allocated to the member account. If the member fails to meet the statutory time limitations to purchase plan 3 service credit, it may be purchased under the provisions of RCW 41.50.165(2). One-half of the purchase payments under RCW 41.50.165(2), plus interest, shall be allocated to the member's account.

(2) No purchased plan 3 membership service may be credited until all payments required of the member are made, with interest. Upon receipt of all payments owed by the member, the department shall bill the employer for any contributions, plus interest, required to purchase membership service. [2000 c 247 § 307.]

41.40.815 Lump sum payments—Reentry. (1) The director may pay a member eligible to receive a retirement allowance or the member's beneficiary a lump sum payment in lieu of a monthly benefit if the initial monthly benefit would be less than one hundred dollars. The one hundred dollar limit shall be increased annually as determined by the director. The lump sum payment shall be the actuarial equivalent of the monthly benefit.

(2) Persons covered under the provisions of subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to retiring again, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the nor-

mal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(3) Any member who receives a settlement under this section is deemed to be retired from this system. [2000 c 247 § 308.]

41.40.820 Retirement eligibility. (1) NORMAL RETIREMENT. Any member who is at least age sixty-five and who has:

(a) Completed ten service credit years; or

(b) Completed five service credit years, including twelve service credit months after attaining age forty-four; or

(c) Completed five service credit years by the transfer payment date specified in RCW 41.40.795, under the public employees' retirement system plan 2 and who transferred to plan 3 under RCW 41.40.795;

shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.790.

(2) EARLY RETIREMENT. Any member who has attained at least age fifty-five and has completed at least ten years of service shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.790, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(3) ALTERNATE EARLY RETIREMENT.

(a) Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.790, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(b) On or after July 1, 2008, any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.790, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced as follows:

Retirement Age	Percent Reduction
55	20%
56	17%
57	14%
58	11%
59	8%
60	5%
61	2%
62	0%
63	0%
64	0%

Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of *RCW 41.40.037(2)(d) until the retired member has reached sixty-five years of age. For purposes of this subsection, employment with an employer also includes any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of RCW 41.40.850(1).

The subsidized reductions for alternate early retirement in this subsection as set forth in section 10, chapter 491, Laws of 2007 were intended by the legislature as replacement benefits for gain-sharing. Until there is legal certainty with respect to the repeal of **chapter 41.31A RCW, the right to retire under this subsection is noncontractual, and the legislature reserves the right to amend or repeal this subsection. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, eligible members may still retire under this subsection, and upon receipt of the first installment of a retirement allowance computed under this subsection, the resulting benefit becomes contractual for the recipient. If the repeal of **chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then retirement benefits for any member who has completed at least thirty service credit years and has attained age fifty-five but has not yet received the first installment of a retirement allowance under this subsection shall be computed using the reductions in (a) of this subsection.

(c) Members who first become employed by an employer in an eligible position on or after May 1, 2013, are not eligible for the alternate early retirement provisions of (a) or (b) of this subsection. Any member who first becomes employed by an employer in an eligible position on or after May 1, 2013, and has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.790, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by five percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five. [2012 1st sp.s. c 7 § 6; 2007 c 491 § 10; 2006 c 33 § 3; 2000 c 247 § 309.]

Reviser's note: *(1) RCW 41.40.037 was amended by 2011 1st sp.s. c 47 § 19, deleting subsection (2)(d).

***(2) Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

Benefits not contractual right until July 1, 2008—2007 c 491: See note following RCW 41.40.630.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

41.40.823 Member with terminal illness—Removal from system. (1) Upon application of the member, a member who is diagnosed with a terminal illness shall be removed from membership in the system subject to the following conditions:

(a) That the medical adviser, after a medical examination of the member made by or under the direction of the medical adviser, has certified in writing that the member has a terminal illness with a life expectancy of five or fewer years; and

(b) That the director concurs in the recommendation of the medical adviser.

(2) Members removed from the system shall not make contributions toward a defined contribution account as defined in chapter 41.34 RCW and shall not accumulate additional service credit.

(3) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to this benefit not granted prior to that amendment or repeal. [2005 c 131 § 1.]

Effective date—2005 c 131: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 21, 2005]." [2005 c 131 § 10.]

41.40.825 Disability allowance—Death of recipient.

(1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the department shall be eligible to receive an allowance under the provisions of plan 3. The member shall receive a monthly disability allowance computed as provided for in RCW 41.40.790 and shall have this allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

Any member who receives an allowance under the provisions of this section shall be subject to comprehensive medical examinations as required by the department. If these medical examinations reveal that a member has recovered from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, the member shall cease to be eligible for the allowance.

(2) If the recipient of a monthly retirement allowance under this section dies, any further benefit payments shall be conditioned by the payment option selected by the retiree as provided in RCW 41.40.845. [2000 c 247 § 310.]

41.40.830 Restored, purchased service credit under plan 2—Transfer to plan 3. (1) Any member who elects to transfer to plan 3 and has eligible unrestored withdrawn contributions in plan 2, may restore such contributions under the provisions of RCW 41.40.740 with interest as determined by the department. The restored plan 2 service credit will be automatically transferred to plan 3. Restoration payments will be transferred to the member account in plan 3. If the member fails to meet the time limitations of RCW 41.40.740, they may restore such contributions under the provisions of RCW 41.50.165(2). The restored plan 2 service credit will be automatically transferred to plan 3. One-half of the restoration payments under RCW 41.50.165(2) plus interest shall be allocated to the member's account.

(2) Any member who elects to transfer to plan 3 may purchase plan 2 service credit under RCW 41.40.740. Purchased plan 2 service credit will be automatically transferred to plan 3. Contributions on behalf of the employer paid by the employee shall be allocated to the defined benefit portion of plan 3 and shall not be refundable when paid to the fund described in RCW 41.50.075(3). Contributions on behalf of

the employee shall be allocated to the member account. If the member fails to meet the time limitations of RCW 41.40.740, they may subsequently restore such contributions under the provisions of RCW 41.50.165(2). Purchased plan 2 service credit will be automatically transferred to plan 3. One-half of the payments under RCW 41.50.165(2), plus interest, shall be allocated to the member's account. [2000 c 247 § 311.]

41.40.835 Death benefits. (1) If a member dies prior to retirement, the surviving spouse or eligible child or children shall receive a retirement allowance computed as provided in RCW 41.40.790 actuarially reduced to reflect a joint and one hundred percent survivor option and, except under subsection (2) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.40.820.

If the surviving spouse who is receiving the retirement allowance dies leaving a child or children under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority.

If there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance, share and share alike. The allowance shall be calculated with the assumption that the age of the spouse and member were equal at the time of the member's death.

(2) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, or a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction under RCW 41.40.820. The member's retirement allowance is computed under RCW 41.40.790. [2009 c 226 § 13; 2003 c 155 § 8; 2000 c 247 § 312.]

Additional notes found at www.leg.wa.gov

41.40.840 Postretirement cost-of-living. Beginning July 1, 1979, and every year thereafter, the department shall determine the following information for each retired member or beneficiary whose retirement allowance has been in effect for at least one year:

- (1) The original dollar amount of the retirement allowance;
- (2) The index for the calendar year prior to the effective date of the retirement allowance, to be known as "index A";
- (3) The index for the calendar year prior to the date of determination, to be known as "index B"; and
- (4) The ratio obtained when index B is divided by index A.

The value of the ratio obtained shall be the annual adjustment to the original retirement allowance and shall be applied beginning with the July payment. In no event, however, shall the annual adjustment:

- (a) Produce a retirement allowance which is lower than the original retirement allowance;
 - (b) Exceed three percent in the initial annual adjustment;
- or

(c) Differ from the previous year's annual adjustment by more than three percent.

For the purposes of this section, "index" means, for any calendar year, that year's average consumer price index—Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor. [2000 c 247 § 313.]

41.40.845 Options for payment of retirement allowances—Court-approved property settlement. (1) Upon retirement for service as prescribed in RCW 41.40.820 or retirement for disability under RCW 41.40.825, a member shall elect to have the retirement allowance paid pursuant to one of the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. Upon the death of the member, the member's benefits shall cease.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3) No later than July 1, 2002, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted under this

section and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a non-spouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(4) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.40.820(1) and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the age provided in RCW 41.40.820(1) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (3) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) Any benefit distributed under *chapter 41.31A RCW after the date of the dissolution order creating separate benefits for a member and nonmember ex spouse shall be paid solely to the member.

(d) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution. [2003 c 294 § 9; 2002 c 158 § 14; 2000 c 247 § 314.]

**Reviser's note:* Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

41.40.850 Suspension of retirement allowance upon reemployment—Exception—Reinstatement. (1) Except as provided in RCW 41.40.037, no retiree under the provisions of plan 3 shall be eligible to receive such retiree's

monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010, 41.32.010, 41.35.010, or 41.37.010, or as a law enforcement officer or firefighter as defined in RCW 41.26.030, except that a retiree who ends his or her membership in the retirement system pursuant to RCW 41.40.023(3)(b) is not subject to this section if the retiree's only employment is as an elective official of a city or town.

(2) If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(3) The department shall adopt rules implementing this section. [2005 c 327 § 9; 2000 c 247 § 315.]

41.40.870 Discontinuing judicial retirement account plan contributions—Additional benefit—One-time irrevocable election—Justices and judges. (1) Between January 1, 2007, and December 31, 2007, a member of plan 3 employed as a supreme court justice, court of appeals judge, or superior court judge may make a one-time irrevocable election, filed in writing with the member's employer, the department, and the administrative office of the courts, to accrue an additional plan 3 defined benefit equal to six-tenths percent of average final compensation for each year of future service credit from the date of the election in lieu of future employer contributions to the judicial retirement account plan under chapter 2.14 RCW.

(2) A member who made the election under subsection (1) of this section may apply, at the time of filing a written application for retirement with the department, to the department to increase the member's benefit multiplier by six-tenths percent per year of service for the period in which the member served as a justice or judge prior to the election. The member may purchase, beginning with the most recent judicial service, the higher benefit multiplier for that portion of the member's prior judicial service for which the higher benefit multiplier was not previously purchased, and that would ensure that the member has no more than a thirty-seven and one-half percent of average final compensation benefit. The member shall pay two and one-half percent of the salary earned for each month of service for which the higher benefit multiplier is being purchased, plus five and one-half percent interest applied from the dates that the service was earned. The purchase price shall not exceed the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier. This payment must be made prior to retirement, subject to rules adopted by the department.

(3) From January 1, 2009, through June 30, 2009, the following members may apply to the department to increase their benefit multiplier by an additional six-tenths percent per year of service for the period in which they served as a justice or judge:

(a) Active members of plan 3 who are not currently employed as a supreme court justice, court of appeals judge, or superior court judge, and who have past service as a supreme court justice, court of appeals judge, or superior court judge; and

(b) Inactive vested members of plan 3 who have separated, have not yet retired, and who have past service as a supreme court justice, court of appeals judge, or superior court judge.

A member eligible under this subsection may purchase the higher benefit multiplier for all or part of the member's prior judicial service beginning with the most recent judicial service. The member shall pay, for the applicable period of service, the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier as determined by the director.

(4) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(5) A member who chooses to make the election under subsection (1) of this section shall contribute a minimum of seven and one-half percent of pay to the member's defined contribution account. [2008 c 300 § 3; 2007 c 123 § 3; 2006 c 189 § 8.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.40.873 Additional benefit for district or municipal court judges—One-time irrevocable election. (1) Between January 1, 2007, and December 31, 2007, a member of plan 3 employed as a district court judge or municipal court judge may make a one-time irrevocable election, filed in writing with the member's employer and the department, to accrue an additional plan 3 defined benefit equal to six-tenths percent of average final compensation for each year of future service credit from the date of the election.

(2) A member who made the election under subsection (1) of this section may apply, at the time of filing a written application for retirement with the department, to the department to increase the member's benefit multiplier by six-tenths percent per year of service for the period in which the member served as a judge prior to the election. The member may purchase, beginning with the most recent judicial service, the higher benefit multiplier for that portion of the member's prior judicial service for which the higher benefit multiplier was not previously purchased, and that would ensure that the member has no more than a thirty-seven and one-half percent of average final compensation benefit. The member shall pay two and one-half percent of the salary earned for each month of service for which the higher benefit multiplier is being purchased, plus five and one-half percent interest applied from the dates that the service was earned. The purchase price shall not exceed the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier. This payment must be made prior to retirement, subject to rules adopted by the department.

(3) From January 1, 2009, through June 30, 2009, the following members may apply to the department to increase their benefit multiplier by an additional six-tenths percent per year of service for the period in which they served as a justice or judge:

(a) Active members of plan 3 who are not currently employed as a district court judge or municipal court judge, and who have past service as a district court judge or municipal court judge; and

(b) Inactive vested members of plan 3 who have separated, have not yet retired, and who have past service as a district court judge or municipal court judge.

A member eligible under this subsection may purchase the higher benefit multiplier for all or part of the member's prior judicial service beginning with the most recent judicial service. The member shall pay, for the applicable period of service, the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier as determined by the director.

(4) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(5) A member who chooses to make the election under subsection (1) of this section shall contribute a minimum of seven and one-half percent of pay to the member's defined contribution account. [2008 c 300 § 4; 2007 c 123 § 4; 2006 c 189 § 9.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.40.877 Justices or judges retirement allowance—In lieu of RCW 41.40.790. In lieu of the retirement allowance provided under RCW 41.40.790, the retirement allowance payable for service as a supreme court justice, court of appeals judge, or superior court judge, for those justices or judges who elected to participate under RCW 41.40.870(1), shall be equal to one and six-tenths percent of average final compensation for each year of service earned after the election. The total retirement benefit accrued or purchased under chapter 189, Laws of 2006 in combination with benefits accrued during periods served prior to the election shall not exceed thirty-seven and one-half percent of average final compensation. [2006 c 189 § 15.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.40.880 District or municipal court judges retirement allowance—In lieu of RCW 41.40.790. In lieu of the retirement allowance provided under RCW 41.40.790, the retirement allowance payable for service as a district court judge or municipal court judge, for those judges who elected to participate under RCW 41.40.873(1), shall be equal to one

and six-tenths percent of average final compensation for each year of service earned after the election. The total retirement benefit accrued or purchased under chapter 189, Laws of 2006 in combination with benefits accrued during periods served prior to the election shall not exceed thirty-seven and one-half percent of average final compensation. [2006 c 189 § 16.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.40.900 Severability—1977 ex.s. c 295. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 295 § 24.]

41.40.920 Effective date—1977 ex.s. c 295. This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect October 1, 1977. [1977 ex.s. c 295 § 25.]

41.40.930 Benefits not contractual right until March 1, 2002. The benefits provided pursuant to chapter 247, Laws of 2000 are not provided to employees as a matter of contractual right prior to March 1, 2002. The legislature retains the right to alter or abolish these benefits at any time prior to March 1, 2002. [2000 c 247 § 316.]

41.40.931 Effective dates—2000 c 247. (1) Except for sections 408 and 901 through 906 of this act, this act takes effect March 1, 2002.

(2) Section 408 of this act takes effect January 1, 2004.

(3) Sections 901 through 906 of this act take effect September 1, 2000. [2000 c 247 § 1201.]

41.40.932 Subchapter headings not law—2000 c 247. Subchapter headings in this act are not any part of the law. [2000 c 247 § 1202.]

Chapter 41.41 RCW

STATE EMPLOYEES' RETIREMENT— FEDERAL SOCIAL SECURITY

Sections

41.41.010	Plan for covering members under OASI approved.
41.41.020	Terms and provisions of plan.
41.41.030	Effective date for coverage of members.
41.41.900	Severability—1957 c 222.

41.41.010 Plan for covering members under OASI approved. The plan for covering the state employee members of the state employees' retirement system under the old age and survivorship provisions of Title II of the federal social security act as amended, required by RCW 41.48.050 as amended by section 5, chapter 4, Laws of the extraordinary session of 1955, approved by the state employees' retirement board of the state employees' retirement system on the 1st day of August, 1955, and approved by the governor of the state of Washington on the 16th day of August, 1955, is hereby approved. [1957 c 222 § 1.]

41.41.020 Terms and provisions of plan. The terms and provisions of the plan are as follows:

(1) Each political subdivision of the state employing members of the state employees' retirement system, and such employees, after approval of this plan by its governing body as provided in RCW 41.48.030(4)(f) and after approval by its eligible employees through referendum as provided in RCW 41.48.030 (3) and (4), and the state itself as such a subdivision, and its employees, after approval of this plan by the legislature as provided in RCW 41.48.050(d) and RCW 41.48.030(4)(f) and after approval by its eligible employees through referendum as provided in RCW 41.48.030 (3) and (4), shall be deemed to have accepted and agreed to be bound by the following terms and conditions in consideration of extension of the existing agreement between the secretary of health, education and welfare and the governor to make the protection of the federal old age and survivors insurance program available and applicable to such employees.

(2) As used in this plan the terms quoted below shall have the meanings assigned thereto in this subsection.

"Political subdivision" means any political subdivision, or instrumentality of one or more such subdivisions, or proprietary enterprise acquired, purchased, or originated by one or more such subdivisions after December, 1950, which employs members of the state employees' retirement system. The state, its agencies, instrumentalities, and institutions of higher learning shall be grouped and considered as a single political subdivision.

"Employee" means any person who is a member of the state employees' retirement system and is employed by a political subdivision, except persons serving in police officer's or firefighters' positions and officials compensated on a fee basis.

"Wages" shall have the meaning given in *RCW 41.48.020(1) and section 209 of the social security act (42 U.S.C.A. Sec. 409); and refers to the first four thousand two hundred dollars paid to any employee in any calendar year.

"State," where not otherwise clearly indicated by the context, means the commissioner of employment security or other officer designated by the governor to administer the plan at the state level for all participating political subdivisions.

(3) The terms and conditions of this plan are intended and shall be construed to be in conformity with the requirements of the federal social security act as amended and with the requirements of chapter 41.48 RCW, and particularly RCW 41.48.050, as amended by chapter 4, Laws of the extraordinary session of 1955.

(4) The rights and benefits accruing to employees from membership in the state employees' retirement system shall in no way be altered or impaired by this plan or by the additional and supplementary OASI coverage which such employees may receive hereunder. Nothing herein shall be construed to alter in any way the obligations of any political subdivision or its employees to the retirement system.

(5) There shall be no additional cost to or involvement of the state with respect to OASI coverage for state employee members of the state employees' retirement system until this plan has been approved by the legislature.

(6) OASI coverage shall be applicable to all services performed by its employees for a political subdivision which has approved this plan.

(7) Each employee to whom OASI coverage is made applicable under this plan pursuant to an extension or modification under RCW 41.48.030 of the existing agreement between the secretary of health, education, and welfare and the governor shall be required to pay into the OASI contribution account established by RCW 41.48.060 during the period of such coverage contributions with respect to his or her wages in an amount equal to the employee tax imposed by the federal insurance contributions act (section 3101, Internal Revenue Code of 1954), in consideration of the employee's retention in service by the political subdivision. The subdivision shall withhold such contributions from the wages paid to the employee; and shall remit the contributions so withheld in each calendar quarter to the state for deposit in the contribution account not later than the twentieth calendar day of the month following that quarter.

(8) Each political subdivision shall pay into the contribution account with respect to the wages of its employees during the period of their OASI coverage pursuant to this plan contributions in an amount equal to the employer tax imposed by the federal insurance contributions act (section 3111, Internal Revenue Code of 1954), from the fund of the subdivision from which such employees' wages are paid. The subdivision shall remit such contributions to the state for deposit in the contribution account on a quarterly basis, not later than the twentieth calendar day of the month following each calendar quarter.

(9) If any political subdivision other than that comprising the state, its agencies, instrumentalities, and institutions of higher learning fails to remit as provided herein employer contributions or employee contributions, or any part of either, such delinquent contributions may be recovered with interest at the rate of six percent per annum by action in a court of competent jurisdiction against the political subdivision; or such delinquent contributions may at the request of the governor be deducted from any moneys payable to such subdivision by the state.

(10) Each political subdivision shall be charged with a share of the cost of administration of this plan by the state, to be computed as that proportion of the overall cost of administration which its total annual contributions bear to the total annual contributions paid by all subdivisions on behalf of employees covered by the plan. The state shall compute the share of cost allocable to each subdivision and bill the subdivision therefor at the end of each fiscal year. The subdivision shall within ninety days thereafter remit its share of the cost to the state for deposit in the general fund of the state.

(11) Each political subdivision shall submit to the state, through the employment security department, P.O. Box 367, Olympia, Washington, or such other officer or agency as the governor may subsequently designate, on forms furnished by the state, not later than the twentieth calendar day of the month following the end of each calendar quarter, the following information:

- A. The social security account number of each employee;
- B. The name of each employee;

C. The amount of wages subject to contributions as required hereunder paid to each employee during the quarter;

D. The total amount of wages subject to contributions paid to all employees during the quarter;

E. The total amount of employee contributions withheld and remitted for the quarter; and

F. The total amount of employer contributions paid by the subdivision for the quarter.

(12) Each political subdivision shall furnish in the same manner as provided in subsection (11) [of this section], upon reasonable notice, such other and further reports or information as the governor may from time to time require. Each subdivision shall comply with such requirements as the secretary of health, education, and welfare or the governor may from time to time establish with respect to any or all of the reports or information which are or may be provided for under subsection (11) [of this section] or this subsection in order to assure the correctness and verification thereof.

(13) The governing body of each political subdivision shall designate an officer of the subdivision to administer such accounting, reporting, and other functions as will be required for the effective operation of this plan within the subdivision, as provided herein. The commissioner of employment security, or such other officer as the governor may designate, shall perform or supervise those functions with respect to employees of the subdivision comprising the state, its agencies, instrumentalities, and institutions of higher learning; and shall serve as the representative of the participating political subdivisions in the administration of this plan with the secretary of health, education, and welfare.

(14) OASI coverage may be made applicable as provided herein to employees of any political subdivision regardless of the approval or disapproval of this plan by any other subdivision.

(15) Each political subdivision, with the approval of a majority of its employees as indicated by vote thereon in conjunction with the referendum to be held pursuant to RCW 41.48.030 (3) and (4), may designate the first day of any month beginning with January of 1955 as the effective date of OASI coverage for such employees; except that after January 1, 1958, a subdivision may not so designate an effective date prior to the first day of the current calendar year.

(16) The governor may terminate the operation of this plan in its entirety with respect to any political subdivision, in his or her discretion, if he or she finds that the subdivision has failed to comply substantially with any requirement or provision of this plan. The plan shall not be so terminated until reasonable notice and opportunity for hearing thereon have been given to the subdivision under such conditions, consistent with the provisions of the social security act, as shall have been established in regulations by the governor. [2012 c 117 § 60; 1957 c 222 § 2.]

*Reviser's note: RCW 41.48.020 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (1) to subsection (6).

41.41.030 Effective date for coverage of members.

The effective date of OASI coverage for state employee members of the state employees' retirement system shall be the 1st day of July, 1957; provided the terms and conditions set forth in RCW 41.48.030(3) have been fulfilled. [1957 c 222 § 3.]

41.41.900 Severability—1957 c 222. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1957 c 222 § 4.]

Chapter 41.44 RCW

STATEWIDE CITY EMPLOYEES' RETIREMENT

Sections

41.44.010	Title of chapter.
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41.44.030	Terms defined.
41.44.040	System created—Operative date.
41.44.050	Election to participate.
41.44.060	Persons excluded.
41.44.070	Board of trustees.
41.44.080	Powers and duties of board—Compensation—Liability.
41.44.090	Contributions by cities—Withdrawal from system.
41.44.100	Retirement fund—Deposit—Investment—Cost.
41.44.105	Supplemental benefits fund.
41.44.110	Membership.
41.44.120	Prior service credit.
41.44.130	Contributions by employees.
41.44.140	Retirement for service.
41.44.150	Allowance on retirement for service.
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41.44.170	Allowance on retirement for disability.
41.44.180	Examination of disability beneficiary—Reentry.
41.44.190	Withdrawal from system—Reentry—Payment on death of member.
41.44.200	Withdrawal—Procedure as to city's contribution.
41.44.210	Benefit on death in line of duty.
41.44.220	Optional allowance on retirement.
41.44.230	Monthly payments.
41.44.240	Rights immune from legal process—Exceptions.
41.44.250	Suspension of retirement allowance.
41.44.260	Merger of existing or new systems into statewide system—Contract.
41.44.270	Agreements between board and cities which accept social security act benefits.
41.44.300	System abolished—Date—Transfer of assets, liabilities, and responsibilities.
41.44.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Portability of public retirement benefits: Chapter 41.54 RCW.

41.44.010 Title of chapter. This chapter shall be known and may be cited as the "Statewide City Employees' Retirement System Law". [1947 c 71 § 1; Rem. Supp. 1947 § 9592-130.]

Additional notes found at www.leg.wa.gov

41.44.020 Purpose of chapter. The purpose of this chapter is to provide for an actuarially sound system for the payment of annuities and other benefits to officers and employees and to beneficiaries of officers and employees of cities and towns thereby enabling such employees to provide for themselves and their dependents in case of old age, disability and death, and effecting economy and efficiency in the public service by furnishing an orderly means whereby such employees who have become aged or otherwise incapacitated may, without hardship or prejudice, be retired from active service. [1947 c 71 § 2; Rem. Supp. 1947 § 9592-131.]

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

(1) "Accumulated additional contributions" means the sum of all "additional contributions" made by a member

standing to the credit of the individual account, together with regular interest thereon.

(2) "Accumulated normal contributions" means the sum of all normal contributions, deducted from the compensation of a member, standing to the credit of his or her individual account, together with regular interest thereon.

(3) "Actuarial equivalent" means a benefit of equal value when computed at regular interest upon the basis of such mortality tables as shall be adopted by the board of trustees.

(4) "Additional contributions" means contributions made pursuant to subsection (6) of RCW 41.44.130.

(5) "Annuity" means payments derived from contributions made by a member as provided herein.

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

(7) "Board" means the "board of trustees" provided for herein.

(8) "City" or "cities" includes town or towns.

(9) "Compensation" means the compensation payable in cash, plus the monetary value, as determined by the board of trustees, of any allowance in lieu thereof (but for the purposes of this chapter such "compensation" shall not exceed three hundred dollars per month, except as to those employees of any member city the legislative body of which shall not later than July 1, 1953, have irrevocably elected by resolution or ordinance to increase the limitation herein contained, effective as to all of its employees, from three hundred dollars to four hundred dollars, commencing on said date, or which shall so elect prior to January 1st of any succeeding year, effective as of January 1st of any such succeeding year, and as to such employees shall, commencing on the specified date, not exceed four hundred dollars or an amount equal to such increased limitation established by such ordinance or resolution per month): PROVIDED HOWEVER, That the foregoing limitation shall not apply to uniformed personnel.

(10) "Compensation earnable" means the full rate of compensation that would be payable to an employee if he or she worked the full normal working time (but for the purposes of this chapter, such "compensation earnable" shall not exceed three hundred dollars per month, except as to those employees of any member city the legislative body of which shall not later than July 1, 1953, have irrevocably elected by resolution or ordinance to increase the limitation herein contained, effective as to all of its employees, from three hundred dollars to four hundred dollars, commencing on said date, or which shall so elect prior to January 1st of any succeeding year, effective as of January 1st of any such succeeding year, and as to such employees shall, commencing on the specified date, not exceed four hundred dollars or an amount equal to such increased limitation established by such ordinance or resolution per month): PROVIDED, HOWEVER, That the foregoing limitation shall not apply to uniformed personnel: PROVIDED FURTHER, That after January 1, 1968 this term shall mean the full rate of compensation payable to an employee if he or she worked the full normal working time.

(11) "Creditable service" means such service as is evidenced by the record of normal contributions, plus prior service as evidenced by prior service certificate.

(12) "Current service" means service after the employee has become a member of the system.

(13) "Effective date" when used with regard to employees means the date on which any individual or group of employees became members of any retirement system and when used with regard to any city or town shall mean the date on which it became a participant.

(14) "Employee" means any appointive officer or employee and shall include elective officials to the extent specified herein.

(15) "Excess interest income" means that interest income earned and received from investments in excess of the interest income on investments required to meet actuarial funding requirements.

(16) "Final compensation" means the highest average annual compensation earnable in any five consecutive years of actual service rendered during the ten years immediately preceding retirement, or where the employee has less than five consecutive years of actual service, the earnable compensation for the last five years preceding his or her retirement.

(17) "Fiscal year" means any year commencing with January 1st and ending with December 31st next following.

(18) "Matching contribution" means the contribution of the city deposited in an amount equal to the normal contributions of the employee.

(19) "Member" means any person included in the membership of the retirement system as provided herein.

(20) "Miscellaneous personnel" means officers and employees other than those in the uniformed police or fire service: PROVIDED, Those members of the fire department who are ineligible to the benefits of a firefighters' pension system established by or pursuant to any other state law, are also included in the miscellaneous personnel.

(21) "Normal contributions" means the contributions at the rate provided for in RCW 41.44.130, excluding those referred to in subsection (6).

(22) "Part time employees" means those employees who, although regularly and continuously employed, do not regularly perform their duties the full number of hours required of other regular employees, including but not confined to such employees as police judges, city attorneys, and other officers and employees who are also engaged in outside employment or occupations.

(23) "Pension" means payments derived from contributions made by the city as provided herein.

(24) "Persons having an insurable interest in his or her life" means and includes only such persons who, because of relationship from ties of blood or marriage, have reason to expect some benefit from the continuation of the life of the member.

(25) "Prior service" means the service of a member for compensation rendered a city prior to the effective date and shall include service in the armed forces of the United States to the extent specified herein and service specified in RCW 41.44.120(5).

(26) "Regular interest" means interest compounded annually at such rate as shall have been adopted by the board of trustees in accordance with the provisions of this chapter.

(27) "Released matching contributions" means such "matching contributions" as are no longer held for the benefit of the employee.

(28) "Retirement allowance" means the pension plus annuity.

(29) "Retirement fund" means "statewide city employees retirement fund" provided for herein.

(30) "Retirement system" means the statewide city employees retirement system provided for herein.

(31) "Service" means service rendered to a city for compensation; and for the purpose of this chapter a member shall be considered as being in service only while he or she is receiving compensation from the city for such service or is on leave granted for service in the armed forces of the United States as contemplated in RCW 41.44.120.

(32) "Uniformed personnel" means any employee who is a police officer in service or who is subject to call to active service or duty as such. [2012 c 117 § 61; 1967 ex.s. c 28 § 6; 1961 c 227 § 1; 1959 c 70 § 1; 1953 c 228 § 1; 1951 c 275 § 2; 1947 c 71 § 3; Rem. Supp. 1947 § 9592-132.]

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

Purpose—1967 ex.s. c 28: "It is the purpose of this act to provide amendments to existing legislation relating to the statewide city employees retirement system to provide for an increase of investment earnings to be used for costs in purchasing, safekeeping, servicing and handling of securities, to amend the mandatory retirement age of uniformed personnel from attained age fifty-five to the minimum age for social security benefits, to change the time required for vested rights from ten years to five years in accordance with the recommendation of the federal committee on intergovernmental relations and to help meet competition with private industry by providing additional fringe benefits or an incentive program for city employees to attract and retain competent employees in public service." [1967 ex.s. c 28 § 1.]

Additional notes found at www.leg.wa.gov

41.44.040 System created—Operative date. A retirement system is hereby authorized for employees of cities, same to become operative after the requisite city or cities or combination thereof, have signified their intention to participate in the retirement system and the board has been appointed and qualified as herein provided. The board may begin to function, establish an office, employ an actuary and such other personnel as necessary and undertake the work of establishing the retirement system but it shall not be required to undertake such work unless necessary moneys are made available through negotiated loans or advances from cities or otherwise.

Whenever cities have notified the governor of election to join the retirement system to an extent which would place three hundred or more employees under the system, the governor shall appoint board members as provided herein and the system so created and established shall be forthwith constituted. The date when the system shall become operative as to any city shall be fixed by the board. [1947 c 71 § 4; Rem. Supp. 1947 § 9592-133.]

Reviser's note: Caption for 1947 c 71 § 4 reads as follows: "Sec. 4. AUTHORIZATION AND CREATION."

41.44.050 Election to participate. Any city or town may elect to participate in the retirement system established by this chapter: PROVIDED, That a first-class city may establish or maintain any other retirement system authorized by any other law or its charter. The manner of election to participate in a retirement system under this chapter shall be as follows:

(1) The legislative body therein by ordinance making such election;

(2) Approval by vote of the people of an ordinance initiated by the voters making such election;

(3) Approval by vote of the people of an ordinance making such election referred to the people by the legislative body.

Any ordinance providing for participation therein may on petition of the voters be referred to the voters for approval or disapproval.

The referendum or initiative herein provided for shall be exercised under the law relating to legislative initiative or referendum of the particular city or town; and if the city or town be one for which the law does not now provide such initiative or referendum, it shall be exercised in the manner provided for legislative initiative and referendum of cities having a commission form of government under chapter 35.17 RCW, the city or town council performing the duties and functions under that law devolving on the commission. A majority vote in the legislative body or by the electorate shall be sufficient to carry or reject. Whenever any city or town has elected to join the retirement system proper authorities in such city [or town] shall immediately file with the board an application for participation under the conditions included in this chapter on a form approved by the board. In such application the city or town shall agree to make the contributions required of participating cities [or towns] in the manner prescribed herein and shall state which employee group or groups are to originally have membership in the system.

In the case of a state association of cities and towns, election to participate shall be by majority vote of the board of directors of the association. [1994 c 81 § 76; 1971 ex.s. c 271 § 13; 1947 c 71 § 5; Rem. Supp. 1947 § 9592-134.]

Additional notes found at www.leg.wa.gov

41.44.060 Persons excluded. Police officers in first-class cities and all city firefighters shall be excluded from the provisions of this chapter, except those employees of the fire department who are not eligible to the benefits of any firefighters' pension system established by or pursuant to state law, and who shall be included in the miscellaneous personnel. [2007 c 218 § 71; 1951 c 275 § 3; 1947 c 71 § 6; Rem. Supp. 1947 § 9592-135.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Firefighters' relief and pensions: Chapters 41.16, 41.18 RCW.

Police relief and pensions in first-class cities: Chapter 41.20 RCW.

Volunteer firefighters' relief and pensions: Chapter 41.24 RCW.

41.44.070 Board of trustees. (1) The board of trustees shall consist of seven members, one of whom shall be the state insurance commissioner, ex officio; three elective city officials eligible to the benefits of the system who shall be appointed by the governor from a list of six city officials submitted by the executive committee of the association of Washington cities as the official representative of cities and towns in the state. Original terms of office of the appointees shall be one, two and three years as designated by the governor; thereafter terms shall be for three years duration. Appointments to fill vacancies other than those caused by expiration of a term, shall be for the unexpired term. Appoin-

tees shall serve until successors have been appointed and qualified.

In addition to these four members, there shall be three city employees who shall be elected by a secret ballot vote of the city employees who are members of the system. The method and details of such election shall be determined by the board of trustees. The first such election shall be held in June of 1968. The original terms of office for the elected city employee members shall be one, two and three years as designated by the board of trustees, and such terms shall begin July 1, 1968; thereafter terms shall be for three years' duration. In the case of vacancies of elected city employee positions the board of trustees shall appoint city employees to serve for the unexpired terms. Such appointees shall serve until successors have been elected.

(2) The board shall annually, dating from the first officially recorded meeting, elect a chair and secretary. Four members shall constitute a quorum.

(3) Each member of the board shall take an oath of office that he or she will diligently and honestly administer the affairs of the board, and that he or she will not knowingly violate or willfully permit to be violated any of the provisions of this chapter. [2012 c 117 § 62; 1967 ex.s. c 28 § 7; 1947 c 71 § 7; Rem. Supp. 1947 § 9592-136.]

Purpose—Severability—1967 ex.s. c 28: See notes following RCW 41.44.030.

41.44.080 Powers and duties of board—Compensation—Liability. The administration of the system is hereby vested in the board of trustees created in RCW 41.44.070 of this chapter and the board shall:

(1) Keep in convenient form such data as shall be deemed necessary for actuarial valuation purposes;

(2) From time to time, through its actuary, make an actuarial investigation into the mortality and service experience of the beneficiaries under this chapter and the various accounts created for the purpose of showing the financial status of the retirement fund;

(3) Adopt for the retirement system the mortality tables and such other tables as shall be deemed necessary;

(4) Certify annually the amount of appropriation which each city shall pay into the retirement fund in the next fiscal year, at such a time that the local authorities shall have ample opportunity for including such expense in the budget;

(5) Keep a record of all its proceedings, which shall be open to inspection by the public;

(6) From time to time adopt such rules and regulations not inconsistent with this chapter, for the administration of the provisions of this chapter, for the administration of the fund created by this chapter and the several accounts thereof, and for the transaction of the business of the board;

(7) Provide for investment, reinvestment, deposit, and withdrawal of funds;

(8) Prepare and publish annually a financial statement showing the condition of the fund and the various accounts thereof, and setting forth such other facts, recommendations, and data as may be of use in the advancement of knowledge concerning the statewide city employees retirement system, and furnish a copy thereof to each city which has joined the retirement system, and to such members as may request copies thereof;

(9) Serve without compensation but shall be reimbursed for expense incident to service as individual members thereof;

(10) Determine equitable amount of administrative expense and death-in-line-of-duty benefit expense to be borne by each city;

(11) Make available to any city considering participation in the system, the services of the actuary employed by the board for the purpose of ascertaining the probable cost of such participation. The cost of any such calculation or valuation shall be paid by the city requesting same to the retirement system;

(12) Perform such other functions as are required for the execution of the provisions of this chapter;

(13) No member of the board shall be liable for the negligence, default, or failure of any employee or of any other member of the board to perform the duties of his or her office and no member of the board shall be considered or held to be an insurer of the funds or assets of the retirement system but shall be liable only for his or her own personal default or individual failure to perform his or her duties as such member and to exercise reasonable diligence to provide for the safeguarding of the funds and assets of the system;

(14) Fix the amount of interest to be credited at a rate which shall be based upon the net annual earnings of the fund for the preceding twelve-month period and from time to time make any necessary changes in such rate;

(15) Distribute excess interest income to retired members on a cost of living index basis, as published by the United States department of health, education, and welfare, applied only to the annuity and current service portion of the retired members' retirement allowance: PROVIDED, That such distribution shall not exceed the income earned and received on open end investments. [2012 c 117 § 63; 1961 c 227 § 2; 1951 c 275 § 4; 1949 c 171 § 1; 1947 c 71 § 8; Rem. Supp. 1949 § 9592-137.]

41.44.090 Contributions by cities—Withdrawal from system. (1) There shall be paid into the retirement fund by contributions of each city the amounts necessary to pay the following:

(a) Contributions equal to those deposited by employees;

(b) Prior service credits at such rate as may be selected;

(c) That part of a retirement allowance necessary to raise it to a specified minimum;

(d) An equitable share of the administrative costs, all of which costs are to be paid by the cities;

(e) An equitable share of the cost of the death-in-the-line-of-duty benefit, all of which costs are to be paid by the cities.

Any city having in its employ ten or more employees who are members of the system may elect to contribute, in lieu of its contributions set forth in item (a) above, an amount estimated actuarially necessary to match at retirement the accumulated normal contributions of those of its members who will ultimately retire for service or disability; provided that such election shall be made by resolution or ordinance of the legislative body of such city and, in order to become effective for the remainder of the year 1953, shall be made on or before July 1, 1953, and thereafter any election so made shall be made prior to January 1, 1954, to become then effective.

tive or prior to January 1st of any succeeding year to become effective on January 1st of such succeeding year.

Any city may, with the approval of the board, further elect to contribute in lieu of its contributions set forth in items (b) and (c) above, an amount estimated actuarially, necessary to amortize over a period of not to exceed thirty years, all liabilities on account of the participation of such a city, which are not covered by the contributions of its employees, its funds on hand and its contributions provided for in item (a) above or the contributions elected to be made in lieu thereof in cases where such city shall have elected to make said contribution in lieu of the contributions required in said item (a); provided that such election shall be made by resolution or ordinance of the legislative body of such city and, in order to become effective for the remainder of the year 1953, shall be made on or before July 1, 1953, and thereafter any election so made shall be made prior to January 1, 1954, to become then effective or prior to January 1st of any succeeding year to become effective on January 1st of such succeeding year.

In the event that any city shall be making either of the lieu contributions as hereinabove set forth, the resulting contributions shall be adjusted to conform with facts and conditions disclosed by each succeeding actuarial valuation.

(2) Payment of the obligation set forth in subsection (1) of this section may be made in advance or may be paid currently as contributions are received from employees and pensions are paid to retired members: PROVIDED, That the share of administrative expense and expense of the death-in-the-line-of-duty benefits shall be paid as soon as funds are available to make such payment and the board shall have the right to require any city that has withdrawn from the system, to annually, at the beginning of each calendar year, deposit and pay in cash an amount estimated by the board to be sufficient to meet the obligation of such city for the ensuing year to those of its members receiving a retirement allowance. From time to time each city may apply reserves in payment of the obligations set forth above as contemplated in RCW 41.44.200.

(3) The board shall furnish each city with an estimate of the amount necessary to pay the obligations of the city in the ensuing fiscal year and the city shall provide therefor in its budget. The board shall cause to be kept an account with each city, crediting the account with such advances and payments as are made by the city and debiting the account with such charges as properly accrue against the city. The board shall furnish each city with a monthly statement of the amount of matching contributions, prior service charges and charges for minimum retirement allowances properly accruing by reason of payment of retirement allowances and deposit of contributions of members.

(4) Notwithstanding anything to the contrary, the retirement system shall not be liable for the payment of any retirement allowances or other benefits on account of the employees or retired members of any city under this chapter, for which reserves or guarantees have not been properly set up by such city or its employees to pay such retirement allowances or other benefits: PROVIDED, That nothing herein contained shall be so construed to prevent the establishment of a reserve account for annuities and pensions in which shall be placed at the time of retirement of any member the balances of the retiring member's contribution and the city's

matching funds for such member and from which account all annuities and current service pensions shall be paid.

(5) Any city may, by majority vote of its electors, withdraw from participation in the retirement system two years after giving written notice to the board of such action by the electorate. It is hereby specifically provided, however, that the city's obligation to those members receiving or eligible to a retirement allowance prior to such termination of participation shall continue in full force and effect as provided in this chapter. Members not receiving or being eligible to a retirement allowance at time of such termination shall be paid their accumulated contributions on demand. Should it develop that any such city is entitled to a refund such refund shall be made within one year following demand of city entitled thereto. [1953 c 228 § 2; 1951 c 275 § 5; 1949 c 171 § 2; 1947 c 71 § 9; Rem. Supp. 1949 § 9592-138.]

41.44.100 Retirement fund—Deposit—Investment—Cost. (1) A fund is hereby created and established to be known as the "statewide city employees retirement fund," and shall consist of all moneys paid into it in accordance with the provisions of this chapter, whether such moneys shall take the form of cash, securities, or other assets: PROVIDED, That such assets shall be public funds to the extent necessary to authorize any bank to deposit such collateral security necessary and required under the laws of the state to secure the deposit of public funds belonging to a city.

(2) The board of trustees shall be the custodian of the retirement fund and shall arrange for the safekeeping thereof. Subject to such provisions as may be prescribed by law for the deposit of city funds in banks, cash belonging to the retirement fund may be deposited in any licensed national bank or banks in the state, or in any bank, banks or corporations authorized or licensed to do a banking business and organized under the laws of the state of Washington; and may be withdrawn on order of the board for the purpose of making such payments as are authorized and required by this chapter.

(3) The board may invest pension fund moneys in such securities of the United States, states, Dominion of Canada, public housing authorities, municipal corporations and other public bodies, as are designated by the laws of the state as lawful investments for the funds of mutual savings banks, and to invest not to exceed twenty-five percent of the system's total investments in the securities of any corporations or public utility bodies as are designated by the laws of the state as lawful investments for the funds of mutual savings banks: PROVIDED, That not more than five percent of the system's total investments may be made in the securities of any one of such corporations or public utility bodies.

(4) Subject to the limitations hereinafter provided, investment of pension funds may also be made in amounts not to exceed twenty-five percent of the system's total investments in the shares of certain open-end investment companies: PROVIDED, That not more than five percent of the system's total investments may be made in the shares of any one such open-end investment company. The total amount invested in any one company shall not exceed five percent of the assets of such company, and shall only be made in the shares of such companies as are registered as "open-end companies" under the federal investment company act of 1940, as amended. Such company must be at least ten years old and

have net assets of at least five million dollars. It must have no outstanding bonds, debentures, notes, or other evidences of indebtedness, or any stock having priority over the shares being purchased, either as to distribution of assets or payment of dividends. It must have paid dividends from investment income in each of the ten years next preceding purchase. The maximum selling commission on its shares may not exceed seven and one-half percent of the sum of the asset value plus such commission.

(5) Investment of pension funds may also be made in the bonds of any municipal corporation or other public body of the state; and in any of the bonds or warrants, including local improvement bonds or warrants within the protection of the local improvement guaranty fund law, issued by any city or town which is a member of the system. Investment of pension funds may also be made in the bonds or other obligations of any other state or territory of the United States or of any political subdivision, agency or instrumentality of any such state, territory, or political subdivision thereof.

Investment of pension funds may also be made in bonds or other obligations insured or guaranteed or which are covered by a repurchase agreement in whole or in part by the federal government or through any corporation, administrator, agency or instrumentality which is or hereafter may be created by the federal government.

(6) In order to provide for an equitable apportionment of the cost of the making and handling of the system's investments, the board may charge against the annual earnings from the system's investments, including income from the same and gains realized from the purchase and sale of its securities, a portion of such earnings computed on the book value of the investments held by the system at the end of its fiscal year, for the purpose of paying the cost of purchasing, safekeeping, servicing and handling its securities: PROVIDED, That such portion shall not exceed one-half of one percent of such value and shall not exceed the net gain from the operations for the year: PROVIDED FURTHER, That such charge shall not be considered as an administrative expense payable solely by the cities. [1967 ex.s. c 28 § 3; 1965 ex.s. c 99 § 1; 1957 c 158 § 1; 1953 c 228 § 3; 1951 c 275 § 6; 1949 c 171 § 3; 1947 c 71 § 10; Rem. Supp. 1949 § 9592-139.]

Purpose—Severability—1967 ex.s. c 28: See notes following RCW 41.44.030.

41.44.105 Supplemental benefits fund. (1) The board of trustees shall establish, in addition to the several benefits provided for, an additional and separate fund to be known as the "supplemental benefits fund" to provide for the payment of supplemental benefits, as hereinafter provided for employees of municipalities electing to participate in said fund.

(2) Any municipality which has elected to participate in this retirement system may elect to have the employees of the municipality participate in and be covered by the supplemental benefits fund. Such election is authorized to be made in any manner authorized by RCW 41.44.050, as now or hereafter amended, as it relates to participation in the system.

(3) A municipality which once elects to participate in the supplemental benefits fund shall never discontinue participation in the fund as to members who are covered in the fund.

(4) Membership in the fund shall be terminated by cessation of membership in the system.

(5) Each municipality which elects to participate in the supplemental benefits fund shall contribute to that fund, in addition to normal contributions and prior service contributions as required, such additional percentage of each payment of earnings as may be fixed by the board, on recommendation of the actuary, as necessary to accumulate the reserves needed to pay the anticipated benefit: PROVIDED, That the rate of contribution to the supplemental benefits fund shall be on the full compensation of the member.

(6) The supplemental benefit for covered employees shall be an allowance not to exceed fifteen percent of average final compensation payable at the time of retirement.

(7) Should the service of a member be discontinued by other than death or retirement, the benefits and privileges as provided by RCW 41.44.190 as now or hereafter amended, shall apply.

(8) A municipality which elects to participate in the supplemental benefits fund shall provide such benefits for all members employed by such city. [1967 ex.s. c 28 § 2.]

Purpose—Severability—1967 ex.s. c 28: See notes following RCW 41.44.030.

41.44.110 Membership. (1) Subject to subsection (2) of this section, membership of this retirement system shall be composed of the following groups of employees in any participating city or cities:

- (a) Miscellaneous personnel as defined in this chapter;
- (b) Uniformed personnel as defined in this chapter;
- (c) Elective officials, who shall have the right to membership in this retirement system upon filing written notice of such election with the board of trustees;
- (d) Employees of the retirement system itself shall be entitled to membership and any costs in connection with such membership shall be a part of the cost of administration;
- (e) Employees of any state association of cities and towns shall be entitled to membership, upon election to participate made by the board of directors pursuant to RCW 41.44.050, and any costs in connection with such membership which would be borne by a city in the case of employees of a city shall be borne by the association.

(2) Any city may, when electing to participate in this retirement system in the manner set forth in RCW 41.44.050, include any one group or combination of the groups mentioned in subsection (1) of this section. For an initial period not to exceed one year from the effective date of any city's entry into this system, if so provided at the time of its election to participate, only a majority of the employees of any group or combination of groups must be members of the system.

At all times subsequent to the effective date of the city's entry into this system, or at all times after expiration of such initial period, if such initial period is established at the time of the city's election to participate, all employees of any group or combination of groups must be included or excluded as members of this system. Groups (c) and (d) shall be considered as being composed of miscellaneous personnel as far as benefits and obligations are concerned except when the contrary is clearly indicated.

(3) Subject to subsection (2) of this section, membership in the retirement system shall be compulsory for all employ-

ees in groups (a) and (b), after qualification as provided in subsection (4) of this section.

(4) Subject to subsection (2) of this section, all employees in city service, on the effective date, or on June 9, 1949, or on expiration of the initial period therein provided if they have completed six consecutive months' service or six months' service in any calendar year prior to the expiration of such initial period, shall be members of the system, provided that such employees who are not regular full time employees and are earning less than one hundred dollars per month, or are part time employees serving in an official or special capacity may with the acquiescence of the legislative body of the city or town in which they are employed, elect on or before January 1, 1950, to discontinue membership by giving written notice of such election to the board. All other regular employees earning more than one hundred dollars per month shall become members upon the completion of six consecutive months' service or six months' service in any calendar year. Any employee otherwise eligible, employed in a permanent position, may elect in writing to become a member of the system at any time during the initial period, or at any time prior to completing such six months' service. Such individual employees other than regular employees, who are earning less than one hundred dollars per month or who are serving in an official or special capacity may elect to become members with the acquiescence of the legislative body of the city or town in which they are employed upon the completion of six months of consecutive service or six months' service in any calendar year.

(5) It shall be the duty of the proper persons in each city to immediately report to the board routine changes in the status of personnel and to immediately furnish such other information regarding the employment of members as the board may from time to time require.

(6) Should any member withdraw more than one-quarter of his or her accumulated contributions, or should he or she die or be retired, he or she shall thereupon cease to be a member.

(7) Transfer of any employee from one city to another shall not cause the employee to lose membership in the system providing the city to which he or she transfers participates in the retirement system created herein. [2012 c 117 § 64; 1971 ex.s. c 271 § 14; 1965 ex.s. c 99 § 2; 1961 c 227 § 3; 1953 c 228 § 4; 1951 c 275 § 7; 1949 c 171 § 4; 1947 c 71 § 11; Rem. Supp. 1949 § 9592-140.]

Additional notes found at www.leg.wa.gov

41.44.120 Prior service credit. (1) Subject to subsections (4) and (5) of this section the following members shall be entitled to prior service credit:

(a) Each member in service on the effective date.

(b) Each member entering after the effective date if such entry is within one year after rendering service prior to the effective date.

(c) Each member entering in accordance with the provisions and subject to the conditions and limitations prescribed in subsection (5) of this section.

As soon as practicable, the board shall issue to each member entitled to prior service credit a certificate certifying the aggregate length of service rendered prior to the effective date. Such certificate shall be final and conclusive as to his or

her prior service unless hereafter modified by the board, upon application of the member.

(2) Each city joining the system shall have the privilege of selecting the rate at which prior service pensions shall be calculated for its employees and may select any one of the three rates set forth below:

(a) 1.33% of final compensation multiplied by the number of years of prior service credited to the member. This rate may be referred to as "full prior service credit."

(b) 1.00% of final compensation multiplied by the number of years of prior service credited to the member. This rate may be referred to as "full prior service credit."

(c) .667% of final compensation multiplied by the number of years of prior service credited to the member. This rate may be referred to as "one-half prior service credit."

(3) The above rates shall apply at the age of sixty-two or over for members included in the miscellaneous personnel and at age sixty or over for members in the uniformed personnel: PROVIDED, That if a member shall retire before attaining either of the ages above referred to, the total prior service pension shall be reduced to the percentages computed and established in accordance with the following tables, to wit:

Miscellaneous Personnel					
Percent of Full Prior Service Allowable					
Male			Female		
Age		Factor	Age		Factor
45	.....	65.48	45	.....	66.78
46	.....	66.86	46	.....	67.91
47	.....	68.29	47	.....	69.09
48	.....	69.77	48	.....	70.34
49	.....	71.28	49	.....	71.67
50	.....	72.82	50	.....	73.10
51	.....	74.43	51	.....	74.71
52	.....	76.13	52	.....	76.41
53	.....	77.93	53	.....	78.21
54	.....	79.84	54	.....	80.11
55	.....	81.86	55	.....	82.12
56	.....	84.00	56	.....	84.24
57	.....	86.28	57	.....	86.50
58	.....	88.69	58	.....	88.89
59	.....	91.26	59	.....	91.42
60	.....	94.00	60	.....	94.11
61	.....	96.90	61	.....	96.96
62	.....	100.00	62	.....	100.00

Percent of Full Prior Service Allowable		
Uniformed Personnel		
Age		Factor
45	.....	69.66
46	.....	71.13
47	.....	72.65
48	.....	74.22
49	.....	75.83
50	.....	77.47
51	.....	79.18
52	.....	80.99
53	.....	82.91
54	.....	84.93
55	.....	87.09
56	.....	89.37

57	.....	91.79
58	.....	94.36
59	.....	97.09
60	.....	100.00

1971 ex.s. c 271 § 15; 1959 c 70 § 2; 1957 c 158 § 2; 1951 c 275 § 8; 1947 c 71 § 12; Rem. Supp. 1947 § 9592-141.]

Additional notes found at www.leg.wa.gov

(4) If sickness, injury, or service in the armed forces of the United States during the national emergency identified with World War I or World War II and/or service in the armed forces of the United States of America for extended active duty by any employee who shall have been regularly granted a leave of absence from the city service by reason thereof, prevents any regular employee from being in service on the effective date, the board shall grant prior service credit to such person when he or she is again employed. The legislative authority in each participating city shall specify the amount of prior service to be granted or current service credit to be made available to such employees: PROVIDED, That in no case shall such service credit exceed five years. Certificate of honorable discharge from or documentary evidence of such service shall be submitted to the board before any such credit may be granted or made available. Prior or current service rates, or both, for such employees shall not exceed the rates established for fellow employees.

(5) There shall be granted to any person who was an employee of a private enterprise or a portion thereof which shall be hereafter acquired by a city as a matter of public convenience or necessity, where it is in the public interest to retain the trained personnel of such enterprise or portion thereof, credit for prior service for the period such person was actually employed by such private enterprise, except that this shall apply only to those persons who shall be employees of such enterprise or portion thereof at the time of its acquisition by the city and who remain in the service of such city until the effective date of membership of such person under this chapter.

There shall be granted to any person who was an employee of any state association of cities and towns, which association elects to participate in the retirement system established by this chapter, credit for prior service for the period such person was actually employed by such association, except that this shall apply only to those persons who shall be employees of such association on May 21, 1971.

Credit for such prior service shall be given only if payment for the additional cost of including such service has been made or if payment of such additional cost or reimbursement therefor has been otherwise provided for to the satisfaction of the board or if such person be entitled to any private pension or retirement benefits as a result of such service with such private enterprise, credit will be given only if he or she agrees at the time of his or her employment by the municipality to accept a reduction in the payment of any benefits payable under this chapter that are based in whole or in part on such added and accredited service by the amount of these private pension or retirement benefits received. The conditions and limitations provided for in this subsection (5) shall be embodied in any certificate of prior service issued or granted by the board where any portion of the prior service credited under this subsection is included therein.

The city may receive payments for these purposes from a third party and shall make from such payments contributions with respect to such prior service as may be necessary to enable the fund to assume its obligations. [2012 c 117 § 65;

41.44.130 Contributions by employees. (1) The normal rates of contribution of members shall be based on sex and age at time of entry into the system, which age shall be the age at the birthday nearest the date of such entry.

(2) The normal rates of contribution for miscellaneous personnel shall be so fixed as to provide an annuity which, together with the pension provided by the city, shall produce as nearly as may be, a retirement allowance at the age of sixty-two years, of one and one-third percent of the final compensation multiplied by the number of years of service of the retiring employee. The normal rate established for age sixty shall be the rate for any member who has attained a greater age before entrance into the retirement system and the normal contribution established for age twenty-four shall be the rate for any member who enters the system at an earlier age.

(3) The normal rates of contribution for uniformed personnel shall be so fixed as to provide an annuity which, together with the pension that would be derived from equal contributions by the city, shall produce as nearly as may be for members who enter service at age thirty-seven or below, a retirement allowance, at age fifty-five with twenty-five or more years of service, or at an age greater than fifty-five after twenty-five years of service, equal to fifty percent of final compensation; and for members entering service at ages over thirty-seven, a retirement allowance at age sixty-two which shall be the same proportion of fifty percent of final compensation as the member's actual years credited bear to twenty-five years. The normal rate established for age fifty shall be the rate for any member who has attained a greater age before entrance into the retirement system.

(4) Subject to the provisions of this chapter, the board shall adopt rules and regulations governing the making of deductions from the compensation of employees and shall certify to the proper officials in each city the normal rate of contribution for each member provided for in subsections (2) and (3) of this section. The proper officials in each city shall apply such rate of contribution to the full compensation of uniformed personnel and to so much of the compensation of miscellaneous personnel as does not exceed three hundred dollars per month, or four hundred dollars per month, or to any increased amount of such compensation as to members whose member cities have duly elected to increase the limitation provided for in subsection (12) of RCW 41.44.030 and shall certify to the board on each and every payroll the total amount to be contributed and shall furnish immediately to the board a copy of each and every payroll; and each of said amounts shall be forwarded immediately to the board and the board shall credit the deduction shown on such payroll to individual accounts of the members represented on such payrolls.

(5) Every member shall be deemed to consent and agree to the contribution made and provided for herein, and shall receipt in full for his or her salary or compensation. Payment less said contributions shall be a full and complete discharge of all claims and demands whatsoever for the service rendered by such person during the period covered by such pay-

ment, except his or her claim to the benefits to which he or she may be entitled under the provisions of this chapter.

(6) Any member may elect to contribute in excess of the contributions provided for in this section in accordance with rules to be established by the board for the purpose of providing additional benefits, but the exercise of this privilege shall not place on the member city or cities any additional financial obligation. The board shall have authority to fix the rate of interest to be paid or allowed upon the additional contributions and from time to time make any necessary changes in said rate. Refunds of additional contributions shall be governed by the same rules as those covering normal contributions unless the board shall establish separate rules therefor. [2012 c 117 § 66; 1965 ex.s. c 99 § 3; 1961 c 227 § 4; 1957 c 158 § 3; 1951 c 275 § 9; 1947 c 71 § 13; Rem. Supp. 1947 § 9592-142.]

41.44.140 Retirement for service. Retirement of a member for service shall be made by the board as follows:

(1) Each member included in the miscellaneous personnel in service on the effective date, who, on or before such effective date, has attained the age of sixty-five years or over shall be compulsorily retired forthwith: PROVIDED, That there shall be no compulsory retirements for a period of two years immediately following the effective date, but any member having attained the age of sixty-five may voluntarily retire at any time after attaining such age. Members included in the miscellaneous personnel attaining age sixty-five after effective date shall be retired on the first day of the calendar month next succeeding the month in which the member shall have attained sixty-five, but none of such members shall be subject to compulsory retirement until two years after the effective date. The legislative authority of the city shall have the privilege at all times of extending time for retirement of any such member to his or her attainment of any age not exceeding age seventy: PROVIDED, That any such extension shall not increase the retirement age of such member in excess of one year at a time.

(2) Any member included in the miscellaneous personnel may retire by filing with the board a written application duly attested, setting forth on what date he or she desires to be retired, such application to be made at least thirty days prior to date of retirement: PROVIDED, That said member, at the time specified for his or her retirement, shall have attained the age of sixty years, or shall have thirty years of creditable service regardless of attained age: PROVIDED FURTHER, That during the two years immediately following the effective date voluntary service retirement of such members under sixty-two years of age shall not be granted.

(3) Each member included in the uniformed personnel in service on the effective date who on or before such effective date has attained the minimum age for social security benefits shall be compulsorily retired forthwith: PROVIDED, That there shall be no compulsory service retirements for a period of two years immediately following the effective date, but any such member having attained the minimum age for social security benefits may voluntarily retire at any time after attaining such age. Members included in the uniformed personnel attaining the minimum age for social security benefits after the effective date shall be retired on the first day of the calendar month next succeeding the month in which the

members shall have attained the minimum age for social security benefits, but none of such members shall be subject to compulsory retirement until two years after the effective date. The legislative authority shall have the privilege at all times of extending time for retirement of any such member: PROVIDED, That any such extension shall not increase the retirement age of such member in excess of one year at a time.

(4) Any member included in the uniformed personnel may retire by filing with the board a written application duly attested, setting forth on what date he or she desires to be retired, such application to be made at least thirty days prior to date of retirement: PROVIDED, That said members, at the time specified for retirement, shall have twenty-five years of creditable service regardless of age, or shall have attained the age of fifty-five years regardless of years of creditable service: PROVIDED FURTHER, That during the two years immediately following the effective date voluntary service retirement of such members under the minimum age for social security benefits shall not be granted.

(5) After the retirement of any employee, any member city, by unanimous vote of its legislative body and with the consent of the board, may reemploy or retain such employee in its service to fill a supervisory or key position. [2012 c 117 § 67; 1967 ex.s. c 28 § 4; 1965 ex.s. c 99 § 4; 1961 c 227 § 5; 1953 c 228 § 5; 1951 c 275 § 10; 1947 c 71 § 14; Rem. Supp. 1947 § 9592-143.]

Purpose—Severability—1967 ex.s. c 28: See notes following RCW 41.44.030.

41.44.150 Allowance on retirement for service. (1) A member upon retirement for service, shall receive a retirement allowance subject to the provisions of subsection (2) of this section, which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his or her accumulated normal contributions at the time of his or her retirement; and

(b) A pension provided by the contributions of the city, equal to the annuity purchased by the accumulated normal contributions of the member;

(c) For any member having credit for prior service an additional pension, provided by the contributions of the city, as set forth in RCW 41.44.120 at the rate selected by the city employing the member;

(d) Any member, excepting a part time employee, who has ten or more years of creditable service and who is retired by reason of attaining the age of sixty-five or over if included in the miscellaneous personnel or the age of fifty-five or over if included in the uniformed personnel, and whose retirement allowance is calculated to be less than sixty dollars per month, shall receive such additional pension, provided by the contributions of the city, as will make his or her total retirement allowance equal to sixty dollars per month. An annuity purchased by accumulated additional contributions in such case shall be paid in addition to the minimum guaranteed as herein provided. A part time employee having ten or more years of creditable service, retired by reason of attaining the ages in this subdivision specified and whose retirement allowance is calculated to be less than forty dollars per month, shall receive such additional pension, provided by the contributions of the city, as will make the total retirement

allowance equal to forty dollars per month, together with an annuity purchased by his or her accumulated additional contributions, if any, in addition to the minimum guaranteed.

Nothing herein contained shall be construed in a manner to increase or to decrease any pension being paid or to be paid to a member retired prior to June 11, 1953.

(e) Any member, excepting a part time employee, who has been or is retired by reason of attaining the age of sixty-five or over if included in the miscellaneous personnel or the age of fifty-five or over if included in the uniformed personnel, and whose retirement allowance is calculated to be less than sixty dollars per month, shall receive such additional pension, provided by the contributions of the city, as will make his or her total retirement allowance equal to six dollars per month for each year of his or her creditable service: PROVIDED, That the total additional retirement allowance shall be limited to an amount equal to such amount as will make his or her total retirement allowance not more than sixty dollars per month. An annuity purchased by accumulated additional contributions, if any, in such case shall be paid in addition to the minimum guaranteed, as herein provided.

Nothing herein contained shall be construed in a manner to increase or to decrease any pension being paid or to be paid to a member retired prior to June 11, 1953.

(f) The normal retirement age for uniformed personnel shall be age fifty-five with twenty-five years of creditable service, or shall be at an age greater than age fifty-five upon the completion of twenty-five years or more of creditable service. Upon retirement at the normal age, the retirement allowance shall be equal to fifty percent of final compensation. If retirement occurs at an age other than the normal age, the retirement allowance shall be the same proportion of fifty percent of final compensation as the member's actual years of service bears to the years of service that were or would have been served up to the normal retirement age: PROVIDED, That if retirement occurs prior to the normal age of retirement, said allowance shall be the actuarial equivalent of said allowance at the normal age of retirement.

Nothing herein contained shall be construed in a manner to increase or to decrease any pension being paid or to be paid to a member retired prior to August 6, 1965.

(2) If the retirement allowance of the member as provided in this section, is in excess of three-fourths of his or her final compensation, the pension of the member, purchased by the contributions of the city, shall be reduced to such an amount as shall make the member's retirement allowance equal to three-fourths of his or her final compensation, except as provided in subdivision (3) of this section.

(3) A member, upon retirement from service, shall receive in addition to the retirement allowance provided in this section, an additional annuity which shall be the actuarial equivalent of any accumulated additional contributions which he or she has to his or her credit at the time of his or her retirement. [2012 c 117 § 68; 1965 ex.s. c 99 § 5; 1961 c 227 § 6; 1957 c 158 § 4; 1953 c 228 § 6; 1951 c 275 § 11; 1949 c 171 § 5; 1947 c 71 § 15; Rem. Supp. 1949 § 9592-144.]

41.44.160 Retirement for disability. Any member who has at least ten years of creditable service within the fifteen years immediately preceding retirement and has not attained the age of sixty-five years, or who attains or has

attained the age of sixty-five years prior to two years after the effective date, may be retired by the board for permanent and total disability, either ordinary or accidental not incurred in line of duty, and any member, regardless of his or her age or years of service, may be retired by the board for any permanent and total disability incurred in line of duty, upon examination as follows:

Any member while in service, or while physically or mentally incapacitated for the performance of duty, if such incapacity has been continuous from discontinuance of city service, shall be examined by such medical authority as the board shall employ, upon the application of the head of the office or department in which the member is employed with approval of the legislative body, or upon application of said member, or a person acting in his or her behalf, stating that said member is permanently and totally incapacitated, either physically or mentally, for the performance of duty and ought to be retired. If examination shows, to the satisfaction of the board, that the member should be retired, he or she shall be retired forthwith: PROVIDED, That no such application shall be considered or granted upon the application of a member unless said member or someone in his or her behalf, in case of the incapacity of a member, shall have filed the application within a period of one year from and after the discontinuance of service of said member: PROVIDED, The board shall retire the said member for disability forthwith: PROVIDED, That the disability retirement allowance shall be effective on the first of the month following that in which the member last received salary or wages in city service.

The board shall secure such medical services and advice as it may deem necessary to carry out the purpose of this section and RCW 41.44.180. [2012 c 117 § 69; 1965 ex.s. c 99 § 6; 1951 c 275 § 12; 1949 c 171 § 6; 1947 c 71 § 16; Rem. Supp. 1947 § 9592-145.]

41.44.170 Allowance on retirement for disability. On retirement for permanent and total disability not incurred in line of duty a member shall receive a retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his or her accumulated normal contributions; and

(2) A pension provided by the contributions of the city which, together with his or her annuity provided by his or her accumulated normal contributions, shall make his or her retirement allowance equal to thirty percent of his or her final compensation for the first ten years of service, which allowance shall be increased by one and one-half percent for each year of service in excess of ten years to a maximum of fifty percent of his or her final compensation; otherwise he or she shall receive a retirement allowance of forty dollars per month or, except as to a part time employee, such sum, monthly, not in excess of sixty dollars per month, as is equal to six dollars per month for each year of his or her creditable service, whichever is greater. If the retirement allowance of a part time employee, based upon the pension hereinabove provided, does not exceed forty dollars per month, then such part time employee shall receive a retirement allowance of forty dollars per month and no more.

Nothing herein contained shall be construed in a manner to increase or to decrease any pension being paid or to be paid to a member retired prior to August 6, 1965.

(3) If it appears to the satisfaction of the board that permanent and total disability was incurred in line of duty, a member shall receive in lieu of the retirement allowance provided under subdivisions (1) and (2) of this section full pay from, and be furnished all hospital and medical care by, the city for a period of six months from the date of his or her disability, and commencing at the expiration of such six month period, shall receive a retirement allowance, regardless of his or her age or years of service, equal to fifty percent of his or her final compensation exclusive of any other benefit he or she may receive.

(4) No disability retirement allowance shall exceed seventy-five percent of final compensation, anything herein to the contrary notwithstanding, except as provided in subdivision (7) of this section.

(5) Upon the death of a member while in receipt of a disability retirement allowance, his or her accumulated contributions, as they were at the date of his or her retirement, less any annuity payments made to him or her, shall be paid to his or her estate, or to such persons having an insurable interest in his or her life as he or she shall have nominated by written designation duly executed and filed with the board. In the alternative, if there be a surviving spouse, or if no surviving spouse, there are surviving a child or children under the age of eighteen years, upon written notice to the board by such spouse, or if there be no such spouse, by the duly appointed, qualified and acting guardian of such child or children, within sixty days of the date of such member's death, there shall be paid to such spouse during his or her lifetime, or, if there be no such spouse, to such child or children, until they shall reach the age of eighteen years, a monthly pension equal to one-half of the monthly final compensation of such deceased member. If any such spouse or child or children shall marry, then such person so marrying shall thereafter receive no further pension herein provided.

(6) If disability is due to intemperance, willful misconduct, or violation of law, on the part of the member, the board, in its discretion, may pay to said member, in one lump sum his or her accumulated contribution, in lieu of a retirement allowance, and such payment shall constitute full satisfaction of all obligations of the city to such member.

(7) In addition to the annuity and pension provided for in subdivisions (1) and (2) of this section, a member shall receive an annuity which shall be the actuarial equivalent of his or her accumulated additional contributions. [2012 c 117 § 70; 1973 1st ex.s. c 154 § 78; 1965 ex.s. c 99 § 7; 1961 c 227 § 7; 1957 c 158 § 5; 1953 c 228 § 7; 1951 c 275 § 13; 1947 c 71 § 17; Rem. Supp. 1947 § 9592-146.]

Additional notes found at www.leg.wa.gov

41.44.180 Examination of disability beneficiary—Reentry. (1) The board may, at its pleasure, require any disability beneficiary under age sixty-two in the miscellaneous personnel and under age fifty-five in the uniformed personnel to undergo medical examination by medical authority designated by the board. Upon the basis of such examination the board shall determine whether such disability beneficiary is still totally and permanently incapacitated, either physically or mentally, for service in the office or department of the city where he or she was employed or in any other position in that

city, the duties of which he or she might reasonably be expected to carry out.

(2) If the board shall determine that the beneficiary is not so incapacitated his or her retirement allowance shall be canceled and he or she shall be reinstated forthwith in city service. If the city is unable to find employment for a disability beneficiary found to be no longer totally and permanently disabled, the board shall continue the disability retirement allowance of the beneficiary until such time as employment is available, except as provided in paragraph (4) of this section.

(3) Should a disability beneficiary reenter city service and be eligible for membership in the retirement system, his or her retirement allowance shall be canceled and he or she shall immediately become a member of the retirement system, his or her rate of contribution for future years being that established for his or her age at the time of such reentry. His or her individual account shall be credited with his or her accumulated contributions less the annuity payments made to him or her. An amount equal to the accumulated normal contributions so credited to him or her shall again be held for the benefit of said member and shall no longer be included in the amounts available to meet the obligations of the city on account of benefits that have been granted. Such member shall receive credit for prior service in the same manner as if he or she had never been retired for disability.

(4) Should any disability beneficiary under age sixty-two in the miscellaneous personnel or under age fifty-five in the uniformed personnel, refuse to submit to medical examination, his or her retirement allowance may be discontinued until his or her withdrawal of such refusal, and should refusal continue for one year, his or her retirement allowance may be canceled. Should said disability beneficiary, prior to attaining age sixty-two or age fifty-five, as the case may be, engage in a gainful occupation the board shall reduce the amount of his or her retirement allowance to an amount, which when added to the compensation earned by him or her in such occupation, shall not exceed the amount of the final compensation on the basis of which his or her retirement allowance was determined. Should the earning capacity of such beneficiary be further altered, the board may further alter his or her retirement allowance as indicated above. When said disability beneficiary reaches age sixty-two, if included in the miscellaneous personnel, or age fifty-five, in the uniformed personnel, his or her retirement allowance shall be made equal to the amount upon which he or she was originally retired, and shall not again be modified for any cause except as provided in RCW 41.44.250.

(5) Should the retirement allowance of any disability beneficiary be canceled for any cause other than reentrance into city service, he or she shall be paid his or her accumulated contributions, less annuity payments made to him or her. [2012 c 117 § 71; 1961 c 227 § 8; 1947 c 71 § 18; Rem. Supp. 1947 § 9592-147.]

41.44.190 Withdrawal from system—Reentry—Payment on death of member. (1) Should service of a member of the miscellaneous personnel be discontinued except by death or retirement, he or she shall be paid six months after the day of discontinuance such part of his or her accumulated contributions as he or she shall demand. Six months after the

date of such discontinuance, unless on leave of absence regularly granted, or unless he or she has exercised the option hereinafter provided, his or her rights to all benefits as a member shall cease, without notice, and his or her accumulated contributions shall be returned to him or her in any event or held for his or her account if for any reason the return of the same is prevented. Should service of a member of the uniformed personnel be discontinued except by death or retirement, he or she shall be paid six months after the day of discontinuance such part of his or her accumulated contributions as he or she shall demand, and six months after the date of such discontinuance, unless on leave of absence regularly granted, his or her rights to all benefits as a member shall cease, without notice, and his or her accumulated contributions shall be returned to him or her in any event, or held for his or her account if for any reason the same is prevented: PROVIDED, That the board may in its discretion, grant the privilege of withdrawal in the amounts above specified at any time following such discontinuance. Any member whose service is discontinued except by death or retirement, and who has five or more years of creditable service when such discontinuance occurs, may, at his or her option, leave his or her accumulated contributions in the fund and thereby be entitled to receive a deferred retirement allowance commencing at retirement age sixty for miscellaneous personnel and at age fifty-five for uniformed personnel, such retirement allowance to be computed in the same manner provided in subsection (1) of RCW 41.44.150: PROVIDED, That this option may be revoked at any time prior to commencement of annuity payments by filing a written notice of such intention with the board together with a written application for a refund of such accumulated contributions. The board may establish rules and regulations to govern withdrawal and redeposit of contributions.

(2) Should a former member, within five years after discontinuance of service, return to service in the same city in which he or she was employed he or she may restore to the fund in such manner as may be agreed upon by such person and the board, his or her withdrawn normal accumulated contributions as they were at the time of his or her separation from service and upon completion of such redeposit all his or her rights and privileges existing at the time of discontinuance of service shall be restored and his or her obligations as a member shall begin again. The rate of contribution of such returning member shall be the same as it was at the time he or she separated from service.

(3) Upon the death of any person who has not been retired, pursuant to the provisions hereof, there shall be paid to his or her estate, or to such persons having an insurable interest in his or her life as he or she shall have nominated by written designation duly executed and filed with the board, his or her accumulated contributions less any payments therefrom already made to him or her. Such payment may be made in one lump sum or may be paid in installments over a period of not to exceed five years, as may be designated by the member or his or her beneficiary, with such rate of interest as may be determined by the board.

(4) In lieu of the death benefit otherwise payable under subsection (3) of this section, there shall be paid a total allowance equal to one-fourth average final compensation per month to the surviving spouse of a member with at least

twenty years service as such, at the time of death and who has not been retired and who, by reason of membership in the system, is covered by the Old Age and Survivors Insurance provisions of the Federal Social Security Act, but not at the time of death qualified to receive the benefits thereof. Said allowance shall become payable upon the death of said member or upon the date the surviving spouse becomes ineligible for any benefit payment from the Federal OASI, if later, and shall cease upon death or remarriage, or upon the date the surviving spouse would become entitled, upon application therefor; to any insurance benefit from the Federal OASI system, whichever event shall first occur: PROVIDED, That said benefit shall cease upon the beneficiary becoming employed by any member city of said system: PROVIDED FURTHER, That this allowance shall consist of:

(a) An amount which shall be the actuarial equivalent of the normal contributions at the time specified for retirement;

(b) An amount provided by the contributions of the city, equal to the annuity purchased by the accumulated normal contributions of the member;

(c) Such additional amount, provided by the contributions of the city, as will make the total allowance equal to one-fourth average final compensation per month;

(d) An annuity purchased by the accumulated additional contributions, if any, in addition to the minimum guaranteed.

(5) In lieu of the death benefit otherwise payable under subsection (3) of this section, the surviving spouse of a member who dies after having attained the minimum requirements for his or her service retirement as required by RCW 41.44.140 may elect to receive the allowance which would have been paid to such surviving spouse had the member been retired on the date of his or her death and had he or she elected to receive the lesser retirement allowances provided for in option C of RCW 41.44.220.

(6) If a former member shall, within one year from date of discontinuance of service, be employed by another city participating in this retirement system he or she shall have the privilege of redepositing and the matching contributions deposited by the city or cities in which he or she was formerly employed shall again be held for the benefit of such member. If such redepositing member possessed a prior service certificate the city employing him or her at time of retirement shall accept the liability evidenced by such certificate.

Reinstatement of a prior service certificate shall be effective only upon a showing that normal contributions are on deposit in the retirement fund, to the credit of the member, covering all current service. [2012 c 117 § 72; 1967 ex.s. c 28 § 5; 1965 ex.s. c 99 § 8; 1961 c 227 § 9; 1951 c 275 § 14; 1947 c 71 § 19; Rem. Supp. 1947 § 9592-148.]

Purpose—Severability—1967 ex.s. c 28: See notes following RCW 41.44.030.

41.44.200 Withdrawal—Procedure as to city's contribution. Whenever a member withdraws his or her accumulated normal contributions the matching contributions of the city so released shall be transferred to a reserve account created for the purpose of showing the amount of credits due each city through such operation. Such credits may be used by the city to apply on any charges made against the city but only so much thereof as will insure leaving in such account an amount estimated to be sufficient to again match contribu-

tions redeposited by employees returning to service as contemplated in RCW 41.44.190. The board may credit such reserve accounts with interest at such rate as the board deems equitable: PROVIDED, That as to any member city which has elected to and is making contributions in lieu of those required in RCW 41.44.090(1)(a), there shall be no release of the city's matching contributions after the date of its commencement to make such lieu contributions: PROVIDED FURTHER, That any released contributions of any such city which have been credited to its reserve account prior to the date of such commencement, shall be available to it for the purposes hereinabove specified, unless the board shall determine that their immediate use for such purposes would result in a harmful effect upon the assets of the system, in which event the board shall have the right to defer their use for a reasonable time in which to permit it to make adjustments in the current assets of the system to prevent the same. [2012 c 117 § 73; 1953 c 228 § 8; 1947 c 71 § 20; Rem. Supp. 1947 § 9592-140.]

41.44.210 Benefit on death in line of duty. Upon the death of any member who dies from injuries or disease arising out of or incurred in the performance of his or her duty or duties, of which the board of trustees shall be the judge, if death occurs within one year from date of discontinuance of city service caused by such injury, there shall be paid to his or her estate or to such person or persons having an insurable interest in his or her life, as he or she shall have nominated by written designation duly executed and filed with the board, the sum of one thousand dollars, purchased by the contributions of the cities participating in the retirement system; and in addition thereto there shall be paid to the surviving spouse during such spouse's lifetime, or if there be no surviving spouse, then to his or her minor child or children until they shall have reached the age of eighteen years, a monthly pension equal to one-half the monthly final compensation of such deceased member. If any such spouse, or child or children shall marry, then such person so marrying shall thereafter receive no further pension herein provided. Cost of the lump sum benefit above provided shall be determined by actuarial calculation and prorated equitably to each city. The benefits provided in this section shall be exclusive of any other benefits due the member under this chapter. [2012 c 117 § 74; 1973 1st ex.s. c 154 § 79; 1961 c 227 § 10; 1957 c 158 § 6; 1947 c 71 § 21; Rem. Supp. 1947 § 9592-150.]

Additional notes found at www.leg.wa.gov

41.44.220 Optional allowance on retirement. A member may elect to receive in lieu of the retirement allowance provided for in RCW 41.44.150, its actuarial equivalent in the form of a lesser retirement allowance, payable in accordance with the terms and conditions of one of the options set forth below in this section. Election of any option must be made by written application filed with the board at least thirty days in advance of retirement, or may be made by any member after he or she has attained the minimum requirements for his or her service retirement as required by RCW 41.44.140, and shall not be effective unless approved by the board prior to retirement of the member.

Option A. The lesser retirement allowance shall be payable to the member throughout his or her life: PROVIDED,

That if he or she die before he or she receives in annuity payments referred to in paragraph (a) of subsection (1) of RCW 41.44.150 a total amount equal to the amount of his or her accumulated contributions as it was at date of his or her retirement, the balance of such accumulated contributions shall be paid in one sum to his or her estate or to such person having an insurable interest in his or her life as he or she shall nominate by written designation duly executed and filed with the board.

Option B. The lesser retirement allowance shall be payable to the member throughout life, and after death of the member, one-half of the lesser retirement allowance shall be continued throughout the life of and paid to the wife or husband of this member.

Option C. The lesser retirement allowance shall be payable to the member throughout life, and after death of the member it shall be continued throughout the life of and paid to the wife or husband of the member.

A member may apply for some other benefit or benefits and the board may grant such application provided such other benefit or benefits, together with the reduced retirement allowance, shall be certified by the actuary to be of equivalent value to his or her retirement allowance.

The surviving spouse may elect to receive a cash refund of the member's accumulated contributions in lieu of the monthly benefit under either Option B or Option C. [2012 c 117 § 75; 1965 ex.s. c 99 § 9; 1947 c 71 § 22; Rem. Supp. 1947 § 9592-151.]

41.44.230 Monthly payments. A pension, annuity, or a retirement allowance granted under the provisions of this chapter, unless otherwise specified herein, shall be payable in monthly installments, and each installment shall cover for the current calendar month. [1947 c 71 § 23; Rem. Supp. 1947 § 9592-152.]

41.44.240 Rights immune from legal process— Exceptions. The right of a person to a pension, annuity or a retirement allowance, to the return of contribution, the pension, annuity or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter shall not be subject to execution, garnishment, or any other process whatsoever whether the same be in actual possession of the person or be deposited or loaned. This section shall not apply to child support collection actions taken under chapter 26.18, 26.23, or 74.20A RCW against benefits payable under any such plan or arrangement. Benefits under this chapter shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation. [2012 c 159 § 27; 1989 c 360 § 28; 1979 ex.s. c 205 § 7; 1947 c 71 § 24; Rem. Supp. 1947 § 9592-153.]

41.44.250 Suspension of retirement allowance. The payment of any retirement allowance to a member who has been retired from service shall be suspended during the time that the beneficiary is in receipt of compensation for service to any city or town that is a member of the statewide city

employees' retirement system, except as to the amount by which such retirement allowance may exceed such compensation for the same period. It is the intent of this section to prevent any retired person from being able to receive both his or her retirement allowance and compensation for service to any city or town that is a member of the statewide city employees' retirement system: PROVIDED, That nothing in this section shall prevent county or state welfare departments from furnishing to any retired employee under the terms of this chapter the hospital, medical, dental, and other benefits granted to pensioners under the provisions of Title 74 RCW. [2012 c 117 § 76; 1951 c 275 § 15; 1947 c 71 § 25; Rem. Supp. 1947 § 9592-154.]

41.44.260 Merger of existing or new systems into statewide system—Contract. The council or other legislative body of any city or town in which there has been established or may hereafter be established by ordinance or pursuant to authority granted, or hereafter granted, by any of the laws of the state of Washington, any retirement system, pension, relief or disability system, excluding any system directly established by the legislature of the state of Washington and by its terms made compulsory, shall have the right by a legal contract in writing to merge or integrate its existing system with that of the statewide city employees' retirement system established by chapter 71, Laws of 1947 [chapter 41.44 RCW]. Any such contract shall contain appropriate provisions granting to any member of the systems integrated or merged the right to elect to withdraw his or her accumulated contributions accrued to the effective date of the merger or integration where the contract would result in a reduction or impairment of the benefits provided for in the existing system of which he or she is a member, and no such contracts shall be effective which shall reduce or impair the benefits which employees who are receiving benefits from either of the integrated systems would have received had the integration or merger not been effected. [1949 c 137 § 1; Rem. Supp. 1949 § 9592-133a.]

41.44.270 Agreements between board and cities which accept social security act benefits. Should any member city of the statewide city employees retirement system established pursuant to this chapter, hereafter take advantage of any benefits lawfully available to its employees and their survivors under the old age and survivors insurance system embodied in the social security act, or should any city which has lawfully taken advantage of such benefits desire to become a member of the statewide city employees retirement system, such city and the board shall have the power to enter into an agreement mutually satisfactory to both parties adjusting the contributions to be made by such city and by its employees and the benefits to be paid by the statewide city employees retirement system, in such a manner to permit the participation of such city in the system as a member with reduced benefits to its employees and reduced contributions by the city and by its employees: PROVIDED, That such adjustment shall be made upon an actuarially sound basis and that as to all matters, other than those changed by such agreement, the provisions of the statewide city employees retirement system law shall apply: PROVIDED FURTHER, That unless such an agreement is entered into by mutual consent of

such city and the board, all of the provisions of the statewide city employees retirement system law shall be applicable. [1953 c 228 § 9.]

41.44.300 System abolished—Date—Transfer of assets, liabilities, and responsibilities. Notwithstanding any provisions of chapter 41.44 RCW to the contrary, the statewide employees' retirement system shall no longer exist after January 1, 1972, at which time all assets, liabilities, and responsibilities of the statewide city employees' retirement system shall be transferred to and assumed by the Washington public employees' retirement system as provided for in *RCW 41.40.405 through 41.40.407. [1971 c 75 § 4.]

*Reviser's note: RCW 41.40.405 through 41.40.407 were decodified pursuant to 1991 c 35 § 4.

41.44.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 100.]

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

Chapter 41.45 RCW ACTUARIAL FUNDING OF STATE RETIREMENT SYSTEMS

Sections

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41.45.010 Intent—Goals. It is the intent of the legislature to provide a dependable and systematic process for funding the benefits provided to members and retirees of the public employees' retirement system, chapter 41.40 RCW; the teachers' retirement system, chapter 41.32 RCW; the law enforcement officers' and firefighters' retirement systems, chapter 41.26 RCW; the school employees' retirement system, chapter 41.35 RCW; the public safety employees' retirement system, chapter 41.37 RCW; and the Washington state patrol retirement system, chapter 43.43 RCW.

The funding process established by this chapter is intended to achieve the following goals:

(1) To fully fund the public employees' retirement system plans 2 and 3, the teachers' retirement system plans 2 and 3, the school employees' retirement system plans 2 and 3, the public safety employees' retirement system plan 2, and the law enforcement officers' and firefighters' retirement system plan 2 as provided by law;

(2) To fully amortize the total costs of the law enforcement officers' and firefighters' retirement system plan 1, not later than June 30, 2024;

(3) To fully amortize the unfunded actuarial accrued liability in the public employees' retirement system plan 1 and the teachers' retirement system plan 1 within a rolling ten-year period, using methods and assumptions that balance needs for increased benefit security, decreased contribution rate volatility, and affordability of pension contribution rates;

(4) To establish long-term employer contribution rates which will remain a relatively predictable proportion of the future state budgets; and

(5) To fund, to the extent feasible, all benefits for plan 2 and 3 members over the working lives of those members so that the cost of those benefits are paid by the taxpayers who receive the benefit of those members' service. [2009 c 561 § 1; 2005 c 370 § 4; (2005 c 370 § 3 expired July 1, 2006); 2004 c 242 § 36; 2002 c 26 § 3; 2001 2nd sp.s. c 11 § 2; (2001 2nd sp.s. c 11 § 1 expired March 1, 2002); 2000 c 247 § 501; 1998 c 341 § 401; 1995 c 239 § 305; 1989 c 273 § 1.]

Effective date—2009 c 561: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009." [2009 c 561 § 9.]

Effective date—2005 c 370 §§ 2 and 4: See note following RCW 41.45.060.

Effective date—2005 c 370 §§ 1, 3, and 6: See note following RCW 41.45.060.

Expiration date—2005 c 370 §§ 1 and 3: See note following RCW 41.45.060.

Effective date—2004 c 242: See RCW 41.37.901.

***Reviser's note:** Section 18 of this act was vetoed.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.45.020 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Council" means the pension funding council created in RCW 41.45.100.

(2) "Department" means the department of retirement systems.

(3) "Law enforcement officers' and firefighters' retirement system plan 1" and "law enforcement officers' and firefighters' retirement system plan 2" means the benefits and funding provisions under chapter 41.26 RCW.

(4) "Public employees' retirement system plan 1," "public employees' retirement system plan 2," and "public employees' retirement system plan 3" mean the benefits and funding provisions under chapter 41.40 RCW.

(5) "Teachers' retirement system plan 1," "teachers' retirement system plan 2," and "teachers' retirement system plan 3" mean the benefits and funding provisions under chapter 41.32 RCW.

(6) "School employees' retirement system plan 2" and "school employees' retirement system plan 3" mean the benefits and funding provisions under chapter 41.35 RCW.

(7) "Washington state patrol retirement system" means the retirement benefits provided under chapter 43.43 RCW.

(8) "Unfunded liability" means the unfunded actuarial accrued liability of a retirement system.

(9) "Actuary" or "state actuary" means the state actuary employed under chapter 44.44 RCW.

(10) "State retirement systems" means the retirement systems listed in RCW 41.50.030.

(11) "Classified employee" means a member of the Washington school employees' retirement system plan 2 or plan 3 as defined in RCW 41.35.010.

(12) "Teacher" means a member of the teachers' retirement system as defined in *RCW 41.32.010(15).

(13) "Select committee" means the select committee on pension policy created in RCW 41.04.276.

(14) "Actuarial value of assets" means the value of pension plan investments and other property used by the actuary for the purpose of an actuarial valuation.

(15) "Public safety employees' retirement system plan 2" means the benefits and funding provisions established under chapter 41.37 RCW.

(16) "Normal cost" means the portion of the actuarial present value of projected benefits and expenses that is allocated to a period, typically twelve months, under the actuarial cost method. [2006 c 365 § 1. Prior: 2004 c 242 § 37; 2004 c 93 § 1; 2003 c 295 § 8; 2002 c 26 § 4; prior: 2001 2nd sp.s. c 11 § 4; 2001 2nd sp.s. c 11 § 3; 2000 c 247 § 502; 1998 c 341 § 402; 1998 c 283 § 1; 1995 c 239 § 306; 1989 c 273 § 2.]

***Reviser's note:** RCW 41.32.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (15) to subsection (25).

Effective date—2006 c 365: "This act takes effect July 1, 2009." [2006 c 365 § 5.]

Effective date—2004 c 242: See RCW 41.37.901.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.45.030 State actuary to submit information on the experience and financial condition of each retirement system—Adoption of long-term economic assumptions. (1) Beginning September 1, 2007, and every two years thereafter, the state actuary shall submit to the council information regarding the experience and financial condition of each state retirement system, and make recommendations regarding the long-term economic assumptions set forth in RCW 41.45.035. The council shall review this and such other information as it may require.

(2) By October 31, 2007, and every two years thereafter, the council, by affirmative vote of four councilmembers, may adopt changes to the long-term economic assumptions established in RCW 41.45.035. Any changes adopted by the council shall be subject to revision by the legislature.

The council shall consult with the economic and revenue forecast supervisor and the executive director of the state investment board, and shall consider long-term historical averages, in reviewing possible changes to the economic assumptions.

(3) The assumptions and the asset value smoothing technique established in RCW 41.45.035, as modified in the future by the council or legislature, shall be used by the state actuary in conducting all actuarial studies of the state retirement systems, including actuarial fiscal notes under RCW 44.44.040. The assumptions shall also be used for the administration of benefits under the retirement plans listed in RCW 41.45.020, pursuant to timelines and conditions established by department rules. [2007 c 280 § 1; 2001 2nd sp.s. c 11 § 5; 1995 c 233 § 1; 1993 c 519 § 17; 1989 c 273 § 3.]

Additional notes found at www.leg.wa.gov

41.45.035 Long-term economic assumptions—Investment rate of return assumptions—Asset value smoothing technique. (1) Beginning July 1, 2001, the following long-term economic assumptions shall be used by the state actuary for the purposes of RCW 41.45.030:

(a) The growth in inflation assumption shall be 3.5 percent;

(b) The growth in salaries assumption, exclusive of merit or longevity increases, shall be 4.5 percent;

(c) The investment rate of return assumption shall be 8 percent; and

(d) The growth in system membership assumption shall be 1.25 percent for the public employees' retirement system, the public safety employees' retirement system, the school employees' retirement system, and the law enforcement officers' and firefighters' retirement system. The assumption shall be .90 percent for the teachers' retirement system.

(2) Beginning July 1, 2009, the growth in salaries assumption for the public employees' retirement system, the public safety employees' retirement system, the teachers' retirement system, the school employees' retirement system, plan 1 of the law enforcement officers' and firefighters' retirement system, and the Washington state patrol retirement system,

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tem, exclusive of merit or longevity increases, shall be the sum of:

(a) The growth in inflation assumption in subsection (1)(a) of this section; and

(b) The productivity growth assumption of 0.5 percent.

(3) The following investment rate of return assumptions for the public employees' retirement system, the public safety employees' retirement system, the teachers' retirement system, the school employees' retirement system, plan 1 of the law enforcement officers' and firefighters' retirement system, and the Washington state patrol retirement system, shall be used by the state actuary for the purposes of RCW 41.45.030:

(a) Beginning July 1, 2013, the investment rate of return assumption shall be 7.9 percent.

(b) Beginning July 1, 2015, the investment rate of return assumption shall be 7.8 percent.

(c) Beginning July 1, 2017, the investment rate of return assumption shall be 7.7 percent.

(d) For valuation purposes, the state actuary shall only use the assumptions in (a) through (c) of this subsection after the effective date in (a) through (c) of this subsection.

(e) By June 1, 2017, the state actuary shall submit to the council information regarding the experience and financial condition of each state retirement system, and make recommendations regarding the long-term investment rate of return assumptions set forth in this subsection. The council shall review this and such other information as it may require.

(4)(a) Beginning with actuarial studies done after July 1, 2003, changes to plan asset values that vary from the long-term investment rate of return assumption shall be recognized in the actuarial value of assets over a period that varies up to eight years depending on the magnitude of the deviation of each year's investment rate of return relative to the long-term rate of return assumption. Beginning with actuarial studies performed after July 1, 2004, the actuarial value of assets shall not be greater than one hundred thirty percent of the market value of assets as of the valuation date or less than seventy percent of the market value of assets as of the valuation date. Beginning April 1, 2004, the council, by affirmative vote of four councilmembers, may adopt changes to this asset value smoothing technique. Any changes adopted by the council shall be subject to revision by the legislature.

(b) The state actuary shall periodically review the appropriateness of the asset smoothing method in this section and recommend changes to the council as necessary. Any changes adopted by the council shall be subject to revision by the legislature. [2012 1st sp.s. c 7 § 7; 2009 c 561 § 2; 2004 c 93 § 2; 2003 1st sp.s. c 11 § 1; 2001 2nd sp.s. c 11 § 6.]

Effective date—2009 c 561: See note following RCW 41.45.010.

Additional notes found at www.leg.wa.gov

41.45.050 Contributions to be based on rates established in this chapter—Allocation formula for contributions. (1) Employers of members of the public employees' retirement system, the teachers' retirement system, the school employees' retirement system, the public safety employees' retirement system, and the Washington state patrol retirement system shall make contributions to those systems based on the rates established in RCW 41.45.060 and 41.45.070.

(2) The state shall make contributions to the law enforcement officers' and firefighters' retirement system plan 2 based

on the rates established in RCW 41.45.060 and 41.45.070. The state treasurer shall transfer the required contributions each month on the basis of salary data provided by the department.

(3) The department shall bill employers, and the state shall make contributions to the law enforcement officers' and firefighters' retirement system plan 2, using the combined rates established in RCW 41.45.060 and 41.45.070 regardless of the level of appropriation provided in the biennial budget. Any member of an affected retirement system may, by mandamus or other appropriate proceeding, require the transfer and payment of funds as directed in this section.

(4) The contributions received for the public employees' retirement system shall be allocated between the public employees' retirement system plan 1 fund and the public employees' retirement system combined plan 2 and plan 3 fund as follows: The contributions necessary to fully fund the public employees' retirement system combined plan 2 and plan 3 employer contribution shall first be deposited in the public employees' retirement system combined plan 2 and plan 3 fund. All remaining public employees' retirement system employer contributions shall be deposited in the public employees' retirement system plan 1 fund.

(5) The contributions received for the teachers' retirement system shall be allocated between the plan 1 fund and the combined plan 2 and plan 3 fund as follows: The contributions necessary to fully fund the combined plan 2 and plan 3 employer contribution shall first be deposited in the combined plan 2 and plan 3 fund. All remaining teachers' retirement system employer contributions shall be deposited in the plan 1 fund.

(6) The contributions received for the school employees' retirement system shall be allocated between the public employees' retirement system plan 1 fund and the school employees' retirement system combined plan 2 and plan 3 fund as follows: The contributions necessary to fully fund the combined plan 2 and plan 3 employer contribution shall first be deposited in the combined plan 2 and plan 3 fund. All remaining school employees' retirement system employer contributions shall be deposited in the public employees' retirement system plan 1 fund.

(7) The contributions received for the law enforcement officers' and firefighters' retirement system plan 2 shall be deposited in the law enforcement officers' and firefighters' retirement system plan 2 fund.

(8) The contributions received for the public safety employees' retirement system shall be allocated between the public employees' retirement system plan 1 fund and the public safety employees' retirement system plan 2 fund as follows: The contributions necessary to fully fund the plan 2 employer contribution shall first be deposited in the plan 2 fund. All remaining public safety employees' retirement system employer contributions shall be deposited in the public employees' retirement system plan 1 fund. [2004 c 242 § 38; 2002 c 26 § 5; 2001 2nd sp.s. c 11 § 8; (2001 2nd sp.s. c 11 § 7 expired March 1, 2002); 2000 c 247 § 503; 1998 c 341 § 403; 1995 c 239 § 308; 1989 c 273 § 5.]

Effective date—2004 c 242: See RCW 41.37.901.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

41.45.060 Basic state and employer contribution rates—Methods used—Role of council—Role of state actuary.

(1) The state actuary shall provide preliminary actuarial valuation results based on the economic assumptions and asset value smoothing technique included in RCW 41.45.035 or adopted under RCW 41.45.030 or 41.45.035.

(2) Not later than July 31, 2008, and every two years thereafter, consistent with the economic assumptions and asset value smoothing technique included in RCW 41.45.035 or adopted under RCW 41.45.030 or 41.45.035, the council shall adopt and may make changes to:

(a) A basic state contribution rate for the law enforcement officers' and firefighters' retirement system plan 1;

(b) Basic employer contribution rates for the public employees' retirement system, the teachers' retirement system, and the Washington state patrol retirement system; and

(c) Basic employer contribution rates for the school employees' retirement system and the public safety employees' retirement system for funding both those systems and the public employees' retirement system plan 1.

The council may adopt annual rate changes for any plan for any rate-setting period. The contribution rates adopted by the council shall be subject to revision by the legislature.

(3) The employer and state contribution rates adopted by the council shall be the level percentages of pay that are needed:

(a) To fully amortize the total costs of the law enforcement officers' and firefighters' retirement system plan 1 not later than June 30, 2024;

(b) To fully fund the public employees' retirement system plans 2 and 3, the teachers' retirement system plans 2 and 3, the public safety employees' retirement system plan 2, and the school employees' retirement system plans 2 and 3 in accordance with RCW 41.45.061, 41.45.067, and this section; and

(c) To fully fund the public employees' retirement system plan 1 and the teachers' retirement system plan 1 in accordance with RCW 41.45.070, 41.45.150, and this section.

(4) The aggregate actuarial cost method shall be used to calculate a combined plan 2 and 3 normal cost, a Washington state patrol retirement system normal cost, and a public safety employees' retirement system normal cost.

(5) A modified entry age normal cost method, as set forth in this chapter, shall be used to calculate employer contributions to the public employees' retirement system plan 1 and the teachers' retirement system plan 1.

(6) The employer contribution rate for the public employees' retirement system and the school employees' retirement system shall equal the sum of:

(a) The amount required to pay the combined plan 2 and plan 3 normal cost for the system, subject to any minimum rates applied pursuant to RCW 41.45.155; plus

(b) The amount required to amortize the unfunded actuarial accrued liability in plan 1 of the public employees' retirement system over a rolling ten-year period using projected future salary growth and growth in system membership, and subject to any minimum or maximum rates applied pursuant to RCW 41.45.150; plus

(c) The amounts required to amortize the costs of any benefit improvements in plan 1 of the public employees' retirement system that become effective after June 30, 2009. The cost of each benefit improvement shall be amortized over a fixed ten-year period using projected future salary growth and growth in system membership. The amounts required under this subsection are not subject to, and are collected in addition to, any minimum or maximum rates applied pursuant to RCW 41.45.150.

(7) The employer contribution rate for the public safety employees' retirement system shall equal the sum of:

(a) The amount required to pay the normal cost for the system, subject to any minimum rates applied pursuant to RCW 41.45.155; plus

(b) The amount required to amortize the unfunded actuarial accrued liability in plan 1 of the public employees' retirement system over a rolling ten-year period using projected future salary growth and growth in system membership, and subject to any minimum or maximum rates applied pursuant to RCW 41.45.150; plus

(c) The amounts required to amortize the costs of any benefit improvements in plan 1 of the public employees' retirement system that become effective after June 30, 2009. The cost of each benefit improvement shall be amortized over a fixed ten-year period using projected future salary growth and growth in system membership. The amounts required under this subsection are not subject to, and are collected in addition to, any minimum or maximum rates applied pursuant to RCW 41.45.150.

(8) The employer contribution rate for the teachers' retirement system shall equal the sum of:

(a) The amount required to pay the combined plan 2 and plan 3 normal cost for the system, subject to any minimum rates applied pursuant to RCW 41.45.155; plus

(b) The amount required to amortize the unfunded actuarial accrued liability in plan 1 of the teachers' retirement system over a rolling ten-year period using projected future salary growth and growth in system membership, and subject to any minimum or maximum rates applied pursuant to RCW 41.45.150; plus

(c) The amounts required to amortize the costs of any benefit improvements in plan 1 of the teachers' retirement system that become effective after June 30, 2009. The cost of each benefit improvement shall be amortized over a fixed ten-year period using projected future salary growth and growth in system membership. The amounts required under this subsection are not subject to, and are collected in addition to, any minimum or maximum rates applied pursuant to RCW 41.45.150.

(9) The council shall immediately notify the directors of the office of financial management and department of retirement systems of the state and employer contribution rates adopted. The rates shall be effective for the ensuing biennial period, subject to any legislative modifications.

(10) The director shall collect those rates adopted by the council. The rates established in RCW 41.45.062, or by the council, shall be subject to revision by the legislature.

(11) The state actuary shall prepare final actuarial valuation results based on the economic assumptions, asset value smoothing technique, and contribution rates included in or adopted under RCW 41.45.030, 41.45.035, and this section.

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[2009 c 561 § 3; 2007 c 280 § 2; 2005 c 370 § 2; (2005 c 370 § 1 expired July 1, 2006); 2004 c 242 § 39. Prior: 2003 c 294 § 10; 2003 c 92 § 3; 2002 c 26 § 2; prior: 2001 2nd sp.s. c 11 § 10; 2001 c 329 § 10; 2000 2nd sp.s. c 1 § 905; 2000 c 247 § 504; prior: 1998 c 341 § 404; 1998 c 340 § 11; 1998 c 283 § 6; 1995 c 239 § 309; 1993 c 519 § 19; 1992 c 239 § 2; 1990 c 18 § 1; 1989 c 273 § 6.]

Effective date—2009 c 561: See note following RCW 41.45.010.

Effective date—2005 c 370 §§ 2 and 4: "Sections 2 and 4 of this act take effect July 1, 2006." [2005 c 370 § 8.]

Effective date—2005 c 370 §§ 1, 3, and 6: "Sections 1, 3, and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2005." [2005 c 370 § 7.]

Expiration date—2005 c 370 §§ 1 and 3: "Sections 1 and 3 of this act expire July 1, 2006." [2005 c 370 § 9.]

Effective date—2004 c 242: See RCW 41.37.901.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.45.0604 Contribution rates—Law enforcement officers' and firefighters' retirement system plan 2. (1) Not later than July 31, 2008, and every even-numbered year thereafter, the law enforcement officers' and firefighters' plan 2 retirement board shall adopt contribution rates for the law enforcement officers' and firefighters' retirement system plan 2 as provided in RCW 41.26.720(1)(a).

(2) The law enforcement officers' and firefighters' plan 2 retirement board shall immediately notify the directors of the office of financial management and department of retirement systems of the state, employer, and employee rates adopted. Thereafter, the director shall collect those rates adopted by the board. The rates shall be effective for the ensuing biennial period, subject to any legislative modifications. [2007 c 280 § 3; 2003 c 92 § 4.]

Additional notes found at www.leg.wa.gov

41.45.061 Required contribution rates for plan 2 members. (1) The required contribution rate for members of the plan 2 teachers' retirement system shall be fixed at the rates in effect on July 1, 1996, subject to the following:

(a) Beginning September 1, 1997, except as provided in (b) of this subsection, the employee contribution rate shall not exceed the employer plan 2 and 3 rates adopted under RCW 41.45.060, *41.45.054, and 41.45.070 for the teachers' retirement system;

(b) In addition, the employee contribution rate for plan 2 shall be increased by fifty percent of the contribution rate increase caused by any plan 2 benefit increase passed after July 1, 1996;

(c) In addition, the employee contribution rate for plan 2 shall not be increased as a result of any distributions pursuant to section 309, chapter 341, Laws of 1998 and **RCW 41.31A.020.

(2) The required contribution rate for members of the school employees' retirement system plan 2 shall equal the school employees' retirement system employer plan 2 and 3 contribution rate adopted under RCW 41.45.060, *41.45.054, and 41.45.070, except as provided in subsection (3) of this section.

(3) The member contribution rate for the school employees' retirement system plan 2 shall be increased by fifty percent of the contribution rate increase caused by any plan 2 benefit increase passed after September 1, 2000.

(4) The required contribution rate for members of the public employees' retirement system plan 2 shall be set at the same rate as the employer combined plan 2 and plan 3 rate.

(5) The required contribution rate for members of the law enforcement officers' and firefighters' retirement system plan 2 shall be set at fifty percent of the cost of the retirement system.

(6) The employee contribution rates for plan 2 under subsections (3) and (4) of this section shall not include any increase as a result of any distributions pursuant to RCW **41.31A.020 and ***41.31A.030.

(7) The required plan 2 and 3 contribution rates for employers shall be adopted in the manner described in RCW 41.45.060, *41.45.054, and 41.45.070.

(8) The required contribution rate for members of the public safety employees' retirement system plan 2 shall be set at fifty percent of the cost of the retirement system.

(9) Concurrently with the adoption of employer contribution rates, the state actuary shall calculate the required contribution rates for plan 2 members, which are fixed in accordance with this section. Upon adoption of employer contribution rates, the state actuary shall immediately notify the directors of the office of financial management and department of retirement systems of the required contribution rates for members, which shall be effective for the ensuing rate-setting period. [2007 c 280 § 4; 2004 c 242 § 40. Prior: 2001 2nd sp.s. c 11 § 13; 2001 2nd sp.s. c 11 § 12; 2001 c 180 § 1; prior: 2000 c 247 § 506; 2000 c 230 § 2; 1998 c 341 § 405; 1997 c 10 § 2; 1995 c 239 § 311.]

Reviser's note: *(1) RCW 41.45.054 was decodified pursuant to 2005 c 370 § 5, effective September 1, 2005.

** (2) RCW 41.31A.020 was repealed by 2007 c 491 § 13 without cognizance of its amendment by 2007 c 491 § 1. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

*** (3) RCW 41.31A.030 was repealed by 2007 c 491 § 13, effective January 2, 2008.

Effective date—2004 c 242: See RCW 41.37.901.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Additional notes found at www.leg.wa.gov

41.45.062 Annual contribution rate increases—Employer, state, and plan 2 members. The basic employer and state contribution rates and required plan 2 member contribution rates are changed to reflect the 2003 actuarial valuation and actuarial projections of the 2005 actuarial valuation, both of which incorporate the 2002 actuarial experience study conducted by the office of the state actuary for 1995-2000. This contribution rate schedule departs from the normal biennial process for setting contribution rates by requiring annual increases in rates during the 2005-2007 biennium, and by requiring annual rates to be adopted by the pension funding council for the 2007-2009 biennium. The rates are lower in the 2005-2007 biennium than required by the 2003 actuarial valuation and will be higher in the 2007-2009 biennium than required by the projected 2005 actuarial valuation.

Upon completion of the 2005 actuarial valuation, the pension funding council and the state actuary shall review the

appropriateness of the contribution rates for 2007-2008 and 2008-2009 and by September 30, 2006, the pension funding council shall adopt contribution rates to complete the four-year phase-in schedule, adjusted for any material changes in benefits or actuarial assumptions, methods, or experience. This contribution rate schedule also requires a departure from the allocation formula for contributions in RCW 41.45.050, suspension of payments on the unfunded liability in the public employees' retirement system and the teachers' retirement system during the 2005-2007 biennium, and a delay in the recognition of the cost of future gain-sharing benefits until the 2007-2009 biennium.

(1) Beginning July 1, 2005, the following employer contribution rate shall be charged: 2.25 percent for the public employees' retirement system.

(2) Beginning September 1, 2005, the following employer contribution rates shall be charged:

(a) 2.75 percent for the school employees' retirement system; and

(b) 2.73 percent for the teachers' retirement system.

(3) Beginning July 1, 2005, the following member contribution rate shall be charged: 2.25 percent for the public employees' retirement system plan 2.

(4) Beginning September 1, 2005, the following member contribution rates shall be charged:

(a) 2.75 percent for the school employees' retirement system plan 2; and

(b) 2.48 percent for the teachers' retirement system plan 2.

(5) The contribution rates in subsections (1) through (4) of this section shall be collected through June 30, 2006, for the public employees' retirement system, and August 31, 2006, for the school employees' retirement system and the teachers' retirement system.

(6) Beginning July 1, 2006, the following employer contribution rate shall be charged: 3.50 percent for the public employees' retirement system.

(7) Beginning September 1, 2006, the following employer contribution rates shall be charged:

(a) 3.75 percent for the school employees' retirement system; and

(b) 3.25 percent for the teachers' retirement system.

(8) Beginning July 1, 2006, the following member contribution rate shall be charged: 3.50 percent for the public employees' retirement system plan 2.

(9) Beginning September 1, 2006, the following member contribution rates shall be charged:

(a) 3.75 percent for the school employees' retirement system plan 2; and

(b) 3.00 percent for the teachers' retirement system plan 2.

(10) During the 2005 interim, the select committee on pension policy shall study the options available to the legislature for addressing the liability associated with future gain-sharing benefits. These options may include, but shall not be limited to, repealing, delaying, or suspending the gain-sharing provisions in law; making gain-sharing discretionary; or replacing gain-sharing benefits with other benefits such as plan choice, employer defined contributions, retirement eligibility enhancements, and postretirement adjustments. The select committee on pension policy shall report the findings

and recommendations of its study to the legislative fiscal committees by no later than December 15, 2005. [2005 c 370 § 6.]

Effective date—2005 c 370 §§ 1, 3, and 6: See note following RCW 41.45.060.

41.45.0621 Plan 1 unfunded accrued actuarial liabilities—Contributions in addition to RCW 41.45.062—

Intent. (1) It is the intent of the legislature to provide for the systematic funding of the plan 1 unfunded accrued actuarial liabilities in a manner that promotes contribution rate adequacy and stability for the affected systems. The rates established in this section shall be collected in addition to the rates established pursuant to RCW 41.45.062.

(2) Beginning September 1, 2006, a 1.29 percent contribution is established as part of the basic state and employer contribution rate for the teachers' retirement system, to be used for the sole purpose of amortizing the unfunded accrued actuarial liability in the teachers' retirement system plan 1.

(3) Beginning September 1, 2006, a 0.87 percent contribution is established as part of the basic state and employer contribution rate for the school employees' retirement system, to be used for the sole purpose of amortizing the unfunded accrued actuarial liability in the public employees' retirement system plan 1.

(4) Beginning January 1, 2007, a 1.77 percent contribution is established as part of the basic state and employer contribution rate for the public employees' retirement system and the public safety employees' retirement system, to be used for the sole purpose of amortizing the unfunded accrued actuarial liability in the public employees' retirement system plan 1.

(5) The contribution rates in this section shall be collected through June 30, 2007, for the public employees' retirement system and the public safety employees' retirement system and August 31, 2007, for the teachers' retirement system and the school employees' retirement system.

(6) Upon completion of the 2005 actuarial valuation, the pension funding council and the state actuary shall review the contribution rates for the plan 1 unfunded actuarial accrued liability for fiscal year 2008 and fiscal year 2009 and by September 30, 2006, the pension funding council shall adopt contribution rates to complete the three-year phase-in schedule, adjusted for any material changes in benefits or actuarial assumptions, methods, and experience. The expected present value of projected contributions during the three-year phase-in period shall be the same as the expected present value of projected contributions that would have been collected without the phase-in, as determined by the state actuary and adjusted for any material changes in benefits or actuarial assumptions, methods, or experience. [2006 c 56 § 3.]

Effective dates—2006 c 56: See note following RCW 41.45.230.

41.45.0631 Washington state patrol retirement system—Contribution rate—Allocation of costs. (1) The allocation of costs between the employer and members of the Washington state patrol retirement system shall be made only after the application of any minimum total contribution rate that may be in effect for the system under subsection (4) of this section. For benefit improvements effective on or after July 1, 2007, costs shall be shared equally by members and the employer, and any cap on member contributions shall be

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adjusted accordingly. The member contribution rate shall be based on the adjusted total contribution rate described in subsection (2) of this section. Beginning July 1, 2007, the required member contribution rate for members of the Washington state patrol retirement system shall be the lesser of the following: (a) One-half of the adjusted total contribution rate for the system; or (b) seven percent, plus fifty percent of the contribution rate increase caused by any benefit improvements effective on or after July 1, 2007.

(2) The employer shall continue to pay for all costs attributable to distributions under RCW 43.43.270(2) for survivors of members who became disabled under RCW 43.43.040(2) prior to July 1, 2006, until such costs are fully paid. In order to avoid charging members for these costs, the total required contribution rate shall be adjusted to exclude these costs. The result of the adjustment shall be the adjusted total contribution rate that is to be used to calculate the required member contribution rate.

(3) The employer rate shall be the contribution rate required to cover all total system costs that are not covered by the member contribution rate.

(4) Beginning July 1, 2009, a minimum total contribution rate is established for the Washington state patrol retirement system. The total Washington state patrol retirement system contribution rate may exceed, but may not drop below, the established minimum total contribution rate. From July 1, 2009, through June 30, 2011, the minimum total contribution rate shall equal the total contribution rate required to fund fifty percent of the Washington state patrol retirement system's normal cost as calculated under the entry age normal cost method. Beginning July 1, 2011, the minimum total contribution rate shall equal the total contribution rate required to fund seventy percent of the Washington state patrol retirement system's normal cost as calculated under the entry age normal cost method. This minimum rate, when applicable, shall be collected in addition to any contribution rate required to amortize any unfunded costs attributable to distributions under RCW 43.43.270(2) for survivors of members who became disabled under RCW 43.43.040(2) prior to July 1, 2006.

(5) Upon completion of each biennial actuarial valuation, the state actuary shall review the appropriateness of this minimum total contribution rate and recommend to the council any adjustments as may be needed. Any changes adopted by the council shall be subject to revision by the legislature. [2009 c 561 § 7. Prior: 2007 c 300 § 1; 2007 c 280 § 5; 2006 c 94 § 2; 2001 c 329 § 11.]

Effective date—2009 c 561: See note following RCW 41.45.010.

Effective date—2007 c 300: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 300 § 3.]

Additional notes found at www.leg.wa.gov

41.45.067 Failure of state or employer to make required contribution—Resulting increase in contribution rate borne in full by state or employer—Members' contribution deducted each payroll period. (1) Any increase in the contribution rate required as the result of a failure of the state or of an employer to make any contribu-

tion required by this section shall be borne in full by the state or by that employer not making the contribution.

(2) The director shall notify all employers of any pending adjustment in the required contribution rate and such pending adjustment in the required contribution rate and any increase shall be announced at least thirty days prior to the effective date of the change.

(3) Members' contributions required by RCW 41.45.060 and 41.45.061 shall be deducted from the members' compensation each payroll period. The members' contribution and the employers' contribution shall be remitted directly to the department within fifteen days following the end of the calendar month during which the payroll period ends.

(4) The state's contribution required for the law enforcement officers' and firefighters' retirement system plan 2 shall be transferred to the appropriate fund from the total contributions transferred by the state treasurer under RCW 41.45.050. [2001 2nd sp.s. c 11 § 14; 2000 c 247 § 507.]

Additional notes found at www.leg.wa.gov

41.45.070 Supplemental rate. (1) In addition to the basic employer contribution rate established in RCW 41.45.060 or *41.45.054, the department shall also charge employers of public employees' retirement system, teachers' retirement system, school employees' retirement system, public safety employees' retirement system, or Washington state patrol retirement system members an additional supplemental rate to pay for the cost of additional benefits, if any, granted to members of those systems. Except as provided in subsections (6), (7), and (9) of this section, the supplemental contribution rates required by this section shall be calculated by the state actuary and shall be charged regardless of language to the contrary contained in the statute which authorizes additional benefits.

(2) In addition to the basic member, employer, and state contribution rate established in RCW 41.45.0604 for the law enforcement officers' and firefighters' retirement system plan 2, the department shall also establish supplemental rates to pay for the cost of additional benefits, if any, granted to members of the law enforcement officers' and firefighters' retirement system plan 2. Except as provided in subsection (6) of this section, these supplemental rates shall be calculated by the actuary retained by the law enforcement officers' and firefighters' board and the state actuary through the process provided in RCW 41.26.720(1)(a) and the state treasurer shall transfer the additional required contributions regardless of language to the contrary contained in the statute which authorizes the additional benefits.

(3) Beginning July 1, 2009, the supplemental rate charged under this section to fund benefit increases provided to active members of the public employees' retirement system plan 1 and the teachers' retirement system plan 1 shall be calculated as the level percentage of all system pay needed to fund the cost of the benefit over a fixed ten-year period, using projected future salary growth and growth in system membership. The supplemental rate to fund benefit increases provided to active members of the public employees' retirement system plan 1 shall be charged to all system employers in the public employees' retirement system, the school employees' retirement system, and the public safety employees' retirement system. The supplemental rate to fund benefit increases

provided to active members of the teachers' retirement system plan 1 shall be charged to all system employers in the teachers' retirement system.

(4) The supplemental rate charged under this section to fund benefit increases provided to active and retired members of the public employees' retirement system plan 2 and plan 3, the teachers' retirement system plan 2 and plan 3, the public safety employees' retirement system plan 2 and plan 3, or the Washington state patrol retirement system shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit, as calculated under RCW 41.45.060, 41.45.061, 41.45.0631, or 41.45.067.

(5) The supplemental rate charged under this section to fund postretirement adjustments which are provided on a nonautomatic basis to current retirees shall be calculated as the percentage of pay needed to fund the adjustments as they are paid to the retirees. Beginning July 1, 2009, the supplemental rate charged under this section to fund increases in the automatic postretirement adjustments for active or retired members of the public employees' retirement system plan 1 and the teachers' retirement system plan 1 shall be calculated as the level percentage of pay needed to fund the cost of the automatic adjustments over a fixed ten-year period, using projected future salary growth and growth in system membership. The supplemental rate to fund increases in the automatic postretirement adjustments for active members or retired members of the public employees' retirement system plan 1 shall be charged to all system employers in the public employees' retirement system, the school employees' retirement system, and the public safety employees' retirement system. The supplemental rate to fund increases in automatic postretirement adjustments for active members or retired members of the teachers' retirement system plan 1 shall be charged to all system employers in the teachers' retirement system.

(6) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members pursuant to chapter 340, Laws of 1998.

(7) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members pursuant to **chapter 41.31A RCW; section 309, chapter 341, Laws of 1998; or section 701, chapter 341, Laws of 1998.

(8) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members and survivors pursuant to chapter 94, Laws of 2006.

(9) A supplemental rate shall not be charged to pay for the cost of the additional benefits granted to members of the teachers' retirement system and the school employees' retirement system plans 2 and 3 in sections 2, 4, 6, and 8, chapter 491, Laws of 2007 until September 1, 2008. A supplemental rate shall not be charged to pay for the cost of the additional benefits granted to members of the public employees' retirement system plans 2 and 3 under sections 9 and 10, chapter 491, Laws of 2007 until July 1, 2008. [2009 c 561 § 4; 2007 c 491 § 12; 2006 c 94 § 3; (2005 c 327 § 10 expired July 1, 2006); 2004 c 242 § 41. Prior: (2003 1st sp.s. c 11 § 3 repealed by 2005 c 327 § 11); 2003 c 92 § 5; prior: 2001 2nd sp.s. c 11 § 16; 2001 2nd sp.s. c 11 § 15; 2000 c 247 § 505; 1998 c 340 § 10; 1995 c 239 § 310; 1990 c 18 § 2; 1989 1st ex.s. c 1 § 1; 1989 c 273 § 7.]

Reviser's note: *(1) RCW 41.45.054 was decodified by 2005 c 370 § 5, effective September 1, 2005.

***(2) Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

Effective date—2009 c 561: See note following RCW 41.45.010.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

Effective date—2006 c 94 § 3: "Section 3 of this act takes effect July 1, 2006." [2006 c 94 § 4.]

Expiration date—2005 c 327 § 10: "Section 10 of this act expires July 1, 2006." [2005 c 327 § 13.]

Effective date—2004 c 242: See RCW 41.37.901.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.45.080 Additional contributions may be required.

In addition to the basic and supplemental employer contributions required by RCW 41.45.060, *41.45.053, and 41.45.070, the department may also require additional employer contributions as provided by law. [2001 2nd sp.s. c 11 § 17; 1989 c 273 § 8.]

***Reviser's note:** RCW 41.45.053 was repealed by 2002 c 7 § 2.

Additional notes found at www.leg.wa.gov

41.45.090 Collection of actuarial data. The department shall collect and keep in convenient form such data as shall be necessary for an actuarial valuation of the assets and liabilities of the state retirement systems, and for making an actuarial investigation into the mortality, service, compensation, and other experience of the members and beneficiaries of those systems. The department and state actuary shall enter into a memorandum of understanding regarding the specific data the department will collect, when it will be collected, and how it will be maintained. The department shall notify the state actuary of any changes it makes, or intends to make, in the collection and maintenance of such data.

At least once in each six-year period, the state actuary shall conduct an actuarial experience study of the mortality, service, compensation and other experience of the members and beneficiaries of each state retirement system, and into the financial condition of each system. The results of each investigation shall be filed with the department, the office of financial management, the budget writing committees of the Washington house of representatives and senate, the select committee on pension policy, and the pension funding council. Upon the basis of such actuarial investigation the department shall adopt such tables, schedules, factors, and regulations as are deemed necessary in the light of the findings of the actuary for the proper operation of the state retirement systems. [2003 c 295 § 9; 1998 c 283 § 7; 1989 c 273 § 9.]

41.45.100 Pension funding council—Created. (1) The pension funding council is hereby created. The council consists of the:

- (a) Director of the department of retirement systems;
- (b) Director of the office of financial management;
- (c) Chair and ranking minority member of the house of representatives appropriations committee; and
- (d) Chair and ranking minority member of the senate ways and means committee.

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The council may select officers as the members deem necessary.

(2) The pension funding council shall adopt changes to economic assumptions and contribution rates by an affirmative vote of at least four members. [1998 c 283 § 2.]

41.45.110 Pension funding council—Audits required—Select committee on pension policy. The pension funding council shall solicit and administer a biennial actuarial audit of the preliminary and final actuarial valuations used for employer and member rate-setting purposes. This audit will be conducted concurrent with the actuarial valuation performed by the state actuary. At least once in each six-year period, the pension funding council shall solicit and administer an actuarial audit of the results of the experience study required in RCW 41.45.090. Upon receipt of the results of the preliminary actuarial audits required by this section, and at least thirty days prior to adopting contribution rates, the pension funding council shall submit the results to the select committee on pension policy. [2007 c 280 § 6; 2003 c 295 § 10; 1998 c 283 § 3.]

41.45.120 Pension funding work group. (1) A pension funding work group is hereby created. The work group shall consist of one staff member selected by the executive head or chairperson of each of the following agencies or committees:

- (a) Department of retirement systems;
 - (b) Office of financial management;
 - (c) State investment board;
 - (d) Ways and means committee of the senate;
 - (e) Appropriations committee of the house of representatives; and
 - (f) Economic and revenue forecast council.
- (2) The state actuary shall make available to the work group information related to economic assumptions and contribution rates.

(3) The pension funding work group shall provide support to the pension funding council. Meetings of the pension funding work group may be called by any member of the group for the purpose of assisting the pension funding council, reviewing actuarial valuations of the state retirement systems, reviewing economic assumptions, or for any other purpose which may assist the pension funding council.

(4) Recommendations from both affected employee and employer groups will be actively sought during the work group process. The work group shall conduct an open public meeting on these recommendations. [1998 c 283 § 4.]

41.45.130 Public employees' retirement system plan 2 assets divided—Assets transferred to school employees' retirement system. Upon the advice of the state actuary, the state treasurer shall divide the assets in the public employees' retirement system plan 2 as of September 1, 2000, in such a manner that sufficient assets remain in plan 2 to maintain the employee contribution rate calculated in the latest actuarial valuation of the public employees' retirement system plan 2. The state actuary shall take into account changes in assets that occur between the latest actuarial valuation and the date of transfer. The balance of the assets shall be transferred to the Washington school employees' retirement system plan 2 and 3. [1998 c 341 § 407.]

[Title 41 RCW—page 307]

Additional notes found at www.leg.wa.gov

41.45.150 Unfunded liabilities—Employer contribution rates. (1) Beginning July 1, 2009, and ending June 30, 2015, maximum annual contribution rates are established for the portion of the employer contribution rate for the public employees' retirement system and the public safety employees' retirement system that is used for the sole purpose of amortizing that portion of the unfunded actuarial accrued liability in the public employees' retirement system plan 1 that excludes any amounts required to amortize plan 1 benefit improvements effective after June 30, 2009. The maximum rates are:

Fiscal Year ending:

2010	2011	2012	2013	2014	2015
1.25%	1.25%	3.75%	4.50%	5.25%	6.00%

(2) Beginning September 1, 2009, and ending August 31, 2015, maximum annual contribution rates are established for the portion of the employer contribution rate for the school employees' retirement system that is used for the sole purpose of amortizing that portion of the unfunded actuarial accrued liability in the public employees' retirement system plan 1 that excludes any amounts required to amortize plan 1 benefit improvements effective after June 30, 2009. The maximum rates are:

Fiscal Year ending:

2010	2011	2012	2013	2014	2015
1.25%	1.25%	3.75%	4.50%	5.25%	6.00%

(3) Beginning September 1, 2009, and ending August 31, 2015, maximum annual contribution rates are established for the portion of the employer contribution rate for the teachers' retirement system that is used for the sole purpose of amortizing that portion of the unfunded actuarial accrued liability in the teachers' retirement system plan 1 that excludes any amounts required to amortize plan 1 benefit improvements effective after June 30, 2009. The maximum rates are:

Fiscal Year ending:

2010	2011	2012	2013	2014	2015
2.04%	2.04%	6.50%	7.50%	8.50%	9.50%

(4) Beginning July 1, 2015, a minimum 3.50 percent contribution is established as part of the basic employer contribution rate for the public employees' retirement system and the public safety employees' retirement system, to be used for the sole purpose of amortizing that portion of the unfunded actuarial accrued liability in the public employees' retirement system plan 1 that excludes any amounts required to amortize plan 1 benefit improvements effective after June 30, 2009. This minimum contribution rate shall remain effective until the actuarial value of assets in plan 1 of the public employees' retirement system equals one hundred percent of the actuarial accrued liability.

(5) Beginning September 1, 2015, a minimum 3.50 percent contribution is established as part of the basic employer contribution rate for the school employees' retirement system, to be used for the sole purpose of amortizing that portion

of the unfunded actuarial accrued liability in the public employees' retirement system plan 1 that excludes any amounts required to amortize plan 1 benefit improvements effective after June 30, 2009. This minimum contribution rate shall remain effective until the actuarial value of assets in plan 1 of the public employees' retirement system equals one hundred percent of the actuarial accrued liability.

(6) Beginning September 1, 2015, a minimum 5.75 percent contribution is established as part of the basic employer contribution rate for the teachers' retirement system, to be used for the sole purpose of amortizing that portion of the unfunded actuarial accrued liability in the teachers' retirement system plan 1 that excludes any amounts required to amortize plan 1 benefit improvements effective after June 30, 2009. This minimum contribution rate shall remain effective until the actuarial value of assets in plan 1 of the teachers' retirement system equals one hundred percent of the actuarial accrued liability.

(7) Upon completion of each biennial actuarial valuation, the state actuary shall review the appropriateness of the minimum contribution rates and recommend to the council any adjustments as may be needed due to material changes in benefits or actuarial assumptions, methods, or experience. Any changes adopted by the council shall be subject to revision by the legislature. [2011 c 362 § 8; 2010 1st sp.s. c 26 § 7; 2009 c 561 § 5; 2006 c 365 § 2.]

Finding—Intent—Effective date—2011 c 362: See notes following RCW 41.32.483.

Effective date—2009 c 561: See note following RCW 41.45.010.

Effective date—2006 c 365: See note following RCW 41.45.020.

41.45.155 Certain plans 2 and 3 normal costs—Minimum basic employer contribution rates. (1) Beginning July 1, 2011, a minimum contribution rate is established for the plans 2 and 3 normal cost as part of the basic employer contribution rate for the public employees' retirement system. The minimum contribution rate for the plans 2 and 3 employer normal cost shall equal the total contribution rate required to fund eighty percent of the plans 2 and 3 employer normal cost as calculated under the entry age normal cost method. This minimum rate, when applicable, shall be collected in addition to any contribution rate required to amortize past gain-sharing distributions in plan 3.

(2) Beginning July 1, 2011, a minimum contribution rate is established for the plan 2 normal cost as part of the basic employer contribution rate for the public safety employees' retirement system. The minimum contribution rate for the plan 2 normal cost shall equal the total contribution rate required to fund eighty percent of the plan 2 normal cost as calculated under the entry age normal cost method.

(3) Beginning September 1, 2011, a minimum contribution rate is established for the plans 2 and 3 normal cost as part of the basic employer contribution rate for the school employees' retirement system. The minimum contribution rate for the plans 2 and 3 employer normal cost shall equal the total contribution rate required to fund eighty percent of the plans 2 and 3 employer normal cost as calculated under the entry age normal cost method. This minimum rate, when applicable, shall be collected in addition to any contribution rate required to amortize past gain-sharing distributions in plan 3.

(4) Beginning September 1, 2011, a minimum contribution rate is established for the plans 2 and 3 normal cost as part of the basic employer contribution rate for the teachers' retirement system. The minimum contribution rate for the plans 2 and 3 employer normal cost shall equal the total contribution rate required to fund eighty percent of the plans 2 and 3 employer normal cost as calculated under the entry age normal cost method. This minimum rate, when applicable, shall be collected in addition to any contribution rate required to amortize past gain-sharing distributions in plan 3.

(5) Upon completion of each biennial actuarial valuation, the state actuary shall review the appropriateness of these minimum contribution rates and recommend to the council any adjustments as may be needed due to material changes in benefits or actuarial assumptions, methods, or experience. Any changes adopted by the council shall be subject to revision by the legislature. [2009 c 561 § 6; 2006 c 365 § 3.]

Effective date—2009 c 561: See note following RCW 41.45.010.

Effective date—2006 c 365: See note following RCW 41.45.020.

41.45.158 Certain plans 2 and 3 normal costs—Minimum member contribution rates. (1) Beginning July 1, 2009, a minimum contribution rate is established for the plans 2 and 3 normal cost as part of the required contribution rate for members of plan 2 of the public employees' retirement system. The minimum contribution rate for the plans 2 and 3 employee normal cost shall equal the total contribution rate required to fund eighty percent of the plans 2 and 3 employee normal cost as calculated under the entry age normal cost method.

(2) Beginning September 1, 2009, a minimum contribution rate is established for the plans 2 and 3 normal cost as part of the required contribution rate for members of plan 2 of the school employees' retirement system. The minimum contribution rate for the plans 2 and 3 employee normal cost shall equal the total contribution rate required to fund eighty percent of the plans 2 and 3 employee normal cost as calculated under the entry age normal cost method.

(3) Beginning September 1, 2009, a minimum contribution rate is established for the plans 2 and 3 normal cost as part of the required contribution rate for members of plan 2 of the teachers' retirement system. The minimum contribution rate for the plans 2 and 3 employee normal cost shall equal the total contribution rate required to fund eighty percent of the plans 2 and 3 employee normal cost as calculated under the entry age normal cost method.

(4) Upon completion of each biennial actuarial valuation, the state actuary shall review the appropriateness of these minimum contribution rates and recommend to the legislature any adjustments as may be needed due to material changes in benefits or actuarial assumptions, methods, or experience. [2006 c 365 § 4.]

Effective date—2006 c 365: See note following RCW 41.45.020.

41.45.200 Contribution rates for certain justices and judges—Public employees' retirement system. (1) The required employer contribution rate in support of public employees' retirement system members employed as supreme court justices, court of appeals judges, and superior court judges who elect to participate under RCW

41.40.124(1) or 41.40.870(1), or who are newly elected or appointed after January 1, 2007, shall consist of the public employees' retirement system employer contribution rate established under this chapter plus two and one-half percent of pay.

(2) The required contribution rate for members of the public employees' retirement system plan 2 employed as supreme court justices, court of appeals judges, and superior court judges who elect to participate under RCW 41.40.124(1) or 41.40.870(1), or who are newly elected or appointed after January 1, 2007, shall be two hundred fifty percent of the member contribution rate for the public employees' retirement system plan 2 established under this chapter less two and one-half percent of pay.

(3) The required contribution rate for members of the public employees' retirement system plan 1 employed as supreme court justices, court of appeals judges, and superior court judges who elect to participate under RCW 41.40.124(1), or who are newly elected or appointed after January 1, 2007, shall be the contribution rate established under RCW 41.40.330 plus three and seventy-six one-hundredths percent of pay. [2006 c 189 § 17.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.45.203 Contribution rates for certain justices and judges—Teachers' retirement system. (1) The required employer contribution rate in support of teachers' retirement system members employed as supreme court justices, court of appeals judges, and superior court judges who elect to participate under RCW 41.32.584(1), or who are newly elected or appointed after January 1, 2007, shall equal the teachers' retirement system employer contribution rate established under this chapter.

(2) The required contribution rate for members of the teachers' retirement system plan 1 employed as supreme court justices, court of appeals judges, and superior court judges who elect to participate under RCW 41.32.584(1), or who are newly elected or appointed after January 1, 2007, shall be the deductions established under RCW 41.50.235 plus three and seventy-six one-hundredths percent of pay. [2007 c 492 § 12; 2006 c 189 § 18.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.45.207 Contribution rates for certain district or municipal court judges—Public employees' retirement system. (1) The required employer contribution rate in support of public employees' retirement system members employed as district court judges and municipal court judges who elect to participate under RCW 41.40.127(1) or 41.40.873(1), or who are newly elected or appointed after January 1, 2007, shall equal the public employees' retirement system employer contribution rate established under this chapter.

(2) The required contribution rate for members of the public employees' retirement system plan 2 employed as district court judges or municipal court judges who elect to participate under RCW 41.40.127(1) or 41.40.873(1), or who are newly elected or appointed after January 1, 2007, shall be two hundred fifty percent of the member contribution rate for the public employees' retirement system plan 2 established under this chapter.

(3) The required contribution rate for members of the public employees' retirement system plan 1 employed as district court judges or municipal court judges who elect to participate under RCW 41.40.124(1), or who are newly elected or appointed after January 1, 2007, shall be the contribution rate established under RCW 41.40.330 plus six and twenty-six one-hundredths percent of pay. [2006 c 189 § 19.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.45.230 Pension funding stabilization account—Creation. The pension funding stabilization account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for payment of state government employer contributions for members of the public employees' retirement system, the teachers' retirement system, the school employees' retirement system, and the public safety employees' retirement system. The account may not be used to pay for any new benefit or for any benefit increase that takes effect after July 1, 2005. An increase that is provided in accordance with a formula that is in existence on July 1, 2005, is not considered a benefit increase for this purpose. Moneys in the account shall be for the exclusive use of the specified retirement systems and may be invested by the state treasurer pursuant to RCW 43.84.080. For purposes of RCW 43.135.034, expenditures from the pension funding stabilization account shall not be considered a state program cost shift from the state general fund to another account. [2012 c 187 § 11; 2009 c 564 § 1808; 2008 c 329 § 910; 2006 c 56 § 1.]

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

Effective dates—2006 c 56: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 15, 2006], except section 10 of this act, which takes effect July 1, 2006." [2006 c 56 § 13.]

41.45.900 Severability—1989 c 273. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 273 § 32.]

41.45.902 Severability—2001 2nd sp.s. c 11. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2001 2nd sp.s. c 11 § 19.]

Chapter 41.47 RCW

ACCEPTANCE OF OLD AGE AND SURVIVORS' INSURANCE—1941 ACT

Sections

41.47.010	Benefits of federal act accepted.
41.47.020	Wage deductions.
41.47.030	Operation of statute limited.
41.47.040	Severability as to coverage.
41.47.050	Contingent effective date.

Designation of agency to carry out federal social security disability program: RCW 43.17.120, 43.17.130.

[Title 41 RCW—page 310]

41.47.010 Benefits of federal act accepted. The state of Washington in behalf of all its eligible officials and employees and the eligible officials and employees of all its counties, cities and towns, and of any and all other of its municipal corporations and political subdivisions which levy taxes and employ and pay salaries and wages to officials and employees including public utility districts, hereby accepts the benefits of the old age and survivors' insurance benefit provisions of the federal social security act, whenever the provisions of such act are extended to embrace such officials and employees. [1941 c 205 § 1; Rem. Supp. 1941 § 9998-57. Formerly RCW 74.40.010.]

41.47.020 Wage deductions. Any and all officials and boards having charge of the preparation of payrolls and payment of salaries and wages to such eligible officials and employees are hereby authorized and directed to make payroll and salary and wage deductions and to handle and dispose of the same as required by such federal act; and any official or board being authorized to disburse funds respectively for the office, department or division of the state, county, city or town, or other municipal corporation or political subdivision in which any such eligible official or employee is employed is authorized to pay and disburse out of any funds available for the operation and maintenance of such office, department or division such sums and dispose of and handle the same in such manner as is required and necessary to make payments and benefits of said federal act available to such eligible officials and employees. [1941 c 205 § 2; Rem. Supp. 1941 § 9998-58. Formerly RCW 74.40.020.]

41.47.030 Operation of statute limited. Nothing contained in this chapter shall deprive any person of benefits under any existing pension system, nor repeal, amend, modify or supersede any law, charter amendment or ordinance establishing or pertaining to an existing pension system. [1941 c 205 § 3; Rem. Supp. 1941 § 9998-59. Formerly RCW 74.40.030.]

41.47.040 Severability as to coverage. If it is found by any judicial authority of competent jurisdiction that the provisions of this chapter may not become applicable to any group of officials or employees for any reason, such inapplicability shall not prevent the same from becoming applicable as herein provided to the other officials and employees embraced herein. [1941 c 205 § 4; Rem. Supp. 1941 § 9998-60. Formerly RCW 74.40.040.]

41.47.050 Contingent effective date. This chapter shall take effect at the time and in the manner provided by the state Constitution unless at that time the federal social security act has not been amended to cover officials and employees of the state, county, city and other municipal corporations and political subdivisions, in which event it shall take effect and become operative on the first day of the second month following the month when such federal act shall become applicable to such state officials and employees. [1941 c 205 § 5; Rem. Supp. 1941 § 9998-61. Formerly RCW 74.40.050.]

(2014 Ed.)

Chapter 41.48 RCW
FEDERAL SOCIAL SECURITY
FOR PUBLIC EMPLOYEES

Sections

41.48.010	Purpose—Construction.
41.48.020	Definitions.
41.48.030	Agreement with the federal secretary of health and human services.
41.48.040	Employees' contributions.
41.48.050	Extension of social security benefits to employees of political subdivisions—Termination, procedure.
41.48.060	OASI contribution account.
41.48.065	OASI revolving fund.
41.48.070	Employees may elect.
41.48.080	Administration costs—Allocation.
41.48.090	Rules and regulations.
41.48.100	Governor may delegate authority.
41.48.110	Legislative declaration—Payments to state employees on account of sickness.
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41.48.130	Sick leave payments—Accounting plan and payroll procedures.
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41.48.150	Definition—"Employee."
41.48.160	Political subdivisions—Sick leave payments—Adoption of accounting plan and payroll procedures.
41.48.170	Sick leave payments—Transfers of moneys to sick leave account.
41.48.180	Sick leave payments—Inclusion in reports to retirement system—Compensation for unused sick leave.

Acceptance of old age and survivors' insurance: Chapter 41.47 RCW.

Application forms—Licenses—Mention of race or religion prohibited—Penalty: RCW 43.01.100.

Hours and wages of department of social and health services personnel: RCW 72.01.042, 72.01.043.

Plan for OASI coverage of members of state employees' retirement system: Chapter 41.41 RCW. teachers' retirement system: Chapter 41.33 RCW.

Trusts for employee benefits: Chapter 49.64 RCW.

41.48.010 Purpose—Construction. In order to extend to employees of the state and its political subdivisions and to the dependents and survivors of such employees, the basic protection accorded to others by the old age and survivors insurance system embodied in the social security act, it is hereby declared to be the policy of the legislature, subject to the limitations of this chapter, that such steps be taken as to provide such protection to employees of the state and its political subdivisions on as broad a basis as is permitted under the social security act. Persons now members of or protected by any state or local pension or retirement plan or system may be covered under the federal social security act only as provided by the federal social security act amendments of 1954. (Public Law No. 761.) It is hereby declared to be the policy of the legislature in enacting the succeeding sections of this title that the protection afforded the employees in positions covered by a retirement system on the date an agreement under this title is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as the result of making the agreements so applicable whether the agreement provides for supplementation, integration or coordination. [1955 ex.s. c 4 § 1; 1951 c 184 § 1.]

41.48.020 Definitions. For the purposes of this chapter:

(2014 Ed.)

(1) "Employee" includes all officers and employees of the state or its political subdivisions except officials compensated on a fee basis;

(2) "Employment" means any service performed by an employee in the employ of the state, or any political subdivision thereof, for such employer, except (a) service which in the absence of an agreement entered into under this chapter would constitute "employment" as defined in the social security act; or (b) service which under the social security act may not be included in an agreement between the state and the secretary of health, education, and welfare entered into under this chapter;

(3) "Federal insurance contributions act" means subchapter A of chapter 9 of the federal internal revenue code of 1939 and subchapters A and B of chapter 21 of the federal internal revenue code of 1954, as such codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of such code of 1939 and section 3101 of such code of 1954;

(4) "Political subdivision" includes an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions. Such term also includes a proprietary enterprise acquired, purchased, or originated by the state or any of its political subdivisions subsequent to December, 1950. Such a subdivision may elect to accept federal OASI coverage under this chapter;

(5) "Secretary of health, education, and welfare" includes any individual to whom the secretary of health, education, and welfare has delegated any of his or her functions under the social security act with respect to coverage under such act of employees of states and their political subdivisions, and with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom such administrator has delegated any such function;

(6) "Wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were for "employment" within the meaning of the federal insurance contributions act, would not constitute "wages" within the meaning of that act. [2012 c 117 § 77; 1955 ex.s. c 4 § 2; 1953 c 62 § 1; 1951 c 184 § 2.]

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

41.48.030 Agreement with the federal secretary of health and human services. (1) The governor is hereby authorized to enter on behalf of the state into an agreement with the federal secretary of health and human services consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old-age and survivors insurance system to employees of the state or any political subdivision not members of an existing retirement system, or to members of a retirement system established by the state or by a political subdivision thereof or by an institution of higher learning with respect to services specified in such agreement which constitute "employment" as defined in RCW 41.48.020. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, admin-

istration, and other appropriate provisions as the governor and secretary of health and human services shall agree upon, but, except as may be otherwise required by or under the social security act as to the services to be covered, such agreement shall provide in effect that:

(a) Benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of Title II of the social security act;

(b) The state will pay to the secretary of the treasury, at such time or times as may be prescribed under the social security act, contributions with respect to wages (as defined in RCW 41.48.020), equal to the sum of the taxes which would be imposed by the federal insurance contributions act if the services covered by the agreement constituted employment within the meaning of that act;

(c) Such agreement shall be effective with respect to services in employment covered by the agreement or modification thereof performed after a date specified therein but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year immediately preceding the calendar year in which such agreement or modification of the agreement is accepted by the secretary of health and human services;

(d) All services which constitute employment as defined in RCW 41.48.020 and are performed in the employ of the state by employees of the state, shall be covered by the agreement;

(e) All services which (i) constitute employment as defined in RCW 41.48.020, (ii) are performed in the employ of a political subdivision of the state, and (iii) are covered by a plan which is in conformity with the terms of the agreement and has been approved by the governor under RCW 41.48.050, shall be covered by the agreement;

(f) As modified, the agreement shall include all services described in either (d) or (e) of this subsection and performed by individuals to whom section 218(c)(3)(C) of the social security act is applicable, and shall provide that the service of any such individual shall continue to be covered by the agreement in case he or she thereafter becomes eligible to be a member of a retirement system;

(g) As modified, the agreement shall include all services described in either (d) or (e) of this subsection and performed by individuals in positions covered by a retirement system with respect to which the governor has issued a certificate to the secretary of health and human services pursuant to subsection (5) of this section; and

(h) Law enforcement officers and firefighters of each political subdivision of this state who are covered by the Washington law enforcement officers' and firefighters' retirement system act, chapter 41.26 RCW, shall constitute a separate "coverage group" for purposes of the agreement entered into under this section and for purposes of section 218 of the social security act.

(2) Any instrumentality jointly created by this state and any other state or states is hereby authorized, upon the granting of like authority by such other state or states, (a) to enter into an agreement with the secretary of health and human services whereby the benefits of the federal old-age and survivors insurance system shall be extended to employees of such

instrumentality, (b) to require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they would be required to pay under RCW 41.48.040(1) if they were covered by an agreement made pursuant to subsection (1) of this section, and (c) to make payments to the secretary of the treasury in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements. Such agreement shall, to the extent practicable, be consistent with the terms and provisions of subsection (1) of this section and other provisions of this chapter.

(3) The governor is empowered to authorize a referendum, and to designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the social security act, and subsection (4) of this section on the question of whether service in all positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under this chapter. If a retirement system covers positions of employees of the state of Washington, of the institutions of higher learning, and positions of employees of one or more of the political subdivisions of the state, then for the purpose of the referendum as provided in this section, there may be deemed to be a separate retirement system with respect to employees of the state, or any one or more of the political subdivisions, or institutions of higher learning and the governor shall authorize a referendum upon request of the subdivisions' or institutions' of higher learning governing body: PROVIDED HOWEVER, That if a referendum of state employees generally fails to produce a favorable majority vote then the governor may authorize a referendum covering positions of employees in any state department who are compensated in whole or in part from grants made to this state under Title III of the federal social security act: PROVIDED, That any city or town affiliated with the statewide city employees retirement system organized under chapter 41.44 RCW may at its option agree to a plan submitted by the board of trustees of that statewide city employees retirement system for inclusion under an agreement under this chapter if the referendum to be held as provided in this section indicates a favorable result: PROVIDED FURTHER, That the teachers' retirement system be considered one system for the purpose of the referendum except as applied to the several *colleges of education. The notice of referendum required by section 218(d)(3)(C) of the social security act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this chapter.

(4) The governor, before authorizing a referendum, shall require the following conditions to be met:

(a) The referendum shall be by secret written ballot on the question of whether service in positions covered by such retirement system shall be excluded from or included under the agreement between the governor and the secretary of health and human services provided for in subsection (1) of this section;

(b) An opportunity to vote in such referendum shall be given and shall be limited to eligible employees;

(c) Not less than ninety days' notice of such referendum shall be given to all such employees;

(d) Such referendum shall be conducted under the supervision of the governor or of an agency or individual designated by the governor;

(e)(i) The proposal for coverage shall be approved only if a majority of the eligible employees vote in favor of including services in such positions under the agreement;

(ii) Coverage obtained through a divided referendum process shall extend coverage to law enforcement officers, firefighters, and employees of political subdivisions of this state, who have membership in a qualified retirement system, allowing them to obtain medicare coverage only (HI-only). In such a divided referendum process, those members voting in favor of medicare coverage constitute a separate coverage group;

(f) The state legislature, in the case of a referendum affecting the rights and liabilities of state employees covered under the state employees' retirement system and employees under the teachers' retirement system, and in all other cases the local legislative authority or governing body, shall have specifically approved the proposed plan and approved any necessary structural adjustment to the existing system to conform with the proposed plan;

(g) In the case of a referendum authorized under section 218(d)(6) of the social security act and (e)(ii) of this subsection, the retirement system will be divided into two parts or divisions. One part or division of the retirement system shall be composed of positions of those members of the system who desire coverage under the agreement as permitted by this section. The remaining part or division of the retirement system shall be composed of positions of those members who do not desire coverage under such an agreement. Each part or division is a separate retirement system for the purposes of section 218(d) of the social security act. The positions of individuals who become members of the system after the coverage is extended shall be included in the part or division of the system composed of members desiring the coverage, with the exception of positions that are excluded in the agreement.

(5) Upon receiving satisfactory evidence that with respect to any such referendum the conditions specified in subsection (4) of this section and section 218(d)(3) of the social security act have been met, the governor shall so certify to the secretary of health and human services.

(6) If the legislative body of any political subdivision of this state certifies to the governor that a referendum has been held under the terms of RCW 41.48.050(1)(i) and gives notice to the governor of termination of social security for any coverage group of the political subdivision, the governor shall give two years advance notice in writing to the federal department of health and human services of the termination of the agreement entered into under this section with respect to that coverage group. [2008 c 142 § 1; 2007 c 218 § 72; 1971 ex.s. c 257 § 19; 1967 c 5 § 1; 1957 c 170 § 1; 1955 ex.s. c 4 § 3; 1951 c 184 § 3.]

***Reviser's note:** The "colleges of education" were redesignated state colleges by 1961 c 62 § 1, formerly RCW 28.81.005, decodified in the 1969 education code. See also RCW 28B.10.016.

(2014 Ed.)

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

41.48.040 Employees' contributions. (1) Every employee of the state whose services are covered by an agreement entered into under RCW 41.48.030 shall be required to pay for the period of such coverage, into the contribution account established by RCW 41.48.060, contributions, with respect to wages (as defined in RCW 41.48.020), equal to the amount of employee tax which would be imposed by the federal insurance contributions act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employees' retention in the service of the state, or his or her entry upon such service, after the enactment of this chapter.

(2) The contribution imposed by this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(3) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the state agency shall prescribe. [2012 c 117 § 78; 1955 ex.s. c 4 § 4; 1951 c 184 § 4.]

41.48.050 Extension of social security benefits to employees of political subdivisions—Termination, procedure.

(1) Each political subdivision of the state is hereby authorized to submit for approval by the governor a plan for extending the benefits of title II of the social security act, in conformity with the applicable provisions of such act, to those employees of such political subdivisions who are not covered by an existing pension or retirement system. Each pension or retirement system established by the state or a political subdivision thereof is hereby authorized to submit for approval by the governor a plan for extending the benefits of title II of the social security act, in conformity with applicable provisions of such act, to members of such pension or retirement system. Each such plan and any amendment thereof shall be approved by the governor if he or she finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the governor, except that no such plan shall be approved unless—

(a) It is in conformity with the requirements of the social security act and with the agreement entered into under RCW 41.48.030;

(b) It provides that all services which constitute employment as defined in RCW 41.48.020 and are performed in the employ of the political subdivision by employees thereof, shall be covered by the plan;

(c) It specifies the source or sources from which the funds necessary to make the payments required by paragraph (a) of subsection (3) and by subsection (4) of this section are expected to be derived and contains reasonable assurance that such sources will be adequate for such purposes;

(d) It provides that in the plan of coverage for members of the state teachers' retirement system or for state employee

members of the state employees' retirement system, there shall be no additional cost to or involvement of the state until such plan has received prior approval by the legislature;

(e) It provides for such methods of administration of the plan by the political subdivision as are found by the governor to be necessary for the proper and efficient administration of the plan;

(f) It provides that the political subdivision will make such reports, in such form and containing such information, as the governor may from time to time require and comply with such provisions as the governor or the secretary of health, education, and welfare may from time to time find necessary to assure the correctness and verification of such reports; and

(g) It authorizes the governor to terminate the plan in its entirety, in his or her discretion, if he or she finds that there has been a failure to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the governor and may be consistent with the provisions of the social security act;

(h) It provides that law enforcement officers and firefighters of each political subdivision of this state who are covered by the Washington Law Enforcement Officers' and Firefighters' Retirement System Act (chapter 209, Laws of 1969 ex. sess.) as now in existence or hereafter amended shall constitute a separate "coverage group" for purposes of the plan or agreement entered into under this section and for purposes of section 216 of the social security act. To the extent that the plan or agreement entered into between the state and any political subdivision of this state is inconsistent with this subsection, the governor shall seek to modify the inconsistency;

(i) It provides that the plan or agreement may be terminated by any political subdivision as to any such coverage group upon giving at least two years advance notice in writing to the governor, effective at the end of the calendar quarter specified in the notice. It shall specify that before notice of such termination is given, a referendum shall be held among the members of the coverage group under the following conditions:

(i) The referendum shall be conducted under the supervision of the legislative body of the political subdivision.

(ii) Not less than sixty days' notice of such referendum shall be given to members of the coverage group.

(iii) An opportunity to vote by secret ballot in such referendum shall be given and shall be limited to all members of the coverage group.

(iv) The proposal for termination shall be approved only if a majority of the coverage group vote in favor of termination.

(v) If a majority of the coverage group vote in favor of termination, the legislative body of the political subdivision shall certify the results of the referendum to the governor and give notice of termination of such coverage group.

(2) The governor shall not finally refuse to approve a plan submitted by a political subdivision under subsection (1) [of this section], and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

(3)(a) Each political subdivision as to which a plan has been approved under this section shall pay into the contribution account, with respect to wages (as defined in RCW 41.48.020), at such time or times as the governor may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the governor under RCW 41.48.030.

(b) Each political subdivision required to make payments under paragraph (a) of this subsection is authorized, in consideration of the employee's retention in, or entry upon, employment after enactment of this chapter, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his or her wages (as defined in RCW 41.48.020), not exceeding the amount of employee tax which is imposed by the federal insurance contributions act, and to deduct the amount of such contribution from his or her wages as and when paid. Contributions so collected shall be paid into the OASI contribution account in partial discharge of the liability of such political subdivision or instrumentality under paragraph (a) of this subsection. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(4) Delinquent reports and payments due under paragraph (f) of subsection (1) and paragraph (a) of subsection (3) of this section will be subject to an added interest charge of six percent per year or, if higher, the rate chargeable to the state by the secretary by virtue of federal law, if the late report or payment contributes to any federal penalty for late filing of reports or for late deposit of contributions. Delinquent contributions, interest, and penalties may be recovered by civil action or may, at the request of the governor, be deducted from any other moneys payable to the political subdivision by any department or agency of the state. [2012 c 117 § 79; 1981 c 119 § 1; 1971 ex.s. c 257 § 20; 1955 ex.s. c 4 § 5; 1951 c 184 § 5.]

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

Law enforcement officers' and firefighters' retirement system: Chapter 41.26 RCW.

Public employees' retirement system: Chapter 41.40 RCW.

Teachers' retirement system: Chapter 41.32 RCW.

41.48.060 OASI contribution account. (1) There is hereby established a special account in the state treasury to be known as the OASI contribution account. Such account shall consist of and there shall be deposited in such account: (a) All contributions and penalties collected under RCW 41.48.040 and 41.48.050; (b) all moneys appropriated thereto under this chapter; (c) any property or securities belonging to the account; and (d) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the account and all other moneys received for the account from any other source. All moneys in the account shall be mingled and undivided. Subject to the provisions of this chapter, the governor is vested with full power, authority and jurisdiction over the account, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this chapter. During the 2009-2011 fiscal biennium, mon-

eyes in the OASI contribution account may also be transferred into the OASI revolving fund.

(2) The OASI contribution account shall be established and held separate and apart from any other funds of the state and shall be used and administered exclusively for the purpose of this chapter. Withdrawals from such account shall be made for, and solely for (a) payment of amounts required to be paid to the secretary of the treasury pursuant to an agreement entered into under RCW 41.48.030; (b) payment of refunds provided for in RCW 41.48.040(3); and (c) refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

(3) From the OASI contribution account the custodian of the fund [account] shall pay to the secretary of the treasury such amounts and at such time or times as may be directed by the governor in accordance with any agreement entered into under RCW 41.48.030 and the social security act.

(4) The treasurer of the state shall be ex officio treasurer and custodian of the OASI contribution account and shall administer such account in accordance with the provisions of this chapter and the directions of the governor and shall pay all warrants drawn upon it in accordance with the provisions of this section and with the regulations as the governor may prescribe pursuant thereto. [2009 c 564 § 923; 1991 sp.s. c 13 § 112; 1973 c 126 § 14; 1967 c 213 § 1; 1951 c 184 § 6.]

Effective date—2009 c 564: See note following RCW 2.68.020.

Additional notes found at www.leg.wa.gov

41.48.065 OASI revolving fund. (1) There is hereby established a separate fund in the custody of the state treasurer to be known as the OASI revolving fund. The fund shall consist of all moneys designated for deposit in the fund. The OASI revolving fund shall be used exclusively for the purpose of this section, including the costs of program administration. Withdrawals from the fund may be made for the payment of amounts the state may be obligated to pay or forfeit by reason of any failure of any public agency to pay assessments on contributions or interest assessments required under the federal-state agreement under this chapter or federal regulations.

(2) All costs allocable to the administration of this chapter shall be charged to and paid to the OASI revolving fund by the participating divisions and instrumentalities of the state pro rata according to their respective contributions.

(3) The treasurer of the state shall be ex officio treasurer and custodian of the fund and shall administer the fund in accordance with this chapter and the directions of the governor and shall pay all amounts drawn upon it in accordance with this section and with the regulations the governor may prescribe under this section. [2009 c 171 § 1; 1991 sp.s. c 13 § 111; 1983 1st ex.s. c 6 § 1.]

Additional notes found at www.leg.wa.gov

41.48.070 Employees may elect. The governing body of any political subdivision having any coverage group, as the term is defined in title II of the social security act, not covered by a state or municipal retirement system may submit for an advisory vote to the members of such coverage group the question of whether they prefer coverage by federal old-age and survivors insurance or coverage by a state or municipal retirement system. [1951 c 184 § 7.]

(2014 Ed.)

41.48.080 Administration costs—Allocation. All costs allocable to the administration of this chapter shall be charged to and paid to the OASI revolving fund by the participating divisions and instrumentalities of the state pro rata according to their respective contributions. [2009 c 171 § 2; 1951 c 184 § 9.]

41.48.090 Rules and regulations. The governor shall make and publish such rules and regulations, not inconsistent with the provisions of this chapter, as he or she finds necessary or appropriate to the efficient administration of the functions with which he or she is charged under this chapter. [2012 c 117 § 80; 1951 c 184 § 10.]

41.48.100 Governor may delegate authority. Any authority conferred upon the governor by this chapter may be exercised by an official or state agency designated by him or her. [2012 c 117 § 81; 1951 c 184 § 11.]

41.48.110 Legislative declaration—Payments to state employees on account of sickness. It is the policy of the state of Washington to pay its employees on account of sickness or accident disability in accordance with applicable leave regulations and in such a manner so such payments are excluded from federal old age and survivors' insurance contribution requirements. [1979 ex.s. c 247 § 3.]

41.48.120 Sick leave account created—Payments to state employees on account of sickness—Exclusion from wages. There is created in the general fund a separate account to be known as the sick leave account, to be used for payments made after January 1, 1980, to state employees made on account of sickness, for the purpose of excluding such payments from the meaning of "wages" under federal old age and survivors' insurance. The legislature shall appropriate amounts necessary for the account. [1979 c 152 § 1.]

Additional notes found at www.leg.wa.gov

41.48.130 Sick leave payments—Accounting plan and payroll procedures. The director of the office of financial management shall, by January 1, 1980, develop an accounting plan and payroll procedures sufficient to meet the requirements of federal statutes and regulations for the purpose of implementing RCW 41.48.120. [1979 c 152 § 2.]

Additional notes found at www.leg.wa.gov

41.48.140 Establishment of sick leave rules by personnel authorities. Nothing in RCW 41.48.120 or 41.48.130 shall affect the power of the Washington personnel resources board or any other state personnel authority to establish sick leave rules except as may be required under RCW 41.48.120 or 41.48.130: PROVIDED, That each personnel board and personnel authority shall establish the maximum number of working days an employee under its jurisdiction may be absent on account of sickness or accident disability without a medical certificate.

"Personnel authority" as used in this section, means a state agency, board, committee, or similar body having general authority to establish personnel rules. [1993 c 281 § 39; 1979 c 152 § 3.]

Additional notes found at www.leg.wa.gov

41.48.150 Definition—"Employee." "Employee," as used in RCW 41.48.120 and 41.48.140, includes all officers and employees of the state, except officials and employees compensated on a fee basis, for whom contributions are made to federal old age and survivors' insurance. [1979 c 152 § 4.]

Additional notes found at www.leg.wa.gov

41.48.160 Political subdivisions—Sick leave payments—Adoption of accounting plan and payroll procedures. A political subdivision of the state may, pursuant to ordinance or resolution, adopt an accounting plan and payroll procedures sufficient to meet the requirements of federal statutes and regulations and the department of health, education, and welfare for the purpose of excluding payments made on account of sickness, from the meaning of "wages" under federal old age and survivors' insurance. [1979 c 152 § 5.]

Additional notes found at www.leg.wa.gov

41.48.170 Sick leave payments—Transfers of moneys to sick leave account. The office of financial management shall direct the state treasurer to, and the state treasurer shall, periodically transfer to the sick leave account in the general fund moneys sufficient to reimburse the sick leave account for payments on account of sickness. State agencies shall place in allotment reserve status and cause to be lapsed at the end of the biennium an amount equal to the sick leave pay and the employer's share of all federal old age and survivor's insurance payments rendered unnecessary by reason of RCW 41.48.120. When directing state agencies to place funds in reserve status, the office of financial management shall promulgate allotment instructions which conserve, to the fullest extent possible, state general fund appropriations. [1979 ex.s. c 247 § 2.]

41.48.180 Sick leave payments—Inclusion in reports to retirement system—Compensation for unused sick leave. Payments to employees pursuant to RCW 41.48.120 or 41.48.160 shall be included in compensation reported to the appropriate retirement system. Any compensation for unused sick leave shall not be considered payment on account of sickness and shall not be paid from the sick leave account. [1979 c 152 § 6.]

Additional notes found at www.leg.wa.gov

Chapter 41.50 RCW

DEPARTMENT OF RETIREMENT SYSTEMS

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41.50.005 Policy and intent. The legislature sets forth as retirement policy and intent:

- (1) The retirement systems of the state shall provide similar benefits wherever possible.
- (2) Persons hired into eligible positions shall accrue service credit for all service rendered.
- (3) The calculation of benefits shall be done in such a manner as to prevent the arithmetic lowering of benefits.
- (4) Liberalization of the granting of service credit shall not jeopardize part-time employment of retirees in ineligible positions. [1991 c 343 § 2.]

Findings—1991 c 343: "The legislature finds:

(1) There is a dichotomy in the provision of service credit within the major two retirement systems of the state. Within plan 1 of the public employees' retirement system, credit is given in whole months upon completing seventy hours per month. Within plan 1 of the teachers' retirement system, full annual service credit is given for full-time employment of four-fifths or more of a school year and partial annual service credit is given for employment of less than four-fifths of a school year but more than twenty days in a school year. Plan 2 of both the public employees' and teachers'

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retirement systems' full monthly service credit is based on completing ninety hours in each month.

(2) There is an expressed interest by public employers in encouraging job-sharing or tandem positions wherein two persons perform one job. This is seen as opening up job opportunities for those persons who have family responsibilities prohibiting full-time employment." [1991 c 343 § 1.]

Additional notes found at www.leg.wa.gov

41.50.010 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

- (1) "Actuarial value" means the present value of a change in actuarial liability;
- (2) "Department" means the department of retirement systems; and
- (3) "Director" means the director of the department of retirement systems. [1994 c 197 § 30; 1975-'76 2nd ex.s. c 105 § 3.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

41.50.020 Department of retirement systems—Created—Director. There is created a department of state government to be known as the department of retirement systems. The executive and administrative head of the department shall be the director, who shall be appointed by the governor with the consent of the senate. The director shall serve at the pleasure of the governor and may be removed upon written notification by the governor to the respective retirement boards.

The director shall have complete charge of and supervisory powers over the department and shall be paid a salary fixed by the governor in accordance with the provisions of RCW 43.03.040. If a vacancy occurs in the position of director while the senate is not in session, the governor shall make a temporary appointment until the next meeting of the senate at which time he or she shall present to that body the name of the person appointed to the position of director. [2012 c 117 § 82; 1975-'76 2nd ex.s. c 105 § 4.]

41.50.030 Transfer of powers, duties, and functions of certain systems, administrators, and committees to department of retirement systems. (1) As soon as possible but not more than one hundred and eighty days after March 19, 1976, there is transferred to the department of retirement systems, except as otherwise provided in this chapter, all powers, duties, and functions of:

- (a) The Washington public employees' retirement system;
- (b) The Washington state teachers' retirement system;
- (c) The Washington law enforcement officers' and firefighters' retirement system;
- (d) The Washington state patrol retirement system;
- (e) The Washington judicial retirement system; and
- (f) The state treasurer with respect to the administration of the judges' retirement fund imposed pursuant to chapter 2.12 RCW.

(2) On July 1, 1996, there is transferred to the department all powers, duties, and functions of the deferred compensation committee.

(3) The department shall administer chapter 41.34 RCW.

(4) The department shall administer the Washington school employees' retirement system created under chapter 41.35 RCW.

(5) The department shall administer the Washington public safety employees' retirement system created under chapter 41.37 RCW.

(6) The department shall administer the collection of employer contributions and initial prefunding of the higher education retirement plan supplemental benefits, also referred to as the annuity or retirement income plans created under chapter 28B.10 RCW. [2011 1st sp.s. c 47 § 20; 2004 c 242 § 42; 1998 c 341 § 501; 1995 c 239 § 316; 1975-'76 2nd ex.s. c 105 § 5.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Effective date—2004 c 242: See RCW 41.37.901.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.50.033 Crediting interest to retirement system accounts. (1) The director shall determine when interest, if provided by a plan, shall be credited to accounts in the public employees' retirement system, the teachers' retirement system, the school employees' retirement system, the public safety employees' retirement system, the law enforcement officers' and firefighters' retirement system, or the Washington state patrol retirement system. The amounts to be credited and the methods of doing so shall be at the director's discretion, except that if interest is credited, it shall be done at least quarterly.

(2) Interest as determined by the director under this section is "regular interest" as defined in RCW *41.40.010(15), **41.32.010(23), ***41.35.010(12), ****41.37.010(12), *****41.26.030(23), and *****43.43.120(8).

(3) The legislature affirms that the authority of the director under RCW 41.40.020 and 41.50.030 includes the authority and responsibility to establish the amount and all conditions for regular interest, if any. The legislature intends chapter 493, Laws of 2007 to be curative, remedial, and retrospectively applicable. [2007 c 493 § 1.]

Reviser's note: *(1) RCW 41.40.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (15) to subsection (31).

** (2) RCW 41.32.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (23) to subsection (38).

*** (3) RCW 41.35.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (12) to subsection (26).

**** (4) RCW 41.37.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (12) to subsection (23).

***** (5) RCW 41.26.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (23) to subsection (24).

***** (6) RCW 43.43.120 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (8) to subsection (17).

41.50.040 Manner of selection and terms of transferred board members not affected. This chapter shall not affect the manner for selecting members of the boards affected by RCW 41.50.030, nor shall it affect the terms of any members serving on such boards. [1975-'76 2nd ex.s. c 105 § 6.]

41.50.050 Powers, duties, and functions of director. The director shall:

(1) Have the authority to organize the department into not more than four divisions, each headed by an assistant director;

(2) Have free access to all files and records of various funds assigned to the department and inspect and audit the files and records as deemed necessary;

(3) Employ personnel to carry out the general administration of the department;

(4) Submit an annual written report of the activities of the department to the governor and the chairs of the appropriate legislative committees with one copy to the staff of each of the committees, including recommendations for statutory changes the director believes to be desirable;

(5) Adopt such rules and regulations as are necessary to carry out the powers, duties, and functions of the department pursuant to the provisions of chapter 34.05 RCW. [1995 c 239 § 317; 1993 c 61 § 1; 1987 c 505 § 24; 1981 c 3 § 33; 1977 ex.s. c 251 § 1; 1975-'76 2nd ex.s. c 105 § 7.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.50.055 Director of retirement systems to administer Washington law enforcement officers' and firefighters' retirement system—Duties. The administration of the Washington law enforcement officers' and firefighters' retirement system is hereby vested in the director of retirement systems, and the director shall:

(1) Keep in convenient form such data as shall be deemed necessary for actuarial evaluation purposes;

(2) As of March 1, 1970, and at least every two years thereafter, through the state actuary, make an actuarial valuation as to the mortality and service experience of the beneficiaries under this chapter and the various accounts created for the purpose of showing the financial status of the retirement fund;

(3) Adopt for the Washington law enforcement officers' and firefighters' retirement system the mortality tables and such other tables as shall be deemed necessary;

(4) Keep a record of all its proceedings, which shall be open to inspection by the public;

(5) From time to time adopt such rules and regulations not inconsistent with chapter 41.26 RCW, for the administration of the provisions of this chapter, for the administration of the fund created by this chapter and the several accounts thereof, and for the transaction of the business of the system;

(6) Prepare and publish annually a financial statement showing the condition of the Washington law enforcement officers' and firefighters' fund and the various accounts thereof, and setting forth such other facts, recommendations and data as may be of use in the advancement of knowledge concerning the Washington law enforcement officers' and firefighters' retirement system, and furnish a copy thereof to each employer, and to such members as may request copies thereof;

(7) Perform such other functions as are required for the execution of the provisions of chapter 41.26 RCW;

(8) Fix the amount of interest to be credited at a rate which shall be based upon the net annual earnings of the Washington law enforcement officers' and firefighters' fund

for the preceding twelve-month period and from time to time make any necessary changes in such rate;

(9) Pay from the department of retirement systems expense fund the expenses incurred in administration of the Washington law enforcement officers' and firefighters' retirement system from those funds appropriated for that purpose;

(10) Perform any other duties prescribed elsewhere in chapter 41.26 RCW;

(11) Issue decisions relating to appeals initiated pursuant to RCW 41.16.145 and 41.18.104 as now or hereafter amended and shall be authorized to order increased benefits pursuant to RCW 41.16.145 and 41.18.104 as now or hereafter amended. [1991 c 35 § 16; 1982 c 163 § 6; 1981 c 3 § 27; 1975-'76 2nd ex.s. c 44 § 3; 1971 ex.s. c 216 § 1; 1969 ex.s. c 209 § 6. Formerly RCW 41.26.060.]

Intent—1991 c 35: See note following RCW 41.26.005.

Intent of amendment—1981 c 3: See note following RCW 2.10.080.

Additional notes found at www.leg.wa.gov

41.50.060 Delegation of powers, duties, and functions—Director's responsibilities. The director may delegate the performance of such powers, duties, and functions, other than those relating to rule making, to employees of the department, but the director shall remain and be responsible for the official acts of the employees of the department.

The director shall be responsible for the public employees' retirement system, the teachers' retirement system, the school employees' retirement system, the judicial retirement system, the law enforcement officers' and firefighters' retirement system, the public safety employees' retirement system, and the Washington state patrol retirement system. The director shall also be responsible for the deferred compensation program. [2004 c 242 § 43; 1998 c 341 § 502; 1995 c 239 § 318; 1975-'76 2nd ex.s. c 105 § 8.]

Effective date—2004 c 242: See RCW 41.37.901.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.50.065 Accumulated service credit—Annual notification to members. (1) The department shall annually notify each member of each retirement system listed in RCW 41.50.030 of his or her:

(a) Service credit accumulated in the preceding calendar year; and

(b) Total service credit accumulated.

(2) The department shall begin notifying members under this section according to the following schedule:

(a) All members of the teachers' retirement system shall begin receiving annual notification of accumulated service credit and service credit earned within the preceding school year or one school year, as appropriate, no later than January 1, 1991;

(b) All members, other than members of the teachers' retirement system, shall begin receiving annual notification of service credit accumulated within the preceding calendar year or school year, as appropriate, no later than June 30, 1992;

(c) All members within five years of being eligible for service retirement shall begin receiving annual notification of

total service credit accumulated no later than October 1, 1993;

(d) Members, other than members of the teachers' retirement system, who are not within five years of being eligible for service retirement shall begin receiving annual notification of total service credit accumulated according to the following schedule:

(i) For members of the law enforcement officers' and firefighters' retirement system, Washington state patrol retirement system, judicial retirement system, and judges' retirement system, no later than August 30, 1993;

(ii) For employees of the state of Washington who are members of the public employees' retirement system, no later than August 30, 1994;

(iii) For employees of political subdivisions of the state of Washington, no later than January 31, 1995;

(iv) For employees of institutions of higher education as defined in RCW 28B.10.016, no later than June 30, 1995; and

(v) For school district employees who are members of the public employees' retirement system, no later than April 30, 1996.

(3) The department shall adopt rules implementing this section. [1991 c 282 § 1; 1990 c 8 § 2.]

Findings—1990 c 8: "The legislature recognizes that:

(1) It is important that members of the retirement system are informed about the amount of service credit they have earned. Untimely and inaccurate reporting by employers hampers the department's ability to inform members of the service credit they have earned;

(2) Requiring a transfer of funds from the retirement accounts of members of the public employees' retirement system and the law enforcement officers' and firefighters' retirement system to the expense funds of those systems does not represent added revenue to the systems but is instead a transfer from the trust fund to the expense fund that causes administrative costs and results in a loss to the system or to the member; and

(3) A standardized time period for school administrator contracts and a prohibition against retroactive revision of those contracts is needed to prevent potential abuses of the average final compensation calculation process." [1990 c 8 § 1.]

41.50.070 Personnel. In addition to the exemptions set forth in RCW 41.06.070, the assistant directors, not to exceed two, and an internal auditor shall also be exempt from the application of the state civil service law, chapter 41.06 RCW.

The officers and exempt personnel appointed by the director pursuant to this section shall be paid salaries fixed by the governor in accordance with the procedure established by law for fixing salaries for officers exempt from the operation of the state civil service law.

All employees classified under chapter 41.06 RCW and engaged in duties pertaining to the functions transferred by this chapter shall be assigned to the department to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the state merit system. [1975-'76 2nd ex.s. c 105 § 9.]

41.50.075 Funds established. (1) Two funds are hereby created and established in the state treasury to be known as the Washington law enforcement officers' and firefighters' system plan 1 retirement fund, and the Washington law enforcement officers' and firefighters' system plan 2 retirement fund which shall consist of all moneys paid into them in accordance with the provisions of this chapter and chapter 41.26 RCW, whether such moneys take the form of

cash, securities, or other assets. The plan 1 fund shall consist of all moneys paid to finance the benefits provided to members of the law enforcement officers' and firefighters' retirement system plan 1, and the plan 2 fund shall consist of all moneys paid to finance the benefits provided to members of the law enforcement officers' and firefighters' retirement system plan 2.

(2) All of the assets of the Washington state teachers' retirement system shall be credited according to the purposes for which they are held, to two funds to be maintained in the state treasury, namely, the teachers' retirement system plan 1 fund and the teachers' retirement system combined plan 2 and 3 fund. The plan 1 fund shall consist of all moneys paid to finance the benefits provided to members of the Washington state teachers' retirement system plan 1, and the combined plan 2 and 3 fund shall consist of all moneys paid to finance the benefits provided to members of the Washington state teachers' retirement system plan 2 and 3.

(3) There is hereby established in the state treasury two separate funds, namely the public employees' retirement system plan 1 fund and the public employees' retirement system combined plan 2 and plan 3 fund. The plan 1 fund shall consist of all moneys paid to finance the benefits provided to members of the public employees' retirement system plan 1, and the combined plan 2 and plan 3 fund shall consist of all moneys paid to finance the benefits provided to members of the public employees' retirement system plans 2 and 3.

(4) There is hereby established in the state treasury the school employees' retirement system combined plan 2 and 3 fund. The combined plan 2 and 3 fund shall consist of all moneys paid to finance the benefits provided to members of the school employees' retirement system plan 2 and plan 3.

(5) There is hereby established in the state treasury the public safety employees' retirement system plan 2 fund. The plan 2 fund shall consist of all moneys paid to finance the benefits provided to members of the public safety employees' retirement system plan 2. [2004 c 242 § 44; 2000 c 247 § 601; 1998 c 341 § 503; 1996 c 39 § 16; 1995 c 239 § 312; 1991 c 35 § 108.]

Effective date—2004 c 242: See RCW 41.37.901.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Intent—1991 c 35: See note following RCW 41.26.005.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.50.077 State treasurer is custodian of funds. The state treasurer is the custodian of, and accountant for, all funds and holdings of the retirement systems listed in RCW 41.50.030. [1991 c 35 § 109.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.50.080 Investment of funds of various systems. The state investment board shall provide for the investment of all funds of the Washington public employees' retirement system, the teachers' retirement system, the school employees' retirement system, the Washington law enforcement officers' and firefighters' retirement system, the Washington state patrol retirement system, the Washington judicial retirement system, the Washington public safety employees' retirement system, the higher education retirement plan supplemental

benefit fund, and the judges' retirement fund, pursuant to RCW 43.84.150, and may sell or exchange investments acquired in the exercise of that authority. [2011 1st sp.s. c 47 § 21; 2004 c 242 § 45; 1998 c 341 § 504; 1981 c 3 § 34; 1977 ex.s. c 251 § 2; 1975-'76 2nd ex.s. c 105 § 10.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Effective date—2004 c 242: See RCW 41.37.901.

Additional notes found at www.leg.wa.gov

41.50.085 Investments in accordance with established standards. Any investments under RCW 43.84.150 by the state investment board shall be made in accordance with the standards established in RCW 43.33A.140. [1998 c 14 § 2; 1977 ex.s. c 251 § 7.]

41.50.088 Duties of director—Retirement investments. (1) The director shall adopt rules as necessary and exercise the following powers and duties:

(a) The director shall recommend to the state investment board types of options for member self-directed investment in the teachers' retirement system plan 3, the school employees' retirement system plan 3, and the public employees' retirement system plan 3 as deemed by the director to be reflective of the members' preferences;

(b) By July 1, 2005, subject to favorable tax determination by the internal revenue service, the director shall make optional actuarially equivalent life annuity benefit payment schedules available to members and survivors that may be purchased from the combined plan 2 and plan 3 funds under RCW 41.50.075; and

(c) Determination of the basis for administrative charges to the self-directed investment fund to offset self-directed account expenses;

(2) The director shall recommend to the state investment board types of options for participant self-directed investment in the state deferred compensation plan, as deemed by the director to be reflective of the participants' preferences. [2010 1st sp.s. c 7 § 28; 2005 c 327 § 14; 2000 c 247 § 602. Prior: 1998 c 341 § 507; 1998 c 116 § 10; 1995 c 239 § 302.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.50.090 Department succeeds to and vested with transferred powers, duties, and functions—Boards to be kept informed—Approval of rules—Disability benefit applications. (1) Except as otherwise provided in this section, on the effective date of transfer as provided in RCW 41.50.030, the department shall succeed to and is vested with all powers, duties, and functions now or by any concurrent act of this 1976 legislature vested in the individual retirement boards set forth in RCW 41.50.030 relating to the administration of their various retirement systems, including but not limited to the power to appoint a staff and define the duties thereof: PROVIDED, That actuarial services required by the department shall be performed by the state actuary as provided in RCW 44.44.040.

(2) The department shall keep each retirement board fully informed on the administration of the corresponding retirement system, and shall furnish any information requested by a retirement board.

(3) Rules proposed by the director under RCW 2.10.070, 41.50.055, 41.32.025, or 41.40.020 shall be submitted to the appropriate retirement boards for review prior to adoption. After receiving approval of the members of the appropriate board, such rules shall become effective as provided by the administrative procedure act, chapter 34.05 RCW.

(4) Each retirement board shall continue to perform all functions as are vested in it by law with respect to applications for benefits paid upon either temporary or permanent disability, with such staff assistance from the department as may be required. The director shall perform those functions with respect to disability benefits as are vested in him or her by RCW 41.26.120, 41.26.125, and 41.26.200. [1985 c 102 § 6; 1983 c 3 § 97; 1981 c 294 § 8; 1975-'76 2nd ex.s. c 105 § 11.]

Purpose—Retrospective application—1985 c 102: See notes following RCW 41.26.120.

Additional notes found at www.leg.wa.gov

41.50.110 Expenses of administration paid from department of retirement systems expense fund—Administrative expense fee. (1) Except as provided by RCW 41.50.255 and subsection (6) of this section, all expenses of the administration of the department, the expenses of administration of the retirement systems, and the expenses of the administration of the office of the state actuary created in chapters 2.10, 2.12, 28B.10, 41.26, 41.32, 41.40, 41.34, 41.35, 41.37, 43.43, and 44.44 RCW shall be paid from the department of retirement systems expense fund.

(2) In order to reimburse the department of retirement systems expense fund on an equitable basis the department shall ascertain and report to each employer, as defined in RCW 28B.10.400, 41.26.030, 41.32.010, 41.35.010, 41.37.010, or 41.40.010, the sum necessary to defray its proportional share of the entire expense of the administration of the retirement system that the employer participates in during the ensuing biennium or fiscal year whichever may be required. Such sum is to be computed in an amount directly proportional to the estimated entire expense of the administration as the ratio of monthly salaries of the employer's members bears to the total salaries of all members in the entire system. It shall then be the duty of all such employers to include in their budgets or otherwise provide the amounts so required.

(3) The department shall compute and bill each employer, as defined in RCW 28B.10.400, 41.26.030, 41.32.010, 41.35.010, 41.37.010, or 41.40.010, at the end of each month for the amount due for that month to the department of retirement systems expense fund and the same shall be paid as are its other obligations. Such computation as to each employer shall be made on a percentage rate of salary established by the department. However, the department may at its discretion establish a system of billing based upon calendar year quarters in which event the said billing shall be at the end of each such quarter.

(4) The director may adjust the expense fund contribution rate for each system at any time when necessary to

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reflect unanticipated costs or savings in administering the department.

(5) An employer who fails to submit timely and accurate reports to the department may be assessed an additional fee related to the increased costs incurred by the department in processing the deficient reports. Fees paid under this subsection shall be deposited in the retirement system expense fund.

(a) Every six months the department shall determine the amount of an employer's fee by reviewing the timeliness and accuracy of the reports submitted by the employer in the preceding six months. If those reports were not both timely and accurate the department may prospectively assess an additional fee under this subsection.

(b) An additional fee assessed by the department under this subsection shall not exceed fifty percent of the standard fee.

(c) The department shall adopt rules implementing this section.

(6) Expenses other than those under *RCW 41.34.060(3) shall be paid pursuant to subsection (1) of this section.

(7) During the 2009-2011 and 2011-2013 fiscal biennia, the legislature may transfer from the department of retirement systems' expense fund to the state general fund such amounts as reflect the excess fund balance of the fund. [2011 1st sp.s. c 50 § 936; 2011 1st sp.s. c 47 § 22; 2009 c 564 § 924; 2008 c 329 § 911; 2005 c 518 § 923; 2004 c 242 § 46; 2003 1st sp.s. c 25 § 914. Prior: 2003 c 295 § 3; 2003 c 294 § 11; 1998 c 341 § 508; 1996 c 39 § 17; 1995 c 239 § 313; 1990 c 8 § 3; 1979 ex.s. c 249 § 8.]

Reviser's note: *(1) RCW 41.34.060 was amended by 2011 c 80 § 2, changing subsection (3) to subsection (4).

(2) This section was amended by 2011 1st sp.s. c 47 § 22 and by 2011 1st sp.s. c 50 § 936, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

Effective date—2005 c 518 § 923: "Section 923 (RCW 41.50.110) of this act takes effect July 1, 2006." [2005 c 518 § 1806.]

Severability—2005 c 518: See note following RCW 28A.500.030.

Effective date—2004 c 242: See RCW 41.37.901.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Findings—1990 c 8: See note following RCW 41.50.065.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.50.112 Report of member data—Department-designed format. Employers, as defined in RCW 41.26.030, 41.32.010, 41.34.020, 41.35.010, and 41.40.010, must report all member data to the department in a format designed and communicated by the department. Employers failing to comply with this reporting requirement shall be assessed an additional fee as defined under RCW 41.50.110(5). [2000 c 247 § 1107.]

Additional notes found at www.leg.wa.gov

41.50.120 Payment of moneys due department by employers—Interest. Notwithstanding any provision of law to the contrary, all employers of members of retirement systems administered by the department shall transmit by a warrant or check to the department within fifteen days following the end of each calendar month the moneys due the department as determined by the statutes governing each system together with such reports as the department may require. The director may collect interest on any employer's overdue payments at the rate of one percent per month on the outstanding balance where necessary to secure adherence to timeliness requirements. [1979 ex.s. c 249 § 9.]

41.50.125 Interest on contributions—Department may charge. The department may charge interest, as determined by the director, on member or employer contributions owing to any of the retirement systems listed in RCW 41.50.030. The department's authority to charge interest shall extend to all optional and mandatory billings for contributions where member or employer contributions are paid other than immediately after service is rendered. Except as explicitly limited by statute, the director may delay the imposition of interest charges on late contributions under this section if the delay is necessary to implement required changes in the department's accounting and information systems. [1994 c 177 § 2.]

Findings—1994 c 177: "The legislature finds that:

(1) Whenever employer or member contributions are not made at the time service is rendered, the state retirement system trust funds lose investment income which is a major source of pension funding. The department of retirement systems has broad authority to charge interest to compensate for the loss to the trust funds, subject only to explicit statutory provisions to the contrary.

(2) The inherent authority of the department to recover all overpayments and unauthorized payments from the retirement trust funds, for the benefit of members and taxpayers, should be established clearly in statute." [1994 c 177 § 1.]

41.50.130 Correction of retirement systems' records—Adjustment in payment of benefits—Limitations. (1) The director may at any time correct errors appearing in the records of the retirement systems listed in RCW 41.50.030. Should any error in such records result in any member, beneficiary, or other person or entity receiving more or less than he or she would have been entitled to had the records been correct, the director, subject to the conditions set forth in this section, shall adjust the payment in such a manner that the benefit to which such member, beneficiary, or other person or entity was correctly entitled shall be paid in accordance with the following:

(a) In the case of underpayments to a member or beneficiary, the retirement system shall correct all future payments from the point of error detection, and shall compute the additional payment due for the allowable prior period which shall be paid in a lump sum by the appropriate retirement system.

(b) In the case of overpayments to a retiree or other beneficiary, the retirement system shall adjust the payment so that the retiree or beneficiary receives the benefit to which he or she is correctly entitled. The retiree or beneficiary shall either repay the overpayment in a lump sum within ninety days of notification or, if he or she is entitled to a continuing benefit, elect to have that benefit actuarially reduced by an amount equal to the overpayment. The retiree or beneficiary

is not responsible for repaying the overpayment if the employer is liable under RCW 41.50.139.

(c) In the case of overpayments to a person or entity other than a member or beneficiary, the overpayment shall constitute a debt from the person or entity to the department, recovery of which shall not be barred by laches or statute of limitations.

(2) Except in the case of actual fraud, in the case of overpayments to a member or beneficiary, the benefits shall be adjusted to reflect only the amount of overpayments made within three years of discovery of the error, notwithstanding any provision to the contrary in chapter 4.16 RCW.

(3) Except in the case of actual fraud, no monthly benefit shall be reduced by more than fifty percent of the member's or beneficiary's corrected benefit. Any overpayment not recovered due to the inability to actuarially reduce a member's benefit due to: (a) The provisions of this subsection; or (b) the fact that the retiree's monthly retirement allowance is less than the monthly payment required to effectuate an actuarial reduction, shall constitute a claim against the estate of a member, beneficiary, or other person or entity in receipt of an overpayment.

(4) Except as provided in subsection (2) of this section, obligations of employers or members until paid to the department shall constitute a debt from the employer or member to the department, recovery of which shall not be barred by laches or statutes of limitation. [1997 c 254 § 15; 1994 c 177 § 3; 1987 c 490 § 1; 1982 c 13 § 1.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Findings—1994 c 177: See note following RCW 41.50.125.

41.50.131 Correction of errors in reporting compensation earnable. (1) Notwithstanding RCW 41.50.130, the department is not required to correct, nor to cause any employer to correct the reporting error described in subsection (2) of this section.

(2) Standby pay and other similar forms of compensation that are not pay for time worked were not salary or wages for personal services within the meaning of RCW 41.40.010(8). Contrary to RCW 41.40.010(8), some employers have been reporting standby pay to the department as compensation earnable. To avoid unduly impacting the retirement allowances of persons who have retired on or before June 9, 1994, the department is not required to correct, nor cause to be corrected, any misreporting of amounts identified as standby pay through June 9, 1994. Any erroneous reporting of amounts identified as standby pay to the department on or after June 9, 1994, shall be corrected as an error under RCW 41.50.130.

(3) The forgiveness of past misreporting under subsection (2) of this section constitutes a benefit enhancement for those individuals for whom amounts received as standby pay were misreported to the department. Prior to June 9, 1994, no retirement system member had any right, contractual or otherwise, to have amounts identified as standby pay included as compensation earnable. [1994 c 177 § 9.]

Findings—1994 c 177: See note following RCW 41.50.125.

41.50.132 Correction of erroneous deduction or pick-up of contributions. (1) By December 31, 1992, the department of retirement systems shall implement and complete the

following process for those members of the law enforcement officers' and firefighters' retirement system plan 2, public employees' retirement system plans 1 and 2, and teachers' retirement system plan 2 who erroneously had contributions either deducted or picked-up from their earnings on and after January 1, 1987:

(a) Create a list of transactions by employer for those members whose employer either deducted or picked-up employee contributions during a month where an employee did not work sufficient hours to earn service credit;

(b) Provide the affected employers with direction and guidance for the review of the transmitted lists from this subsection and the employers' preparation of any necessary correcting transactions to the department's records;

(c) Receive all correcting transactions submitted by the employer.

(2) All debits and credits to all member accounts affected by this remedial process shall be reconciled by the department.

(3) All moneys payable to an affected member, or any moneys to be further deducted or picked-up from such member's earnings, shall be determined and accomplished solely by the employer.

(4) After December 31, 1992, no credit of employer contributions shall be made.

(5) Return of contributions to an employee by the department is limited solely to when such member retires or otherwise terminates his or her membership and chooses to withdraw them with any accumulated interest.

(6) Employer contributions forfeited under this section shall be transferred to the department of retirement systems expense account. [1991 c 343 § 13.]

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

41.50.133 Recovery of certain overpayments to surviving beneficiaries under the teachers' retirement system. (1) The director of the department of retirement systems shall not recover from surviving beneficiaries of members who died in service any pension overpayment based on the application of section 2, chapter 96, Laws of 1979 ex. sess., nor shall such benefits be reduced.

(2) The director of the department of retirement systems shall not recover from retirees any pension overpayments made between July 1, 1990, and February 1, 1992, based upon the application of *RCW 41.40.198, 41.40.1981, 41.40.325, 41.32.485, 41.32.487, or 41.32.575 due to the incorrect calculation of the "age sixty-five allowance" as this term is defined in *RCW 41.32.575(1)(a) and 41.40.325(1)(a). [1992 c 212 § 21; 1987 c 490 § 2.]

*Reviser's note: RCW 41.40.198, 41.40.1981, 41.40.325, 41.32.487, and 41.32.575 were repealed by 1995 c 345 § 11.

41.50.135 Collection of overpayments—Determination of liability—Administrative process created. (1) If the department finds that any member, beneficiary, or other person or entity has been paid an amount of retirement benefits to which that person or entity is not entitled, and the person is not entitled to a continuing benefit from any of the retirement systems listed in RCW 41.50.030, the department may issue an order and notice of assessment specifying the

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amount due, including interest, to be remitted to the department. The order and notice of assessment shall be served upon any person or entity who may have received benefits to which the person or entity is not entitled. The order and notice of assessment shall be served by the department in the manner prescribed for the service of a summons in a civil action, or by certified mail to the last known address of the obligor as shown by the records of the department.

(2) Any notice of assessment under subsection (1) of this section shall constitute a determination of liability from which the member, beneficiary, or other person or entity served may appeal by filing a petition for adjudicative proceedings with the director personally or by mail within sixty days from the date the assessment was served. If a petition for adjudicative proceedings is not filed within sixty days of the delivery of the notice of assessment, the determination that was the basis for establishing the overpayment debt and the assessment is conclusive and final.

(3) This section creates an administrative process for the collection of overpayments from persons who are not entitled to a continuing benefit from one of the retirement systems listed in RCW 41.50.030. The collection of overpayments from persons entitled to a continuing benefit from one of the retirement systems listed in RCW 41.50.030 is governed by RCW 41.50.130. [1996 c 56 § 1.]

41.50.136 Collection of overpayments—Issuance of warrant—Lien. Whenever a notice of determination of liability becomes conclusive and final under RCW 41.50.135, the director, upon giving at least twenty days notice by certified mail return receipt requested to the individual's last known address of the intended action, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee under RCW 36.18.012(10). The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the person mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A copy of the warrant shall be mailed to the person mentioned in the warrant by certified mail to the person's last known address within five days of its filing with the clerk. [2001 c 146 § 5; 1996 c 56 § 2.]

41.50.137 Collection of overpayments—Department may issue subpoenas. The department may issue subpoenas to compel the statement of witnesses and the production of any books, records, or documents necessary or relevant to the department's administration of duties under this chapter. It is unlawful for any person or entity, without just cause, to fail to comply with any subpoena issued under this section. [1996 c 56 § 3.]

41.50.138 Collection of overpayments—Waiver of overpayment. (1) The director may waive repayment of all

or part of a retirement allowance overpayment, under RCW 41.50.130 only, if:

(a) The overpayment was not the result of the retiree's or the beneficiary's nondisclosure, fraud, misrepresentation, or other fault; and

(b) The director finds in his or her sole discretion that recovery of the overpayment would be a manifest injustice.

(2) The director may not waive an overpayment if the member, retiree, or beneficiary:

(a) Provided incorrect information to the department or the employer which caused the overpayment;

(b) Failed to provide information to the department or the employer which was necessary to correctly calculate the retirement allowance;

(c) Caused the employer to provide incorrect information or fail to provide necessary information; or

(d) Knew or reasonably should have known that he or she was in receipt of an overpayment.

(3) If the director waives an overpayment and the overpayment occurred because the member's or retiree's employer:

(a) Provided incorrect information to the department which caused the overpayment;

(b) Failed to provide information to the department which was necessary to correctly calculate the retirement allowance;

(c) Caused another party to provide incorrect information or fail to provide necessary information; or

(d) Knew or reasonably should have known that the information provided would cause the retiree or beneficiary to be overpaid;

then the department shall bill the member's or retiree's employer for the amount of the overpayment that would have been recoverable under RCW 41.50.130 had the overpayment not been waived pursuant to this section.

(4) Nothing in this section authorizes the director to waive the prospective correction of an overstated retirement allowance.

(5) If the director waives an overpayment he or she must state in writing:

(a) The nature of and reason for the overpayment;

(b) The reason for the waiver; and

(c) The amount of the overpayment that is waived.

The department will maintain a file containing documentation of all overpayments waived. The department will provide the file to any person upon request.

(6) This section applies to overpayments identified on or after September 1, 1994. [1996 c 56 § 4.]

41.50.139 Retirement status reports—Overpayments—Employer obligations. (1) Retirement system employers shall elicit on a written form from all new employees as to their having been retired from a retirement system listed in RCW 41.50.030. Employers must report any retirees in their employ to the department. If a retiree works in excess of applicable postretirement employment restrictions and the employer failed to report the employment of the retiree, that employer is liable for the loss to the trust fund.

(2) If an employer erroneously reports to the department that an employee has separated from service such that a person receives a retirement allowance in contravention of the

applicable retirement system statutes, the person's retirement status shall remain unaffected and the employer is liable for the resulting overpayments.

(3) Upon receipt of a billing from the department, the employer shall pay into the appropriate retirement system trust fund the amount of the overpayment plus interest as determined by the director. The employer's liability under this section shall not exceed the amount of overpayments plus interest received by the retiree within three years of the date of discovery, except in the case of fraud. In the case of fraud, the employer is liable for the entire overpayment plus interest. [1997 c 254 § 16.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

41.50.140 Cooperation of employers in administration of systems—Employer contributions for retroactive service credit—Employee contributions paid by employer. (1) Every employer participating in one or more of the retirement systems listed in RCW 41.50.030 shall fully cooperate in the administration of the systems in which its employees participate, including the distribution of information to employees, and shall accept and carry out all other duties as required by law, regulation, or administrative instruction.

(2) If an employee is entitled to retroactive service credit which was not previously established through no fault of the employee, or through an employer error which has caused a member's compensation or contributions to be understated or overstated so as to cause a loss to the retirement funds, the director may bill the employer for the loss, to include interest, if applicable. The employer contributions, with interest thereon, will be treated as if in fact the interest was part of the normal employer contribution and no distribution of interest received shall be required.

(3) Employer-paid employee contributions will not be credited to a member's account until the employer notifies the director in writing that the employer has been reimbursed by the employee or beneficiary for the payment. The employer shall have the right to collect from the employee the amount of the employee's obligation. Failure on the part of the employer to collect all or any part of the sums which may be due from the employee or beneficiary shall in no way cause the employer obligation for the total liability to be lessened. [1982 1st ex.s. c 52 § 33.]

Additional notes found at www.leg.wa.gov

41.50.145 Plan 3—Loss of investment return due to error—Liability. (1) If the department determines that due to employer error a member of plan 3 has suffered a loss of investment return, the employer shall pay the department for credit to the member's account the amount determined by the department as necessary to correct the error.

(2) If the department determines that due to departmental error a member of plan 3 has suffered a loss of investment return, the department shall credit to the member's account from the appropriate retirement system combined plan 2 and 3 fund the amount determined by the department as necessary to correct the error. [1999 c 223 § 2; 1998 c 341 § 515.]

Additional notes found at www.leg.wa.gov

41.50.150 Retirement benefits based on excess compensation—Employer liable for extra retirement costs.

(1) The employer of any employee whose retirement benefits are based in part on excess compensation, as defined in this section, shall, upon receipt of a billing from the department, pay into the appropriate retirement system the present value at the time of the employee's retirement of the total estimated cost of all present and future benefits from the retirement system attributable to the excess compensation. The state actuary shall determine the estimated cost using the same method and procedure as is used in preparing fiscal note costs for the legislature. However, the director may in the director's discretion decline to bill the employer if the amount due is less than fifty dollars. Accounts unsettled within thirty days of the receipt of the billing shall be assessed an interest penalty of one percent of the amount due for each month or fraction thereof beyond the original thirty-day period.

(2) "Excess compensation," as used in this section, includes the following payments, if used in the calculation of the employee's retirement allowance:

(a) A cash out of unused annual leave in excess of two hundred forty hours of such leave. "Cash out" for purposes of this subsection means:

(i) Any payment in lieu of an accrual of annual leave; or
(ii) Any payment added to salary or wages, concurrent with a reduction of annual leave;

(b) A cash out of any other form of leave;

(c) A payment for, or in lieu of, any personal expense or transportation allowance to the extent that payment qualifies as reportable compensation in the member's retirement system;

(d) The portion of any payment, including overtime payments, that exceeds twice the regular daily or hourly rate of pay; and

(e) Any termination or severance payment.

(3) This section applies to the retirement systems listed in RCW 41.50.030 and to retirements occurring on or after March 15, 1984. Nothing in this section is intended to amend or determine the meaning of any definition in chapter 2.10, 2.12, 41.26, 41.32, 41.40, 41.35, 41.37, or 43.43 RCW or to determine in any manner what payments are includable in the calculation of a retirement allowance under such chapters.

(4) An employer is not relieved of liability under this section because of the death of any person either before or after the billing from the department. [2004 c 242 § 47; 1998 c 341 § 509; 1997 c 221 § 1; 1995 c 244 § 1; 1984 c 184 § 1.]

Effective date—2004 c 242: See RCW 41.37.901.

Intent—Application—1995 c 244 § 1: "The definition of "cash out" added to RCW 41.50.150(2)(a) by this act is a clarification of the legislature's original intent regarding the meaning of the term. The definition of "cash out" applies retroactively to payments made before July 23, 1995." [1995 c 244 § 2.]

Additional notes found at www.leg.wa.gov

41.50.152 Payment of excess compensation—Public notice requirements. (1) Except as limited by subsection (3) of this section, the governing body of an employer under chapter 41.32, 41.35, 41.37, or 41.40 RCW shall comply with the provisions of subsection (2) of this section prior to executing a contract or collective bargaining agreement with members under chapter 41.32, 41.35, 41.37, or 41.40 RCW which provides for:

(a) A cash out of unused annual leave in excess of two hundred forty hours of such leave. "Cash out" for purposes of this subsection means any payment in lieu of an accrual of annual leave or any payment added to regular salary, concurrent with a reduction of annual leave;

(b) A cash out of any other form of leave;

(c) A payment for, or in lieu of, any personal expense or transportation allowance;

(d) The portion of any payment, including overtime payments, that exceeds twice the regular rate of pay; or

(e) Any other termination or severance payment.

(2) Any governing body entering into a contract that includes a compensation provision listed in subsection (1) of this section shall do so only after public notice in compliance with the open public meetings act, chapter 42.30 RCW. This notification requirement may be accomplished as part of the approval process for adopting a contract in whole, and does not require separate or additional open public meetings. At the public meeting, full disclosure shall be made of the nature of the proposed compensation provision, and the employer's estimate of the excess compensation billings under RCW 41.50.150 that the employing entity would have to pay as a result of the proposed compensation provision. The employer shall notify the department of its compliance with this section at the time the department bills the employer under RCW 41.50.150 for the pension impact of compensation provisions listed in subsection (1) of this section that are adopted after July 23, 1995.

(3) The requirements of subsection (2) of this section shall not apply to the adoption of a compensation provision listed in subsection (1) of this section if the compensation would not be includable in calculating benefits under chapter 41.32, 41.35, 41.37, or 41.40 RCW for the employees covered by the compensation provision. [2004 c 242 § 48; 1998 c 341 § 510; 1995 c 387 § 1.]

Effective date—2004 c 242: See RCW 41.37.901.

Additional notes found at www.leg.wa.gov

41.50.155 Erroneous withdrawals of contributions—

Restoration. (1) If a person receives a withdrawal of accumulated contributions from any of the retirement systems listed in RCW 41.50.030 in contravention of the restrictions on withdrawal for the particular system, the member shall no longer be entitled to credit for the period of service represented by the withdrawn contributions. The erroneous withdrawal shall be treated as an authorized withdrawal, subject to all conditions imposed by the member's system for restoration of withdrawn contributions. Failure to restore the contributions within the time permitted by the system shall constitute a waiver by the member of any right to receive a retirement allowance based upon the period of service represented by the withdrawn contributions.

(2) All erroneous withdrawals occurring prior to June 9, 1994, shall be subject to the provisions of this section. The deadline for restoring the prior erroneous withdrawals shall be five years from June 9, 1994, for members who are currently active members of a system. [1994 c 177 § 4.]

Findings—1994 c 177: See note following RCW 41.50.125.

41.50.160 Restoration of withdrawn contributions. The department of retirement systems shall incorporate the

development of individual member accounts receivable into its information systems projects for fiscal years 1993 and 1994, so that by January 1, 1994, members of state retirement systems who are otherwise eligible to restore previously withdrawn contributions have the option to make restoration in a manner determined by the department. [1994 c 197 § 31; 1992 c 195 § 2.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

41.50.165 Establishing, restoring service credit—Conditions. (1) Except for those affected by subsection (4) of this section, a member of a retirement system specified by RCW 41.50.030 or, one previously established by the state but closed to new membership, may, as provided in each retirement system:

(a) Establish allowable membership service not previously credited;

(b) Restore all or a part of that previously credited membership service represented by withdrawn contributions; or

(c) Restore service credit represented by a lump sum payment in lieu of benefits.

(2) Persons who previously have failed to:

(a) Establish service credit for service previously earned;

or

(b) Reestablish service credit by the restoration of withdrawn contributions or repayment of a lump sum payment in lieu of a benefit, may now establish or reestablish such service credit by paying the actuarial value of the resulting increase in their benefit in a manner defined by the department.

(3) Any establishment of service credit for service previously rendered, restoration of service credit destroyed, or repayment of a lump sum received in lieu of benefit must be completed prior to retirement.

(4) Service credit is established for or restored to the period in which the service credit is earned. [1994 c 197 § 2.]

Intent—1994 c 197: "(1) This act removes the time limitations within the state's retirement systems for:

(a) The restoration of service credit represented by employee contributions withdrawn by a member of a state's retirement systems; or

(b) The crediting of certain service that, under the provisions of the system, was not creditable at the time it was performed, such as a probationary period or interrupted military service.

(2) This act expands the current procedures for establishing service credit previously earned, restoring withdrawn contributions, or repaying lump sums received in lieu of a benefit. In so doing, it allows the member of one of the state's retirement systems to obtain additional service credit by paying the value of this added benefit that was previously unavailable." [1994 c 197 § 1.]

Additional notes found at www.leg.wa.gov

41.50.170 Notification of restoration rights. Upon termination for reasons other than retirement, the department shall inform a member withdrawing his or her contributions, and the member shall acknowledge in writing, of the right to restore such contributions upon reestablishment of membership in the respective retirement system and the requirements involved in such restoration. [1994 c 197 § 3.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

[Title 41 RCW—page 326]

41.50.175 Adoption of rules. The department shall adopt rules under chapter 34.05 RCW implementing and administering chapter 197, Laws of 1994. These rules are to include, but are not limited to:

(1) The application and calculation of actuarial value, with the agreement of the state actuary; and

(2) Establishing the minimum partial payment or the minimum units of restored service, or both. [1994 c 197 § 4.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

41.50.200 Subdivision of retirement system funds. In the records of the teachers' retirement system the teachers' retirement system plan 1 fund shall be subdivided into the member reserve, the pension reserve, and other funds as may from time to time be created by the director for the purpose of the internal accounting record. The director may adopt rules creating or deleting funds as he or she deems necessary. [1992 c 212 § 2; 1991 c 35 § 32; 1989 c 273 § 16; 1982 1st ex.s. c 52 § 7; 1969 ex.s. c 150 § 1; 1963 ex.s. c 14 § 2; 1955 c 274 § 2; 1947 c 80 § 3; Rem. Supp. 1947 § 4995-28. Prior: 1941 c 97 § 2, part; 1937 c 221 § 3, part; 1923 c 187 § 5, part; Rem. Supp. 1941 § 4995-3, part. Formerly RCW 41.32.030.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.50.205 Records—Teachers' retirement system annual report. The department shall keep a record of all its proceedings, which shall be open to public inspection. It shall publish annually a report showing the fiscal transactions of the Washington state teachers' retirement system for the preceding school year; the amount of the accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the retirement system. [1991 c 35 § 33; 1969 ex.s. c 150 § 4; 1947 c 80 § 12; Rem. Supp. 1947 § 4995-31. Prior: 1941 c 97 § 2, part; 1937 c 221 § 3, part; Rem. Supp. 1941 § 4995-3, part. Formerly RCW 41.32.120.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.50.210 Medical director. The director shall designate a medical director. If required, other physicians may be employed to report on special cases. The medical director shall arrange for and pass upon all medical examinations required under the provisions of chapter 41.32 RCW, investigate all essential statements and certificates by or on behalf of a member in connection with an application for a disability allowance, and report in writing to the board of trustees the conclusions and recommendations upon all matters under referral. [1992 c 72 § 10; 1991 c 35 § 34; 1947 c 80 § 13; Rem. Supp. 1947 § 4995-32. Prior: 1941 c 97 § 2, part; 1937 c 221 § 3, part; Rem. Supp. 1941 § 4995-3, part. Formerly RCW 41.32.130.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.50.215 Teachers' retirement system funds—Annual interest to be credited. From interest and other earnings on the moneys of the Washington state teachers' retirement system, and except as otherwise provided in

*RCW 41.32.499, at the close of each fiscal year the department shall make an allowance of regular interest on the balance which was on hand at the beginning of the fiscal year in each of the teachers' retirement system funds as they may deem advisable; however, no interest shall be credited to the expense fund. [1992 c 212 § 6; 1991 c 35 § 36; 1973 1st ex.s. c 189 § 7; 1955 c 274 § 5; 1947 c 80 § 19; Rem. Supp. 1947 § 4995-38. Prior: 1941 c 97 § 6, part; 1939 c 86 § 6, part; 1937 c 221 § 7, part; Rem. Supp. 1941 § 4995-7, part. Formerly RCW 41.32.190.]

*Reviser's note: RCW 41.32.499 was repealed by 1995 c 345 § 11.

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.50.220 Trustees, employees not to guarantee loans. No trustee or employee of the department shall become an endorser or surety or an obligor for moneys loaned by the department. [1991 c 35 § 37; 1947 c 80 § 23; Rem. Supp. 1947 § 4995-42. Prior: 1941 c 97 § 6, part; 1939 c 86 § 6, part; 1937 c 221 § 7, part; Rem. Supp. 1941 § 4995-7, part. Formerly RCW 41.32.230.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.50.230 Employer reports to department. On or before a date specified by the department in each month every employer shall file a report with the department on a form provided, stating the name of the employer and with respect to each employee who is a member or who is required to become a member of the Washington state teachers' retirement system: (1) The full name, (2) the earnable compensation paid, (3) the employee's contribution to the retirement system, and (4) other information as the department shall require. [1991 c 35 § 51; 1983 c 56 § 14; 1975-76 2nd ex.s. c 16 § 1. Prior: 1975 1st ex.s. c 275 § 150; 1975 c 43 § 32; 1969 ex.s. c 176 § 96; 1967 c 50 § 4; 1963 ex.s. c 14 § 13; 1947 c 80 § 42; Rem. Supp. 1947 § 4995-61. Formerly RCW 41.32.420.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.50.235 Teachers' retirement system salary deductions. Every officer authorized to issue salary warrants to teachers shall deduct from the salary payments to any member of the Washington state teachers' retirement system plan 1 regularly employed an amount which will result in total deductions of six percent of the amount of earnable compensation paid in any fiscal year. These deductions shall be transmitted and reported to the retirement system as directed by the department. [1991 c 35 § 52; 1967 c 50 § 5; 1963 ex.s. c 14 § 14; 1955 c 274 § 20; 1947 c 80 § 43; Rem. Supp. 1947 § 4995-62. Prior: 1941 c 97 § 5, part; 1939 c 86 § 5, part; 1937 c 221 § 6, part; Rem. Supp. 1941 § 4995-6, part. Formerly RCW 41.32.430.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.50.240 Duties of payroll officer. The person responsible for making up the payroll shall transmit promptly to the department at the end of each and every payroll period a copy of the original payroll voucher or such other payroll report as the department may require showing thereon all

deductions for contributions for the teachers' retirement system made from the earnable compensation of a member of the teachers' retirement system together with warrants or checks covering the total of such deductions. The department shall place such moneys into the proper funds established in this chapter. [1977 ex.s. c 293 § 17. Formerly RCW 41.32.830.]

Additional notes found at www.leg.wa.gov

41.50.255 Payment of legal and medical expenses of retirement systems. The director is authorized to pay from the interest earnings of the trust funds of the public employees' retirement system, the teachers' retirement system, the Washington state patrol retirement system, the Washington judicial retirement system, the judges' retirement system, the school employees' retirement system, the public safety employees' retirement system, or the law enforcement officers' and firefighters' retirement system lawful obligations of the appropriate system for legal expenses and medical expenses which expenses are primarily incurred for the purpose of protecting the appropriate trust fund or are incurred in compliance with statutes governing such funds.

The term "legal expense" includes, but is not limited to, legal services provided through the legal services revolving fund, fees for expert witnesses, travel expenses, fees for court reporters, cost of transcript preparation, and reproduction of documents.

The term "medical costs" includes, but is not limited to, expenses for the medical examination or reexamination of members or retirees, the costs of preparation of medical reports, and fees charged by medical professionals for attendance at discovery proceedings or hearings.

The director may also pay from the interest earnings of the trust funds specified in this section costs incurred in investigating fraud and collecting overpayments, including expenses incurred to review and investigate cases of possible fraud against the trust funds and collection agency fees and other costs incurred in recovering overpayments. Recovered funds must be returned to the appropriate trust funds. [2004 c 242 § 49; 1998 c 341 § 511; 1995 c 281 § 1; 1993 sp.s. c 24 § 916; 1991 c 35 § 73; 1984 c 184 § 7. Formerly RCW 41.40.083.]

Effective date—2004 c 242: See RCW 41.37.901.

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.50.260 Public employees' retirement system funds created. For the purpose of the internal accounting record of the public employees' retirement system and not the segregation of moneys on deposit with the state treasurer there are hereby created the employees' savings fund, the benefit account fund, and such other funds as the director may from time to time create.

(1) The employees' savings fund shall be the fund in which shall be accumulated the contributions from the compensation of public employees' retirement system members. The director shall provide for the maintenance of an individual account for each member of the public employees' retirement system showing the amount of the member's contributions together with interest accumulations thereon. The contributions of a member returned to the former employee upon

the individual's withdrawal from service, or paid in event of the employee's or former employee's death, as provided in chapter 41.40 RCW, shall be paid from the employees' savings fund. The accumulated contributions of a member, upon the commencement of the individual's retirement, shall be transferred from the employees' savings fund to the benefit account fund.

(2) The benefit account fund shall be the fund in which shall be accumulated the reserves for the payment of all public employees' retirement system retirement allowances and death benefits, if any, in respect of any beneficiary. The amounts contributed by all public employees' retirement system employers to provide pension benefits shall be credited to the benefit account fund. The benefit account fund shall be the fund from which shall be paid all public employees' retirement system retirement allowances, or benefits in lieu thereof because of which reserves have been transferred from the employees' savings fund to the benefit account fund. At the time a recipient of a retirement allowance again becomes a member of the public employees' retirement system, the department shall transfer from the benefit account fund to the employees' savings fund and credit to the individual account of such a member a sum equal to the excess, if any, of the individual's account at the date of the member's retirement over any service retirement allowance received since that date. [1992 c 212 § 11; 1991 c 35 § 74; 1982 1st ex.s. c 52 § 18; 1973 1st ex.s. c 190 § 4; 1972 ex.s. c 151 § 2; 1967 c 127 § 2; 1963 c 174 § 7; 1953 c 200 § 4; 1949 c 240 § 6; 1947 c 274 § 11; Rem. Supp. 1949 § 11072-11. Formerly RCW 41.40.100.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.50.265 Public employees' retirement system funds—Report of the state treasurer—Members may receive reports and statements. The state treasurer shall furnish annually to the department a statement of the amount of the funds in the treasurer's custody belonging to the public employees' retirement system. Copies of this annual report shall be available to public employees' retirement system members upon request. The records of the department shall be open to public inspection. Any member of the public employees' retirement system shall be furnished with a statement of the amount to the credit of his or her individual account in the employees' savings fund upon his or her written request, provided that the department shall not be required to answer more than one such request of any member in any one year. [1991 c 35 § 75; 1947 c 274 § 12; Rem. Supp. 1947 § 11072-12. Formerly RCW 41.40.110.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.50.270 Transmittal of total of public employees' retirement system members' deductions. The person responsible for making up the payroll shall transmit promptly to the department at the end of each and every payroll period a copy of the original payroll voucher or any other payroll report as the department may require showing thereon all deductions for the public employees' retirement system made from the compensation earnable of each member, together with warrants or checks covering the total of the deductions. The department after making a record of all receipts shall pay

them to the state treasurer for use according to the provisions of chapter 41.40 RCW. [1991 c 35 § 90; 1977 ex.s. c 295 § 19; 1947 c 274 § 36; Rem. Supp. 1947 § 11072-36. Formerly RCW 41.40.350.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.50.500 Mandatory assignment of retirement benefits—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 41.50.500 through 41.50.650, 41.50.670 through 41.50.720, and 26.09.138.

(1) "Benefits" means periodic retirement payments or a withdrawal of accumulated contributions.

(2) "Disposable benefits" means that part of the benefits of an individual remaining after the deduction from those benefits of any amount required by law to be withheld. The term "required by law to be withheld" does not include any deduction elective to the member.

(3) "Dissolution order" means any judgment, decree, or order of spousal maintenance, property division, or court-approved property settlement incident to a decree of divorce, dissolution, invalidity, or legal separation issued by the superior court of the state of Washington or a judgment, decree, or other order of spousal support issued by a court of competent jurisdiction in another state or country, that has been registered or otherwise made enforceable in this state.

(4) "Mandatory benefits assignment order" means an order issued to the department of retirement systems pursuant to RCW 41.50.570 to withhold and deliver benefits payable to an obligor under chapter 2.10, 2.12, 41.26, 41.32, 41.40, 41.35, 41.37, or 43.43 RCW.

(5) "Obligee" means an ex spouse or spouse to whom a duty of spousal maintenance or property division obligation is owed.

(6) "Obligor" means the spouse or ex spouse owing a duty of spousal maintenance or a property division obligation.

(7) "Periodic retirement payments" means periodic payments of retirement allowances, including but not limited to service retirement allowances, disability retirement allowances, and survivors' allowances. The term does not include a withdrawal of accumulated contributions.

(8) "Property division obligation" means any outstanding court-ordered property division or court-approved property settlement obligation incident to a decree of divorce, dissolution, or legal separation.

(9) "Standard allowance" means a benefit payment option selected under RCW 2.10.146(1)(a), 41.26.460(1)(a), 41.32.785(1)(a), 41.40.188(1)(a), 41.40.660(1), 41.40.845(1)(a), 41.37.170, or 41.35.220 that ceases upon the death of the retiree. Standard allowance also means the benefit allowance provided under RCW 2.10.110, 2.10.130, 43.43.260, 41.26.100, 41.26.130(1)(a), or chapter 2.12 RCW. Standard allowance also means the maximum retirement allowance available under RCW 41.32.530(1) following member withdrawal of accumulated contributions, if any.

(10) "Withdrawal of accumulated contributions" means a lump sum payment to a retirement system member of all or a part of the member's accumulated contributions, including accrued interest, at the request of the member including any lump sum amount paid upon the death of the member. [2004

c 242 § 50; 2000 c 247 § 603; 1998 c 341 § 512; 1991 c 365 § 1; 1987 c 326 § 1.]

Effective date—2004 c 242: See RCW 41.37.901.

Additional notes found at www.leg.wa.gov

41.50.510 Mandatory assignment of retirement benefits—Remedies—Applicability. (1) The remedies provided in RCW 41.50.530 through 41.50.650 and 26.09.138 are in addition to, and not in substitution for, any other remedies provided by law to enforce a dissolution order against an obligor.

(2) The remedies provided in RCW 41.50.530 through 41.50.630 shall be the exclusive remedies enforceable against the department of retirement systems or the retirement systems listed in RCW 41.50.030 to recover spousal maintenance pursuant to a dissolution, divorce, or legal separation order.

(3) RCW 41.50.530 through 41.50.650 and 26.09.138 apply to all dissolution orders incident to a decree of divorce, dissolution, or legal separation whether entered before or after July 1, 1987. [1991 c 365 § 2; 1987 c 326 § 2.]

Additional notes found at www.leg.wa.gov

41.50.520 Mandatory assignment of retirement benefits—Other remedies not limited. Nothing in RCW 41.50.500 through 41.50.650 limits the use of any and all civil and criminal remedies against an obligor to enforce the obligations of a dissolution order. [1987 c 326 § 3.]

41.50.530 Mandatory assignment of retirement benefits—Proceeding to enforce spousal maintenance—Venue—Jurisdiction. (1) A proceeding to enforce a duty of spousal maintenance through a mandatory benefits assignment order may be commenced by an obligee:

(a) By filing a petition for an original action; or

(b) By motion in an existing action or under an existing cause number.

(2) Venue for the action is in the superior court of the county of the state of Washington where the obligee resides or is present, where the obligor resides, or where the prior dissolution order was entered.

(3) The court retains continuing jurisdiction under RCW 41.50.500 through 41.50.650 and 26.09.138 until the obligor has satisfied all duties of spousal maintenance, including arrearages, to the obligee. [1991 c 365 § 3; 1987 c 326 § 4.]

Additional notes found at www.leg.wa.gov

41.50.540 Mandatory assignment of retirement benefits—Notice to obligor. (1) Every court order or decree establishing a spousal maintenance obligation may state that if any such payment is more than fifteen days past due and the total of such past due payments is equal to or greater than one hundred dollars or if the obligor requests a withdrawal of accumulated contributions from the department of retirement systems, the obligee may seek a mandatory benefits assignment order without prior notice to the obligor. Failure to include this provision does not affect the validity of the dissolution order.

(2) If the dissolution order under which the obligor owes the duty of spousal maintenance is not in compliance with subsection (1) of this section or if the obligee cannot show

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that the obligor has approved or received a copy of the court order or decree that complies with subsection (1) of this section, then notice shall be provided to the obligor at least fifteen days before the obligee seeks a mandatory benefits assignment order. The notice shall state that, if a spousal maintenance payment is more than fifteen days past due and the total of such past due payments is equal to or greater than one hundred dollars or if the obligor requests a withdrawal of accumulated contributions from the department of retirement systems, the obligee may seek a mandatory benefits assignment order without further notice to the obligor. Service of the notice shall be by personal service, or by any form of mail requiring a return receipt. The notice requirement under this subsection is not jurisdictional. [1991 c 365 § 4; 1987 c 326 § 5.]

Additional notes found at www.leg.wa.gov

41.50.550 Mandatory assignment of retirement benefits—Withdrawal of accumulated contributions—Notice to obligee—Payment to obligee. (1) An obligee who wishes to be notified by the department of retirement systems if the obligor seeks a withdrawal of accumulated contributions shall submit such a request to the department in writing on a form supplied by the department. The request shall be filed by certified or registered mail and shall include the obligee's address and a copy of the dissolution order requiring the spousal maintenance owed.

(2) The department shall thereafter promptly send notice to the obligee at the address provided in subsection (1) of this section when the obligor applies for a withdrawal of accumulated contributions. The department shall not process the obligor's request for a withdrawal of accumulated contributions sooner than seventy-five days after sending the notice to the obligee.

(3) The department shall pay directly to an obligee who has not obtained a mandatory benefits assignment order all or part of the accumulated contributions if the dissolution order filed with the department pursuant to subsection (1) of this section includes a provision that states:

"At such time as (the obligor) requests a withdrawal of accumulated contributions as defined in RCW 41.50.500, the department of retirement systems shall pay to (the obligee) dollars from such accumulated contributions or . . . percentage of such accumulated contributions (whichever is provided by the court)." [1991 c 365 § 5; 1987 c 326 § 6.]

Additional notes found at www.leg.wa.gov

41.50.560 Mandatory assignment of retirement benefits—Petition for order. (1) A petition or motion seeking a mandatory benefits assignment order in an action under RCW 41.50.530 may be filed by an obligee if the obligor is more than fifteen days past due in spousal maintenance payments and the total of such past due payments is equal to or greater than one hundred dollars or if the obligor requests a withdrawal of accumulated contributions from the department of retirement systems. The petition or motion shall include a sworn statement by the obligee, stating the facts authorizing the issuance of the mandatory benefits assignment order, including:

(a) That the obligor, stating his or her name, residence, and social security number, (i) is more than fifteen days past due in spousal maintenance payments and that the total of such past due payments is equal to or greater than one hundred dollars, or (ii) has requested a withdrawal of accumulated contributions from the department of retirement systems;

(b) A description of the terms of the dissolution order requiring payment of spousal maintenance and the amount, if any, past due;

(c) The name of the public retirement system or systems from which the obligor is currently receiving periodic retirement benefits or from which the obligor has requested a withdrawal of accumulated contributions; and

(d) That notice has been provided to the obligor as required by RCW 41.50.540.

(2) If the court in which a mandatory benefits assignment order is sought does not already have a copy of the dissolution order in the court file, then the obligee shall attach a copy of the dissolution order to the petition or motion seeking the mandatory benefits assignment order. [1991 c 365 § 6; 1987 c 326 § 7.]

Additional notes found at www.leg.wa.gov

41.50.570 Mandatory assignment of retirement benefits—Issuance of order. Upon receipt of a petition or motion seeking a mandatory benefits assignment order that complies with RCW 41.50.560, the court shall issue a mandatory benefits assignment order as provided in RCW 41.50.590, including the information required in RCW 41.50.580 (1)(a) or (2)(a), directed to the department of retirement systems, and commanding the department to answer the order on the forms served with the order that comply with RCW 41.50.610 within twenty days after service of the order upon the department. [1987 c 326 § 8.]

41.50.580 Mandatory assignment of retirement benefits—Order—Contents. (1)(a) The mandatory benefits assignment order issued pursuant to RCW 41.50.570 and directed at periodic retirement benefits shall include:

(i) The maximum amount of current spousal maintenance to be withheld from the obligor's periodic retirement benefits each month;

(ii) The total amount of the arrearage judgments previously entered by the court, if any, together with interest, if any; and

(iii) The maximum amount to be withheld from the obligor's periodic retirement payments each month to satisfy the arrearage judgments specified in (a)(ii) of this subsection.

(b) The total amount to be withheld from the obligor's periodic retirement payments each month pursuant to a mandatory benefits assignment order shall not exceed fifty percent of the disposable benefits of the obligor. If the amounts to be paid toward the arrearage are specified in the assignment order, then the maximum amount to be withheld is the sum of the current maintenance ordered and the amount ordered to be paid toward the arrearage, or fifty percent of the disposable benefits of the obligor, whichever is less.

(c) Fifty percent of the disposable benefits of the obligor are exempt from collection under the assignment order, and may be disbursed by the department to the obligor. The pro-

visions of RCW 6.27.150 do not apply to mandatory benefits assignment orders under this chapter.

(2)(a) A mandatory benefits assignment order issued pursuant to RCW 41.50.570 and directed at a withdrawal of accumulated contributions shall include:

(i) The maximum amount of current spousal maintenance to be withheld from the obligor's accumulated contributions;

(ii) The total amount of the arrearage judgments for spousal maintenance payments entered by the court, if any, together with interest, if any; and

(iii) The amount to be withheld from the obligor's withdrawal of accumulated contributions to satisfy the current maintenance obligation and the arrearage judgments specified in (a)(i) and (ii) of this subsection;

(b) The total amount to be withheld from the obligor's withdrawal of accumulated contributions may be up to one hundred percent of the disposable benefits of the obligor.

(3) If an obligor is subject to two or more mandatory benefits assignment orders on account of different obligees and if the nonexempt portion of the obligor's benefits is not sufficient to respond fully to all the mandatory benefits assignment orders, the department shall apportion the obligor's nonexempt disposable benefits among the various obligees in proportionate shares to the extent permitted by federal law. Any obligee may seek a court order directing the department to reapportion the obligor's nonexempt disposable earnings upon notice to all interested obligees. The order must specifically supersede the terms of previous mandatory benefits assignment orders the terms of which it alters. Notice shall be by personal service, or in a manner provided by the civil rules of superior court or applicable statute. [1991 c 365 § 7; 1987 c 326 § 9.]

Additional notes found at www.leg.wa.gov

41.50.590 Mandatory assignment of retirement benefits—Order—Form. The mandatory benefits assignment order shall be in the following form:

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF

.....
Obligee No.
vs.
MANDATORY
....., BENEFITS ASSIGNMENT
Obligor ORDER

.....
The Department of Retirement Systems
of the State of Washington

THE STATE OF WASHINGTON TO: The Department of Retirement Systems

AND TO:
Obligor

The above-named obligee claims that the above-named obligor is more than fifteen days past due in spousal maintenance payments and that the total amount of such past due payments is equal to or greater than one hundred dollars or

that the obligor has requested a withdrawal of accumulated contributions from the department of retirement systems. The amount of the accrued past due spousal maintenance debt as of this date is dollars. If the obligor is receiving periodic retirement payments from the department, the amount to be withheld from the obligor's benefits to satisfy such accrued spousal maintenance is dollars per month and the amount to be withheld from the obligor's benefits to satisfy current and continuing spousal maintenance is per month. Upon satisfaction of the accrued past due spousal maintenance debt, the department shall withhold only dollars, the amount necessary to satisfy current and continuing spousal maintenance from the obligor's benefits. If the obligor has requested a withdrawal of accumulated contributions from the department, the amount to be withheld from the obligor's benefits to satisfy such accrued spousal maintenance is dollars.

You are hereby commanded to answer this order by filling in the attached form according to the instructions, and you must mail or deliver the original of the answer to the court, one copy to the obligee or obligee's attorney, and one copy to the obligor within twenty days after service of this benefits assignment order upon you.

(1) If you are currently paying periodic retirement payments to the obligor, then you shall do as follows:

- (a) Withhold from the obligor's retirement payments each month the lesser of:
 - (i) The sum of the specified arrearage payment amount plus the specified current spousal maintenance amount; or
 - (ii) Fifty percent of the disposable benefits of the obligor.
- (b) The total amount withheld above is subject to the mandatory benefits assignment order, and all other sums may be disbursed to the obligor.

You shall continue to withhold the ordered amounts from nonexempt benefits of the obligor until notified by a court order that the mandatory benefits assignment order has been modified or terminated. You shall promptly notify the court if and when the obligor is no longer receiving periodic retirement payments from the department of retirement systems.

You shall deliver the withheld benefits to the clerk of the court that issued this mandatory benefits assignment order each month, but the first delivery shall occur no sooner than twenty days after your receipt of this mandatory benefits assignment order.

(2) If you are not currently paying periodic retirement payments to the obligor but the obligor has requested a withdrawal of accumulated contributions, then you shall do as follows:

- (a) Withhold from the obligor's benefits the sum of the specified arrearage payment amount plus the specified interest amount, up to one hundred percent of the disposable benefits of the obligor.
- (b) The total amount withheld above is subject to the mandatory benefits assignment order, and all other sums may be disbursed to the obligor.

You shall mail a copy of this order and a copy of your answer to the obligor at the mailing address in the department's files as soon as is reasonably possible. This mandatory benefits assignment order has priority over any assignment or order of execution, garnishment, attachment, levy, or similar

legal process authorized by Washington law, except for a wage assignment order for child support under chapter 26.18 RCW or order to withhold or deliver under chapter 74.20A RCW.

NOTICE TO OBLIGOR: YOU HAVE A RIGHT TO REQUEST A HEARING IN THE SUPERIOR COURT THAT ISSUED THIS MANDATORY BENEFITS ASSIGNMENT ORDER, TO REQUEST THAT THE COURT QUASH, MODIFY, OR TERMINATE THE MANDATORY BENEFITS ASSIGNMENT ORDER.

DATED THIS day of , 19. . .

.....
 Obligee, Judge/Court Commissioner
 or obligee's attorney

[1991 c 365 § 8; 1987 c 326 § 10.]

Additional notes found at www.leg.wa.gov

41.50.600 Mandatory assignment of retirement benefits—Duties of department. (1) The director or the director's designee shall answer an order by sworn affidavit within twenty days after the date of service. The answer shall state whether the obligor receives periodic payments from the department of retirement systems, whether the obligor has requested a withdrawal of accumulated contributions from the department, whether the department will honor the mandatory benefits assignment order and if not, the reasons why, and whether there are other current court or administrative orders on file with the department directing the department to withhold all or a portion of the obligor's benefits.

(2)(a) If any periodic retirement payments are currently payable to the obligor, the funds subject to the mandatory benefits assignment order shall be withheld from the next periodic retirement payment due twenty days or more after receipt of the mandatory benefits assignment order. The withheld amount shall be delivered to the clerk of the court that issued the mandatory benefits assignment order each month, but the first delivery shall occur no sooner than twenty days after receipt of the mandatory benefits assignment order.

(b) The department shall continue to withhold the ordered amount from nonexempt benefits of the obligor until notified by the court that the mandatory benefits assignment order has been modified or terminated. If the department is initially unable to comply, or able to comply only partially, with the withholding obligation, the court's order shall be interpreted to require the department to comply to the greatest extent possible at the earliest possible date. The department shall notify the court of changes in withholding amounts and the reason for the change. When the obligor is no longer eligible to receive funds from one or more public retirement systems the department shall promptly notify the court.

(3)(a) If no periodic retirement payments are currently payable to the obligor but the obligor has requested a withdrawal of accumulated contributions, the funds subject to the mandatory benefits assignment order shall be withheld from the withdrawal payment. The withheld amount shall be delivered to the clerk of the court that issued the mandatory benefits assignment order.

(b) If the department is unable to comply fully with the withholding obligation, the court's order shall be interpreted to require the department to comply to the greatest extent possible.

(4) The department may deduct a processing fee from the remainder of the obligor's funds after withholding under the mandatory benefits assignment order, unless the remainder is exempt under RCW 41.50.580. The processing fee may not exceed (a) twenty-five dollars for the first disbursement made by the department to the superior court clerk; and (b) six dollars for each subsequent disbursement to the clerk. Funds collected pursuant to this subsection shall be deposited in the department of retirement systems expense fund.

(5) A court order for spousal maintenance governed by RCW 41.50.500 through 41.50.650 or 26.09.138 shall have priority over any other assignment or order of execution, garnishment, attachment, levy, or similar legal process authorized under Washington law, except for a mandatory wage assignment for child support under chapter 26.18 RCW, or an order to withhold and deliver under chapter 74.20A RCW.

(6) If the department, without good cause, fails to withhold funds as required by a mandatory benefits assignment order issued under RCW 41.50.570, the department may be held liable to the obligee for any amounts wrongfully disbursed to the obligor in violation of the mandatory benefits assignment order. However, the department shall under no circumstances be held liable for failing to withhold funds from a withdrawal of accumulated contributions unless the mandatory benefits assignment order was properly served on the department at least thirty days before the department made the withdrawal payment to the obligor. If the department is held liable to an obligee for failing to withhold funds as required by a mandatory benefits assignment order, the department may recover such amounts paid to an obligee by thereafter either withholding such amounts from the available nonexempt benefits of the obligor or filing a legal action against the obligor.

(7) If the department complies with a court order pursuant to RCW 41.50.500 through 41.50.650, neither the department, its officers, its employees, nor any of the retirement systems listed in RCW 41.50.030 may be liable to the obligor or an obligee for wrongful withholding.

(8) The department may combine amounts withheld from various obligors into a single payment to the superior court clerk, if the payment includes a listing of the amounts attributable to each obligor and other information as required by the clerk.

(9) The department shall mail to the obligor at the obligor's last known mailing address appearing in the department's files copies of the mandatory benefits assignment order and the department's answer within twenty days after receiving the mandatory benefits assignment order.

(10) The department shall not consider any withholding allowance that is elective to the employee to be a mandatory deduction for purposes of calculating the member's disposable benefits subject to a mandatory benefits assignment order. The department shall withhold elective withholdings as elected by the employee after deducting from the benefit the amount owing to an obligee pursuant to a mandatory benefits assignment order. [1991 c 365 § 9; 1987 c 326 § 11.]

Additional notes found at www.leg.wa.gov

41.50.610 Mandatory assignment of retirement benefits—Order—Answer—Form. The answer of the department shall be made on forms, served on the director with the mandatory benefits assignment order, substantially as follows:

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON IN AND FOR THE
COUNTY OF

..... No.

Obligee
vs.
.....

ANSWER TO
MANDATORY BENEFITS
ASSIGNMENT ORDER

.....
Department of Retirement Systems of
the State of Washington

1. At the time of the service of the mandatory benefits assignment order on the department, was the above-named obligor receiving periodic retirement payments from the department of retirement systems?

Yes No (check one).

2. At the time of the service of the mandatory benefits assignment order on the department, had the above-named obligor requested a withdrawal of accumulated contributions from the department?

Yes No (check one).

3. Are there any other court or administrative orders on file with the department currently in effect directing the department to withhold all or a portion of the obligor's benefits?

Yes No (check one).

4. If the answer to question one or two is yes and the department cannot comply fully with the mandatory benefits assignment order, provide an explanation.

I declare under the laws of the state of Washington that the foregoing is true and correct to the best of my knowledge.

.....
Signature of director Date and place

or

.....
Signature of person Place
answering for director

.....
Connection with director

[1987 c 326 § 12.]

41.50.620 Mandatory assignment of retirement benefits—Order—Service. (1) Service of the mandatory benefits assignment order on the department is invalid unless it is served with four answer forms in conformance with RCW 41.50.610, together with stamped envelopes addressed to, respectively, the clerk of the court where the order was issued, the obligee's attorney or the obligee, and the obligor at the last mailing address known to the obligee. The obligee shall also include an extra copy of the mandatory benefits

assignment order for the department to mail to the obligor. Service on the department shall be in person or by any form of mail requiring a return receipt.

(2) On or before the date of service of the mandatory benefits assignment order on the department, the obligee shall mail or cause to be mailed by certified or registered mail a copy of the mandatory benefits assignment order to the obligor at the obligor's last mailing address known to the obligee; or, in the alternative, a copy of the mandatory benefits assignment order shall be served on the obligor in the same manner as a summons in a civil action on, before, or within two days after the date of service of the order on the department. This requirement is not jurisdictional, but if the copy is not mailed or served as this subsection requires, or if any irregularity appears with respect to the mailing or service, the superior court, in its discretion, may quash the mandatory benefits assignment order, upon motion of the obligor promptly made and supported by an affidavit showing that the obligor has been prejudiced due to the failure to mail or serve the copy. [1991 c 365 § 10; 1987 c 326 § 13.]

Additional notes found at www.leg.wa.gov

41.50.630 Mandatory assignment of retirement benefits—Hearing to quash, modify, or terminate order. In a hearing to quash, modify, or terminate the mandatory benefits assignment order, the court may grant relief only upon a showing that the mandatory benefits assignment order causes extreme hardship or substantial injustice. Satisfaction by the obligor of all past due payments subsequent to the issuance of the mandatory benefits assignment order is not grounds to quash, modify, or terminate the mandatory benefits assignment order. If a mandatory benefits assignment order has been in operation for twelve consecutive months and the obligor's spousal maintenance is current, the court may terminate the order upon motion of the obligor unless the obligee can show good cause as to why the mandatory benefits assignment order should remain in effect. [1991 c 365 § 11; 1987 c 326 § 14.]

Additional notes found at www.leg.wa.gov

41.50.640 Mandatory assignment of retirement benefits—Award of costs to prevailing party. In any action to enforce a dissolution order by means of a mandatory benefits assignment order pursuant to RCW 41.50.530 through 41.50.630 and 26.09.138, the court may award costs to the prevailing party, including an award for reasonable attorneys' fees consistent with RCW 26.09.140. An obligor shall not be considered a prevailing party under this section unless the obligee has acted in bad faith in connection with the proceeding in question. This section does not authorize an award of attorneys' fees against the department of retirement systems or any of the retirement systems listed in RCW 41.50.030. [1987 c 326 § 15.]

41.50.650 Payments pursuant to court orders entered under prior law. (1) Notwithstanding RCW 2.10.180(1), 2.12.090(1), *41.26.180(1), 41.32.052(1), 41.40.052(1), and 43.43.310(1) as those sections existed between July 1, 1987, and July 28, 1991, the department of retirement systems shall make direct payments of benefits to a spouse or ex spouse pursuant to court orders or decrees

entered before July 1, 1987, that complied with all the requirements in RCW 2.10.180(1), 2.12.090(2), *41.26.180(3), 41.32.052(3), 41.40.052(3), 43.43.310(2), and **41.04.310 through 41.04.330, as such requirements existed before July 1, 1987. The department shall be responsible for making direct payments only if the decree or court order expressly orders the department to make direct payments to the spouse or ex spouse and specifies a sum certain or percentage amount of the benefit payments to be made to the spouse or ex spouse.

(2) The department of retirement systems shall notify a spouse or ex spouse who, pursuant to a mandatory benefits assignment order entered between July 1, 1987, and July 28, 1991, is receiving benefits in satisfaction of a court-ordered property division, that he or she is entitled to receive direct payments of a court-ordered property division pursuant to RCW 41.50.670 if the dissolution order fully complies or is modified to fully comply with the requirements of RCW 41.50.670 through 41.50.720 and, as applicable, RCW 2.10.180, 2.12.090, *41.26.180, 41.32.052, 41.40.052, 43.43.310, and 26.09.138. The department shall send notice in writing as soon as reasonably feasible but no later than ninety days after July 28, 1991. The department shall also send notice to the obligor member spouse. [1991 c 365 § 12; 1987 c 326 § 16.]

Reviser's note: *(1) RCW 41.26.180 was recodified as RCW 41.26.053 pursuant to 1994 c 298 § 5.

***(2) RCW 41.04.310 through 41.04.330 were repealed by 1987 c 326 § 21, effective July 1, 1987.

Additional notes found at www.leg.wa.gov

41.50.660 Mandatory assignment of retirement benefits—Rules. The director shall adopt such rules under RCW 41.50.050 as the director may find necessary to carry out the purposes of RCW 41.50.500 through 41.50.650 and to avoid conflicts with any applicable federal or state laws. [1987 c 326 § 27.]

41.50.670 Property division obligations—Direct payments pursuant to court order. (1) Nothing in this chapter regarding mandatory assignment of benefits to enforce a spousal maintenance obligation shall abridge the right of an obligee to direct payments of retirement benefits to satisfy a property division obligation ordered pursuant to a court decree of dissolution or legal separation or any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation as provided in RCW 2.10.180, 2.12.090, 41.26.053, 41.26.162, 41.32.052, 41.35.100, 41.34.070(4), 41.40.052, 43.43.310, 41.37.090, or 26.09.138, as those statutes existed before July 1, 1987, and as those statutes exist on and after July 28, 1991. The department shall pay benefits under this chapter in a lump sum or as a portion of periodic retirement payments as expressly provided by the dissolution order. A dissolution order may not order the department to pay a periodic retirement payment or lump sum unless that payment is specifically authorized under the provisions of chapter 2.10, 2.12, 41.26, 41.32, 41.35, 41.34, 41.40, 41.37, or 43.43 RCW, as applicable.

(2) The department shall pay directly to an obligee the amount of periodic retirement payments or lump sum payment, as appropriate, specified in the dissolution order if the

dissolution order filed with the department pursuant to subsection (1) of this section includes a provision that states in the following form:

If (the obligor) receives periodic retirement payments as defined in RCW 41.50.500, the department of retirement systems shall pay to (the obligee) dollars from such payments or . . . percent of such payments. If the obligor's debt is expressed as a percentage of his or her periodic retirement payment and the obligee does not have a survivorship interest in the obligor's benefit, the amount received by the obligee shall be the percentage of the periodic retirement payment that the obligor would have received had he or she selected a standard allowance.

If (the obligor) requests or has requested a withdrawal of accumulated contributions as defined in RCW 41.50.500, or becomes eligible for a lump sum death benefit, the department of retirement systems shall pay to (the obligee) dollars plus interest at the rate paid by the department of retirement systems on member contributions. Such interest to accrue from the date of this order's entry with the court of record.

(3) This section does not require a member to select a standard allowance upon retirement nor does it require the department to recalculate the amount of a retiree's periodic retirement payment based on a change in survivor option.

(4) A court order under this section may not order the department to pay more than seventy-five percent of an obligor's periodic retirement payment to an obligee.

(5) Persons whose court decrees were entered between July 1, 1987, and July 28, 1991, shall also be entitled to receive direct payments of retirement benefits to satisfy court-ordered property divisions if the dissolution orders comply or are modified to comply with this section and RCW 41.50.680 through 41.50.720 and, as applicable, RCW 2.10.180, 2.12.090, 41.26.053, 41.32.052, 41.35.100, 41.34.070, 41.40.052, 43.43.310, 41.37.090, and 26.09.138.

(6) The obligee must file a copy of the dissolution order with the department within ninety days of that order's entry with the court of record.

(7) A division of benefits pursuant to a dissolution order under this section shall be based upon the obligor's gross benefit prior to any deductions. If the department is required to withhold a portion of the member's benefit pursuant to 26 U.S.C. Sec. 3402 and the sum of that amount plus the amount owed to the obligee exceeds the total benefit, the department shall satisfy the withholding requirements under 26 U.S.C. Sec. 3402 and then pay the remainder to the obligee. The provisions of this subsection do not apply to amounts withheld pursuant to 26 U.S.C. Sec. 3402(i). [2004 c 242 § 51; 2002 c 158 § 5; 1998 c 341 § 513; 1996 c 39 § 18; 1991 c 365 § 13.]

Effective date—2004 c 242: See RCW 41.37.901.

Additional notes found at www.leg.wa.gov

41.50.680 Property division obligations—Processing fee. The department may deduct a processing fee for administering direct payments under RCW 41.50.670 according to the dissolution order. The fee may not exceed (1) seventy-five dollars or the actual average administrative costs, whichever is less, for the first disbursement made by the department; and (2) six dollars or the actual average administrative costs, whichever is less for subsequent disbursements. The

department shall deduct the fee in equal dollar amounts from the obligee's and obligor's payments. The funds collected pursuant to this section shall be deposited in the department of retirement systems expense account. [1991 c 365 § 14.]

Additional notes found at www.leg.wa.gov

41.50.690 Property division obligations—Obligee entitled to statement of obligor's retirement benefits—

When. Unless otherwise prohibited by federal law, following both the initial and final postretirement audit of an obligor's retirement benefit, the department shall provide an obligee entitled to direct payment of retirement benefits pursuant to a dissolution order under RCW 41.50.670 with a statement of monthly retirement benefit allowance to be paid to the obligor, and other retirement benefit information available to the obligor including the average final compensation, total years of service, retirement date, the amount of the employee contributions made prior to implementation of employer pickup under RCW 41.04.445 and 41.04.450, and savings and interest. [1991 c 365 § 15.]

Additional notes found at www.leg.wa.gov

41.50.700 Property division obligations—Cessation upon death of obligee or obligor—Payment treated as deduction from member's periodic retirement payment.

(1) Except under subsection (3) of this section and RCW 41.26.460(5), 41.32.530(5), 41.32.785(5), 41.32.851(4), 41.35.220(4), 41.40.188(5), 41.40.660(5), 41.40.845(4), 43.43.271(4), and 41.34.080, the department's obligation to provide direct payment of a property division obligation to an obligee under RCW 41.50.670 shall cease upon the death of the obligee or upon the death of the obligor, whichever comes first. However, if an obligor dies and is eligible for a lump sum death benefit, the department shall be obligated to provide direct payment to the obligee of all or a portion of the withdrawal of accumulated contributions pursuant to a court order that complies with RCW 41.50.670.

(2) The direct payment of a property division obligation to an obligee under RCW 41.50.670 shall be paid as a deduction from the member's periodic retirement payment. An obligee may not direct the department to withhold any funds from such payment.

(3) The department's obligation to provide direct payment to a nonmember ex spouse from a preretirement divorce meeting the criteria of RCW *41.26.162(2) or 43.43.270(2) may continue for the life of the member's surviving spouse qualifying for benefits under RCW 41.26.160, 41.26.161, or 43.43.270(2). Upon the death of the member's surviving spouse qualifying for benefits under RCW 41.26.160, 41.26.161, or 43.43.270(2), the department's obligation under this subsection shall cease. The department's obligation to provide direct payment to a nonmember ex spouse qualifying for a continued split benefit payment under *RCW 41.26.162(3) shall continue for the life of that nonmember ex spouse. [2003 c 294 § 12; 2002 c 158 § 6; 1991 c 365 § 16.]

*Reviser's note: RCW 41.26.162 was amended by 2005 c 62 § 3, deleting subsections (2) and (3).

Additional notes found at www.leg.wa.gov

41.50.710 Property division obligations—Remedies exclusive—Payment pursuant to court order defense

against claims. (1) The remedies provided in RCW 41.50.670 through 41.50.720 are the exclusive remedies enforceable against the department or the retirement systems listed in RCW 41.50.030 for the direct payment of retirement benefits to satisfy a property division obligation pursuant to a dissolution order. The department shall not be required to make payments to an obligee of benefits accruing prior to (a) thirty calendar days following service of the dissolution order on the department; or (b) benefit payments restrained under RCW 41.50.720.

(2) Whenever the department of retirement systems makes direct payments of property division to a spouse or ex spouse under RCW 41.50.670 to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation, it shall be a sufficient answer to any claim of a beneficiary against the department for the department to show that the payments were made pursuant to court decree. [1991 c 365 § 17.]

Additional notes found at www.leg.wa.gov

41.50.720 Payment of benefits—Restraining orders.

A party to a dissolution proceeding may file a motion with the court requesting the court to enter an order restraining the department from paying any benefits to a member until further order of the court. The department shall not initiate payment of benefits to a member from the time a restraining order is served on the department until the court enters a further order disposing of the benefits. [1991 c 365 § 25.]

Additional notes found at www.leg.wa.gov

41.50.730 Retirement or termination agreement payments—Effect on pension benefits calculation. Any payment made by an employer to a member of any retirement system enumerated in RCW 41.50.030 based on either an agreement of the employee to terminate or retire; or notification to the employer of intent to retire; shall affect retirement as follows:

(1) If the agreement does not require the employee to perform additional service, the payment shall not be used in any way to calculate the pension benefit.

(2) If the agreement requires additional service and results in payment at the same or a lower rate than that paid for the same or similar service by other employees it may be included in the pension benefit calculation but shall be deemed excess compensation and is billable to the employer as provided in RCW 41.50.150.

(3) If the agreement requires additional service and results in payment at a rate higher than that paid for the same or similar service by other employees, that portion of the payment which equals the payment for the same or similar service shall be treated as described in subsection (2) of this section, and the balance of the payment shall be treated as described in subsection (1) of this section. [1993 c 270 § 1.]

41.50.740 Retirement or termination agreement payments—Opportunity to change payment options. Members of the teachers' retirement system who retired prior to January 1, 1993, from service with a community college district whose reported earnable compensation included pay-

ments made pursuant to an agreement to terminate or retire, or to provide notice of intent to retire, and whose retirement allowance has been reduced under RCW 41.50.150 or is reduced after July 25, 1993, under RCW 41.50.730, shall have an opportunity to change the retirement allowance payment option selected by the member under RCW 41.32.530. Any request for a change shall be made in writing to the department no later than October 31, 1993, and shall apply prospectively only. [1993 c 270 § 2.]

41.50.750 Retirement or termination agreement payments—Overpayments not required to be repaid. (1)

Retirees whose reported earnable compensation included payments made pursuant to an agreement to terminate or retire, or to provide notice of intent to retire, shall not be required to repay to the trust funds any overpayments resulting from the employer misreporting, subject to the conditions provided in subsection (2) of this section. The retirees' allowances shall be prospectively adjusted to reflect the benefits to which the retirees are correctly entitled.

(2) Subsection (1) of this section shall apply only to members of the teachers' retirement system who retired prior to January 1, 1993, from service with a community college district.

(3) Any retirees under subsection (2) of this section who, since January 1, 1990, have had their retirement allowances reduced under RCW 41.50.130(1)(b) because of the inclusion of retirement agreement payments in calculating their allowances, shall have their allowances adjusted to reflect the benefits to which the retirees are correctly entitled, but without a reduction to recoup prior overpayments. The retirees shall be reimbursed by the retirement system for the cumulative amount of the reduction in the retirement allowance that has occurred since January 1, 1990, to recoup prior overpayments.

(4) Any retirees covered by subsection (2) of this section who, after January 1, 1990, repaid a previous overpayment in a lump sum under RCW 41.50.130(1)(b) because of the inclusion of retirement agreement payments in calculating their allowances, shall be reimbursed by the retirement system for the amount of the lump sum repayment. [1993 c 270 § 3.]

41.50.760 Cost-of-living adjustments—Alternative calculation—Election.

The department of retirement systems may continue to pay cost-of-living adjustments consistent with the provisions of the statutes repealed by section 11, chapter 345, Laws of 1995, in lieu of the benefits provided by RCW 41.32.489, 41.32.4872, 41.40.197, and 41.40.1986, if the department determines that: (1) A member earned service credit under chapter 41.40 or 41.32 RCW on or after May 8, 1989; and (2) a retiree would receive greater increases in the next ten years under the statutes repealed by section 11, chapter 345, Laws of 1995 than under the provisions of RCW 41.32.489, 41.32.4872, 41.40.197, and 41.40.1986; and (3) the retiree does not elect the benefits provided by chapter 345, Laws of 1995 over the benefits provided under the statutes repealed by section 11, chapter 345, Laws of 1995. The election must be made in a manner prescribed by the department. [1995 c 345 § 13.]

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.50.770 Deferred compensation plans. (1) "Employee" as used in this section and RCW 41.50.780 includes all full-time, part-time, and career seasonal employees of the state, a county, a municipality, or other political subdivision of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of the government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and of the superior and district courts; and members of the state legislature or of the legislative authority of any county, city, or town.

(2) The state, through the department, and any county, municipality, or other political subdivision of the state acting through its principal supervising official or governing body is authorized to contract with an employee to defer a portion of that employee's income, which deferred portion shall in no event exceed the amount allowable under 26 U.S.C. Sec. 457, and deposit or invest such deferred portion in a credit union, savings and loan association, bank, or mutual savings bank or purchase life insurance, shares of an investment company, individual securities, or fixed and/or variable annuity contracts from any insurance company or any investment company licensed to contract business in this state.

(3) Employees participating in the state deferred compensation plan administered by the department shall self-direct the investment of the deferred portion of their income through the selection of investment options as set forth in subsection (4) of this section.

(4) The department can provide such plans as it deems are in the interests of state employees. In addition to the types of investments described in this section, the state investment board, with respect to the state deferred compensation plan, shall invest the deferred portion of an employee's income, without limitation as to amount, in accordance with RCW 43.84.150, 43.33A.140, and 41.50.780, and pursuant to investment policy established by the state investment board for the state deferred compensation plans. The state investment board, after consultation with the director regarding any recommendations made pursuant to RCW 41.50.088(2), shall provide a set of options for participants to choose from for investment of the deferred portion of their income. Any income deferred under such a plan shall continue to be included as regular compensation, for the purpose of computing the state or local retirement and pension benefits earned by any employee.

(5) Coverage of an employee under a deferred compensation plan under this section shall not render such employee ineligible for simultaneous membership and participation in any pension system for public employees. [2014 c 172 § 1; 2010 1st sp.s. c 7 § 29; 1998 c 116 § 11; 1995 c 239 § 314.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.50.780 Deferred compensation principal and administrative accounts created—Participation in

[Title 41 RCW—page 336]

deferred compensation plans—Department's duties. (1) The deferred compensation principal account is hereby created in the state treasury.

(2) The amount of compensation deferred by employees under agreements entered into under the authority contained in RCW 41.50.770 shall be paid into the deferred compensation principal account and shall be sufficient to cover costs of administration and staffing in addition to such other amounts as determined by the department. The deferred compensation principal account shall be used to carry out the purposes of RCW 41.50.770. All eligible state employees shall be given the opportunity to participate in agreements entered into by the department under RCW 41.50.770. State agencies shall cooperate with the department in providing employees with the opportunity to participate.

(3) Any county, municipality, or other subdivision of the state may elect to participate in any agreements entered into by the department under RCW 41.50.770, including the making of payments therefrom to the employees participating in a deferred compensation plan upon their separation from state or other qualifying service. Accordingly, the deferred compensation principal account shall be considered to be a public pension or retirement fund within the meaning of Article XXIX, section 1 of the state Constitution, for the purpose of determining eligible investments and deposits of the moneys therein.

(4) All moneys in the state deferred compensation principal account and the state deferred compensation administrative account, all property and rights purchased therewith, and all income attributable thereto, shall be held in trust by the state investment board, as set forth under RCW 43.33A.030, for the exclusive benefit of the state deferred compensation plan's participants and their beneficiaries. Neither the participant, nor the participant's beneficiary or beneficiaries, nor any other designee, has any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payments under the plan. These payments and right thereto are nonassignable and nontransferable. Unpaid accumulated deferrals are not subject to attachment, garnishment, or execution and are not transferable by operation of law in event of bankruptcy or insolvency, except to the extent otherwise required by law.

(5) The state investment board has the full power to invest moneys in the state deferred compensation principal account and the state deferred compensation administrative account in accordance with RCW 43.84.150, 43.33A.140, and 41.50.770, and cumulative investment directions received pursuant to RCW 41.50.770. All investment and operating costs of the state investment board associated with the investment of the deferred compensation plan assets shall be paid pursuant to RCW 43.33A.160 and 43.84.160. With the exception of these expenses, one hundred percent of all earnings from these investments shall accrue directly to the deferred compensation principal account.

(6)(a) No state board or commission, agency, or any officer, employee, or member thereof is liable for any loss or deficiency resulting from participant investments selected pursuant to RCW 41.50.770(3).

(b) Neither the department, nor the director or any employee, nor the state investment board, nor any officer, employee, or member thereof is liable for any loss or defi-

ciency resulting from reasonable efforts to implement investment directions pursuant to RCW 41.50.770(3).

(7) The deferred compensation administrative account is hereby created in the state treasury. All expenses of the department pertaining to the deferred compensation plan including staffing and administrative expenses shall be paid out of the deferred compensation administrative account. Any excess balances credited to this account over administrative expenses disbursed from this account shall be transferred to the deferred compensation principal account at such time and in such amounts as may be determined by the department with the approval of the office of financial management. Any deficiency in the deferred compensation administrative account caused by an excess of administrative expenses disbursed from this account shall be transferred to this account from the deferred compensation principal account.

(8)(a)(i) The department shall keep or cause to be kept full and adequate accounts and records of the assets of each individual participant, obligations, transactions, and affairs of any deferred compensation plans created under RCW 41.50.770 and this section. The department shall account for and report on the investment of state deferred compensation plan assets or may enter into an agreement with the state investment board for such accounting and reporting.

(ii) The department's duties related to individual participant accounts include conducting the activities of trade instruction, settlement activities, and direction of cash movement and related wire transfers with the custodian bank and outside investment firms.

(iii) The department has sole responsibility for contracting with any recordkeepers for individual participant accounts and shall manage the performance of recordkeepers under those contracts.

(b)(i) The department's duties under (a)(ii) of this subsection do not limit the authority of the state investment board to conduct its responsibilities for asset management and balancing of the deferred compensation funds.

(ii) The state investment board has sole responsibility for contracting with outside investment firms to provide investment management for the deferred compensation funds and shall manage the performance of investment managers under those contracts.

(c) The state treasurer shall designate and define the terms of engagement for the custodial banks.

(9) The department may adopt rules necessary to carry out its responsibilities under RCW 41.50.770 and this section. [2010 1st sp.s. c 7 § 30; 2008 c 229 § 12; 2001 c 181 § 2. Prior: 1998 c 245 § 42; 1998 c 116 § 12; 1995 c 239 § 315.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Effective date—2008 c 229: See note following RCW 41.05.295.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.50.790 Survivor benefits—Dissolution orders. (1)

The department shall designate an obligee as a survivor beneficiary of a member under RCW 2.10.146, 41.26.460, 41.32.530, 41.32.785, 41.32.851, 41.35.220, 41.40.188, 41.40.660, 41.37.170, or 41.40.845 if the department has been served by registered or certified mail with a dissolution

order as defined in RCW 41.50.500 at least thirty days prior to the member's retirement. The department's duty to comply with the dissolution order arises only if the order contains a provision that states in substantially the following form:

When (the obligor) applies for retirement the department shall designate (the obligee) as survivor beneficiary with a survivor benefit.

The survivor benefit designated in the dissolution order must be consistent with the survivor benefit options authorized by statute or administrative rule.

(2) The obligee's entitlement to a survivor benefit pursuant to a dissolution order filed with the department in compliance with subsection (1) of this section shall cease upon the death of the obligee.

(3)(a) A subsequent dissolution order may order the department to divide a survivor benefit between a survivor beneficiary and an alternate payee. In order to divide a survivor benefit between more than one payee, the dissolution order must:

(i) Be ordered by a court of competent jurisdiction following notice to the survivor beneficiary;

(ii) Contain a provision that complies with subsection (1) of this section designating the survivor beneficiary;

(iii) Contain a provision clearly identifying the alternate payee or payees; and

(iv) Specify the proportional division of the benefit between the survivor beneficiary and the alternate payee or payees.

(b) The department will calculate actuarial adjustment for the court-ordered survivor benefit based upon the life of the survivor beneficiary.

(c) If the survivor beneficiary dies, the department shall terminate the benefit. If the alternate payee predeceases the survivor beneficiary, all entitlement of the alternate payee to a benefit ceases and the entire benefit will revert to the survivor beneficiary.

(d) For purposes of this section, "survivor beneficiary" means:

(i) The obligee designated in the provision of dissolution filed in compliance with subsection (1) of this section; or

(ii) In the event of more than one dissolution order, the obligee named in the first decree of dissolution received by the department.

(e) For purposes of this section, "alternate payee" means a person, other than the survivor beneficiary, who is granted a percentage of a survivor benefit pursuant to a dissolution order.

(4) The department shall under no circumstances be held liable for not designating an obligee as a survivor beneficiary under subsection (1) of this section if the dissolution order or amendment thereto is not served on the department by registered or certified mail at least thirty days prior to the member's retirement.

(5) If a dissolution order directing designation of a survivor beneficiary has been previously filed with the department in compliance with this section, no additional obligation shall arise on the part of the department upon filing of a subsequent dissolution order unless the subsequent dissolution order:

(a) Specifically amends or supersedes the dissolution order already on file with the department; and

(b) Is filed with the department by registered or certified mail at least thirty days prior to the member's retirement.

(6) The department shall designate a court-ordered survivor beneficiary pursuant to a dissolution order filed with the department before June 6, 1996, only if the order:

(a) Specifically directs the member or department to make such selection;

(b) Specifies the survivor option to be selected; and

(c) The member retires after June 6, 1996. [2004 c 242 § 52; 2002 c 26 § 8; 1998 c 341 § 514; 1996 c 175 § 1.]

Effective date—2004 c 242: See RCW 41.37.901.

Additional notes found at www.leg.wa.gov

41.50.800 Apportionment of budgeted funds of affected agencies. If apportionments of budgeted funds are required because of the transfers herein authorized, the director of financial management shall certify such apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustment in funds and appropriation accounts and equipment records in accordance with such certification. [1979 c 151 § 64; 1975-'76 2nd ex.s. c 105 § 13.]

41.50.801 Continuation of rules, pending business, contracts, investments, etc. On the effective date of transfer as provided in RCW 41.50.030, all rules and regulations, and all pending business before any of the retirement boards whose powers, duties, and functions are transferred to the department by this chapter shall be continued and acted upon by the department.

All existing contracts and obligations pertaining to the functions herein transferred shall remain in full force and effect, and shall be performed by the department. None of the transfers directed by this chapter shall affect the validity of any act performed by a retirement board or by any official or employee thereof prior to the effective date of transfer as provided in RCW 41.50.030.

None of the transfers involving investment of funds by any of the retirement boards shall affect the validity of any act performed by such boards or by any official or employee thereof prior to the effective date of transfer as provided in RCW 41.50.030. [1975-'76 2nd ex.s. c 105 § 14.]

41.50.802 Transfer of reports, documents, etc., property, funds, assets, appropriations, etc. All reports, documents, surveys, books, records, files, papers, or other writings relating to the administration of the powers, duties, and functions transferred by this chapter shall be made available to the department and to the state actuary.

All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed in carrying out the powers, duties, and functions transferred by this chapter shall be made available to the department.

All funds, credits, or other assets held in connection with powers, duties, and functions transferred by this chapter shall be assigned to the department.

Any appropriations made to any committee, division, board, or any other state agency for the purpose of carrying out the powers, duties, and functions transferred by this chapter shall, in the manner prescribed by the director of financial management, be transferred and credited to the department

for the purpose of carrying out such transferred powers, duties, and functions. [1979 c 151 § 65; 1975-'76 2nd ex.s. c 105 § 15.]

41.50.803 Savings. Nothing in this chapter nor in the amendment of RCW 43.17.010, 43.17.020, or *43.33.070 shall be construed to affect any existing rights acquired under RCW 43.17.010, 43.17.020, or *43.33.070 except as to the governmental agencies referred to and their officials and employees, nor as affecting any actions, activities, or proceedings validated thereunder, nor as affecting any civil or criminal proceedings instituted thereunder, nor any rule, regulation, or order promulgated thereunder, nor any administrative action taken thereunder; and neither the abolition of any agency or division thereof nor any transfer of powers, duties, and functions as provided in this chapter shall affect the validity of any act performed by such agency or division thereof or any officer thereof prior to the effective date of transfer as provided in RCW 41.50.030. [1975-'76 2nd ex.s. c 105 § 16.]

*Reviser's note: RCW 43.33.070 was repealed by 1981 c 3 § 48, effective July 1, 1981.

41.50.810 Blind mailings to retirees—Restrictions.

(1) Any organization that exclusively provides representation or services to retired members of the Washington state retirement systems and has membership dues deducted through the department of retirement systems has the right to request the department to assist in doing blind mailings to retirees twice each year. The mailings must provide information to members of the retirement systems eligible for membership in the retiree organization regarding services offered by the retiree organization. The mailings shall not be for the purpose of supporting or opposing any political party, ballot measure, or candidate. The retiree organization must provide all printed materials to be mailed and envelopes to a mail processing center and pay all costs for generating mailing labels, inserting materials into envelopes, sealing, labeling, and delivering materials to be mailed to a bulk mail center or post office. The organization must use its own bulk mail permit and pay all postage costs.

(2) The department must provide requested retiree data for addressing the envelopes to the mail center under a secure data share agreement with the mail center under which neither the organizations nor any other entity has direct access to any names or addresses. The department has no obligation to approve or disapprove, or in any other way take any responsibility for, the content of the mailings. Only organizations that meet the requirements under subsection (1) of this section and have legal authority to provide services to retirement system retirees have the right to request assistance with blind mailings. [2009 c 30 § 1.]

41.50.900 Severability—1975-'76 2nd ex.s. c 105. See note following RCW 41.04.270.

41.50.901 Effective date—1987 c 326. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987. [1987 c 326 § 29.]

41.50.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 101.]

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

Chapter 41.54 RCW PORTABILITY OF PUBLIC RETIREMENT BENEFITS

Sections

41.54.010	Definitions.
41.54.020	Benefits under prior retirement systems—Restoration of contributions.
41.54.030	Calculation of service retirement allowance.
41.54.032	Calculation of disability retirement allowance.
41.54.034	Calculation of surviving spouse's death benefit.
41.54.040	Payment of retirement allowance and postretirement adjustments—Death benefit.
41.54.070	Benefits under chapter—Minimum and maximum.
41.54.080	Benefits under chapter—Contractual rights not established.
41.54.090	Benefits under chapter—Lump sum payment.
41.54.100	Transfer of membership under chapter 341, Laws of 1998—Benefits not diminished.
41.54.900	Effective dates—1987 c 192.
41.54.901	Effective date—1988 c 195.
41.54.902	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

41.54.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Base salary" means salaries or wages earned by a member of a system during a payroll period for personal services and includes wages and salaries deferred under provisions of the United States internal revenue code, but shall exclude overtime payments, nonmoney maintenance compensation, and lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, any form of severance pay, any bonus for voluntary retirement, any other form of leave, or any similar lump sum payment; except that forms of payment which are excluded under this subsection shall be included in base salary when reportable to the department in all of a dual member's retirement systems, and when none of the dual member's retirement systems are the Washington state patrol retirement system.

(2) "Department" means the department of retirement systems.

(3) "Director" means the director of the department of retirement systems.

(4) "Dual member" means a person who (a) is or becomes a member of a system on or after July 1, 1988, (b)

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has been a member of one or more other systems, and (c) has never been retired for service from a retirement system and is not receiving a disability retirement or disability leave benefit from any retirement system listed in RCW 41.50.030 or subsection (6) of this section.

(5) "Service" means the same as it may be defined in each respective system. For the purposes of RCW 41.54.030, military service granted under RCW 41.40.170(3) or 43.43.260 may only be based on service accrued under chapter 41.40 or 43.43 RCW, respectively.

(6) "System" means the retirement systems established under chapters 41.32, 41.40, 41.44, 41.35, 41.37, and 43.43 RCW; plan 2 of the system established under chapter 41.26 RCW; and the city employee retirement systems for Seattle, Tacoma, and Spokane. [2007 c 207 § 1; 2004 c 242 § 58; 1998 c 341 § 702; 1993 c 517 § 8; 1990 c 192 § 1; 1988 c 195 § 1; 1987 c 192 § 1.]

Effective date—2004 c 242: See RCW 41.37.901.

Purpose—1993 c 517: See note following RCW 41.26.420.

Additional notes found at www.leg.wa.gov

41.54.020 Benefits under prior retirement systems—Restoration of contributions. (1) Those persons who are dual members on or after July 1, 1988, shall not receive a retirement benefit from any prior system while dual members without the loss of all benefits under this chapter. Retroactive retirement in any prior system will cancel membership in any subsequent systems except as allowed under RCW 41.04.270 and will result in the refund of all employee and employer contributions made to such systems.

(2) If a member has withdrawn contributions from a prior system, the member may restore the contributions, together with interest since the date of withdrawal as determined by the system, and recover the service represented by the contributions. Such restoration must be completed within two years of establishing dual membership or prior to retirement, whichever occurs first.

(3) If a member does not meet the time limitation under subsection (2) of this section, the member, prior to retirement, may restore the service credit destroyed by the withdrawn contributions by paying the amount required under RCW 41.50.165(2).

(4) Any service accrued in one system by the member shall not accrue in any other system. [1994 c 197 § 32; 1987 c 384 § 2; 1987 c 192 § 2.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Additional notes found at www.leg.wa.gov

41.54.030 Calculation of service retirement allowance. (1) A dual member may combine service in all systems for the purpose of:

(a) Determining the member's eligibility to receive a service retirement allowance; and

(b) Qualifying for a benefit under RCW 41.26.530(2), 41.32.840(2), 41.35.620, or 41.40.790.

(2) A dual member who is eligible to retire under any system may elect to retire from all the member's systems and to receive service retirement allowances calculated as provided in this section. Each system shall calculate the allowance using its own criteria except that the member shall be

allowed to substitute the member's base salary from any system as the compensation used in calculating the allowance.

(3) The service retirement allowances from a system which, but for this section, would not be allowed to be paid at this date based on the dual member's age may be received immediately or deferred to a later date. The allowances shall be actuarially adjusted from the earliest age upon which the combined service would have made such dual member eligible in that system.

(4) The service retirement eligibility requirements of RCW 41.40.180 shall apply to any dual member whose prior system is plan 1 of the public employees' retirement system established under chapter 41.40 RCW. [2007 c 207 § 2; 2003 c 294 § 13; 1998 c 341 § 703. Prior: 1996 c 55 § 4; 1996 c 55 § 3; 1996 c 39 § 19; 1995 c 239 § 319; 1990 c 192 § 2; 1988 c 195 § 2; 1987 c 192 § 3.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.54.032 Calculation of disability retirement allowance. (1) If a dual member becomes disabled, the member's service in all systems may be combined for the sole purpose of determining the member's eligibility to receive a disability retirement allowance from the member's current system.

(2) The member's current system shall use its own criteria to:

(a) Determine the member's eligibility for a disability retirement allowance; and

(b) Calculate the disability retirement allowance based on service actually established in the current system. The member shall be allowed to substitute the member's base salary from any system as the compensation used in calculating the allowance.

(3) Subsections (1) and (2) of this section shall not apply to the member's prior system.

(4) A dual member who is eligible to receive a disability retirement under the current system may elect to receive a service retirement from all prior systems and to receive service retirement allowances calculated as provided in this section. Each system shall calculate the service retirement allowance using its own criteria except that the member shall be allowed to substitute the member's base salary from any system as the compensation used in calculating the service retirement allowance.

(5) The service retirement allowances from a system which, but for this section, would not be allowed to be paid at this date based on the dual member's age, may be received immediately or deferred to a later date. The allowances shall be actuarially adjusted from the earliest age upon which the combined service would have made such dual member eligible in that system.

(6) This section shall not apply to any disability benefit under:

(a) RCW 41.40.220; or

(b) The Washington state patrol retirement system established under chapter 43.43 RCW. [1996 c 55 § 1.]

41.54.034 Calculation of surviving spouse's death benefit. (1) If a dual member dies in service in any system, the member's service in all systems may be combined for the

sole purpose of determining the surviving spouse's eligibility to receive a death benefit from each of the member's current and prior systems.

(2) Each system shall use its own criteria to:

(a) Determine the surviving spouse's eligibility for a death benefit; and

(b) Calculate the death benefit based on service actually established in that system.

(3) The surviving spouse shall receive the same benefit from each system that would have been received if the member were active in the system at the time of death. The spouse shall be allowed to substitute the member's base salary from any system as the compensation used in calculating the allowance.

(4) This section shall not apply to the Washington state patrol retirement system established under chapter 43.43 RCW. [1996 c 55 § 2.]

41.54.040 Payment of retirement allowance and post-retirement adjustments—Death benefit. (1) The allowances calculated under RCW 41.54.030, 41.54.032, and 41.54.034 shall be paid separately by each respective current and prior system. Any deductions from such separate payments shall be according to the provisions of the respective systems.

(2) Postretirement adjustments, if any, shall be applied by the respective systems based on the payments made under subsection (1) of this section.

(3) The department shall adopt rules under chapter 34.05 RCW to ensure that where a dual member has service in a system established under chapter 41.32, 41.40, 41.44, 41.35, 41.37, or 43.43 RCW; service in plan 2 of the system established under chapter 41.26 RCW; and service under the city employee retirement system for Seattle, Tacoma, or Spokane, the additional cost incurred as a result of the dual member receiving a benefit under this chapter shall be borne by the retirement system incurring the additional cost. [2004 c 242 § 59; 1998 c 341 § 704; 1996 c 55 § 5. Prior: 1993 c 519 § 16; 1993 c 517 § 9; 1990 c 192 § 5; 1988 c 195 § 3; 1987 c 192 § 4.]

Effective date—2004 c 242: See RCW 41.37.901.

Purpose—1993 c 517: See note following RCW 41.26.420.

Additional notes found at www.leg.wa.gov

41.54.070 Benefits under chapter—Minimum and maximum. (1) The benefit granted by this chapter shall not result in a total benefit less than would have been received absent such benefit.

(2) The total sum of the retirement allowances received under this chapter shall not exceed the largest amount the dual member would receive if all the service had been rendered in any one system. When calculating the maximum benefit a dual member would receive: (a) Military service granted under RCW 41.40.170(3) or 43.43.260 shall be based only on service accrued under chapter 41.40 or 43.43 RCW, respectively; and (b) the calculation shall be made assuming that the dual member did not defer any allowances pursuant to RCW 41.54.030(3). When a dual member's combined retirement allowances would exceed the limitation imposed by this subsection, the allowances shall be reduced by the systems on a proportional basis, according to service. The

limitation imposed by this subsection shall not apply to a dual member with:

- (i) Less than fifteen years of service credit in a plan with a retirement benefit cap as defined by the department; and
- (ii) Service credit in a plan with no retirement benefit cap. [2007 c 207 § 3; 1996 c 55 § 6; 1988 c 195 § 4; 1987 c 192 § 7.]

41.54.080 Benefits under chapter—Contractual rights not established. The benefits provided under RCW 41.54.010 through 41.54.070 are not provided to employees as a matter of contractual right and the legislature retains the right to alter or abolish these benefits at any time prior to a member's retirement. [1987 c 192 § 8.]

41.54.090 Benefits under chapter—Lump sum payment. (1) The systems may pay a dual member a lump sum payment in lieu of a monthly benefit if the initial monthly benefit computed in accordance with RCW 41.54.030 would be less than fifty dollars. The lump sum payment shall be the greater of the actuarial equivalent of such monthly benefits or an amount equal to the individual's accumulated contributions plus accrued interest.

(2) It is the intent of the legislature that any member who receives a settlement under this section shall be deemed to be retired from the system making the lump sum payment. [1988 c 195 § 6.]

41.54.100 Transfer of membership under chapter 341, Laws of 1998—Benefits not diminished. Persons who were members of the public employees' retirement system plan 2 prior to September 1, 2000, and were transferred or mandated into membership pursuant to chapter 341, Laws of 1998 shall suffer no diminution of benefits guaranteed to public employees' retirement system plan 2 members as of the date of their change in membership. [1998 c 341 § 705.]

Additional notes found at www.leg.wa.gov

41.54.900 Effective dates—1987 c 192. (1) Section 5 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1987.

(2) The remainder of this act shall take effect on July 1, 1988. [1987 c 192 § 11.]

41.54.901 Effective date—1988 c 195. This act shall take effect July 1, 1988. [1988 c 195 § 7.]

41.54.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-

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specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 102.]

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

Chapter 41.56 RCW

PUBLIC EMPLOYEES' COLLECTIVE BARGAINING

Sections

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- 41.56.020 Application of chapter.
- 41.56.021 Application of chapter to employees of institutions of higher education—Exceptions—Limitations on bargaining.
- 41.56.022 Application of chapter to University of Washington printing craft employees.
- 41.56.024 Application of chapter to classified employees of technical colleges.
- 41.56.025 Application of chapter to education providers under chapter 28A.193 RCW.
- 41.56.0251 Application of chapter to charter schools.
- 41.56.026 Application of chapter to individual providers under chapter 74.39A RCW.
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- 41.56.513 Application of chapter to certain postdoctoral and clinical university employees.
- 41.56.900 Short title—Effective date—1967 ex.s. c 108.
- 41.56.905 Uniformed personnel—Provisions additional—Liberal construction.
- 41.56.906 Construction of chapter—Certain agreements subject to RCW 28A.400.320.
- 41.56.910 Severability—1973 c 131.
- 41.56.911 Part headings not law—2006 c 54.
- 41.56.912 Severability—2006 c 54.
- 41.56.913 Conflict with federal requirements—2006 c 54.
- 41.56.914 Short title—2006 c 54.
- 41.56.915 Effective date—2006 c 54.
- 41.56.950 Retroactive date in collective bargaining agreements allowable, when.

Reviser's note: Throughout chapter 41.56 RCW, the phrase "this act" has been changed to "this chapter." "This act" [1967 ex.s. c 108] is codified as this chapter and RCW 41.06.150.

41.56.010 Declaration of purpose. The intent and purpose of this chapter is to promote the continued improvement of the relationship between public employers and their employees by providing a uniform basis for implementing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment relations with public employers. [1967 ex.s. c 108 § 1.]

41.56.020 Application of chapter. This chapter shall apply to any county or municipal corporation, or any political subdivision of the state of Washington, including district courts and superior courts, except as otherwise provided by RCW 54.04.170, 54.04.180, and chapters 41.59, 47.64, and 53.18 RCW. [1999 c 217 § 1; 1994 c 297 § 1; 1993 c 76 § 2; 1992 c 36 § 1; 1989 c 275 § 1; 1987 c 135 § 1; 1985 c 7 § 107; 1983 c 3 § 98; 1967 ex.s. c 108 § 2.]

Additional notes found at www.leg.wa.gov

41.56.021 Application of chapter to employees of institutions of higher education—Exceptions—Limitations on bargaining. (1) In addition to the entities listed in RCW 41.56.020, this chapter applies to employees of institutions of higher education who are exempted from civil service pursuant to RCW 41.06.070(2), with the following exceptions:

(a) Executive employees, including all members of the governing board of each institution of higher education and related boards; all presidents and vice presidents; deans, directors, and chairs; and executive heads of major administrative or academic divisions;

(b) Managers who perform any of the following functions:

(i) Formulate, develop, or establish institutional policy, or direct the work of an administrative unit;

(ii) Manage, administer, and control a program, including its physical, financial, or personnel resources;

(iii) Have substantial responsibility for human resources administration, legislative relations, public information, internal audits and investigations, or the preparation and administration of budgets;

(iv) Functionally is above the first level of supervision and exercises authority that is not merely routine or clerical in nature and requires the consistent use of independent judgment;

(c) Employees who, in the regular course of their duties, act as a principal assistant, administrative assistant, or personal assistant to employees as defined by (a) of this subsection;

(d) Confidential employees;

(e) Employees who assist assistant attorneys general who advise and represent managers or confidential employees in personnel or labor relations matters, or who advise or represent the state in tort actions.

(2) Employees subject to this section shall not be included in any unit of employees certified under RCW 41.56.022, 41.56.024, or 41.56.203, chapter 41.76 RCW, or chapter 41.80 RCW. Employees whose eligibility for collective bargaining is covered by chapter 28B.52, 41.76, or 41.80 RCW are exempt from the provisions of this chapter.

(3) Institutions of higher education and the exclusive bargaining representatives shall not agree to any proposal that would prevent the implementation of approved affirmative action plans or that would be inconsistent with the comparable worth agreement that provided the basis for the salary changes implemented beginning with the 1983-1985 biennium to achieve comparable worth.

(4) Institutions of higher education and the exclusive bargaining representative shall not bargain over rights of management that, in addition to all powers, duties, and rights established by constitutional provision or statute, shall include but not be limited to the following:

(a) The functions and programs of the institution, the use of technology, and the structure of the organization;

(b) The institution's budget and the size of its workforce, including determining the financial basis for layoffs;

(c) The right to direct and supervise employees;

(d) The right to take whatever actions are deemed necessary to carry out the mission of the state and the institutions of higher education during emergencies;

(e) Retirement plans and retirement benefits; or

(f) Health care benefits or other employee insurance benefits, except as provided in RCW 41.80.020. [2007 c 136 § 1.]

41.56.022 Application of chapter to University of Washington printing craft employees. In addition to the entities listed in RCW 41.56.020, this chapter shall apply to the University of Washington with respect to the printing craft employees in the department of printing at the University of Washington. [1987 c 484 § 1.]

41.56.024 Application of chapter to classified employees of technical colleges. In addition to the entities listed in RCW 41.56.020, this chapter shall apply to classified employees of technical colleges as provided for in RCW 28B.50.874. [1991 c 238 § 112.]

Additional notes found at www.leg.wa.gov

41.56.025 Application of chapter to education providers under chapter 28A.193 RCW. This chapter applies to the bargaining unit of classified employees of school districts, educational service districts, or institutions of higher education that are education providers under chapter 28A.193 RCW. Such bargaining units must be limited to the employees working as education providers to juveniles in each adult correctional facility maintained by the department of corrections and must be separate from other bargaining units in school districts, educational service districts, or institutions of higher education. [1998 c 244 § 12.]

Additional notes found at www.leg.wa.gov

41.56.0251 Application of chapter to charter schools. In addition to the entities listed in RCW 41.56.020, this chapter applies to any charter school established under chapter 28A.710 RCW. Any bargaining unit or units established at the charter school must be limited to employees working in the charter school and must be separate from other bargaining units in school districts, educational service districts, or institutions of higher education. Any charter school established under chapter 28A.710 RCW is a separate employer from any school district, including the school district in which it is located. [2013 c 2 § 307 (Initiative Measure No. 1240, approved November 6, 2012).]

Findings—2013 c 2 (Initiative Measure No. 1240): See RCW 28A.710.005.

41.56.026 Application of chapter to individual providers under chapter 74.39A RCW. In addition to the entities listed in RCW 41.56.020, this chapter applies to individual providers under RCW 74.39A.270 and 74.39A.300. [2002 c 3 § 12 (Initiative Measure No. 775, approved November 6, 2001).]

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

41.56.027 Application of chapter to passenger-only ferry employees. In addition to the entities listed in RCW 41.56.020, this chapter does apply to:

(1) Public employees of public transportation benefit areas providing passenger-only ferry service as provided in RCW 47.64.090; and

(2) Public employees of ferry districts providing passenger-only ferry service as provided in RCW 47.64.090. [2003 c 91 § 2.]

Additional notes found at www.leg.wa.gov

41.56.028 Application of chapter to family child care providers—Governor as public employer—Procedure—Intent. (1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the governor with respect to family child care providers. Solely for the purposes of collective bargaining and as expressly limited under subsections (2)

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and (3) of this section, the governor is the public employer of family child care providers who, solely for the purposes of collective bargaining, are public employees. The public employer shall be represented for bargaining purposes by the governor or the governor's designee appointed under chapter 41.80 RCW.

(2) This chapter governs the collective bargaining relationship between the governor and family child care providers, except as follows:

(a) A statewide unit of all family child care providers is the only unit appropriate for purposes of collective bargaining under RCW 41.56.060.

(b) The exclusive bargaining representative of family child care providers in the unit specified in (a) of this subsection shall be the representative chosen in an election conducted pursuant to RCW 41.56.070, except that in the initial election conducted under chapter 54, Laws of 2006, if more than one labor organization is on the ballot and none of the choices receives a majority of the votes cast, a run-off election shall be held.

(c) Notwithstanding the definition of "collective bargaining" in RCW 41.56.030(4), the scope of collective bargaining for child care providers under this section shall be limited solely to: (i) Economic compensation, such as manner and rate of subsidy and reimbursement, including tiered reimbursements; (ii) health and welfare benefits; (iii) professional development and training; (iv) labor-management committees; (v) grievance procedures; and (vi) other economic matters. Retirement benefits shall not be subject to collective bargaining. By such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

(d) The mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

(i) With respect to commencement of negotiations between the governor and the exclusive bargaining representative of family child care providers, negotiations shall be commenced initially upon certification of an exclusive bargaining representative under (a) of this subsection and, thereafter, by February 1st of any even-numbered year; and

(ii) The decision of the arbitration panel is not binding on the legislature and, if the legislature does not approve the request for funds necessary to implement the compensation and benefit provisions of the arbitrated collective bargaining agreement, is not binding on the state.

(e) Family child care providers do not have the right to strike.

(3) Family child care providers who are public employees solely for the purposes of collective bargaining under subsection (1) of this section are not, for that reason, employees of the state for any purpose. This section applies only to the governance of the collective bargaining relationship between the employer and family child care providers as provided in subsections (1) and (2) of this section.

(4) This section does not create or modify:

(a) The parents' or legal guardians' right to choose and terminate the services of any family child care provider that provides care for their child or children;

(b) The secretary of the department of social and health services' right to adopt requirements under RCW 74.15.030,

except for requirements related to grievance procedures and collective negotiations on personnel matters as specified in subsection (2)(c) of this section;

(c) Chapter 26.44 RCW, RCW 43.43.832, 43.20A.205, and 74.15.130; and

(d) The legislature's right to make programmatic modifications to the delivery of state services through child care subsidy programs, including standards of eligibility of parents, legal guardians, and family child care providers participating in child care subsidy programs, and the nature of services provided. The governor shall not enter into, extend, or renew any agreement under this section that does not expressly reserve the legislative rights described in this subsection (4)(d).

(5) Upon meeting the requirements of subsection (6) of this section, the governor must submit, as a part of the proposed biennial or supplemental operating budget submitted to the legislature under RCW 43.88.030, a request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into under this section or for legislation necessary to implement such agreement.

(6) A request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into under this section shall not be submitted by the governor to the legislature unless such request has been:

(a) Submitted to the director of financial management by October 1st before the legislative session at which the request is to be considered, except that, for initial negotiations under this section, the request must be submitted by November 15, 2006; and

(b) Certified by the director of financial management as being feasible financially for the state or reflects the binding decision of an arbitration panel reached under this section.

(7) The legislature must approve or reject the submission of the request for funds as a whole. If the legislature rejects or fails to act on the submission, any such agreement will be reopened solely for the purpose of renegotiating the funds necessary to implement the agreement.

(8) The governor shall periodically consult with the joint committee on employment relations established by RCW 41.80.010 regarding appropriations necessary to implement the compensation and benefit provisions of any collective bargaining agreement and, upon completion of negotiations, advise the committee on the elements of the agreement and on any legislation necessary to implement such agreement.

(9) After the expiration date of any collective bargaining agreement entered into under this section, all of the terms and conditions specified in any such agreement remain in effect until the effective date of a subsequent agreement, not to exceed one year from the expiration date stated in the agreement, except as provided in subsection (4)(d) of this section.

(10) If, after the compensation and benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

(11) In enacting this section, the legislature intends to provide state action immunity under federal and state anti-trust laws for the joint activities of family child care providers and their exclusive bargaining representative to the extent such activities are authorized by this chapter. [2007 c 278 § 2; 2006 c 54 § 1.]

41.56.029 Application of chapter to adult family home providers—Governor as public employer—Procedure—Intent. (1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the governor with respect to adult family home providers. Solely for the purposes of collective bargaining and as expressly limited under subsections (2) and (3) of this section, the governor is the public employer of adult family home providers who, solely for the purposes of collective bargaining, are public employees. The public employer shall be represented for bargaining purposes by the governor or the governor's designee.

(2) There shall be collective bargaining, as defined in RCW 41.56.030, between the governor and adult family home providers, except as follows:

(a) A statewide unit of all adult family home providers is the only unit appropriate for purposes of collective bargaining under RCW 41.56.060.

(b) The exclusive bargaining representative of adult family home providers in the unit specified in (a) of this subsection shall be the representative chosen in an election conducted pursuant to RCW 41.56.070.

Bargaining authorization cards furnished as the showing of interest in support of any representation petition or motion for intervention filed under this section shall be exempt from disclosure under chapter 42.56 RCW.

(c) Notwithstanding the definition of "collective bargaining" in RCW 41.56.030(4), the scope of collective bargaining for adult family home providers under this section shall be limited solely to: (i) Economic compensation, such as manner and rate of subsidy and reimbursement, including tiered reimbursements; (ii) health and welfare benefits; (iii) professional development and training; (iv) labor-management committees; (v) grievance procedures; and (vi) other economic matters. Retirement benefits shall not be subject to collective bargaining. By such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

(d) In addition to the entities listed in the mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480, the provisions apply to the governor or the governor's designee and the exclusive bargaining representative of adult family home providers, except that:

(i) In addition to the factors to be taken into consideration by an interest arbitration panel under RCW 41.56.465, the panel shall consider the financial ability of the state to pay for the compensation and benefit provisions of a collective bargaining agreement.

(ii) The decision of the arbitration panel is not binding on the legislature and, if the legislature does not approve the request for funds necessary to implement the compensation and benefit provisions of the arbitrated collective bargaining agreement, the decision is not binding on the state.

(e) Adult family home providers do not have the right to strike.

(3) Adult family home providers who are public employees solely for the purposes of collective bargaining under subsection (1) of this section are not, for that reason, employees of the state for any other purpose. This section applies only to the governance of the collective bargaining relationship between the employer and adult family home providers as provided in subsections (1) and (2) of this section.

(4) This section does not create or modify:

(a) The department's authority to establish a plan of care for each consumer or its core responsibility to manage long-term care services under chapter 70.128 RCW, including determination of the level of care that each consumer is eligible to receive. However, at the request of the exclusive bargaining representative, the governor or the governor's designee appointed under chapter 41.80 RCW shall engage in collective bargaining, as defined in RCW 41.56.030(4), with the exclusive bargaining representative over how the department's core responsibility affects hours of work for adult family home providers. This subsection shall not be interpreted to require collective bargaining over an individual consumer's plan of care;

(b) The department's obligation to comply with the federal medicaid statute and regulations and the terms of any community-based waiver granted by the federal department of health and human services and to ensure federal financial participation in the provision of the services;

(c) The legislature's right to make programmatic modifications to the delivery of state services under chapter 70.128 RCW, including standards of eligibility of consumers and adult family home providers participating in the programs under chapter 70.128 RCW, and the nature of services provided. The governor shall not enter into, extend, or renew any agreement under this chapter that does not expressly reserve the legislative rights described in this subsection (4)(c);

(d) The residents', parents', or legal guardians' right to choose and terminate the services of any licensed adult family home provider; and

(e) RCW 43.43.832, 43.20A.205, or 74.15.130.

(5) Upon meeting the requirements of subsection (6) of this section, the governor must submit, as a part of the proposed biennial or supplemental operating budget submitted to the legislature under RCW 43.88.030, a request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into under this section or for legislation necessary to implement the agreement.

(6) A request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into under this section shall not be submitted by the governor to the legislature unless the request has been:

(a) Submitted to the director of financial management by October 1st prior to the legislative session at which the requests are to be considered; and

(b) Certified by the director of financial management as financially feasible for the state or reflective of a binding decision of an arbitration panel reached under subsection (2)(d) of this section.

(7) The legislature must approve or reject the submission of the request for funds as a whole. If the legislature rejects or fails to act on the submission, any collective bargaining

agreement must be reopened for the sole purpose of renegotiating the funds necessary to implement the agreement.

(8) If, after the compensation and benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

(9) After the expiration date of any collective bargaining agreement entered into under this section, all of the terms and conditions specified in the agreement remain in effect until the effective date of a subsequent agreement, not to exceed one year from the expiration date stated in the agreement.

(10) In enacting this section, the legislature intends to provide state action immunity under federal and state anti-trust laws for the joint activities of adult family home providers and their exclusive bargaining representative to the extent the activities are authorized by this chapter. [2007 c 184 § 1.]

Part headings not law—2007 c 184: "Part headings used in this act are not any part of the law." [2007 c 184 § 9.]

Severability—2007 c 184: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 184 § 10.]

Conflict with federal requirements—2007 c 184: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2007 c 184 § 11.]

41.56.030 Definitions. As used in this chapter:

(1) "Adult family home provider" means a provider as defined in RCW 70.128.010 who receives payments from the medicaid and state-funded long-term care programs.

(2) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.

(3) "Child care subsidy" means a payment from the state through a child care subsidy program established pursuant to RCW 74.12.340 or *74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor program.

(4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

(5) "Commission" means the public employment relations commission.

(6) "Executive director" means the executive director of the commission.

(7) "Family child care provider" means a person who: (a) Provides regularly scheduled care for a child or children in

the home of the provider or in the home of the child or children for periods of less than twenty-four hours or, if necessary due to the nature of the parent's work, for periods equal to or greater than twenty-four hours; (b) receives child care subsidies; and (c) is either licensed by the state under RCW 74.15.030 or is exempt from licensing under chapter 74.15 RCW.

(8) "Individual provider" means an individual provider as defined in RCW 74.39A.240(4) who, solely for the purposes of collective bargaining, is a public employee as provided in RCW 74.39A.270.

(9) "Institution of higher education" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges.

(10)(a) "Language access provider" means any independent contractor who provides spoken language interpreter services for department of social and health services appointments or medicaid enrollee appointments, or provided these services on or after January 1, 2009, and before June 10, 2010, whether paid by a broker, language access agency, or the department.

(b) "Language access provider" does not mean an owner, manager, or employee of a broker or a language access agency.

(11) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multi-member board, commission, or committee, whether appointed by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to (i) the executive head or body of the applicable bargaining unit, or (ii) any person elected by popular vote, or (iii) any person appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multi-member board, commission, or committee, whether appointed by the executive head or body of the public employer, or (d) who is a court commissioner or a court magistrate of superior court, district court, or a department of a district court organized under chapter 3.46 RCW, or (e) who is a personal assistant to a district court judge, superior court judge, or court commissioner. For the purpose of (e) of this subsection, no more than one assistant for each judge or commissioner may be excluded from a bargaining unit.

(12) "Public employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter, or any subdivision of such public body. For the purposes of this section, the public employer of district court or superior court employees for wage-related matters is the respective county legislative authority, or person or body acting on behalf of the legislative authority, and the public employer for nonwage-related matters is the judge or judge's designee of the respective district court or superior court.

(13) "Uniformed personnel" means: (a) Law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of two thousand five hundred or more and law enforcement officers

employed by the governing body of any county with a population of ten thousand or more; (b) correctional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(9), by a county with a population of seventy thousand or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates; (c) general authority Washington peace officers as defined in RCW 10.93.020 employed by a port district in a county with a population of one million or more; (d) security forces established under RCW 43.52.520; (e) firefighters as that term is defined in RCW 41.26.030; (f) employees of a port district in a county with a population of one million or more whose duties include crash fire rescue or other firefighting duties; (g) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; or (h) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer. [2011 1st sp.s. c 21 § 11; 2010 c 296 § 3; 2007 c 184 § 2; 2006 c 54 § 2; 2004 c 3 § 6; 2002 c 99 § 2. Prior: 2000 c 23 § 1; 2000 c 19 § 1; 1999 c 217 § 2; 1995 c 273 § 1; prior: 1993 c 398 § 1; 1993 c 397 § 1; 1993 c 379 § 302; 1992 c 36 § 2; 1991 c 363 § 119; 1989 c 275 § 2; 1987 c 135 § 2; 1984 c 150 § 1; 1975 1st ex.s. c 296 § 15; 1973 c 131 § 2; 1967 ex.s. c 108 § 3.]

*Reviser's note: RCW 74.08A.340 was repealed by 2012 c 217 § 2.

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Conflict with federal requirements—2010 c 296: See note following RCW 41.56.510.

Part headings not law—Severability—Conflict with federal requirements—2007 c 184: See notes following RCW 41.56.029.

Severability—Effective date—2004 c 3: See notes following RCW 74.39A.270.

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Public employment relations commission: Chapter 41.58 RCW.

Additional notes found at www.leg.wa.gov

41.56.040 Right of employees to organize and designate representatives without interference. No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter. [1967 ex.s. c 108 § 4.]

41.56.050 Disagreement in selection of bargaining representative—Disagreement as to merger of bargaining units—Intervention by commission. (1) In the event that a public employer and public employees are in disagreement as to the selection of a bargaining representative, the commission shall be invited to intervene as is provided in RCW 41.56.060 through 41.56.090.

(2) In the event that a public employer and a bargaining representative are in disagreement as to the merger of two or

more bargaining units in the employer's workforce that are represented by the same bargaining representative, the commission shall be invited to intervene as is provided in RCW 41.56.060 through 41.56.090. [2011 c 222 § 1; 1975 1st ex.s. c 296 § 16; 1967 ex.s. c 108 § 5.]

Additional notes found at www.leg.wa.gov

41.56.060 Determination of bargaining unit—Bargaining representative. (1) The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. In determining, modifying, or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees. The commission shall determine the bargaining representative by: (a) Examination of organization membership rolls; (b) comparison of signatures on organization bargaining authorization cards; or (c) conducting an election specifically therefor.

(2) For classified employees of school districts and educational service districts:

(a) Appropriate bargaining units existing on July 24, 2005, may not be divided into more than one unit without the agreement of the public employer and the certified bargaining representative of the unit; and

(b) In making bargaining unit determinations under this section, the commission must consider, in addition to the factors listed in subsection (1) of this section, the avoidance of excessive fragmentation. [2005 c 232 § 1; 1975 1st ex.s. c 296 § 17; 1967 ex.s. c 108 § 6.]

Additional notes found at www.leg.wa.gov

41.56.070 Election to ascertain bargaining representative. In the event the commission elects to conduct an election to ascertain the exclusive bargaining representative, and upon the request of a prospective bargaining representative showing written proof of at least thirty percent representation of the public employees within the unit, the commission shall hold an election by secret ballot to determine the issue. The ballot shall contain the name of such bargaining representative and of any other bargaining representative showing written proof of at least ten percent representation of the public employees within the unit, together with a choice for any public employee to designate that he or she does not desire to be represented by any bargaining agent. Where more than one organization is on the ballot and neither of the three or more choices receives a majority vote of the public employees within the bargaining unit, a run-off election shall be held. The run-off ballot shall contain the two choices which received the largest and second-largest number of votes. No question concerning representation may be raised within one year of a certification or attempted certification. Where there is a valid collective bargaining agreement in effect, no question of representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement. Any agreement which contains a provision for automatic renewal or extension of the agreement shall not be a valid agreement; nor shall any agreement

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be valid if it provides for a term of existence for more than three years, except that any agreement entered into between school districts, cities, counties, or municipal corporations, and their respective employees, may provide for a term of existence of up to six years. [2012 c 117 § 83. Prior: 2007 c 75 § 2; 2007 c 75 § 1; 1975 1st ex.s. c 296 § 18; 1967 ex.s. c 108 § 7.]

Additional notes found at www.leg.wa.gov

41.56.080 Certification of bargaining representative—Scope of representation. The bargaining representative which has been determined to represent a majority of the employees in a bargaining unit shall be certified by the commission as the exclusive bargaining representative of, and shall be required to represent, all the public employees within the unit without regard to membership in said bargaining representative: PROVIDED, That any public employee at any time may present his or her grievance to the public employer and have such grievance adjusted without the intervention of the exclusive bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect, and if the exclusive bargaining representative has been given reasonable opportunity to be present at any initial meeting called for the resolution of such grievance. [2012 c 117 § 84; 1975 1st ex.s. c 296 § 19; 1967 ex.s. c 108 § 8.]

Additional notes found at www.leg.wa.gov

41.56.090 Rules and regulations. The commission shall promulgate, revise or rescind such rules and regulations as it may deem necessary or appropriate to administer the provisions of this chapter in conformity with the intent and purpose of this chapter and consistent with the best standards of labor-management relations. [1975 1st ex.s. c 296 § 20; 1967 ex.s. c 108 § 9.]

Additional notes found at www.leg.wa.gov

41.56.100 Authority and duty of employer to engage in collective bargaining—Limitations—Mediation, grievance procedures upon failure to agree. (1) A public employer shall have the authority to engage in collective bargaining with the exclusive bargaining representative and no public employer shall refuse to engage in collective bargaining with the exclusive bargaining representative. However, a public employer is not required to bargain collectively with any bargaining representative concerning any matter which by ordinance, resolution, or charter of said public employer has been delegated to any civil service commission or personnel board similar in scope, structure, and authority to the board created by chapter 41.06 RCW.

(2) Upon the failure of the public employer and the exclusive bargaining representative to conclude a collective bargaining agreement, any matter in dispute may be submitted by either party to the commission. This subsection does not apply to negotiations and mediations conducted between a school district employer and an exclusive bargaining representative under RCW 28A.657.050.

(3) If a public employer implements its last and best offer where there is no contract settlement, allegations that either party is violating the terms of the implemented offer shall be subject to grievance arbitration procedures if and as

such procedures are set forth in the implemented offer, or, if not in the implemented offer, if and as such procedures are set forth in the parties' last contract. [2010 c 235 § 801; 1989 c 45 § 1; 1975 1st ex.s. c 296 § 21; 1967 ex.s. c 108 § 10.]

Finding—2010 c 235: See note following RCW 28A.405.245.

Arbitration of labor disputes: Chapter 49.08 RCW.

Additional notes found at www.leg.wa.gov

41.56.110 Dues—Deduction from pay. Upon the written authorization of any public employee within the bargaining unit and after the certification or recognition of such bargaining representative, the public employer shall deduct from the pay of such public employee the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and shall transmit the same to the treasurer of the exclusive bargaining representative. [1973 c 59 § 1; 1967 ex.s. c 108 § 11.]

41.56.113 Individual providers—Family child care providers—Adult family home providers—Language access providers—Deductions from payments for dues—State is payor, not employer. (1) This subsection (1) applies only if the state makes the payments directly to a provider.

(a) Upon the written authorization of an individual provider, a family child care provider, an adult family home provider, or a language access provider within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the state as payor, but not as the employer, shall, subject to (c) of this subsection, deduct from the payments to an individual provider, a family child care provider, an adult family home provider, or a language access provider the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and shall transmit the same to the treasurer of the exclusive bargaining representative.

(b) If the governor and the exclusive bargaining representative of a bargaining unit of individual providers, family child care providers, adult family home providers, or language access providers enter into a collective bargaining agreement that:

(i) Includes a union security provision authorized in RCW 41.56.122, the state as payor, but not as the employer, shall, subject to (c) of this subsection, enforce the agreement by deducting from the payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues; or

(ii) Includes requirements for deductions of payments other than the deduction under (a)(i) of this subsection, the state, as payor, but not as the employer, shall, subject to (c) of this subsection, make such deductions upon written authorization of the individual provider, family child care provider, adult family home provider, or language access provider.

(c)(i) The initial additional costs to the state in making deductions from the payments to individual providers, family child care providers, adult family home providers, and language access providers under this section shall be negotiated, agreed upon in advance, and reimbursed to the state by the exclusive bargaining representative.

(ii) The allocation of ongoing additional costs to the state in making deductions from the payments to individual providers, family child care providers, adult family home providers, or language access providers under this section shall be an appropriate subject of collective bargaining between the exclusive bargaining representative and the governor unless prohibited by another statute. If no collective bargaining agreement containing a provision allocating the ongoing additional cost is entered into between the exclusive bargaining representative and the governor, or if the legislature does not approve funding for the collective bargaining agreement as provided in RCW 74.39A.300, 41.56.028, 41.56.029, or 41.56.510, as applicable, the ongoing additional costs to the state in making deductions from the payments to individual providers, family child care providers, adult family home providers, or language access providers under this section shall be negotiated, agreed upon in advance, and reimbursed to the state by the exclusive bargaining representative.

(d) The governor and the exclusive bargaining representative of a bargaining unit of family child care providers may not enter into a collective bargaining agreement that contains a union security provision unless the agreement contains a process, to be administered by the exclusive bargaining representative of a bargaining unit of family child care providers, for hardship dispensation for license-exempt family child care providers who are also temporary assistance for needy families recipients or WorkFirst participants.

(2) This subsection (2) applies only if the state does not make the payments directly to a provider.

(a) Upon the written authorization of a language access provider within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the state shall require through its contracts with third parties that:

(i) The monthly amount of dues as certified by the secretary of the exclusive bargaining representative be deducted from the payments to the language access provider and transmitted to the treasurer of the exclusive bargaining representative; and

(ii) A record showing that dues have been deducted as specified in (a)(i) of this subsection be provided to the state.

(b) If the governor and the exclusive bargaining representative of the bargaining unit of language access providers enter into a collective bargaining agreement that includes a union security provision authorized in RCW 41.56.122, the state shall enforce the agreement by requiring through its contracts with third parties that:

(i) The monthly amount of dues required for membership in the exclusive bargaining representative as certified by the secretary of the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues, be deducted from the payments to the language access provider and transmitted to the treasurer of the exclusive bargaining representative; and

(ii) A record showing that dues or fees have been deducted as specified in (a)(i) of this subsection be provided to the state. [2010 c 296 § 4; 2007 c 184 § 3; 2006 c 54 § 3; 2004 c 3 § 7; 2002 c 99 § 1.]

Conflict with federal requirements—2010 c 296: See note following RCW 41.56.510.

Part headings not law—Severability—Conflict with federal requirements—2007 c 184: See notes following RCW 41.56.029.

Severability—Effective date—2004 c 3: See notes following RCW 74.39A.270.

41.56.120 Right to strike not granted. Nothing contained in this chapter shall permit or grant any public employee the right to strike or refuse to perform his or her official duties. [2012 c 117 § 85; 1967 ex.s. c 108 § 12.]

41.56.122 Collective bargaining agreements—Authorized provisions. A collective bargaining agreement may:

(1) Contain union security provisions: PROVIDED, That nothing in this section shall authorize a closed shop provision: PROVIDED FURTHER, That agreements involving union security provisions must safeguard the right of nonassociation of public employees based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member. Such public employee shall pay an amount of money equivalent to regular union dues and initiation fee to a nonreligious charity or to another charitable organization mutually agreed upon by the public employee affected and the bargaining representative to which such public employee would otherwise pay the dues and initiation fee. The public employee shall furnish written proof that such payment has been made. If the public employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization. When there is a conflict between any collective bargaining agreement reached by a public employer and a bargaining representative on a union security provision and any charter, ordinance, rule, or regulation adopted by the public employer or its agents, including but not limited to, a civil service commission, the terms of the collective bargaining agreement shall prevail.

(2) Provide for binding arbitration of a labor dispute arising from the application or the interpretation of the matters contained in a collective bargaining agreement. [1975 1st ex.s. c 296 § 22; 1973 c 59 § 2.]

Additional notes found at www.leg.wa.gov

41.56.123 Collective bargaining agreements—Effect of termination—Application of section. (1) After the termination date of a collective bargaining agreement, all of the terms and conditions specified in the collective bargaining agreement shall remain in effect until the effective date of a subsequent agreement, not to exceed one year from the termination date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

(2) This section does not apply to provisions of a collective bargaining agreement which both parties agree to exclude from the provisions of subsection (1) of this section and to provisions within the collective bargaining agreement with separate and specific termination dates.

(3) This section shall not apply to the following:

(a) Bargaining units covered by RCW 41.56.430 et seq. for fact-finding and interest arbitration;

(b) Collective bargaining agreements authorized by chapter 53.18 RCW; or

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(c) Collective bargaining agreements authorized by chapter 54.04 RCW.

(4) This section shall not apply to collective bargaining agreements in effect or being bargained on July 23, 1989. [1993 c 398 § 4; 1989 c 46 § 1.]

Additional notes found at www.leg.wa.gov

41.56.125 Arbitrators—Selection—Additional method. In addition to any other method for selecting arbitrators, the parties may request the public employment relations commission to, and the commission shall, appoint a qualified person who may be an employee of the commission to act as an arbitrator to assist in the resolution of a labor dispute between such public employer and such bargaining representative arising from the application of the matters contained in a collective bargaining agreement. The arbitrator shall conduct such arbitration of such dispute in a manner as provided for in the collective bargaining agreement: PROVIDED, That the commission shall not collect any fees or charges from such public employer or such bargaining representative for services performed by the commission under the provisions of this chapter: PROVIDED FURTHER, That the provisions of chapter 49.08 RCW shall have no application to this chapter. [1975 1st ex.s. 296 § 23; 1973 c 59 § 3.]

Additional notes found at www.leg.wa.gov

41.56.130 Rules and regulations of Washington state personnel resources board—Mandatory subjects. See RCW 41.06.150.

41.56.140 Unfair labor practices for public employer enumerated. It shall be an unfair labor practice for a public employer:

(1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;

(2) To control, dominate, or interfere with a bargaining representative;

(3) To discriminate against a public employee who has filed an unfair labor practice charge;

(4) To refuse to engage in collective bargaining with the certified exclusive bargaining representative. [2011 c 222 § 2; 1969 ex.s. c 215 § 1.]

41.56.150 Unfair labor practices for bargaining representative enumerated. It shall be an unfair labor practice for a bargaining representative:

(1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;

(2) To induce the public employer to commit an unfair labor practice;

(3) To discriminate against a public employee who has filed an unfair labor practice charge;

(4) To refuse to engage in collective bargaining. [1969 ex.s. c 215 § 2.]

41.56.160 Commission to prevent unfair labor practices and issue remedial orders and cease and desist orders. (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than

six months before the filing of the complaint with the commission. This power shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by law.

(2) If the commission determines that any person has engaged in or is engaging in an unfair labor practice, the commission shall issue and cause to be served upon the person an order requiring the person to cease and desist from such unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of this chapter, such as the payment of damages and the reinstatement of employees.

(3) The commission may petition the superior court for the county in which the main office of the employer is located or in which the person who has engaged or is engaging in such unfair labor practice resides or transacts business, for the enforcement of its order and for appropriate temporary relief. [1994 c 58 § 1; 1983 c 58 § 1; 1975 1st ex.s. c 296 § 24; 1969 ex.s. c 215 § 3.]

Additional notes found at www.leg.wa.gov

41.56.165 Applicability of administrative procedure act to commission action. Actions taken by or on behalf of the commission shall be pursuant to chapter 34.05 RCW, or rules adopted in accordance with chapter 34.05 RCW, and the right of judicial review provided by chapter 34.05 RCW shall be applicable to all such actions and rules. [1994 c 58 § 2.]

41.56.203 University of Washington—Certain employees enrolled in an academic program—Scope of collective bargaining. (1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the University of Washington with respect to employees who are enrolled in an academic program and are in a classification in (a) through (i) of this subsection on any University of Washington campus. The employees in (a) through (i) of this subsection constitute an appropriate bargaining unit:

- (a) Predoctoral instructor;
- (b) Predoctoral lecturer;
- (c) Predoctoral teaching assistant;
- (d) Predoctoral teaching associates I and II;
- (e) Tutors, readers, and graders in all academic units and tutoring centers;
- (f) Predoctoral staff assistant;
- (g) Predoctoral staff associates I and II;
- (h) Except as provided in this subsection (1)(h), predoctoral researcher, predoctoral research assistant, and predoctoral research associates I and II. The employees that constitute an appropriate bargaining unit under this subsection (1) do not include predoctoral researchers, predoctoral research assistants, and predoctoral research associates I and II who are performing research primarily related to their dissertation and who have incidental or no service expectations placed upon them by the university; and

(i) All employees enrolled in an academic program whose duties and responsibilities are substantially equivalent to those employees in (a) through (h) of this subsection.

(2)(a) The scope of bargaining for employees at the University of Washington under this section excludes:

(i) The ability to terminate the employment of any individual if the individual is not meeting academic requirements as determined by the University of Washington;

(ii) The amount of tuition or fees at the University of Washington. However, tuition and fee remission and waiver is within the scope of bargaining;

(iii) The academic calendar of the University of Washington; and

(iv) The number of students to be admitted to a particular class or class section at the University of Washington.

(b)(i) Except as provided in (b)(ii) of this subsection, provisions of collective bargaining agreements relating to compensation must not exceed the amount or percentage established by the legislature in the appropriations act. If any compensation provision is affected by subsequent modification of the appropriations act by the legislature, both parties must immediately enter into collective bargaining for the sole purpose of arriving at a mutually agreed upon replacement for the affected provision.

(ii) The University of Washington may provide additional compensation to student employees covered by this section that exceeds that provided by the legislature. [2002 c 34 § 2.]

Intent—2002 c 34: "(1) This act is intended to promote cooperative labor relations between the University of Washington and the employees who provide instructional, research, and related academic services, and who are enrolled as students at the university by extending collective bargaining rights under chapter 41.56 RCW and using the orderly procedures administered by the public employment relations commission. To achieve this end, the legislature intends that under chapter 41.56 RCW the university will exclusively bargain in good faith over all matters within the scope of bargaining under RCW 41.56.203.

(2) The legislature recognizes the importance of the shared governance practices developed at the University of Washington. The legislature does not intend to restrict, limit, or prohibit the exercise of the functions of the faculty in any shared governance mechanisms or practices, including the faculty senate, faculty councils, and faculty codes of the University of Washington; nor does the legislature intend to restrict, limit, or prohibit the exercise of the functions of the graduate and professional student senate, the associated students of the University of Washington, or any other student organization in matters outside the scope of bargaining covered by chapter 41.56 RCW.

(3) The legislature intends that nothing in this act will restrict, limit, or prohibit the University of Washington from consideration of the merits, necessity, or organization of any program, activity, or service established by the University of Washington, including, but not limited to, any decision to establish, modify, or discontinue any such program, activity, or service. The legislature further intends that nothing in this act will restrict, limit, or prohibit the University of Washington from having sole discretion over admission requirements for students, criterion for the award of certificates and degrees to students, academic criterion for selection of employees covered by this chapter, initial appointment of students, and the content, conduct, and supervision of courses, curricula, grading requirements, and research programs.

(4) The legislature does not intend to limit the matters excluded from collective bargaining to those items specified in this act." [2002 c 34 § 1.]

Additional notes found at www.leg.wa.gov

41.56.205 Washington State University—Certain employees enrolled in an academic program—Scope of collective bargaining. (1) In addition to the entities listed in RCW 41.56.020, this chapter applies to Washington State University with respect to employees who are enrolled in an academic program and are in a classification in (a) through (g) of this subsection on any Washington State University campus. The employees in (a) through (g) of this subsection constitute an appropriate bargaining unit:

- (a) Graduate teaching assistant;

- (b) Graduate staff assistant;
- (c) Graduate project assistant;
- (d) Graduate veterinary assistant;
- (e) Tutor, reader, and graders in all academic units and tutoring centers;

(f) Except as provided in this subsection (1)(f), graduate research assistant. The employees that constitute an appropriate bargaining unit under this subsection (1) do not include graduate research assistants who are performing research primarily related to their dissertation and who have incidental or no service expectations placed upon them by the university; and

(g) All employees enrolled in an academic program whose duties and responsibilities are substantially equivalent to those employees in (a) through (f) of this subsection.

(2)(a) The scope of bargaining for employees at Washington State University under this section excludes:

(i) The ability to terminate the employment of any individual if the individual is not meeting academic requirements as determined by Washington State University;

(ii) The amount of tuition or fees at Washington State University. However, tuition and fee remission and waiver is within the scope of bargaining;

(iii) The academic calendar of Washington State University; and

(iv) The number of students to be admitted to a particular class or class section at Washington State University.

(b)(i) Except as provided in (b)(ii) of this subsection, provisions of collective bargaining agreements relating to compensation must not exceed the amount or percentage established by the legislature in the appropriations act. If any compensation provision is affected by subsequent modification of the appropriations act by the legislature, both parties must immediately enter into collective bargaining for the sole purpose of arriving at a mutually agreed upon replacement for the affected provision.

(ii) Washington State University may provide additional compensation to student employees covered by this section that exceeds that provided by the legislature. [2008 c 203 § 2.]

Intent—2008 c 203: "(1) The legislature acknowledges the ability of student employees who provide instructional, research, and related academic services at the University of Washington to collectively bargain and recognizes that student employees performing equivalent services at Washington State University do not enjoy collective bargaining rights. The legislature further recognizes that while the titles of the student employees may differ between the two institutions, student employees at Washington State University should enjoy the same collective bargaining rights as their counterparts at the University of Washington. The legislature therefore intends to grant bargaining rights to student employees at Washington State University to the same extent such rights are granted to student employees at the University of Washington.

(2) This act is intended to promote cooperative labor relations between Washington State University and the employees who provide instructional, research, and related academic services, and who are enrolled as students at the university by extending collective bargaining rights under chapter 41.56 RCW and using the orderly procedures administered by the public employment relations commission. To achieve this end, the legislature intends that under chapter 41.56 RCW the university will exclusively bargain in good faith over all matters within the scope of bargaining under section 2 of this act.

(3) The legislature recognizes the importance of the shared governance practices developed at Washington State University. The legislature does not intend to restrict, limit, or prohibit the exercise of the functions of the faculty in any shared governance mechanisms or practices, including the faculty senate, faculty councils, and faculty codes of Washington State University;

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nor does the legislature intend to restrict, limit, or prohibit the exercise of the functions of the graduate and professional student association, the associated students of Washington State University, or any other student organization in matters outside the scope of bargaining covered by chapter 41.56 RCW.

(4) The legislature intends that nothing in this act will restrict, limit, or prohibit Washington State University from consideration of the merits, necessity, or organization of any program, activity, or service established by Washington State University, including, but not limited to, any decision to establish, modify, or discontinue any such program, activity, or service. The legislature further intends that nothing in this act will restrict, limit, or prohibit Washington State University from having sole discretion over admission requirements for students, criterion for the award of certificates and degrees to students, academic criterion for selection of employees covered by this act, initial appointment of students, and the content, conduct, and supervision of courses, curricula, grading requirements, and research programs.

(5) The legislature does not intend to limit the matters excluded from collective bargaining to those items specified in section 2 of this act." [2008 c 203 § 1.]

41.56.210 Department to prevent unfair labor practices and issue remedial orders—Application to state civil service employees. See RCW 41.06.340.

41.56.220 Right of employee representing bargaining unit to be absent from employment during legislative session—Replacement. Any public employee who represents fifty percent or more of a bargaining unit or who represents on a statewide basis a group of five or more bargaining units shall have the right to absent himself or herself from his or her employment without pay and without suffering any discrimination in his or her future employment and without losing benefits incident to his or her employment while representing his or her bargaining unit at the legislature of the state of Washington during any regular or special session thereof: PROVIDED, That such employee is replaced by his or her bargaining unit with an employee who shall be paid by the employer and who shall be qualified to perform the duties and obligations of the absent member in accordance with the rules of the civil service or other standards established by his or her employer for such absent employee. [2012 c 117 § 86; 1980 c 87 § 17; 1969 ex.s. c 174 § 1.]

41.56.230 Rights of employees and bargaining representatives of school districts dissolved due to financial insolvency. Notwithstanding any other provision of this chapter, employees and bargaining representatives of school districts that are dissolved due to financial insolvency shall have resort to collective bargaining, including grievance arbitration and other processes, only to the extent provided by RCW 28A.315.229. [2012 c 186 § 23.]

Effective date—2012 c 186: See note following RCW 28A.315.025.

Rule-making authority—2012 c 186: See RCW 28A.315.902.

41.56.430 Uniformed personnel—Legislative declaration. The intent and purpose of chapter 131, Laws of 1973 is to recognize that there exists a public policy in the state of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes. [1973 c 131 § 1.]

Additional notes found at www.leg.wa.gov

41.56.440 Uniformed personnel—Negotiations—Declaration of an impasse—Appointment of mediator. Negotiations between a public employer and the bargaining representative in a unit of uniformed personnel shall be commenced at least five months prior to the submission of the budget to the legislative body of the public employer. If no agreement has been reached sixty days after the commencement of such negotiations then, at any time thereafter, either party may declare that an impasse exists and may submit the dispute to the commission for mediation, with or without the concurrence of the other party. The commission shall appoint a mediator, who shall forthwith meet with the representatives of the parties, either jointly or separately, and shall take such other steps as he or she may deem appropriate in order to persuade the parties to resolve their differences and effect an agreement: PROVIDED, That a mediator does not have a power of compulsion. [1979 ex.s. c 184 § 1; 1975-'76 2nd ex.s. c 14 § 1; 1975 1st ex.s. c 296 § 28; 1973 c 131 § 3.]

Additional notes found at www.leg.wa.gov

41.56.450 Uniformed personnel—Interest arbitration panel—Powers and duties—Hearings—Findings and determination. If an agreement has not been reached following a reasonable period of negotiations and mediation, and the executive director, upon the recommendation of the assigned mediator, finds that the parties remain at impasse, then an interest arbitration panel shall be created to resolve the dispute. The issues for determination by the arbitration panel shall be limited to the issues certified by the executive director. Within seven days following the issuance of the determination of the executive director, each party shall name one person to serve as its arbitrator on the arbitration panel. The two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chair of the arbitration panel. Upon the failure of the arbitrators to select a neutral chair within seven days, the two appointed members shall use one of the two following options in the appointment of the third member, who shall act as chair of the panel: (1) By mutual consent, the two appointed members may jointly request the commission to, and the commission shall, appoint a third member within two days of such request. Costs of each party's appointee shall be borne by each party respectively; other costs of the arbitration proceedings shall be borne by the commission; or (2) either party may apply to the commission, the federal mediation and conciliation service, or the American Arbitration Association to provide a list of five qualified arbitrators from which the neutral chair shall be chosen. Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chair shall be shared equally between the parties.

The arbitration panel so constituted shall promptly establish a date, time, and place for a hearing and shall provide reasonable notice thereof to the parties to the dispute. A hearing, which shall be informal, shall be held, and each party shall have the opportunity to present evidence and make argument. No member of the arbitration panel may present the case for a party to the proceedings. The rules of evidence prevailing in judicial proceedings may be considered, but are not binding,

and any oral testimony or documentary evidence or other data deemed relevant by the chair of the arbitration panel may be received in evidence. A recording of the proceedings shall be taken. The arbitration panel has the power to administer oaths, require the attendance of witnesses, and require the production of such books, papers, contracts, agreements, and documents as may be deemed by the panel to be material to a just determination of the issues in dispute. If any person refuses to obey a subpoena issued by the arbitration panel, or refuses to be sworn or to make an affirmation to testify, or any witness, party, or attorney for a party is guilty of any contempt while in attendance at any hearing held hereunder, the arbitration panel may invoke the jurisdiction of the superior court in the county where the labor dispute exists, and the court has jurisdiction to issue an appropriate order. Any failure to obey the order may be punished by the court as a contempt thereof. The hearing conducted by the arbitration panel shall be concluded within twenty-five days following the selection or designation of the neutral chair of the arbitration panel, unless the parties agree to a longer period.

The neutral chair shall consult with the other members of the arbitration panel, and, within thirty days following the conclusion of the hearing, the neutral chair shall make written findings of fact and a written determination of the issues in dispute, based on the evidence presented. A copy thereof shall be served on the commission, on each of the other members of the arbitration panel, and on each of the parties to the dispute. That determination shall be final and binding upon both parties, subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary or capricious. [2012 c 117 § 87; 1983 c 287 § 2; 1979 ex.s. c 184 § 2; 1975-'76 2nd ex.s. c 14 § 2; 1975 1st ex.s. c 296 § 29; 1973 c 131 § 4.]

Additional notes found at www.leg.wa.gov

41.56.452 Interest arbitration panel a state agency. An interest arbitration panel created pursuant to RCW 41.56.450, in the performance of its duties under chapter 41.56 RCW, exercises a state function and is, for the purposes of this chapter, a state agency. Chapter 34.05 RCW does not apply to proceedings before an interest arbitration panel under this chapter. [1983 c 287 § 3; 1980 c 87 § 19.]

Additional notes found at www.leg.wa.gov

41.56.465 Uniformed personnel—Interest arbitration panel—Determinations—Factors to be considered. (1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, the panel shall consider:

- (a) The constitutional and statutory authority of the employer;
- (b) Stipulations of the parties;
- (c) The average consumer prices for goods and services, commonly known as the cost of living;
- (d) Changes in any of the circumstances under (a) through (c) of this subsection during the pendency of the proceedings; and
- (e) Such other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or tradi-

tionally taken into consideration in the determination of wages, hours, and conditions of employment. For those employees listed in *RCW 41.56.030(7)(a) who are employed by the governing body of a city or town with a population of less than fifteen thousand, or a county with a population of less than seventy thousand, consideration must also be given to regional differences in the cost of living.

(2) For employees listed in *RCW 41.56.030(7) (a) through (d), the panel shall also consider a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States.

(3) For employees listed in *RCW 41.56.030(7) (e) through (h), the panel shall also consider a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers may not be considered.

(4) For employees listed in RCW 41.56.028:

(a) The panel shall also consider:

(i) A comparison of child care provider subsidy rates and reimbursement programs by public entities, including counties and municipalities, along the west coast of the United States; and

(ii) The financial ability of the state to pay for the compensation and benefit provisions of a collective bargaining agreement; and

(b) The panel may consider:

(i) The public's interest in reducing turnover and increasing retention of child care providers;

(ii) The state's interest in promoting, through education and training, a stable child care workforce to provide quality and reliable child care from all providers throughout the state; and

(iii) In addition, for employees exempt from licensing under chapter 74.15 RCW, the state's fiscal interest in reducing reliance upon public benefit programs including but not limited to medical coupons, food stamps, subsidized housing, and emergency medical services.

(5) For employees listed in RCW 74.39A.270:

(a) The panel shall consider:

(i) A comparison of wages, hours, and conditions of employment of publicly reimbursed personnel providing similar services to similar clients, including clients who are elderly, frail, or have developmental disabilities, both in the state and across the United States; and

(ii) The financial ability of the state to pay for the compensation and fringe benefit provisions of a collective bargaining agreement; and

(b) The panel may consider:

(i) A comparison of wages, hours, and conditions of employment of publicly employed personnel providing similar services to similar clients, including clients who are elderly, frail, or have developmental disabilities, both in the state and across the United States;

(ii) The state's interest in promoting a stable long-term care workforce to provide quality and reliable care to vulnerable elderly and disabled recipients;

(iii) The state's interest in ensuring access to affordable, quality health care for all state citizens; and

(iv) The state's fiscal interest in reducing reliance upon public benefit programs including but not limited to medical coupons, food stamps, subsidized housing, and emergency medical services.

(6) Subsections (2) and (3) of this section may not be construed to authorize the panel to require the employer to pay, directly or indirectly, the increased employee contributions resulting from chapter 502, Laws of 1993 or chapter 517, Laws of 1993 as required under chapter 41.26 RCW. [2007 c 278 § 1; 1995 c 273 § 2; 1993 c 398 § 3.]

***Reviser's note:** RCW 41.56.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (7) to subsection (14). RCW 41.56.030 was subsequently amended by 2011 1st sp.s. c 21 § 11, changing subsection (14) to subsection (13).

Additional notes found at www.leg.wa.gov

41.56.470 Uniformed personnel—Arbitration panel—Rights of parties. During the pendency of the proceedings before the arbitration panel, existing wages, hours, and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his or her rights or position under chapter 131, Laws of 1973. [2012 c 117 § 88; 1973 c 131 § 6.]

Additional notes found at www.leg.wa.gov

41.56.473 Uniformed personnel—Application of chapter to Washington state patrol—Bargaining subjects. (1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the state with respect to the officers of the Washington state patrol appointed under RCW 43.43.020, except that the state is prohibited from negotiating any matters relating to retirement benefits or health care benefits or other employee insurance benefits.

(2) For the purposes of negotiating wages, wage-related matters, and nonwage matters, the state shall be represented by the governor or the governor's designee who is appointed under chapter 41.80 RCW, and costs of the negotiations under this section shall be reimbursed as provided in RCW 41.80.140.

(3) The governor or the governor's designee shall consult with the chief of the Washington state patrol regarding collective bargaining.

(4) The negotiation of provisions pertaining to wages and wage-related matters in a collective bargaining agreement between the state and the Washington state patrol officers is subject to the following:

(a) The state's bargaining representative must periodically consult with a subcommittee of the joint committee on employment relations created in RCW 41.80.010(5) which shall consist of the four members appointed to the joint committee with leadership positions in the senate and the house of representatives, and the chairs and ranking minority members of the senate transportation committee and the house transportation committee, or their successor committees. The subcommittee must be consulted regarding the appropriations

necessary to implement these provisions in a collective bargaining agreement and, on completion of negotiations, must be advised on the elements of these provisions.

(b) Provisions that are entered into before the legislature approves the funds necessary to implement the provisions must be conditioned upon the legislature's subsequent approval of the funds.

(5) The governor shall submit a request for funds necessary to implement the wage and wage-related matters in the collective bargaining agreement or for legislation necessary to implement the agreement. Requests for funds necessary to implement the provisions of bargaining agreements may not be submitted to the legislature by the governor unless such requests:

(a) Have been submitted to the director of financial management by October 1st before the legislative session at which the requests are to be considered; and

(b) Have been certified by the director of financial management as being feasible financially for the state or reflects the decision of an arbitration panel reached under RCW 41.56.475. [2005 c 438 § 1; 1999 c 217 § 3.]

41.56.475 Uniformed personnel—Application of chapter to Washington state patrol—Mediation and arbitration. In addition to the classes of employees listed in *RCW 41.56.030(7), the provisions of RCW 41.56.430 through 41.56.452 and 41.56.470, 41.56.480, and 41.56.490 also apply to Washington state patrol officers appointed under RCW 43.43.020 as provided in this section, subject to the following:

(1) Within ten working days after the first Monday in September of every odd-numbered year, the state's bargaining representative and the bargaining representative for the appropriate bargaining unit shall attempt to agree on an interest arbitration panel consisting of three members to be used if the parties are not successful in negotiating a comprehensive collective bargaining agreement. Each party shall name one person to serve as its arbitrator on the arbitration panel. The two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chair of the arbitration panel. Upon the failure of the arbitrators to select a neutral chair within seven days, the two appointed members shall use one of the two following options in the appointment of the third member, who shall act as chair of the panel: (a) By mutual consent, the two appointed members may jointly request the commission to, and the commission shall, appoint a third member within two days of such a request. Costs of each party's appointee shall be borne by each party respectively; other costs of the arbitration proceedings shall be borne by the commission; or (b) either party may apply to the commission, the federal mediation and conciliation service, or the American arbitration association to provide a list of five qualified arbitrators from which the neutral chair shall be chosen. Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chair shall be shared equally between the parties. Immediately upon selecting an interest arbitration panel, the parties shall cooperate to reserve dates with the arbitration panel for potential arbitration between August 1st and September 15th of the following even-numbered year. The par-

ties shall also prepare a schedule of at least five negotiation dates for the following year, absent an agreement to the contrary. The parties shall execute a written agreement before November 1st of each odd-numbered year setting forth the names of the members of the arbitration panel and the dates reserved for bargaining and arbitration. This subsection imposes minimum obligations only and is not intended to define or limit a party's full, good faith bargaining obligation under other sections of this chapter.

(2) The mediator or arbitration panel may consider only matters that are subject to bargaining under RCW 41.56.473.

(3) The decision of an arbitration panel is not binding on the legislature and, if the legislature does not approve the funds necessary to implement provisions pertaining to wages and wage-related matters of an arbitrated collective bargaining agreement, is not binding on the state or the Washington state patrol.

(4) In making its determination, the arbitration panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:

(a) The constitutional and statutory authority of the employer;

(b) Stipulations of the parties;

(c) Comparison of the hours and conditions of employment of personnel involved in the proceedings with the hours and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;

(d) Changes in any of the foregoing circumstances during the pendency of the proceedings; and

(e) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under RCW 41.56.473. [2008 c 149 § 1; 2005 c 438 § 2; 1999 c 217 § 4; 1993 c 351 § 1; 1988 c 110 § 2; 1987 c 135 § 3.]

***Reviser's note:** RCW 41.56.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (7) to subsection (14). RCW 41.56.030 was subsequently amended by 2011 1st sp.s. c 21 § 11, changing subsection (14) to subsection (13).

Additional notes found at www.leg.wa.gov

41.56.480 Uniformed personnel—Refusal to submit to procedures—Invoking jurisdiction of superior court—Contempt. If the representative of either or both the uniformed personnel and the public employer refuse to submit to the procedures set forth in RCW 41.56.440 and 41.56.450, the parties, or the commission on its own motion, may invoke the jurisdiction of the superior court for the county in which the labor dispute exists and such court shall have jurisdiction to issue an appropriate order. A failure to obey such order may be punished by the court as a contempt thereof. A decision of the arbitration panel shall be final and binding on the parties, and may be enforced at the instance of either party, the arbitration panel or the commission in the superior court for the county where the dispute arose. [1975 1st ex.s. c 296 § 30; 1973 c 131 § 7.]

Additional notes found at www.leg.wa.gov

41.56.490 Uniformed employees—Strikes prohibited—Violations—Contempt of court. The right of uniformed employees to engage in any strike, work slowdown, or stoppage is not granted. An organization recognized as the bargaining representative of uniformed employees subject to this chapter that willfully disobeys a lawful order of enforcement by a superior court pursuant to RCW 41.56.480 and 41.56.490, or willfully offers resistance to such order, whether by strike or otherwise, is in contempt of court as provided in chapter 7.21 RCW. An employer that willfully disobeys a lawful order of enforcement by a superior court pursuant to RCW 41.56.480 or willfully offers resistance to such order is in contempt of court as provided in chapter 7.21 RCW. [1989 c 373 § 24; 1973 c 131 § 8.]

Additional notes found at www.leg.wa.gov

41.56.492 Application of uniformed personnel collective bargaining provisions to employees of public passenger transportation systems—Conditions. In addition to the classes of employees listed in *RCW 41.56.030(7), the provisions of RCW 41.56.430 through 41.56.452, 41.56.470, 41.56.480, and 41.56.490 shall also be applicable to the employees of a public passenger transportation system of a metropolitan municipal corporation, county transportation authority, public transportation benefit area, or city public passenger transportation system, subject to the following:

(1) Negotiations between the public employer and the bargaining representative may commence at any time agreed to by the parties. If no agreement has been reached ninety days after commencement of negotiations, either party may demand that the issues in disagreement be submitted to a mediator. The services of the mediator shall be provided by the commission without cost to the parties, but nothing in this section or RCW 41.56.440 shall be construed to prohibit the public employer and the bargaining representative from agreeing to substitute at their own expense some other mediator or mediation procedure; and

(2) If an agreement has not been reached following a reasonable period of negotiations and mediation, and the mediator finds that the parties remain at impasse, either party may demand that the issues in disagreement be submitted to an arbitration panel for a binding and final determination. In making its determination, the arbitration panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and as additional standards or guidelines to aid it in reaching a decision [decision], shall take into consideration the following factors:

(a) The constitutional and statutory authority of the employer;

(b) Stipulations of the parties;

(c) Compensation package comparisons, economic indices, fiscal constraints, and similar factors determined by the arbitration panel to be pertinent to the case; and

(d) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. [1993 c 473 § 1.]

***Reviser's note:** RCW 41.56.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (7) to subsection (14). RCW 41.56.030 was subsequently amended by 2011 1st sp.s. c 21 § 11, changing subsection (14) to subsection (13).

(2014 Ed.)

41.56.496 Commercial nuclear plants—Application of chapter to certain employees. (1) In order to assure the uninterrupted and dedicated service of employees employed by employees of operators of certain commercial nuclear plants, the provisions of RCW 41.56.430 through 41.56.470, 41.56.480, and 41.56.490 shall apply to the operating and maintenance employees of a joint operating agency as defined in RCW 43.52.250 who are employed at a commercial nuclear power plant operating under a site certificate issued under chapter 80.50 RCW, except as provided in subsection (2) of this section.

(2) In making its determination, the arbitration panel shall take into consideration the following factors:

(a) The constitutional and statutory authority of the employer;

(b) Stipulations of the parties;

(c) A comparison of the wages, benefits, hours of work, and working conditions of the personnel involved in the proceeding with those of like personnel in relevant Washington labor markets. For classifications not found in Washington, the comparison shall be made with similar personnel in the states of California and Arizona, taking into account the relative differences in the cost of living;

(d) Economic indices, fiscal constraints, relative differences in the cost of living, and similar factors determined by the arbitration panel to be pertinent to the case;

(e) Other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, benefits, hours of work, and working conditions. [2009 c 126 § 1.]

41.56.500 School district collective bargaining agreements—Required action districts. All collective bargaining agreements entered into between a school district employer and school district employees under this chapter after June 10, 2010, as well as bargaining agreements existing on June 10, 2010, but renewed or extended after June 10, 2010, shall be consistent with RCW 28A.657.050. [2010 c 235 § 802.]

Finding—2010 c 235: See note following RCW 28A.405.245.

41.56.510 Application of chapter to language access providers—Governor as public employer—Procedure—Intent. (1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the governor with respect to language access providers. Solely for the purposes of collective bargaining and as expressly limited under subsections (2) and (3) of this section, the governor is the public employer of language access providers who, solely for the purposes of collective bargaining, are public employees. The governor or the governor's designee shall represent the public employer for bargaining purposes.

(2) There shall be collective bargaining, as defined in RCW 41.56.030, between the governor and language access providers, except as follows:

(a) A statewide unit of all language access providers is the only unit appropriate for purposes of collective bargaining under RCW 41.56.060;

(b) The exclusive bargaining representative of language access providers in the unit specified in (a) of this subsection

shall be the representative chosen in an election conducted pursuant to RCW 41.56.070.

Bargaining authorization cards furnished as the showing of interest in support of any representation petition or motion for intervention filed under this section are exempt from disclosure under chapter 42.56 RCW;

(c) Notwithstanding the definition of "collective bargaining" in RCW 41.56.030(4), the scope of collective bargaining for language access providers under this section is limited solely to: (i) Economic compensation, such as the manner and rate of payments; (ii) professional development and training; (iii) labor-management committees; and (iv) grievance procedures. Retirement benefits are not subject to collective bargaining. By such obligation neither party may be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter;

(d) In addition to the entities listed in the mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480, the provisions apply to the governor or the governor's designee and the exclusive bargaining representative of language access providers, except that:

(i) In addition to the factors to be taken into consideration by an interest arbitration panel under RCW 41.56.465, the panel shall consider the financial ability of the state to pay for the compensation and benefit provisions of a collective bargaining agreement;

(ii) The decision of the arbitration panel is not binding on the legislature and, if the legislature does not approve the request for funds necessary to implement the compensation and benefit provisions of the arbitrated collective bargaining agreement, the decision is not binding on the state;

(e) Language access providers do not have the right to strike.

(3) Language access providers who are public employees solely for the purposes of collective bargaining under subsection (1) of this section are not, for that reason, employees of the state for any other purpose. This section applies only to the governance of the collective bargaining relationship between the employer and language access providers as provided in subsections (1) and (2) of this section.

(4) Each party with whom the department of social and health services contracts for language access services and each of their subcontractors shall provide to the department an accurate list of language access providers, as defined in RCW 41.56.030, including their names, addresses, and other contact information, annually by January 30th, except that initially the lists must be provided within thirty days of June 10, 2010. The department shall, upon request, provide a list of all language access providers, including their names, addresses, and other contact information, to a labor union seeking to represent language access providers.

(5) This section does not create or modify:

(a) The department's obligation to comply with the federal statute and regulations; and

(b) The legislature's right to make programmatic modifications to the delivery of state services under chapter 74.04 RCW. The governor may not enter into, extend, or renew any agreement under this chapter that does not expressly reserve the legislative rights described in this subsection.

(6) Upon meeting the requirements of subsection (7) of this section, the governor must submit, as a part of the pro-

posed biennial or supplemental operating budget submitted to the legislature under RCW 43.88.030, a request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into under this section or for legislation necessary to implement the agreement.

(7) A request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into under this section may not be submitted by the governor to the legislature unless the request has been:

(a) Submitted to the director of financial management by October 1st prior to the legislative session at which the requests are to be considered, except that, for initial negotiations under this section, the request may not be submitted before July 1, 2011; and

(b) Certified by the director of financial management as financially feasible for the state or reflective of a binding decision of an arbitration panel reached under subsection (2)(d) of this section.

(8) The legislature must approve or reject the submission of the request for funds as a whole. If the legislature rejects or fails to act on the submission, any collective bargaining agreement must be reopened for the sole purpose of renegotiating the funds necessary to implement the agreement.

(9) If, after the compensation and benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

(10) After the expiration date of any collective bargaining agreement entered into under this section, all of the terms and conditions specified in the agreement remain in effect until the effective date of a subsequent agreement, not to exceed one year from the expiration date stated in the agreement.

(11) In enacting this section, the legislature intends to provide state action immunity under federal and state anti-trust laws for the joint activities of language access providers and their exclusive bargaining representative to the extent the activities are authorized by this chapter. [2010 c 296 § 2.]

Conflict with federal requirements—2010 c 296: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2010 c 296 § 9.]

41.56.513 Application of chapter to certain postdoctoral and clinical university employees. In addition to the entities listed in RCW 41.56.020, this chapter applies to postdoctoral and clinical employees as excluded in chapter 41.76 RCW at the University of Washington and at Washington State University. [2012 c 255 § 1.]

41.56.900 Short title—Effective date—1967 ex.s. c 108. RCW 41.56.010 through 41.56.900 and 41.06.150 shall be known as the "Public Employees' Collective Bargaining

Act" and shall take effect on July 1, 1967. [1967 ex.s. c 108 § 14.]

41.56.905 Uniformed personnel—Provisions additional—Liberal construction. The provisions of this chapter are intended to be additional to other remedies and shall be liberally construed to accomplish their purpose. Except as provided in RCW 53.18.015, if any provision of this chapter conflicts with any other statute, ordinance, rule or regulation of any public employer, the provisions of this chapter shall control. [1983 c 287 § 5; 1973 c 131 § 10.]

Additional notes found at www.leg.wa.gov

41.56.906 Construction of chapter—Certain agreements subject to RCW 28A.400.320. Nothing in this chapter may be construed to grant school district employers or classified school district employees the right to reach agreements that are in conflict with the termination provisions of RCW 28A.400.320. [2009 c 396 § 11.]

41.56.910 Severability—1973 c 131. If any provisions of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 c 131 § 11.]

41.56.911 Part headings not law—2006 c 54. Part headings used in this act are not any part of the law. [2006 c 54 § 9.]

41.56.912 Severability—2006 c 54. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2006 c 54 § 10.]

41.56.913 Conflict with federal requirements—2006 c 54. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state. [2006 c 54 § 11.]

41.56.914 Short title—2006 c 54. This act may be known and cited as the access to quality family child care act. [2006 c 54 § 12.]

41.56.915 Effective date—2006 c 54. Sections 1 through 5 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 15, 2006]. [2006 c 54 § 13.]

41.56.950 Retroactive date in collective bargaining agreements allowable, when. Whenever a collective bargaining agreement between a public employer and a bargain-

ing representative is concluded after the termination date of the previous collective bargaining agreement between the same parties, the effective date of such collective bargaining agreement may be the day after the termination date of the previous collective bargaining agreement and all benefits included in the new collective bargaining agreement including wage increases may accrue beginning with such effective date as established by this section. [1971 ex.s. c 187 § 1.]

Chapter 41.58 RCW

PUBLIC EMPLOYMENT LABOR RELATIONS

Sections

41.58.005	Intent—Construction.
41.58.010	Public employment relations commission—Created—Membership—Terms—Vacancies—Quorum—Report.
41.58.015	Compensation and travel expenses of members—Executive director—Employees.
41.58.020	Powers and duties of commission.
41.58.030	Office.
41.58.040	Duties of employers and employees.
41.58.050	Rules and regulations.
41.58.060	State ferry system, which chapter governs.
41.58.800	Transfer of employees to commission.
41.58.801	Transfer of reports, documents, records, property, etc., funds, appropriations, etc.
41.58.802	Procedure for transfer of budgeted fund or equipment.
41.58.803	Continuation and savings.
41.58.900	Effective dates—1975-'76 2nd ex.s. c 5.
41.58.901	Effective date—1975 1st ex.s. c 296 §§ 4, 6, and 8 through 39.

41.58.005 Intent—Construction. (1) It is the intent of the legislature by the adoption of chapter 296, Laws of 1975 1st ex. sess. to provide, in the area of public employment, for the more uniform and impartial (a) adjustment and settlement of complaints, grievances, and disputes arising out of employer-employee relations and, (b) selection and certification of bargaining representatives by transferring jurisdiction of such matters to the public employment relations commission from other boards and commissions. It is further the intent of the legislature, by such transfer, to achieve more efficient and expert administration of public labor relations administration and to thereby ensure the public of quality public services.

(2) Nothing contained in chapter 296, Laws of 1975 1st ex. sess. shall be construed to alter any existing collective bargaining unit or the provisions of any existing bargaining agreement.

(3) Nothing contained in chapter 296, Laws of 1975 1st ex. sess. shall be construed to alter any power or authority regarding the scope of collective bargaining in the employment areas affected by chapter 296, Laws of 1975 1st ex. sess., but chapter 296, Laws of 1975 1st ex. sess. shall be construed as transferring existing jurisdiction and authority to the public employment relations commission.

(4) Nothing contained in chapter 296, Laws of 1975 1st ex. sess. shall be construed to prohibit the consideration or adjustment of complaints or grievances by the public employer. [1975 1st ex.s. c 296 § 1.]

41.58.010 Public employment relations commission—Created—Membership—Terms—Vacancies—Quorum—Report. (1) There is hereby created the public employment relations commission (hereafter called the "commission") to administer the provisions of this chapter.

The commission shall consist of three members who shall be citizens appointed by the governor by and with the advice and consent of the senate. One of the original members shall be appointed for a term of three years, one for a term of four years, and one for a term of five years. Their successors shall be appointed for terms of five years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he or she succeeds. Commission members shall be eligible for reappointment. The governor shall designate one member to serve as chair of the commission. Any member of the commission may be removed by the governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause. Commission members shall not be eligible for state retirement under chapter 41.40 RCW by virtue of their service on the commission.

(2) In making citizen member appointments initially, and subsequently thereafter, the governor shall be cognizant of the desirability of appointing persons knowledgeable in the area of labor relations in the state.

(3) A vacancy in the commission shall not impair the right of the remaining members to exercise all of the powers of the commission, and two members of the commission shall, at all times, constitute a quorum of the commission.

(4) The commission shall at the close of each fiscal year make a report in writing to the legislature and to the governor stating the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the commission, and an account of all moneys it has disbursed. [2012 c 117 § 89; 1981 c 338 § 21; 1975-'76 2nd ex.s. c 5 § 1.]

41.58.015 Compensation and travel expenses of members—Executive director—Employees. (1) Each member of the commission shall be compensated in accordance with RCW 43.03.250. Members of the commission shall also be reimbursed for travel expenses incurred in the discharge of their official duties on the same basis as is provided in RCW 43.03.050 and 43.03.060.

(2) The commission shall appoint an executive director whose annual salary shall be determined under the provisions of RCW 43.03.028. The executive director shall perform such duties and have such powers as the commission shall prescribe in order to implement and enforce the provisions of this chapter. In addition to the performance of administrative duties, the commission may delegate to the executive director authority with respect to, but not limited to, representation proceedings, unfair labor practice proceedings, mediation of labor disputes, arbitration of disputes concerning the interpretation or application of a collective bargaining agreement, and, in certain cases, fact-finding or arbitration of disputes concerning the terms of a collective bargaining agreement. Such delegation shall not eliminate a party's right of appeal to the commission. The executive director, with such assistance as may be provided by the attorney general and such additional legal assistance consistent with chapter 43.10 RCW, shall have authority on behalf of the commission, when necessary to carry out or enforce any action or decision of the commission, to petition any court of competent jurisdiction for an order requiring compliance with the action or decision.

(3) The commission shall employ such employees as it may from time to time find necessary for the proper performance of its duties, consistent with the provisions of this chapter.

(4) The payment of all of the expenses of the commission, including travel expenses incurred by the members or employees of the commission under its orders, shall be subject to the provisions of RCW 43.03.050 and 43.03.060. [1984 c 287 § 71; 1979 ex.s. c 146 § 2; 1975-'76 2nd ex.s. c 34 § 91; 1975-'76 2nd ex.s. c 5 § 2.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

41.58.020 Powers and duties of commission. (1) It shall be the duty of the commission, in order to prevent or minimize interruptions growing out of labor disputes, to assist employers and employees to settle such disputes through mediation and fact-finding.

(2) The commission, through the director, may proffer its services in any labor dispute arising under a collective bargaining statute administered by the commission, either upon its own motion or upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial disruption to the public welfare.

(3) If the director is not able to bring the parties to agreement by mediation within a reasonable time, the director shall seek to induce the parties to voluntarily seek other means of settling the dispute without resort to strike or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the director shall not be deemed a violation of any duty or obligation imposed by this chapter.

(4) Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement. The commission is directed to make its mediation and fact-finding services available in the settlement of such grievance disputes only as a last resort. [1993 c 379 § 303; 1975 1st ex.s. c 296 § 4.]

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

Additional notes found at www.leg.wa.gov

41.58.030 Office. The principal office of the commission shall be in the city of Olympia, but it may meet and exercise any or all of its powers at any other place in the state. [1975 1st ex.s. c 296 § 5.]

41.58.040 Duties of employers and employees. In order to prevent or minimize disruptions to the public welfare growing out of labor disputes, employers and employees and their representatives shall:

(1) Exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements;

(2) Whenever a dispute arises over the terms or application of a collective bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously; and

(3) In case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the commission under this chapter for the purpose of aiding in a settlement of the dispute. [1975 1st ex.s. c 296 § 6.]

Additional notes found at www.leg.wa.gov

41.58.050 Rules and regulations. The commission shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the administrative procedure act, chapter 34.05 RCW, such rules and regulations as may be necessary to carry out the provisions of this chapter. [2011 1st sp.s. c 16 § 17; 1975 1st ex.s. c 296 § 7.]

Effective date—2011 1st sp.s. c 16 §§ 16-25: See note following RCW 41.58.060.

Transfer of powers, duties, and functions—2011 1st sp.s. c 16: See note following RCW 41.58.060.

41.58.060 State ferry system, which chapter governs. For any matter concerning the state ferry system and employee relations, collective bargaining, or labor disputes or stoppages, the provisions of this chapter and chapter 47.64 RCW shall govern. However, if a conflict exists between this chapter and chapter 47.64 RCW, this chapter shall govern. [2011 1st sp.s. c 16 § 18; 1983 c 15 § 22.]

Effective date—2011 1st sp.s. c 16 §§ 16-25: "Sections 16 through 25 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2011." [2011 1st sp.s. c 16 § 31.]

Transfer of powers, duties, and functions—2011 1st sp.s. c 16: "(1) Consistent with *RCW 41.58.065, the marine employees' commission's powers, duties, and functions are transferred to the public employment relations commission.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the marine employees' commission shall be delivered to the custody of the public employment relations commission. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the marine employees' commission shall be made available to the public employment relations commission. All funds, credits, or other assets held by the marine employees' commission shall be assigned to the public employment relations commission.

(b) Any appropriations made to the marine employees' commission shall, on July 1, 2011, be transferred and credited to the public employment relations commission.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All pending business before the marine employees' commission shall be continued and acted upon by the public employment relations commission. All existing contracts and obligations shall remain in full force and shall be performed by the public employment relations commission.

(4) The transfer of the powers, duties, and functions of the marine employees' commission shall not affect the validity of any act performed before July 1, 2011.

(5) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification." [2011 1st sp.s. c 16 § 23.]

(2014 Ed.)

*Reviser's note: RCW 41.58.065 expired June 30, 2013.

Additional notes found at www.leg.wa.gov

41.58.800 Transfer of employees to commission. All employees of the department of labor and industries classified under the provisions of chapter 41.06 RCW, the state civil service law, whose positions are entirely concerned with functions transferred to the commission by chapter 296, Laws of 1975 1st ex. sess. shall be transferred to the jurisdiction of the commission. [1975-'76 2nd ex.s. c 5 § 3.]

41.58.801 Transfer of reports, documents, records, property, etc., funds, appropriations, etc. All reports, documents, surveys, books, records, files, papers, or other writings in the possession of the marine employee commission, the office of the superintendent of public instruction, the state board for community and technical colleges, and the department of labor and industries and pertaining to the functions transferred to the commission by chapter 296, Laws of 1975 1st ex. sess. shall by January 1, 1976, be delivered to the custody of the commission. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed in carrying out the functions transferred by chapter 296, Laws of 1975 1st ex. sess. shall by January 1, 1976, be transferred to the commission.

Any appropriation or portion thereof remaining as of January 1, 1976, and which is made to an agency for the purpose of carrying out functions transferred from such agency pursuant to chapter 296, Laws of 1975 1st ex. sess., shall, by January 1, 1976, be transferred and credited to the commission for the purpose of carrying out such functions. This paragraph shall not affect the transfer of moneys prior to January 1, 1976, pursuant to section 67, chapter 269, Laws of 1975 1st ex. sess.

Whenever any question arises as to the transfer of any funds, including unexpended balances within any accounts, books, documents, records, papers, files, equipment, or any other tangible property used or held in the exercise of the performance of the functions transferred under chapter 296, Laws of 1975 1st ex. sess., the director of financial management or his or her successor shall make a determination as to the proper allocation and certify the same to the state agencies concerned. [2012 c 117 § 90; 1979 c 151 § 66; 1975-'76 2nd ex.s. c 5 § 4.]

41.58.802 Procedure for transfer of budgeted fund or equipment. Where transfers of budgeted funds or equipment are required under *this act, the director of financial management shall certify such transfers to the agencies affected, the state auditor and the state treasurer all of whom shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with such certification. [1979 c 151 § 67; 1975-'76 2nd ex.s. c 5 § 5.]

*Reviser's note: For codification of "this act" [1975-'76 2nd ex.s. c 5], see Codification Tables.

41.58.803 Continuation and savings. On January 1, 1976, all rules and regulations, and all business pending before the agencies or divisions thereof from whom functions are transferred pursuant to chapter 296, Laws of 1975 1st ex.

sess. and which pertain to such functions shall be continued and acted upon by the commission. All existing contracts and obligations pertaining to such functions shall remain in full force and effect, but shall be performed by the commission in lieu of the agency from whom the functions are transferred. The transfer of any functions shall not affect the validity of any act performed by such agency or division thereof or any officer or employee thereof prior to the effective date of the transferral of such functions.

Notwithstanding any other provisions of *this act, contracts or agreements are authorized between the commission and other agencies with respect to functions transferred from other agencies pursuant to chapter 296, Laws of 1975 1st ex. sess. Such contract or agreement may provide for an employee or employees of such other agencies or other person or persons to continue to provide services relating to pending business which is transferred to the commission as of January 1, 1976, until such pending business is completed. [1975-'76 2nd ex.s. c 5 § 6.]

*Reviser's note: For codification of "this act" [1975-'76 2nd ex.s. c 5], see Codification Tables.

41.58.900 Effective dates—1975-'76 2nd ex.s. c 5. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on September 8, 1975, except for the provisions of sections 6 and 7 which shall be effective on January 1, 1976. [1975-'76 2nd ex.s. c 5 § 9.]

41.58.901 Effective date—1975 1st ex.s. c 296 §§ 4, 6, and 8 through 39. Sections 4, 6, and 8 through 39 of chapter 296, Laws of 1975 1st ex. sess. shall not be effective until January 1, 1976. [1975-'76 2nd ex.s. c 5 § 8.]

Chapter 41.59 RCW

EDUCATIONAL EMPLOYMENT RELATIONS ACT

Sections

41.59.010	Purpose.
41.59.020	Definitions.
41.59.031	Application of chapter to charter schools.
41.59.060	Employee rights enumerated—Fees and dues, deduction from pay.
41.59.070	Election to ascertain exclusive bargaining representative, when—Run-off election—Decertification election.
41.59.080	Determination of bargaining unit—Standards.
41.59.090	Certification of exclusive bargaining representative—Scope of representation.
41.59.100	Union security provisions—Scope—Agency shop provision, collection of dues or fees.
41.59.105	School district collective bargaining agreements—Required action districts.
41.59.106	Rights of employees and bargaining representatives of school districts dissolved due to financial insolvency.
41.59.110	Commission, rules and regulations of—Federal precedents as standard.
41.59.120	Resolving impasses in collective bargaining—Mediation—Fact-finding with recommendations—Other.
41.59.130	Binding arbitration procedures authorized.
41.59.140	Unfair labor practices for employer, employee organization, enumerated.
41.59.150	Commission to prevent unfair labor practices—Scope.
41.59.160	Applicability of administrative procedure act provisions to commission action.
41.59.170	Effective date of certain agreements—Increased benefits during agreement authorized, when.
41.59.180	Employees in specialized job category—Exclusion.
41.59.900	Short title.

41.59.910	Construction of chapter—Effect on existing agreements—Collective bargaining agreement prevails where conflict.
41.59.920	Construction of chapter—Employee's rights preserved.
41.59.930	Construction of chapter—Employer's responsibilities and rights preserved.
41.59.935	Construction of chapter—Certain agreements subject to RCW 28A.150.410 and 28A.400.200.
41.59.936	Construction of chapter—Certain agreements subject to RCW 28A.405.470.
41.59.940	Effective date—1975 1st ex.s. c 288.
41.59.950	Severability—1975 1st ex.s. c 288.

Reviser's note: Phrase "the commission" is used throughout chapter 41.59 RCW; 1975 1st ex.s. c 288 § 4, wherein the commission was created, was vetoed by the governor; reference to the proviso in RCW 41.59.020(3) below, together with amendments and repeals in 1975-'76 2nd ex.s. c 5 (codified in chapter 41.58 RCW) suggests commission to be that created in RCW 41.58.010.

41.59.010 Purpose. It is the purpose of this chapter to prescribe certain rights and obligations of the educational employees of the school districts of the state of Washington, and to establish procedures governing the relationship between such employees and their employers which are designed to meet the special requirements and needs of public employment in education. [1975 1st ex.s. c 288 § 2.]

41.59.020 Definitions. As used in this chapter:

(1) The term "employee organization" means any organization, union, association, agency, committee, council, or group of any kind in which employees participate, and which exists for the purpose, in whole or in part, of collective bargaining with employers.

(2) The term "collective bargaining" or "bargaining" means the performance of the mutual obligation of the representatives of the employer and the exclusive bargaining representative to meet at reasonable times in light of the time limitations of the budget-making process, and to bargain in good faith in an effort to reach agreement with respect to the wages, hours, and terms and conditions of employment: PROVIDED, That prior law, practice or interpretation shall be neither restrictive, expansive, nor determinative with respect to the scope of bargaining. A written contract incorporating any agreements reached shall be executed if requested by either party. The obligation to bargain does not compel either party to agree to a proposal or to make a concession.

In the event of a dispute between an employer and an exclusive bargaining representative over the matters that are terms and conditions of employment, the commission shall decide which item(s) are mandatory subjects for bargaining and which item(s) are nonmandatory.

(3) The term "commission" means the public employment relations commission established by RCW 41.58.010.

(4) The terms "employee" and "educational employee" means any certificated employee of a school district, except:

(a) The chief executive officer of the employer.

(b) The chief administrative officers of the employer, which shall mean the superintendent of the district, deputy superintendents, administrative assistants to the superintendent, assistant superintendents, and business manager. Title variation from all positions enumerated in this subsection (b) may be appealed to the commission for determination of inclusion in, or exclusion from, the term "educational employee".

(c) Confidential employees, which shall mean:

(i) Any person who participates directly on behalf of an employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements, except that the role of such person is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment; and

(ii) Any person who assists and acts in a confidential capacity to such person.

(d) Unless included within a bargaining unit pursuant to RCW 41.59.080, any supervisor, which means any employee having authority, in the interest of an employer, to hire, assign, promote, transfer, layoff, recall, suspend, discipline, or discharge other employees, or to adjust their grievances, or to recommend effectively such action, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment, and shall not include any persons solely by reason of their membership on a faculty tenure or other governance committee or body. The term "supervisor" shall include only those employees who perform a preponderance of the above-specified acts of authority.

(e) Unless included within a bargaining unit pursuant to RCW 41.59.080, principals and assistant principals in school districts.

(5) The term "employer" means any school district.

(6) The term "exclusive bargaining representative" means any employee organization which has:

(a) Been selected or designated pursuant to the provisions of this chapter as the representative of the employees in an appropriate collective bargaining unit; or

(b) Prior to January 1, 1976, been recognized under a predecessor statute as the representative of the employees in an appropriate collective bargaining or negotiations unit.

(7) The term "person" means one or more individuals, organizations, unions, associations, partnerships, corporations, boards, committees, commissions, agencies, or other entities, or their representatives.

(8) The term "nonsupervisory employee" means all educational employees other than principals, assistant principals and supervisors. [1989 c 11 § 11; 1975 1st ex.s. c 288 § 3.]

Additional notes found at www.leg.wa.gov

41.59.031 Application of chapter to charter schools.

This chapter applies to any charter school established under chapter 28A.710 RCW. Any bargaining unit or units established at the charter school must be limited to employees working in the charter school and must be separate from other bargaining units in school districts, educational service districts, or institutions of higher education. Any charter school established under chapter 28A.710 RCW is a separate employer from any school district, including the school district in which it is located. [2013 c 2 § 308 (Initiative Measure No. 1240, approved November 6, 2012).]

Findings—2013 c 2 (Initiative Measure No. 1240): See RCW 28A.710.005.

41.59.060 Employee rights enumerated—Fees and dues, deduction from pay. (1) Employees shall have the right to self-organization, to form, join, or assist employee organizations, to bargain collectively through representatives

of their own choosing, and shall also have the right to refrain from any or all of such activities except to the extent that employees may be required to pay a fee to any employee organization under an agency shop agreement authorized in this chapter.

(2) The exclusive bargaining representative shall have the right to have deducted from the salary of employees, upon receipt of an appropriate authorization form which shall not be irrevocable for a period of more than one year, an amount equal to the fees and dues required for membership. Such fees and dues shall be deducted monthly from the pay of all appropriate employees by the employer and transmitted as provided for by agreement between the employer and the exclusive bargaining representative, unless an automatic payroll deduction service is established pursuant to law, at which time such fees and dues shall be transmitted as therein provided. If an agency shop provision is agreed to and becomes effective pursuant to RCW 41.59.100, except as provided in that section, the agency fee equal to the fees and dues required of membership in the exclusive bargaining representative shall be deducted from the salary of employees in the bargaining unit. [1975 1st ex.s. c 288 § 7.]

41.59.070 Election to ascertain exclusive bargaining representative, when—Run-off election—Decertification election.

(1) Any employee organization may file a request with the commission for recognition as the exclusive representative. Such request shall allege that a majority of the employees in an appropriate collective bargaining unit wish to be represented for the purpose of collective bargaining by such organization, shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate, shall be supported by credible evidence demonstrating that at least thirty percent of the employees in the appropriate unit desire the organization requesting recognition as their exclusive representative, and shall indicate the name, address, and telephone number of any other interested employee organization, if known to the requesting organization.

(2) The commission shall determine the exclusive representative by conducting an election by secret ballot, except under the following circumstances:

(a) In instances where a serious unfair labor practice has been committed which interfered with the election process and precluded the holding of a fair election, the commission shall determine the exclusive bargaining representative by an examination of organization membership rolls or a comparison of signatures on organization bargaining authorization cards.

(b) In instances where there is then in effect a lawful written collective bargaining agreement between the employer and another employee organization covering any employees included in the unit described in the request for recognition, the request for recognition shall not be entertained unless it shall be filed within the time limits prescribed in subsection (3) of this section for decertification or a new recognition election.

(c) In instances where within the previous twelve months another employee organization has been lawfully recognized or certified as the exclusive bargaining representative of any employees included in the unit described in the request for

recognition, the request for recognition shall not be entertained.

(d) In instances where the commission has within the previous twelve months conducted a secret ballot election involving any employees included in the unit described in the request for recognition in which a majority of the valid ballots cast chose not to be represented by any employee organization, the request for recognition shall not be entertained.

(3) Whenever the commission conducts an election to ascertain the exclusive bargaining representative, the ballot shall contain the name of the proposed bargaining representative and of any other bargaining representative showing written proof of at least ten percent representation of the educational employees within the unit, together with a choice for any educational employee to designate that he or she does not desire to be represented by any bargaining agent. Where more than one organization is on the ballot and neither of the three or more choices receives a majority of the valid ballots cast by the educational employees within the bargaining unit, a run-off election shall be held. The run-off ballot shall contain the two choices which receive the largest and second largest number of votes. No question concerning representation may be raised within one year of a certification or attempted certification. Where there is a valid collective bargaining agreement in effect, no question of representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement. In the event that a valid collective bargaining agreement, together with any renewals or extensions thereof, has been or will be in existence for three years, then the question of representation may be raised not more than ninety nor less than sixty days prior to the third anniversary date of the agreement or any renewals or extensions thereof as long as such renewals and extensions do not exceed three years; and if the exclusive bargaining representative is removed as a result of such procedure, the then existing collective bargaining agreement shall be terminable by the new exclusive bargaining representative so selected within sixty days after its certification or terminated on its expiration date, whichever is sooner, or if no exclusive bargaining representative is so selected, then the agreement shall be deemed to be terminated at its expiration date or as of such third anniversary date, whichever is sooner.

(4) Within the time limits prescribed in subsection (3) of this section, a petition may be filed signed by at least thirty percent of the employees of a collective bargaining unit, then represented by an exclusive bargaining representative, alleging that a majority of the employees in that unit do not wish to be represented by an employee organization, requesting that the exclusive bargaining representative be decertified, and indicating the name, address and telephone number of the exclusive bargaining representative and any other interested employee organization, if known. Upon the verification of the signatures on the petition, the commission shall conduct an election by secret ballot as prescribed by subsection (3) of this section. [1975 1st ex.s. c 288 § 8.]

41.59.080 Determination of bargaining unit—Standards. The commission, upon proper application for certification as an exclusive bargaining representative or upon petition for change of unit definition by the employer or any

employee organization within the time limits specified in RCW 41.59.070(3), and after hearing upon reasonable notice, shall determine the unit appropriate for the purpose of collective bargaining. In determining, modifying or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the educational employees; the history of collective bargaining; the extent of organization among the educational employees; and the desire of the educational employees; except that:

(1) A unit including nonsupervisory educational employees shall not be considered appropriate unless it includes all such nonsupervisory educational employees of the employer; and

(2) A unit that includes only supervisors may be considered appropriate if a majority of the employees in such category indicate by vote that they desire to be included in such a unit; and

(3) A unit that includes only principals and assistant principals may be considered appropriate if a majority of such employees indicate by vote that they desire to be included in such a unit; and

(4) A unit that includes both principals and assistant principals and other supervisory employees may be considered appropriate if a majority of the employees in each category indicate by vote that they desire to be included in such a unit; and

(5) A unit that includes supervisors and/or principals and assistant principals and nonsupervisory educational employees may be considered appropriate if a majority of the employees in each category indicate by vote that they desire to be included in such a unit; and

(6) A unit that includes only employees in vocational-technical institutes or occupational skill centers may be considered to constitute an appropriate bargaining unit if the history of bargaining in any such school district so justifies; and

(7) Notwithstanding the definition of collective bargaining, a unit that contains only supervisors and/or principals and assistant principals shall be limited in scope of bargaining to compensation, hours of work, and the number of days of work in the annual employment contracts; and

(8) The bargaining unit of certificated employees of school districts, educational service districts, or institutions of higher education that are education providers under chapter 28A.193 RCW must be limited to the employees working as education providers to juveniles in each adult correctional facility maintained by the department of corrections and must be separate from other bargaining units in school districts, educational service districts, or institutions of higher education. [1998 c 244 § 11; 1975 1st ex.s. c 288 § 9.]

Additional notes found at www.leg.wa.gov

41.59.090 Certification of exclusive bargaining representative—Scope of representation. The employee organization which has been determined to represent a majority of the employees in a bargaining unit shall be certified by the commission as the exclusive bargaining representative of, and shall be required to represent all the employees within the unit without regard to membership in that bargaining representative: PROVIDED, That any employee at any time may present his or her grievance to the employer and have such grievance adjusted without the intervention of the exclusive

bargaining representative, as long as such representative has been given an opportunity to be present at that adjustment and to make its views known, and as long as the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect. [2012 c 117 § 91; 1975 1st ex.s. c 288 § 10.]

41.59.100 Union security provisions—Scope—Agency shop provision, collection of dues or fees. A collective bargaining agreement may include union security provisions including an agency shop, but not a union or closed shop. If an agency shop provision is agreed to, the employer shall enforce it by deducting from the salary payments to members of the bargaining unit the dues required of membership in the bargaining representative, or, for nonmembers thereof, a fee equivalent to such dues. All union security provisions must safeguard the right of nonassociation of employees based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee shall pay an amount of money equivalent to regular dues and fees to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the bargaining representative to which such employee would otherwise pay the dues and fees. The employee shall furnish written proof that such payment has been made. If the employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization. [1975 1st ex.s. c 288 § 11.]

41.59.105 School district collective bargaining agreements—Required action districts. All collective bargaining agreements entered into between a school district employer and school district employees under this chapter after June 10, 2010, as well as bargaining agreements existing on June 10, 2010, but renewed or extended after June 10, 2010, shall be consistent with RCW 28A.657.050. [2010 c 235 § 803.]

Finding—2010 c 235: See note following RCW 28A.405.245.

41.59.106 Rights of employees and bargaining representatives of school districts dissolved due to financial insolvency. Notwithstanding any other provision of this chapter, employees and bargaining representatives of school districts that are dissolved due to financial insolvency shall have resort to collective bargaining, including grievance arbitration and other processes, only to the extent provided by RCW 28A.315.229. [2012 c 186 § 24.]

Effective date—2012 c 186: See note following RCW 28A.315.025.

Rule-making authority—2012 c 186: See RCW 28A.315.902.

41.59.110 Commission, rules and regulations of—Federal precedents as standard. (1) The commission shall promulgate, revise, or rescind, in the manner prescribed by the administrative procedure act, chapter 34.05 RCW, such rules and regulations as it may deem necessary and appropriate to administer the provisions of this chapter, in conformity with the intent and purpose of this chapter, and consistent with the best standards of labor-management relations.

(2) The rules, precedents, and practices of the national labor relations board, provided they are consistent with this

chapter, shall be considered by the commission in its interpretation of this chapter, and prior to adoption of any aforesaid commission rules and regulations. [1975 1st ex.s. c 288 § 12.]

41.59.120 Resolving impasses in collective bargaining—Mediation—Fact-finding with recommendations—Other. (1) Either an employer or an exclusive bargaining representative may declare that an impasse has been reached between them in collective bargaining and may request the commission to appoint a mediator for the purpose of assisting them in reconciling their differences and resolving the controversy on terms which are mutually acceptable. If the commission determines that its assistance is needed, not later than five days after the receipt of a request therefor, it shall appoint a mediator in accordance with rules and regulations for such appointment prescribed by the commission. The mediator shall meet with the parties or their representatives, or both, forthwith, either jointly or separately, and shall take such other steps as he or she may deem appropriate in order to persuade the parties to resolve their differences and effect a mutually acceptable agreement. The mediator, without the consent of both parties, shall not make findings of fact or recommend terms of settlement. The services of the mediator, including, if any, per diem expenses, shall be provided by the commission without cost to the parties. Nothing in this subsection (1) shall be construed to prevent the parties from mutually agreeing upon their own mediation procedure, and in the event of such agreement, the commission shall not appoint its own mediator unless failure to do so would be inconsistent with the effectuation of the purposes and policy of this chapter.

(2) If the mediator is unable to effect settlement of the controversy within ten days after his or her appointment, either party, by written notification to the other, may request that their differences be submitted to fact-finding with recommendations, except that the time for mediation may be extended by mutual agreement between the parties. Within five days after receipt of the aforesaid written request for fact-finding, the parties shall select a person to serve as fact finder and obtain a commitment from that person to serve. If they are unable to agree upon a fact finder or to obtain such a commitment within that time, either party may request the commission to designate a fact finder. The commission, within five days after receipt of such request, shall designate a fact finder in accordance with rules and regulations for such designation prescribed by the commission. The fact finder so designated shall not be the same person who was appointed mediator pursuant to subsection (1) of this section without the consent of both parties.

The fact finder, within five days after his or her appointment, shall meet with the parties or their representatives, or both, either jointly or separately, and make inquiries and investigations, hold hearings, and take such other steps as he or she may deem appropriate. For the purpose of such hearings, investigations and inquiries, the fact finder shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. If the dispute is not settled within ten days after his or her appointment, the fact finder shall make findings of fact and recom-

mend terms of settlement within thirty days after his or her appointment, which recommendations shall be advisory only.

(3) Such recommendations, together with the findings of fact, shall be submitted in writing to the parties and the commission privately before they are made public. Either the commission, the fact finder, the employer, or the exclusive bargaining representative may make such findings and recommendations public if the dispute is not settled within five days after their receipt from the fact finder.

(4) The costs for the services of the fact finder, including, if any, per diem expenses and actual and necessary travel and subsistence expenses, and any other incurred costs, shall be borne by the commission without cost to the parties.

(5) Nothing in this section shall be construed to prohibit an employer and an exclusive bargaining representative from agreeing to substitute, at their own expense, their own procedure for resolving impasses in collective bargaining for that provided in this section or from agreeing to utilize for the purposes of this section any other governmental or other agency or person in lieu of the commission.

(6) Any fact finder designated by an employer and an exclusive representative or the commission for the purposes of this section shall be deemed an agent of the state.

(7) This section does not apply to negotiations and mediations conducted under RCW 28A.657.050. [2012 c 117 § 92; 2010 c 235 § 804; 1975 1st ex.s. c 288 § 13.]

Finding—2010 c 235: See note following RCW 28A.405.245.

41.59.130 Binding arbitration procedures authorized. An employer and an exclusive bargaining representative who enter into a collective bargaining agreement may include in such agreement procedures for binding arbitration of such disputes as may arise involving the interpretation or application of such agreement. [1975 1st ex.s. c 288 § 14.]

41.59.140 Unfair labor practices for employer, employee organization, enumerated. (1) It shall be an unfair labor practice for an employer:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in RCW 41.59.060;

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: PROVIDED, That subject to rules and regulations made by the commission pursuant to RCW 41.59.110, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment or any term or condition of employment, but nothing contained in this subsection shall prevent an employer from requiring, as a condition of continued employment, payment of periodic dues and fees uniformly required to an exclusive bargaining representative pursuant to RCW 41.59.100;

(d) To discharge or otherwise discriminate against an employee because he or she has filed charges or given testimony under *this chapter;

(e) To refuse to bargain collectively with the representatives of its employees.

(2) It shall be an unfair labor practice for an employee organization:

(a) To restrain or coerce (i) employees in the exercise of the rights guaranteed in RCW 41.59.060: PROVIDED, That this paragraph shall not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (ii) an employer in the selection of his or her representatives for the purposes of collective bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

(c) To refuse to bargain collectively with an employer, provided it is the representative of its employees subject to RCW 41.59.090.

(3) The expressing of any views, argument, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of *this chapter, if such expression contains no threat of reprisal or force or promise of benefit. [2012 c 117 § 93; 1975 1st ex.s. c 288 § 15.]

***Reviser's note:** Session law [1975 1st ex.s. c 288 § 15] language here reads "this act" or "this 1975 act"; for codification of 1975 1st ex.s. c 288, see Codification Tables.

41.59.150 Commission to prevent unfair labor practices—Scope. (1) The commission is empowered to prevent any person from engaging in any unfair labor practice as defined in RCW 41.59.140: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, equity or otherwise.

(2) If the commission determines that any person has engaged in or is engaging in any such unfair labor practices as defined in RCW 41.59.140, then the commission shall issue and cause to be served upon such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of this chapter, such as the payment of damages and/or the reinstatement of employees.

(3) The commission may petition the superior court for the county in which the main office of the employer is located or wherein the person who has engaged or is engaging in such unfair labor practice resides or transacts business, for the enforcement of its order and for appropriate temporary relief. [1983 c 58 § 3; 1975 1st ex.s. c 288 § 16.]

41.59.160 Applicability of administrative procedure act provisions to commission action. Actions taken by or on behalf of the commission shall be pursuant to chapter 34.05 RCW, or rules and regulations adopted in accordance therewith, and the right of judicial review provided by chapter 34.05 RCW shall be applicable to all such actions and rules and regulations. [1975 1st ex.s. c 288 § 17.]

41.59.170 Effective date of certain agreements—Increased benefits during agreement authorized, when. (1) Whenever a collective bargaining agreement between an

employer and an exclusive bargaining representative is concluded after the termination date of the previous collective bargaining agreement between the employer and an employee organization representing the same employees, the effective date of such collective bargaining agreement may be the day after the termination date of the previous collective bargaining agreement and all benefits included in the new collective bargaining agreement, including wage or salary increases, may accrue beginning with such effective date as established by this subsection, and may also accrue beginning with the effective date of any individual employee contracts affected thereby.

(2) Any collective bargaining agreement may provide for the increase of any wages, salaries and other benefits during the term of such agreement or the term of any individual employee contracts concerned, in the event that the employer receives by increased appropriation or from other sources, additional moneys for such purposes. [1975 1st ex.s. c 288 § 18.]

41.59.180 Employees in specialized job category—Exclusion. Notwithstanding the definition of "employee" in RCW 41.59.020, the commission may exclude from the coverage of chapter 288, Laws of 1975 1st ex. sess. any specialized job category of an employer where a majority of the persons employed in that job category consists of classified employees. At such time as a majority of such employees are certificated, the job category may be considered an appropriate unit under chapter 288, Laws of 1975 1st ex. sess. [1997 c 13 § 14; 1975 1st ex.s. c 288 § 23.]

41.59.900 Short title. This chapter may be cited as the educational employment relations act. [1975 1st ex.s. c 288 § 1.]

41.59.910 Construction of chapter—Effect on existing agreements—Collective bargaining agreement prevails where conflict. This chapter shall supersede existing statutes not expressly repealed to the extent that there is a conflict between a provision of this chapter and those other statutes. Except as otherwise expressly provided herein, nothing in this chapter shall be construed to annul, modify or preclude the renewal or continuation of any lawful agreement entered into prior to January 1, 1976 between an employer and an employee organization covering wages, hours, and terms and conditions of employment. Where there is a conflict between any collective bargaining agreement and any resolution, rule, policy or regulation of the employer or its agents, the terms of the collective bargaining agreement shall prevail. [1975 1st ex.s. c 288 § 19.]

41.59.920 Construction of chapter—Employee's rights preserved. Except as otherwise expressly provided herein, nothing contained in this chapter shall be construed to deny or otherwise abridge any rights, privileges or benefits granted by law to employees. [1975 1st ex.s. c 288 § 20.]

41.59.930 Construction of chapter—Employer's responsibilities and rights preserved. Nothing in this chapter shall be construed to interfere with the responsibilities and rights of the employer as specified by federal and state law,

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including the employer's responsibilities to students, the public, and other constituent elements of the institution. [1975 1st ex.s. c 288 § 24.]

41.59.935 Construction of chapter—Certain agreements subject to RCW 28A.150.410 and 28A.400.200. Nothing in this chapter shall be construed to grant employers or employees the right to reach agreements regarding salary or compensation increases in excess of those authorized in accordance with RCW 28A.150.410 and 28A.400.200. [1990 c 33 § 571; (1997 c 431 § 22 expired June 30, 1999); 1987 1st ex.s. c 2 § 206; 1981 c 16 § 3.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Intent—Severability—Effective dates—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

Additional notes found at www.leg.wa.gov

41.59.936 Construction of chapter—Certain agreements subject to RCW 28A.405.470. Nothing in this chapter may be construed to grant employers or employees the right to reach agreements that are in conflict with the termination provisions of RCW 28A.405.470. [2009 c 396 § 10.]

41.59.940 Effective date—1975 1st ex.s. c 288. Except for RCW 41.59.040, 41.59.050, 41.59.110 and 41.59.160 which shall take effect ninety days following enactment hereof, this chapter and RCW *28A.150.060 and 28A.405.100 as amended by chapter 288, Laws of 1975 1st ex. sess. shall take effect on January 1, 1976. Where the term "effective date of this chapter" is used elsewhere in this chapter it shall mean January 1, 1976. [1990 c 33 § 572; 1975 1st ex.s. c 288 § 26.]

Reviser's note: *(1) RCW 28A.150.060 was repealed by 2009 c 548 § 710, effective September 1, 2011.

(2) Engrossed Substitute Senate Bill No. 2500, which is chapter 288, Laws of 1975 1st ex. sess., was passed by the senate May 28, 1975, passed by the house of representatives June 2, 1975, and approved by the governor July 2, 1975, with the exception of section 4 thereof, which was vetoed by the governor; it includes the repeal of chapter 28A.72 RCW in section 28 thereof.

(3) RCW 41.59.040 and 41.59.050 were repealed by 1979 ex.s. c 146 § 3.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

41.59.950 Severability—1975 1st ex.s. c 288. If any provision of *this chapter, or its application to any person or circumstance is held invalid, the remainder of *the chapter, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 288 § 25.]

***Reviser's note:** Session law [1975 1st ex.s. c 288 § 25] language here reads "this 1975 act" or "the act"; for codification of 1975 1st ex.s. c 288, see Codification Tables.

Chapter 41.60 RCW

STATE EMPLOYEES' SUGGESTION AWARDS AND INCENTIVE PAY

Sections

- 41.60.010 Definitions.
- 41.60.015 Productivity board created—Also known as employee involvement and recognition board—Members—Terms—Compensation.

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41.60.150	Recognition awards.
41.60.160	Persons ineligible for awards.
41.60.910	Severability—1975-'76 2nd ex.s. c 122.
41.60.911	Effective dates—1987 c 387.

41.60.010 Definitions. As used in this chapter:

- (1) "Board" means the productivity board.
- (2) "Delegated authority" means authority delegated to an agency head by the board to design and implement an agency unique employee suggestion program for the agency.
- (3) "Board designee" means an agency head with delegated authority from the board.
- (4) "Employee suggestion program" means the programs developed by the board under RCW 41.60.020.
- (5) "Statewide employee suggestion program" means an employee suggestion program administered by the productivity board.
- (6) "Agency unique suggestion program" means an employee suggestion program designed and administered by an agency head with delegated authority.
- (7) "Teamwork incentive program" means the program developed by the board under RCW 41.60.100 through 41.60.120.
- (8) "State employees" means present employees in state agencies and institutions of higher education except for elected officials, directors of such agencies and institutions, and their confidential secretaries and administrative assistants and others specifically ruled ineligible by the rules of the productivity board. [1999 c 50 § 1; 1993 c 467 § 1; 1987 c 387 § 1; 1983 c 54 § 1; 1982 c 167 § 6; 1977 ex.s. c 169 § 103; 1969 ex.s. c 152 § 3; 1965 ex.s. c 142 § 1.]

Additional notes found at www.leg.wa.gov

41.60.015 Productivity board created—Also known as employee involvement and recognition board—Members—Terms—Compensation. (1) There is hereby created the productivity board, which may also be known as the employee involvement and recognition board. The board shall administer the employee suggestion program and the teamwork incentive program under this chapter.

- (2) The board shall be composed of:
 - (a) The secretary of state who shall act as chairperson;
 - (b) The director of financial management or the director's designee;
 - (c) The director of enterprise services or the director's designee;
 - (d) Three persons with experience in administering incentives such as those used by industry, with the lieutenant governor, secretary of state, and speaker of the house of representatives each appointing one person. The secretary of state's appointee shall be a representative of an employee

organization certified as an exclusive representative of at least one bargaining unit of classified employees; and

(e) Two persons representing state agencies and institutions with employees subject to chapter 41.06 RCW, and one person representing those subject to *chapter 28B.16 RCW, both appointed by the secretary of state.

Members under subsection (2)(d) and (e) of this section shall be appointed to serve three-year terms.

Members of the board appointed pursuant to subsection (2)(d) of this section may be compensated in accordance with RCW 43.03.240. Any board member who is not a state employee may be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060. [2011 1st sp.s. c 43 § 443; 2011 1st sp.s. c 21 § 30; 2000 c 139 § 1; 1999 c 50 § 2; 1993 c 467 § 2; 1987 c 387 § 2; 1985 c 114 § 1; 1984 c 287 § 72; 1983 c 54 § 2; 1982 c 167 § 1.]

Reviser's note: *(1) Chapter 28B.16 RCW was repealed by 1993 c 281, with the exception of RCW 28B.16.015 and 28B.16.240, which was recodified as RCW 41.06.382. For exemptions to higher education personnel law see chapter 41.06 RCW. RCW 28B.16.015 and 41.06.382 were subsequently repealed by 2002 c 354 § 403, effective July 1, 2005.

(2) This section was amended by 2011 1st sp.s. c 21 § 30 and by 2011 1st sp.s. c 43 § 443, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

41.60.020 Employee suggestion program—Rules for administration of chapter. (1) The board shall formulate, establish, and maintain a statewide employee suggestion program and adopt rules to allow for agency unique suggestion programs. Employee suggestion programs are developed to encourage and reward meritorious suggestions by state employees that will promote efficiency and economy in the performance of any function of state government: PROVIDED, That the program shall include provisions for the processing of suggestions having multiagency impact and post-implementation auditing of suggestions for fiscal accountability.

(2) The board shall adopt rules necessary or appropriate for the proper administration and for the accomplishment of the purposes of this chapter. These rules shall include the adoption of a payment award schedule that establishes the criteria for determining the amounts of any financial or other awards under this chapter. [1999 c 50 § 3; 1995 c 181 § 1; 1993 c 467 § 3; 1982 c 167 § 7; 1975-'76 2nd ex.s. c 122 § 1; 1969 ex.s. c 152 § 4; 1965 ex.s. c 142 § 2.]

Additional notes found at www.leg.wa.gov

41.60.030 Employee suggestion program—Determination of award. The board, or [the] board's designee, shall make the final determination as to whether an employee suggestion award will be made and shall determine the nature and extent of the award based on the payment award scale.

No employee suggestion award may normally be made to an employee for a suggestion which is within the scope of

the employee's regularly assigned responsibilities. [1999 c 50 § 4; 1982 c 167 § 8; 1965 ex.s. c 142 § 3.]

Additional notes found at www.leg.wa.gov

41.60.041 Employee suggestion program—Amount and payment of award—Transfer of funds to general fund. (1) Cash awards for suggestions generating net savings, revenue, or both to the state shall be determined by the board, or the board's designee, based on the payment award scale. No award may be granted in excess of ten thousand dollars. Savings, revenue, or both, shall be calculated for the first year of implementation.

(2) The board shall establish guidelines for making cash awards for suggestions for which benefits to the state are intangible or for which benefits cannot be calculated.

(3) Funds for the awards shall be drawn from the appropriation of the agency benefiting from the employee's suggestion. If the suggestion reduces costs to a nonappropriated fund or reduces costs paid without appropriation from a nonappropriated portion of an appropriated fund, an award may be paid from the benefiting fund or account without appropriation.

(4) Awards may be paid to state employees for suggestions which generate new or additional money for the general fund or any other funds of the state. The director of financial management shall distribute moneys appropriated for this purpose with the concurrence of the productivity board. Transfers shall be made from other funds of the state to the general fund, in amounts equal to award payments made by the general fund, for suggestions generating new or additional money for those other funds. [1999 c 50 § 5; 1989 c 56 § 1; 1987 c 387 § 3; 1985 c 114 § 2; 1982 c 167 § 9.]

Additional notes found at www.leg.wa.gov

41.60.050 Appropriations for administrative costs. The legislature shall appropriate from the personnel service fund for the payment of administrative costs of the productivity board. However, during the 2011-2013 and 2013-2015 fiscal biennia, the operations of the productivity board shall be suspended. [2013 2nd sp.s. c 4 § 970. Prior: 2011 1st sp.s. c 50 § 937; 2011 1st sp.s. c 43 § 473; 1991 sp.s. c 16 § 918; 1987 c 387 § 4; 1985 c 114 § 3; 1983 c 54 § 3; 1982 c 167 § 11; 1975-'76 2nd ex.s. c 122 § 3; 1969 ex.s. c 152 § 6; 1965 ex.s. c 142 § 5.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Personnel service fund: RCW 41.06.280.

Additional notes found at www.leg.wa.gov

41.60.080 Employee suggestion program—Contests to encourage participation. The board and agency heads may design and initiate contests between agencies and between agency suggestion evaluators to encourage participation in the suggestion program at management levels. Any tokens of recognition offered during these contests shall be nonmonetary and shall not be considered an award, or subject

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to RCW 41.60.030. [1999 c 50 § 6; 1982 c 167 § 12; 1975-'76 2nd ex.s. c 122 § 5.]

Additional notes found at www.leg.wa.gov

41.60.100 Employee teamwork incentive program—Applications. (1) With the exception of agencies of the legislative and judicial branches, any organizational unit composed of employees in any agency or group of agencies of state government with the ability to identify costs, revenues, or both may apply to the board to participate in the teamwork incentive program as a team. The application shall have the approval of the heads of the agency or agencies within which the team is located.

(2) Applications shall be in the form specified by the board and contain such information as the board requires. This may include, but is not limited to, quantitative measures which establish a database of program output or performance expectations, or both. This database is used to evaluate savings in accordance with RCW 41.60.110. [1999 c 50 § 7; 1993 c 467 § 4; 1989 c 56 § 2; 1987 c 387 § 5; 1985 c 114 § 4; 1982 c 167 § 2.]

Additional notes found at www.leg.wa.gov

41.60.110 Employee teamwork incentive program—Evaluation of savings. To qualify for a teamwork incentive program award for its employees, a team must identify the net savings, revenue, or both, accomplished during the project period. The calculations of net savings, revenue, or both, are not final until approved by the agency head, who may modify the team's calculations. The board may by rule establish criteria to be used in calculating net savings, revenue, or both. [1999 c 50 § 8; 1993 c 467 § 5; 1989 c 56 § 3; 1987 c 387 § 6; 1985 c 114 § 5; 1982 c 167 § 3.]

Additional notes found at www.leg.wa.gov

41.60.120 Employee teamwork incentive program—Awards. The agency head may recommend an award amount to the board. The board shall make the final determination as to whether an award will be made in accordance with applicable rules governing the teamwork incentive program. Awards will be based on the payment award scale. Funds for the teamwork incentive award shall be drawn from the agencies in which the unit is located or from the benefiting fund or account without appropriation when additional revenue is generated to the fund or account.

Awards may be paid to teams for process changes which generate new or additional money for the general fund or any other funds of the state. The director of the office of financial management shall distribute moneys appropriated for this purpose with the concurrence of the productivity board. Transfers shall be made from other funds of the state to the general fund in amounts equal to award payments made by the general fund, for innovations generating new or additional money for those other funds. [1999 c 50 § 9; 1993 c 467 § 6; 1989 c 56 § 4; 1987 c 387 § 7; 1985 c 114 § 6; 1982 c 167 § 4.]

Additional notes found at www.leg.wa.gov

41.60.140 Incentive pay or awards not included in retirement calculations. Incentive pay or awards provided under this chapter shall not be included for the purpose of

computing a retirement allowance under any public retirement system of this state. [1982 c 167 § 10.]

Additional notes found at www.leg.wa.gov

41.60.150 Recognition awards. Other than suggestion awards and incentive pay unit awards, agencies shall have the authority to recognize employees, either individually or as a class, for accomplishments including outstanding achievements, safety performance, longevity, outstanding public service, or service as employee suggestion evaluators and implementors. Recognition awards may not exceed two hundred dollars in value per award. Such awards may include, but not be limited to, cash or such items as pen and desk sets, plaques, pins, framed certificates, clocks, and calculators. Award costs shall be paid by the agency giving the award. From February 15, 2010, through June 30, 2013, recognition awards may not be given in the form of cash or cash equivalents such as gift certificates or gift cards. [2011 1st sp.s. c 39 § 9; 2010 c 1 § 6; 2000 c 139 § 2; 1999 c 50 § 10; 1989 c 56 § 5; 1985 c 114 § 7.]

Effective date—2011 1st sp.s. c 39: See note following RCW 41.04.820.

Effective date—2010 c 1: See note following RCW 41.06.070.

Additional notes found at www.leg.wa.gov

41.60.160 Persons ineligible for awards. No award may be made under this chapter to any elected state official or state agency director. [1993 c 467 § 7; 1987 c 387 § 8.]

Additional notes found at www.leg.wa.gov

41.60.910 Severability—1975-'76 2nd ex.s. c 122. If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975-'76 2nd ex.s. c 122 § 9.]

41.60.911 Effective dates—1987 c 387. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987, except section 10 of this act which shall take effect immediately. [1987 c 387 § 11.]

Chapter 41.68 RCW

REPARATIONS TO STATE EMPLOYEES TERMINATED DURING WORLD WAR II

Sections

41.68.010	Legislative finding.
41.68.020	Eligibility for reparation.
41.68.030	Submittal of claim.
41.68.040	Determination of eligibility.
41.68.050	Payment of reparation.
41.68.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Redress authorized for municipal employees dismissed during World War II: RCW 41.04.580.

41.68.010 Legislative finding. The dismissal or termination of various state employees during World War II resulted from the promulgation of federal Executive Order 9066 which was based mainly on fear and suspicion rather

than on factual justification. It is fair and just that reparations be made to those employees who were terminated from state employment during the wartime years because of these circumstances. The legislature therefore finds that equity and fairness will be served by authorizing the filing of claims with the state for salary losses suffered by the state employees directly affected, and by authorizing the payment thereof, subject to the provisions of this chapter. [1983 1st ex.s. c 15 § 1.]

41.68.020 Eligibility for reparation. Any state employee or the living surviving spouse of a state employee who, due to the promulgation of federal Executive Order 9066, was dismissed, terminated from a temporary position, or rejected during the person's probationary period, or who voluntarily resigned in lieu of dismissal from state government employment, and who incurred salary losses as a result thereof, is eligible to file a claim with the state for the reparation of those losses. [1983 1st ex.s. c 15 § 2.]

41.68.030 Submittal of claim. A claim under this chapter may be submitted to the department of enterprise services for the reparation of salary losses suffered during the years 1942 through 1947. The claim shall be supported by appropriate verification, such as the person's name at the time of the dismissal, the name of the employing department, and a social security number, or by evidence of official action of termination. The claimant shall also provide an address to which the department shall mail notification of its determination regarding the claimant's eligibility. [2011 1st sp.s. c 43 § 474; 1983 1st ex.s. c 15 § 3.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.68.040 Determination of eligibility. (1) The department of enterprise services shall determine the eligibility of a claimant to receive reparations authorized by this chapter. The department shall then notify the claimant by mail of its determination regarding the claimant's eligibility.

(2) The department may adopt rules that will assist in the fair determination of eligibility and the processing of claims. The department, however, has no obligation to directly notify any person of possible eligibility for reparation of salary losses under this chapter. [2011 1st sp.s. c 43 § 475; 1983 1st ex.s. c 15 § 4.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.68.050 Payment of reparation. A claimant under this chapter who is determined eligible by the department of enterprise services shall receive two thousand five hundred dollars each year for two years. All claims which the department determines are eligible for reparation shall be immediately forwarded to the state treasurer, who shall issue warrants in the appropriate amounts upon demand and verification of identity. If a claimant dies after filing a claim but before receiving full payment, payments shall be made to the claimant's estate upon demand and verification of identity. [2011 1st sp.s. c 43 § 476; 1983 1st ex.s. c 15 § 5.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.68.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 103.]

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

Chapter 41.72 RCW

LAW ENFORCEMENT MEDAL OF HONOR

Sections

41.72.010	Law enforcement medal of honor established.
41.72.020	Law enforcement medal of honor committee established—Membership—Establishment of qualifications for award.
41.72.030	Law enforcement medal of honor awarded—When.
41.72.040	Law enforcement medal of honor may be awarded posthumously.
41.72.050	Law enforcement medal of honor—Design.

41.72.010 Law enforcement medal of honor established. There is established a decoration of the state law enforcement medal of honor with accompanying ribbons and appurtenances for award by the governor in the name of the state to any law enforcement officer who has been seriously injured or killed while in the performance of duty, or who has been distinguished by exceptionally meritorious conduct, upon nomination of the governor's state law enforcement medal of honor committee. [1994 c 89 § 1.]

41.72.020 Law enforcement medal of honor committee established—Membership—Establishment of qualifications for award. There is created the state law enforcement medal of honor committee for nominating candidates for the award of the state law enforcement medal of honor. The committee membership consists of a representative from the governor's office, the Washington state law enforcement association, the Washington state council of police officers, the Washington association of sheriffs and police chiefs, and the Washington state troopers association. The attorney general shall serve as chair of the committee and shall designate a secretary for the committee. The committee shall meet not less than semiannually to consider candidates for nomination. The committee shall adopt rules establishing the qualifications for the state law enforcement medal of honor, the protocol governing the decoration, and the appurtenances necessary to the implementation of this chapter. [1994 c 89 § 2.]

41.72.030 Law enforcement medal of honor awarded—When. The state law enforcement medal of honor shall be awarded to recipients during the national law enforcement recognition week. The governor may delegate

the awarding of the medal to the lieutenant governor or the attorney general. [1994 c 89 § 3.]

41.72.040 Law enforcement medal of honor may be awarded posthumously. The state law enforcement medal of honor may be awarded posthumously to be presented to the representative of the deceased as may be deemed appropriate by the governor or the designees specified in RCW 41.72.030. [1994 c 89 § 4.]

41.72.050 Law enforcement medal of honor—Design. The decoration of the state law enforcement medal of honor shall be bronze and shall consist of a police shield overlaid by a sheriff's star with the seal of the state of Washington in the center and the words "law enforcement medal of honor" within the design and suspended from a ring attached by either a navy blue ribbon with a gold edge or a green ribbon with a gold edge. Such color choice shall be the recipient's. The reverse of the decoration shall be inscribed with the words "For exceptionally honorable and meritorious conduct in performing services as a law enforcement officer." [1994 c 89 § 5.]

Chapter 41.76 RCW

PUBLIC FOUR-YEAR INSTITUTIONS OF HIGHER EDUCATION—FACULTY LABOR RELATIONS

Sections

41.76.001	Findings—Declarations—Intent.
41.76.005	Definitions.
41.76.010	Scope of bargaining.
41.76.015	Exclusive bargaining representatives—Duty of representation.
41.76.020	Exclusive bargaining representatives—Procedures for certification—Challenges—Elections.
41.76.025	Bargaining unit determination—Hearings.
41.76.030	Settlement of unresolved matters—Role of commission—Mediation—Other procedures authorized.
41.76.035	Provisions relating to compensation—Restrictions.
41.76.040	Procedures for grievance arbitration—Subpoenas—Commission—Superior courts.
41.76.045	Exclusive bargaining representative—Union security provisions—Dues and fees.
41.76.050	Unfair labor practices.
41.76.055	Commission to prevent unfair labor practices—Scope—Remedies.
41.76.060	Rule making.
41.76.065	Strikes and lockouts prohibited—Violations—Remedies.
41.76.070	Certain contracts or agreements—Chapter 34.05 RCW does not apply.
41.76.075	Retroactive accrual of benefits and salaries.
41.76.080	Existing agreements not affected.
41.76.085	Limitations on application of chapter.
41.76.900	Severability—2002 c 356.
41.76.901	Captions not law—2002 c 356.
41.76.902	Effective date—2002 c 356.

41.76.001 Findings—Declarations—Intent. The legislature finds and declares that:

(1) The people of the state of Washington have a fundamental interest in developing harmonious and cooperative labor relations within the public four-year institutions of higher education.

(2) Teachers in the public school system and instructors in the community colleges in the state have been granted the opportunity to bargain collectively. It is desirable to expand the jurisdiction of the public employment relations commis-

sion to cover faculty in the state's public four-year institutions of higher education.

(3) It is the purpose of this chapter to provide the means by which relations between the boards of regents and trustees of the public four-year institutions of higher education of the state of Washington and their faculty may assure that the responsibilities and authorities granted to these institutions are carried out in an atmosphere that permits the fullest participation by faculty in determining the conditions of employment which affect them. It is the intent of the legislature to accomplish this purpose by providing a uniform structure for recognizing the right of faculty of the public four-year institutions of higher education to engage in collective bargaining as provided in this chapter, if they should so choose.

(4) It is the further purpose of this chapter to provide orderly and clearly defined procedures for collective bargaining and dispute resolution, and to define and prohibit certain practices that are contrary to the public interest. [2002 c 356 § 1.]

41.76.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Faculty governance system" means the internal organization that serves as the faculty advisory body and is charged with the responsibility for recommending policies, regulations, and rules for the college or university.

(2) "Grievance arbitration" means a method to resolve disputes arising out of interpretations or application of the terms of an agreement under which the parties to a controversy must accept the decision of an impartial person or persons.

(3) "Collective bargaining" and "bargaining" mean the performance of the mutual obligation of the representatives of the employer and the exclusive bargaining representative to meet at reasonable times to bargain in good faith in an effort to reach agreement with respect to wages, hours, and other terms and conditions of employment. A written contract incorporating any agreements reached must be executed if requested by either party. The obligation to bargain does not compel either party to agree to a proposal or to make a concession.

In the event of a dispute between an employer and an exclusive bargaining representative over the matters that are terms and conditions of employment, the commission shall decide which items are mandatory subjects for bargaining, subject to RCW 41.76.010.

(4) "Commission" means the public employment relations commission established pursuant to RCW 41.58.010.

(5) "Faculty" means employees who, at a public four-year institution of higher education, are designated with faculty status or who perform faculty duties as defined through policies established by the faculty governance system, excluding casual or temporary employees, administrators, confidential employees, graduate student employees, post-doctoral and clinical employees, and employees subject to chapter 41.06 or 41.56 RCW.

(6) "Employee organization" means any organization that includes as its members faculty of the employer and that has as one of its purposes representation of faculty under this

chapter. A faculty governance system is not an employee organization as defined in this subsection.

(7) "Employer" means the board of regents or the board of trustees of a public four-year institution of higher education.

(8) "Exclusive bargaining representative" means any employee organization that has been determined by the commission to represent all of the faculty members of the bargaining unit as required in RCW 41.76.015.

(9) "Administrator" means deans, associate and assistant deans, vice-provosts, vice-presidents, the provost, chancellors, vice-chancellors, the president, and faculty members who exercise managerial or supervisory authority over other faculty members.

(10) "Confidential employee" means (a) a person who participates directly on behalf of an employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of a collective bargaining agreement, if the role of the person is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment; and (b) a person who assists and acts in a confidential capacity to a person in (a) of this subsection.

(11) "Bargaining unit" includes all faculty members of all campuses of each of the colleges and universities. Only one bargaining unit is allowable for faculty of each employer, and that unit must contain all faculty members from all schools, colleges, and campuses of the employer.

(12) "Public four-year institutions of higher education" means the University of Washington, Washington State University, Eastern Washington University, Western Washington University, Central Washington University, and The Evergreen State College. [2002 c 356 § 3.]

41.76.010 Scope of bargaining. (1) Prohibited subjects of bargaining include but are not limited to the following:

(a) Consideration of the merits, necessity, or organization of any service, activity, or program established by law or resolution of the employer, except for the terms and conditions of employment of faculty members who may be affected by such service, activity, or program.

(b) The amount of any fees that are not a term or condition of employment.

(c) Admission requirements for students, conditions for the award of certificates and degrees, and the content, methods, supervision, and evaluation of courses, curricula, and research programs.

(2) Permissive subjects of bargaining include, but are not limited to, criteria and standards to be used for the appointment, promotion, evaluation, and tenure of faculty.

(3) Nothing in this section shall be construed to limit the right of the employer to consult with any employee on any matter outside the scope of bargaining. [2002 c 356 § 4.]

41.76.015 Exclusive bargaining representatives—Duty of representation. The employee organization which has been determined by the commission to be the exclusive bargaining representative of a bargaining unit shall be required to represent all the faculty members within the bargaining unit without regard to membership in that employee organization: PROVIDED, That any faculty member may at

any time present his or her complaints or concerns to the employer and have such complaints or concerns adjusted without intervention of the exclusive bargaining representative, as long as the exclusive bargaining representative has been given an opportunity to be present at the adjustment and to make its views known, and as long as the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect. [2002 c 356 § 6.]

41.76.020 Exclusive bargaining representatives—Procedures for certification—Challenges—Elections. The commission shall certify exclusive bargaining representatives in accordance with the procedures specified in this section.

(1) No question concerning representation may be raised within one year following issuance of a certification under this section.

(2) If there is a valid collective bargaining agreement in effect, no question concerning representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement: PROVIDED, That in the event a valid collective bargaining agreement, together with any renewals or extensions thereof, has been or will be in existence for more than three years, then a question concerning representation may be raised not more than ninety nor less than sixty days prior to the third anniversary date or any subsequent anniversary date of the agreement; and if the exclusive bargaining representative is removed as the result of such procedure, the collective bargaining agreement shall be deemed to be terminated as of the date of the certification or the anniversary date following the filing of the petition, whichever is later.

(3) An employee organization seeking certification as exclusive bargaining representative of a bargaining unit, or faculty members seeking decertification of their exclusive bargaining representative, must make a confidential showing to the commission of credible evidence demonstrating that at least thirty percent of the faculty in the bargaining unit are in support of the petition. The petition must indicate the name, address, and telephone number of any employee organization known to claim an interest in the bargaining unit.

(4) A petition filed by an employer must be supported by credible evidence demonstrating the good faith basis on which the employer claims the existence of a question concerning the representation of its faculty.

(5) Any employee organization which makes a confidential showing to the commission of credible evidence demonstrating that it has the support of at least ten percent of the faculty in the bargaining unit involved is entitled to intervene in proceedings under this section and to have its name listed as a choice on the ballot in an election conducted by the commission.

(6) The commission shall determine any question concerning representation by conducting a secret ballot election among the faculty members in the bargaining unit, except under the following circumstances:

(a) If only one employee organization is seeking certification as exclusive bargaining representative of a bargaining unit for which there is no incumbent exclusive bargaining representative, the commission may, upon the concurrence of the employer and the employee organization, determine the

question concerning representation by conducting a cross-check comparing the employee organization's membership records or bargaining authorization cards against the employment records of the employer; or

(b) If the commission determines that a serious unfair labor practice has been committed which interfered with the election process and precludes the holding of a fair election, the commission may determine the question concerning representation by conducting a cross-check comparing the employee organization's membership records or bargaining authorization cards against the employment records of the employer.

(7) The representation election ballot must contain a choice for each employee organization qualifying under subsection (3) or (5) of this section, together with a choice for no representation. The representation election shall be determined by the majority of the valid ballots cast. If there are three or more choices on the ballot and none of the three or more choices receives a majority of the valid ballots cast, a runoff election shall be conducted between the two choices receiving the highest and second highest numbers of votes.

(8) The commission shall certify as the exclusive bargaining representative the employee organization that has been determined to represent a majority of faculty members in a bargaining unit. [2002 c 356 § 7.]

41.76.025 Bargaining unit determination—Hearings.

In any dispute concerning membership in the bargaining unit or the allocation of employees or positions to a bargaining unit, the commission, after a hearing or hearings, shall determine the dispute. [2002 c 356 § 8.]

41.76.030 Settlement of unresolved matters—Role of commission—Mediation—Other procedures authorized. (1) The commission shall conduct mediation activities upon the request of either party as a means of assisting in the settlement of unresolved matters considered under this chapter.

(2) If any matter being jointly considered by the exclusive bargaining representative and the board of regents or trustees is not settled by the means provided in this chapter, either party may request the assistance and advice of the commission. Nothing in this section prohibits an employer and an employee organization from agreeing to substitute, at their own expense, some other impasse procedure or other means of resolving matters considered under this chapter. [2002 c 356 § 9.]

41.76.035 Provisions relating to compensation—Restrictions. (1) Except as provided in subsection (2) of this section, provisions of collective bargaining agreements relating to compensation shall not exceed the amount or percentage established by the legislature in the appropriations act. If any compensation provision is affected by subsequent modification of the appropriations act by the legislature, both parties shall immediately enter into collective bargaining for the sole purpose of arriving at a mutually agreed upon replacement for the affected provision.

(2) An employer may provide additional compensation to faculty that exceeds that provided by the legislature. [2002 c 356 § 10.]

41.76.040 Procedures for grievance arbitration—Subpoenas—Commission—Superior courts. A collective bargaining agreement negotiated under this chapter may include procedures for final and binding grievance arbitration of the disputes arising about the interpretation or application of the agreement.

(1) The parties to a collective bargaining agreement may agree on one or more permanent umpires to serve as arbitrator, or may agree on any impartial person to serve as arbitrator, or may agree to select arbitrators from any source available to them, including federal and private agencies, in addition to the staff and dispute resolution panel maintained by the commission.

(2) An arbitrator may require any person to attend as a witness, and to bring with him or her any book, record, document, or other evidence. Subpoenas shall issue and be signed by the arbitrator and shall be served in the same manner as subpoenas to testify before a court of record in this state. The fees for such attendance shall be paid by the party requesting issuance of the subpoena and shall be the same as the fees of witnesses in the superior court. If any person so summoned to testify refuses or neglects to obey such subpoena, upon petition authorized by the arbitrator, the superior court may compel the attendance of such person before the arbitrator, or punish the person for contempt in the same manner provided for the attendance of witnesses or the punishment of them in the courts of this state.

(3) The arbitrator shall appoint a time and place for the hearing and notify the parties thereof, and may adjourn the hearing from time to time as may be necessary, and, on application of either party and for good cause, may postpone the hearing to a time not extending beyond a date fixed by the collective bargaining agreement for making the award. The arbitrator has the power to administer oaths. The arbitration award shall be in writing and signed by the arbitrator or a majority of the members of the arbitration panel. The arbitrator shall, promptly upon its rendition, serve a true copy of the award on each of the parties or their attorneys.

(4) If a party to a collective bargaining agreement negotiated under this chapter refuses to submit a grievance for arbitration, the other party to the collective bargaining agreement may invoke the jurisdiction of the superior court for any county in which the labor dispute exists, and such court has jurisdiction to issue an order compelling arbitration. The commission, on its own motion, may invoke the jurisdiction of the superior court where a strike or lockout is in existence. Arbitration shall be ordered if the grievance states a claim which on its face is covered by the collective bargaining agreement, and doubts as to the coverage of the arbitration clause shall be resolved in favor of arbitration. Disputes concerning compliance with grievance procedures shall be reserved for determination by the arbitrator.

(5) If a party to a collective bargaining agreement negotiated under this chapter refuses to comply with the award of an arbitrator determining a grievance arising under such collective bargaining agreement, the other party to the collective bargaining agreement, or any affected employee, may invoke the jurisdiction of the superior court for any county in which the labor dispute exists, and such court has jurisdiction to issue an order enforcing the arbitration award. The commission, on its own motion, may invoke the jurisdiction of the

superior court where a strike or lockout is in existence. The court shall not substitute its judgment for that of the arbitrator and shall enforce any arbitration award which is based on the collective bargaining agreement, except that an arbitration award shall not be enforced and a new arbitration proceeding may be ordered:

(a) If the arbitration award was procured by corruption, fraud, or undue means;

(b) If there was evident partiality or corruption in the arbitrator or arbitrators;

(c) If the arbitrator or arbitrators were guilty of misconduct, in refusing to postpone a hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of any party have been prejudiced; or

(d) If the arbitrator or arbitrators have exceeded their powers, or so imperfectly executed them that a final and definite award on the subject matter was not made, in which event the court also has discretion to remand the matter to the arbitrator or arbitrators who issued the defective award. [2002 c 356 § 11.]

41.76.045 Exclusive bargaining representative—Union security provisions—Dues and fees. (1) Upon filing with the employer the voluntary written authorization of a bargaining unit faculty member under this chapter, the employee organization which is the exclusive bargaining representative of the bargaining unit shall have the right to have deducted from the salary of the bargaining unit faculty member the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the exclusive bargaining representative. Such employee authorization shall not be irrevocable for a period of more than one year. Such dues and fees shall be deducted from the pay of all faculty members who have given authorization for such deduction, and shall be transmitted by the employer to the employee organization or to the depository designated by the employee organization.

(2) A collective bargaining agreement may include union security provisions, but not a closed shop. If an agency shop or other union security provision is agreed to, the employer shall enforce any such provision by deductions from the salary of bargaining unit faculty members affected thereby and shall transmit such funds to the employee organization or to the depository designated by the employee organization.

(3) A faculty member who is covered by a union security provision and who asserts a right of nonassociation based on bona fide religious tenets or teachings of a church or religious body of which such faculty member is a member shall pay to a nonreligious charity or other charitable organization an amount of money equivalent to the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the exclusive bargaining representative. The charity shall be agreed upon by the faculty member and the employee organization to which such faculty member would otherwise pay the dues and fees. The faculty member shall furnish written proof that such payments have been made. If the faculty member and the employee organization do not reach agreement on such matter, the dispute shall be

submitted to the commission for determination. [2002 c 356 § 12.]

41.76.050 Unfair labor practices. (1) It is an unfair labor practice for an employer to:

(a) Interfere with, restrain, or coerce faculty members in the exercise of the rights guaranteed by this chapter;

(b) Dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: PROVIDED, That subject to rules adopted by the commission, an employer is not prohibited from permitting faculty members to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) Encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment, or any term or condition of employment;

(d) Discharge or discriminate otherwise against a faculty member because that faculty member has filed charges or given testimony under this chapter;

(e) Refuse to bargain collectively with the exclusive bargaining representative of its faculty.

(2) It is an unfair labor practice for an employee organization to:

(a) Restrain or coerce a faculty member in the exercise of the rights guaranteed by this chapter: PROVIDED, That this subsection does not impair the rights of (i) an employee organization to prescribe its own rules with respect to the acquisition or retention of membership in the employee organization or (ii) to the rights of an employer in the selection of its representatives for the purpose of bargaining or the adjustment of grievances;

(b) Cause or attempt to cause an employer to discriminate against a faculty member in violation of subsection (1)(c) of this section;

(c) Discriminate against a faculty member because that faculty member has filed charges or given testimony under this chapter;

(d) Refuse to bargain collectively with an employer.

(3) The expressing of any view, arguments, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under this chapter, if such expression contains no threat of reprisal or force or promise of benefit. [2002 c 356 § 13.]

41.76.055 Commission to prevent unfair labor practices—Scope—Remedies. (1) The commission is empowered to prevent any person from engaging in any unfair labor practice as defined in RCW 41.76.050: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, equity or otherwise.

(2) If the commission determines that any person has engaged in or is engaging in any such unfair labor practice as defined in RCW 41.76.050, then the commission shall issue and cause to be served upon such person an order requiring such person to cease and desist from such unfair labor prac-

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ice, and to take such affirmative action as will effectuate the purposes and policy of this chapter, such as the payment of damages and/or the reinstatement of faculty members.

(3) The commission may petition the superior court for the county in which the main office of the employer is located or wherein the person who has engaged or is engaging in such unfair labor practice resides or transacts business, for the enforcement of its order and for appropriate temporary relief. [2002 c 356 § 14.]

41.76.060 Rule making. The commission is authorized from time to time to make, amend, and rescind, in the manner prescribed by the administrative procedure act, chapter 34.05 RCW, such rules and regulations as may be necessary to carry out the provisions of this chapter. [2002 c 356 § 15.]

41.76.065 Strikes and lockouts prohibited—Violations—Remedies. The right of faculty to engage in any strike is prohibited. The right of a board of regents or trustees to engage in any lockout is prohibited. Should either a strike or lockout occur, the representative of the faculty or board of regents or trustees may invoke the jurisdiction of the superior court in the county in which the labor dispute exists, and such court has jurisdiction to issue an appropriate order against either or both parties. In fashioning an order, the court shall take into consideration not only the elements necessary for injunctive relief but also the purpose and goals of this chapter and any mitigating factors such as the commission of an unfair labor practice by either party. [2002 c 356 § 16.]

41.76.070 Certain contracts or agreements—Chapter 34.05 RCW does not apply. Contracts or agreements, or any provision thereof, entered into between boards of regents or trustees and exclusive bargaining representatives pursuant to this chapter are not affected by or subject to chapter 34.05 RCW. [2002 c 356 § 17.]

41.76.075 Retroactive accrual of benefits and salaries. Whenever a collective bargaining agreement between an employer and an exclusive bargaining representative is concluded after the termination date of the previous collective bargaining agreement between the same parties, the effective date of the collective bargaining agreement may be the day after the termination date of the previous collective bargaining agreement, and all benefits included in the new collective bargaining agreement, including wage or salary increases, may accrue beginning with the effective date as established by this section. [2002 c 356 § 19.]

41.76.080 Existing agreements not affected. Nothing in this chapter shall be construed to annul, modify, or preclude the renewal or continuation of any lawful agreement entered into before October 1, 2002, between an employer and an employee organization covering wages, hours, and terms and conditions of employment. [2002 c 356 § 20.]

41.76.085 Limitations on application of chapter. Except as otherwise expressly provided in this chapter, this chapter shall not be construed to deny or otherwise abridge any rights, privileges, or benefits granted by law to employees. This chapter shall not be construed to interfere with the

responsibilities and rights of the board of regents or board of trustees as specified by federal and state law. [2002 c 356 § 21.]

41.76.900 Severability—2002 c 356. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2002 c 356 § 18.]

41.76.901 Captions not law—2002 c 356. Section captions used in this act are not any part of the law. [2002 c 356 § 22.]

41.76.902 Effective date—2002 c 356. This act takes effect October 1, 2002. [2002 c 356 § 23.]

Chapter 41.80 RCW STATE COLLECTIVE BARGAINING

Sections

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41.80.001 Application of chapter. Collective bargaining negotiations under this chapter shall commence no later than July 1, 2004. A collective bargaining agreement entered into under this chapter shall not be effective prior to July 1, 2005. However, any collective bargaining agreement entered into before July 1, 2004, covering employees affected by this section and RCW 41.80.010 through 41.80.130, that expires after July 1, 2004, shall, unless a superseding agreement complying with this section and RCW 41.80.010 through 41.80.130 is negotiated by the parties, remain in full force during its duration, but the agreement may not be renewed or extended beyond July 1, 2005, or until superseded by a collective bargaining agreement entered into under this section and RCW 41.80.010 through 41.80.130, whichever is later. The duration of any collective bargaining agreement under this chapter shall not exceed one fiscal biennium. [2002 c 354 § 301.]

41.80.005 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means any agency as defined in RCW 41.06.020 and covered by chapter 41.06 RCW.

(2) "Collective bargaining" means the performance of the mutual obligation of the representatives of the employer and the exclusive bargaining representative to meet at reasonable times and to bargain in good faith in an effort to reach agreement with respect to the subjects of bargaining specified under RCW 41.80.020. The obligation to bargain does not compel either party to agree to a proposal or to make a concession, except as otherwise provided in this chapter.

(3) "Commission" means the public employment relations commission.

(4) "Confidential employee" means an employee who, in the regular course of his or her duties, assists in a confidential capacity persons who formulate, determine, and effectuate management policies with regard to labor relations or who, in the regular course of his or her duties, has authorized access to information relating to the effectuation or review of the employer's collective bargaining policies, or who assists or aids a manager. "Confidential employee" also includes employees who assist assistant attorneys general who advise and represent managers or confidential employees in personnel or labor relations matters, or who advise or represent the state in tort actions.

(5) "Director" means the director of the public employment relations commission.

(6) "Employee" means any employee, including employees whose work has ceased in connection with the pursuit of lawful activities protected by this chapter, covered by chapter 41.06 RCW, except:

(a) Employees covered for collective bargaining by chapter 41.56 RCW;

(b) Confidential employees;

(c) Members of the Washington management service;

(d) Internal auditors in any agency; or

(e) Any employee of the commission, the office of financial management, or the office of risk management within the department of enterprise services.

(7) "Employee organization" means any organization, union, or association in which employees participate and that exists for the purpose, in whole or in part, of collective bargaining with employers.

(8) "Employer" means the state of Washington.

(9) "Exclusive bargaining representative" means any employee organization that has been certified under this chapter as the representative of the employees in an appropriate bargaining unit.

(10) "Institutions of higher education" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges.

(11) "Labor dispute" means any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment with respect to the subjects of bargaining provided in this chapter, regardless of whether the

disputants stand in the proximate relation of employer and employee.

(12) "Manager" means "manager" as defined in RCW 41.06.022.

(13) "Supervisor" means an employee who has authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, or to adjust employee grievances, or effectively to recommend such action, if the exercise of the authority is not of a merely routine nature but requires the consistent exercise of individual judgment. However, no employee who is a member of the Washington management service may be included in a collective bargaining unit established under this section.

(14) "Unfair labor practice" means any unfair labor practice listed in RCW 41.80.110. [2011 1st sp.s. c 43 § 444; 2002 c 354 § 321.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.80.010 Negotiation and ratification of collective bargaining agreements. (1) For the purpose of negotiating collective bargaining agreements under this chapter, the employer shall be represented by the governor or governor's designee, except as provided for institutions of higher education in subsection (4) of this section.

(2)(a) If an exclusive bargaining representative represents more than one bargaining unit, the exclusive bargaining representative shall negotiate with each employer representative as designated in subsection (1) of this section one master collective bargaining agreement on behalf of all the employees in bargaining units that the exclusive bargaining representative represents. For those exclusive bargaining representatives who represent fewer than a total of five hundred employees each, negotiation shall be by a coalition of all those exclusive bargaining representatives. The coalition shall bargain for a master collective bargaining agreement covering all of the employees represented by the coalition. The governor's designee and the exclusive bargaining representative or representatives are authorized to enter into supplemental bargaining of agency-specific issues for inclusion in or as an addendum to the master collective bargaining agreement, subject to the parties' agreement regarding the issues and procedures for supplemental bargaining. This section does not prohibit cooperation and coordination of bargaining between two or more exclusive bargaining representatives.

(b) This subsection (2) does not apply to exclusive bargaining representatives who represent employees of institutions of higher education, except when the institution of higher education has elected to exercise its option under subsection (4) of this section to have its negotiations conducted by the governor or governor's designee under the procedures provided for general government agencies in subsections (1) through (3) of this section.

(c) If five hundred or more employees of an independent state elected official listed in RCW 43.01.010 are organized in a bargaining unit or bargaining units under RCW 41.80.070, the official shall be consulted by the governor or the governor's designee before any agreement is reached under (a) of this subsection concerning supplemental bar-

gaining of agency specific issues affecting the employees in such bargaining unit.

(3) The governor shall submit a request for funds necessary to implement the compensation and fringe benefit provisions in the master collective bargaining agreement or for legislation necessary to implement the agreement. Requests for funds necessary to implement the provisions of bargaining agreements shall not be submitted to the legislature by the governor unless such requests:

(a) Have been submitted to the director of the office of financial management by October 1 prior to the legislative session at which the requests are to be considered; and

(b) Have been certified by the director of the office of financial management as being feasible financially for the state.

The legislature shall approve or reject the submission of the request for funds as a whole. The legislature shall not consider a request for funds to implement a collective bargaining agreement unless the request is transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060. If the legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement or the exclusive bargaining representative may seek to implement the procedures provided for in RCW 41.80.090.

(4)(a)(i) For the purpose of negotiating agreements for institutions of higher education, the employer shall be the respective governing board of each of the universities, colleges, or community colleges or a designee chosen by the board to negotiate on its behalf.

(ii) A governing board of a university or college may elect to have its negotiations conducted by the governor or governor's designee under the procedures provided for general government agencies in subsections (1) through (3) of this section, except that:

(A) The governor or the governor's designee and an exclusive bargaining representative shall negotiate one master collective bargaining agreement for all of the bargaining units of employees of a university or college that the representative represents; or

(B) If the parties mutually agree, the governor or the governor's designee and an exclusive bargaining representative shall negotiate one master collective bargaining agreement for all of the bargaining units of employees of more than one university or college that the representative represents.

(iii) A governing board of a community college may elect to have its negotiations conducted by the governor or governor's designee under the procedures provided for general government agencies in subsections (1) through (3) of this section.

(b) Prior to entering into negotiations under this chapter, the institutions of higher education or their designees shall consult with the director of the office of financial management regarding financial and budgetary issues that are likely to arise in the impending negotiations.

(c)(i) In the case of bargaining agreements reached between institutions of higher education other than the University of Washington and exclusive bargaining representatives agreed to under the provisions of this chapter, if appropriations are necessary to implement the compensation and

fringe benefit provisions of the bargaining agreements, the governor shall submit a request for such funds to the legislature according to the provisions of subsection (3) of this section, except as provided in (c)(iii) of this subsection.

(ii) In the case of bargaining agreements reached between the University of Washington and exclusive bargaining representatives agreed to under the provisions of this chapter, if appropriations are necessary to implement the compensation and fringe benefit provisions of a bargaining agreement, the governor shall submit a request for such funds to the legislature according to the provisions of subsection (3) of this section, except as provided in this subsection (4)(c)(ii) and as provided in (c)(iii) of this subsection.

(A) If appropriations of less than ten thousand dollars are necessary to implement the provisions of a bargaining agreement, a request for such funds shall not be submitted to the legislature by the governor unless the request has been submitted to the director of the office of financial management by October 1 prior to the legislative session at which the request is to be considered.

(B) If appropriations of ten thousand dollars or more are necessary to implement the provisions of a bargaining agreement, a request for such funds shall not be submitted to the legislature by the governor unless the request:

(I) Has been submitted to the director of the office of financial management by October 1 prior to the legislative session at which the request is to be considered; and

(II) Has been certified by the director of the office of financial management as being feasible financially for the state.

(C) If the director of the office of financial management does not certify a request under (c)(ii)(B) of this subsection as being feasible financially for the state, the parties shall enter into collective bargaining solely for the purpose of reaching a mutually agreed upon modification of the agreement necessary to address the absence of those requested funds. The legislature may act upon the compensation and fringe benefit provisions of the modified collective bargaining agreement if those provisions are agreed upon and submitted to the office of financial management and legislative budget committees before final legislative action on the biennial or supplemental operating budget by the sitting legislature.

(iii) In the case of a bargaining unit of employees of institutions of higher education in which the exclusive bargaining representative is certified during or after the conclusion of a legislative session, the legislature may act upon the compensation and fringe benefit provisions of the unit's initial collective bargaining agreement if those provisions are agreed upon and submitted to the office of financial management and legislative budget committees before final legislative action on the biennial or supplemental operating budget by the sitting legislature.

(5) There is hereby created a joint committee on employment relations, which consists of two members with leadership positions in the house of representatives, representing each of the two largest caucuses; the chair and ranking minority member of the house appropriations committee, or its successor, representing each of the two largest caucuses; two members with leadership positions in the senate, representing each of the two largest caucuses; and the chair and ranking minority member of the senate ways and means committee,

or its successor, representing each of the two largest caucuses. The governor shall periodically consult with the committee regarding appropriations necessary to implement the compensation and fringe benefit provisions in the master collective bargaining agreements, and upon completion of negotiations, advise the committee on the elements of the agreements and on any legislation necessary to implement the agreements.

(6) If, after the compensation and fringe benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

(7) After the expiration date of a collective bargaining agreement negotiated under this chapter, all of the terms and conditions specified in the collective bargaining agreement remain in effect until the effective date of a subsequently negotiated agreement, not to exceed one year from the expiration date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

(8) For the 2013-2015 fiscal biennium, a collective bargaining agreement related to employee health care benefits negotiated between the employer and coalition pursuant to RCW 41.80.020(3) regarding the dollar amount expended on behalf of each employee shall be a separate agreement for which the governor may request funds necessary to implement the agreement. The legislature may act upon a 2013-2015 collective bargaining agreement related to employee health care benefits if an agreement is reached and submitted to the office of financial management and legislative budget committees before final legislative action on the biennial or supplemental operating appropriations act by the sitting legislature. [2013 2nd sp.s. c 4 § 971. Prior: 2011 1st sp.s. c 50 § 938; 2011 c 344 § 1; 2010 c 104 § 1; 2002 c 354 § 302.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

41.80.020 Scope of bargaining. (1) Except as otherwise provided in this chapter, the matters subject to bargaining include wages, hours, and other terms and conditions of employment, and the negotiation of any question arising under a collective bargaining agreement.

(2) The employer is not required to bargain over matters pertaining to:

(a) Health care benefits or other employee insurance benefits, except as required in subsection (3) of this section;

(b) Any retirement system or retirement benefit; or

(c) Rules of the human resources director, the director of enterprise services, or the Washington personnel resources board adopted under RCW 41.06.157.

(3) Matters subject to bargaining include the number of names to be certified for vacancies, promotional preferences, and the dollar amount expended on behalf of each employee for health care benefits. However, except as provided otherwise in this subsection for institutions of higher education, negotiations regarding the number of names to be certified

for vacancies, promotional preferences, and the dollar amount expended on behalf of each employee for health care benefits shall be conducted between the employer and one coalition of all the exclusive bargaining representatives subject to this chapter. The exclusive bargaining representatives for employees that are subject to chapter 47.64 RCW shall bargain the dollar amount expended on behalf of each employee for health care benefits with the employer as part of the coalition under this subsection. Any such provision agreed to by the employer and the coalition shall be included in all master collective bargaining agreements negotiated by the parties. For institutions of higher education, promotional preferences and the number of names to be certified for vacancies shall be bargained under the provisions of RCW 41.80.010(4). For agreements covering the 2013-2015 fiscal biennium, any agreement between the employer and the coalition regarding the dollar amount expended on behalf of each employee for health care benefits is a separate agreement and shall not be included in the master collective bargaining agreements negotiated by the parties.

(4) The employer and the exclusive bargaining representative shall not agree to any proposal that would prevent the implementation of approved affirmative action plans or that would be inconsistent with the comparable worth agreement that provided the basis for the salary changes implemented beginning with the 1983-1985 biennium to achieve comparable worth.

(5) The employer and the exclusive bargaining representative shall not bargain over matters pertaining to management rights established in RCW 41.80.040.

(6) Except as otherwise provided in this chapter, if a conflict exists between an executive order, administrative rule, or agency policy relating to wages, hours, and terms and conditions of employment and a collective bargaining agreement negotiated under this chapter, the collective bargaining agreement shall prevail. A provision of a collective bargaining agreement that conflicts with the terms of a statute is invalid and unenforceable.

(7) This section does not prohibit bargaining that affects contracts authorized by RCW 41.06.142. [2013 2nd sp.s. c 4 § 972. Prior: 2011 1st sp.s. c 50 § 939; 2011 1st sp.s. c 43 § 445; 2010 c 283 § 16; 2002 c 354 § 303.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—Intent—Effective date—2010 c 283: See notes following RCW 47.60.355.

41.80.030 Contents of collective bargaining agreements—Execution. (1) The parties to a collective bargaining agreement shall reduce the agreement to writing and both shall execute it.

(2) A collective bargaining agreement shall contain provisions that:

(a) Provide for a grievance procedure that culminates with final and binding arbitration of all disputes arising over the interpretation or application of the collective bargaining

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agreement and that is valid and enforceable under its terms when entered into in accordance with this chapter; and

(b) Require processing of disciplinary actions or terminations of employment of employees covered by the collective bargaining agreement entirely under the procedures of the collective bargaining agreement. Any employee, when fully reinstated, shall be guaranteed all employee rights and benefits, including back pay, sick leave, vacation accrual, and retirement and federal old age, survivors, and disability insurance act credits, but without back pay for any period of suspension.

(3)(a) If a collective bargaining agreement between an employer and an exclusive bargaining representative is concluded after the termination date of the previous collective bargaining agreement between the employer and an employee organization representing the same bargaining units, the effective date of the collective bargaining agreement may be the day after the termination of the previous collective bargaining agreement, and all benefits included in the new collective bargaining agreement, including wage or salary increases, may accrue beginning with that effective date.

(b) If a collective bargaining agreement between an employer and an exclusive bargaining representative is concluded after the termination date of the previous collective bargaining agreement between the employer and the exclusive bargaining representative representing different bargaining units, the effective date of the collective bargaining agreement may be the day after the termination date of whichever previous collective bargaining agreement covering one or more of the units terminated first, and all benefits included in the new collective bargaining agreement, including wage or salary increases, may accrue beginning with that effective date. [2002 c 354 § 304.]

41.80.040 Management rights—Not subject to bargaining. The employer shall not bargain over rights of management which, in addition to all powers, duties, and rights established by constitutional provision or statute, shall include but not be limited to the following:

(1) The functions and programs of the employer, the use of technology, and the structure of the organization;

(2) The employer's budget and the size of the agency workforce, including determining the financial basis for layoffs;

(3) The right to direct and supervise employees;

(4) The right to take whatever actions are deemed necessary to carry out the mission of the state and its agencies during emergencies; and

(5) Retirement plans and retirement benefits. [2002 c 354 § 305.]

41.80.050 Rights of employees. Except as may be specifically limited by this chapter, employees shall have the right to self-organization, to form, join, or assist employee organizations, and to bargain collectively through representatives of their own choosing for the purpose of collective bargaining free from interference, restraint, or coercion. Employees shall also have the right to refrain from any or all such activities except to the extent that they may be required to pay a fee to an exclusive bargaining representative under a

union security provision authorized by this chapter. [2002 c 354 § 306.]

41.80.060 Right to strike not granted. Nothing contained in chapter 354, Laws of 2002 permits or grants to any employee the right to strike or refuse to perform his or her official duties. [2002 c 354 § 307.]

41.80.070 Bargaining units—Certification. (1) A bargaining unit of employees covered by this chapter existing on June 13, 2002, shall be considered an appropriate unit, unless the unit does not meet the requirements of (a) and (b) of this subsection. The commission, after hearing upon reasonable notice to all interested parties, shall decide, in each application for certification as an exclusive bargaining representative, the unit appropriate for certification. In determining the new units or modifications of existing units, the commission shall consider: The duties, skills, and working conditions of the employees; the history of collective bargaining; the extent of organization among the employees; the desires of the employees; and the avoidance of excessive fragmentation. However, a unit is not appropriate if it includes:

(a) Both supervisors and nonsupervisory employees. A unit that includes only supervisors may be considered appropriate if a majority of the supervisory employees indicates by vote that they desire to be included in such a unit; or

(b) More than one institution of higher education. For the purposes of this section, any branch or regional campus of an institution of higher education is part of that institution of higher education.

(2) The exclusive bargaining representatives certified to represent the bargaining units existing on June 13, 2002, shall continue as the exclusive bargaining representative without the necessity of an election.

(3) If a single employee organization is the exclusive bargaining representative for two or more units, upon petition by the employee organization, the units may be consolidated into a single larger unit if the commission considers the larger unit to be appropriate. If consolidation is appropriate, the commission shall certify the employee organization as the exclusive bargaining representative of the new unit. [2002 c 354 § 308.]

41.80.080 Representation—Elections—Rules. (1) The commission shall determine all questions pertaining to representation and shall administer all elections and be responsible for the processing and adjudication of all disputes that arise as a consequence of elections. The commission shall adopt rules that provide for at least the following:

- (a) Secret balloting;
- (b) Consulting with employee organizations;
- (c) Access to lists of employees, job classification, work locations, and home mailing addresses;
- (d) Absentee voting;
- (e) Procedures for the greatest possible participation in voting;
- (f) Campaigning on the employer's property during working hours; and
- (g) Election observers.

(2)(a) If an employee organization has been certified as the exclusive bargaining representative of the employees of a

bargaining unit, the employee organization may act for and negotiate master collective bargaining agreements that will include within the coverage of the agreement all employees in the bargaining unit as provided in RCW 41.80.010(2)(a). However, if a master collective bargaining agreement is in effect for the exclusive bargaining representative, it shall apply to the bargaining unit for which the certification has been issued. Nothing in this section requires the parties to engage in new negotiations during the term of that agreement.

(b) This subsection (2) does not apply to exclusive bargaining representatives who represent employees of institutions of higher education.

(3) The certified exclusive bargaining representative shall be responsible for representing the interests of all the employees in the bargaining unit. This section shall not be construed to limit an exclusive representative's right to exercise its discretion to refuse to process grievances of employees that are unmeritorious.

(4) No question concerning representation may be raised if:

(a) Fewer than twelve months have elapsed since the last certification or election; or

(b) A valid collective bargaining agreement exists covering the unit, except for that period of no more than one hundred twenty calendar days nor less than ninety calendar days before the expiration of the contract. [2002 c 354 § 309.]

41.80.090 Failure to reach agreement—Third party involvement—Expiration of agreements during negotiation. Should the parties fail to reach agreement in negotiating a collective bargaining agreement, either party may request of the commission the assistance of an impartial third party to mediate the negotiations.

If a collective bargaining agreement previously negotiated under this chapter should expire while negotiations are underway, the terms and conditions specified in the collective bargaining agreement shall remain in effect for a period not to exceed one year from the expiration date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

If resolution is not reached through mediation by one hundred days beyond the expiration date of a contract previously negotiated under this chapter, or one hundred days from the initiation of mediated negotiations if no such contract exists, an independent fact finder shall be appointed by the commission.

The fact finder shall meet with the parties or their representatives, or both, and make inquiries and investigations, hold hearings, and take such other steps as may be appropriate. If the dispute is not settled, the fact finder shall make findings of fact and recommend terms of settlement within thirty days.

Such recommendations, together with the findings of fact, shall be submitted in writing to the parties and the commission privately before they are made public. The commission, the fact finder, the employer, or the exclusive bargaining representative may make such findings and recommendations public if the dispute is not settled within ten working days after their receipt from the fact finder.

Nothing in this section shall be construed to prohibit an employer and an exclusive bargaining representative from agreeing to substitute, at their own expense, their own procedure for resolving impasses in collective bargaining for that provided in this section or from agreeing to utilize for the purposes of this section any other governmental or other agency or person in lieu of the commission.

Costs for mediator services shall be borne by the commission, and costs for fact-finding shall be borne equally by the negotiating parties. [2002 c 354 § 310.]

41.80.100 Union security—Fees and dues—Right of nonassociation. (1) A collective bargaining agreement may contain a union security provision requiring as a condition of employment the payment, no later than the thirtieth day following the beginning of employment or July 1, 2004, whichever is later, of an agency shop fee to the employee organization that is the exclusive bargaining representative for the bargaining unit in which the employee is employed. The amount of the fee shall be equal to the amount required to become a member in good standing of the employee organization. Each employee organization shall establish a procedure by which any employee so requesting may pay a representation fee no greater than the part of the membership fee that represents a pro rata share of expenditures for purposes germane to the collective bargaining process, to contract administration, or to pursuing matters affecting wages, hours, and other conditions of employment.

(2) An employee who is covered by a union security provision and who asserts a right of nonassociation based on bona fide religious tenets, or teachings of a church or religious body of which the employee is a member, shall, as a condition of employment, make payments to the employee organization, for purposes within the program of the employee organization as designated by the employee that would be in harmony with his or her individual conscience. The amount of the payments shall be equal to the periodic dues and fees uniformly required as a condition of acquiring or retaining membership in the employee organization minus any included monthly premiums for insurance programs sponsored by the employee organization. The employee shall not be a member of the employee organization but is entitled to all the representation rights of a member of the employee organization.

(3) Upon filing with the employer the written authorization of a bargaining unit employee under this chapter, the employee organization that is the exclusive bargaining representative of the bargaining unit shall have the exclusive right to have deducted from the salary of the employee an amount equal to the fees and dues uniformly required as a condition of acquiring or retaining membership in the employee organization. The fees and dues shall be deducted each pay period from the pay of all employees who have given authorization for the deduction and shall be transmitted by the employer as provided for by agreement between the employer and the employee organization.

(4) Employee organizations that before July 1, 2004, were entitled to the benefits of this section shall continue to be entitled to these benefits. [2002 c 354 § 311.]

41.80.110 Unfair labor practices enumerated. (1) It is an unfair labor practice for an employer:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by this chapter;

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: PROVIDED, That subject to rules adopted by the commission, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment, or any term or condition of employment;

(d) To discharge or discriminate otherwise against an employee because that employee has filed charges or given testimony under this chapter;

(e) To refuse to bargain collectively with the representatives of its employees.

(2) It is an unfair labor practice for an employee organization:

(a) To restrain or coerce an employee in the exercise of the rights guaranteed by this chapter: PROVIDED, That this subsection shall not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership in the employee organization or to an employer in the selection of its representatives for the purpose of bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

(c) To discriminate against an employee because that employee has filed charges or given testimony under this chapter;

(d) To refuse to bargain collectively with an employer.

(3) The expressing of any views, arguments, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under this chapter, if such expression contains no threat of reprisal or force or promise of benefit. [2002 c 354 § 312.]

41.80.120 Unfair labor practice procedures—Powers and duties of commission. (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected or impaired by any means of adjustment, mediation, or conciliation in labor disputes that have been or may hereafter be established by law.

(2) If the commission determines that any person has engaged in or is engaging in an unfair labor practice, the commission shall issue and cause to be served upon the person an order requiring the person to cease and desist from such unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of this chapter, such as the payment of damages and the reinstatement of employees.

(3) The commission may petition the superior court for the county in which the main office of the employer is located or in which the person who has engaged or is engaging in such unfair labor practice resides or transacts business, for the enforcement of its order and for appropriate temporary relief. [2002 c 354 § 313.]

41.80.130 Enforcement of collective bargaining agreements—Arbitrators—Subpoenas—Superior court.

(1) For the purposes of implementing final and binding arbitration under grievance procedures required by RCW 41.80.030, the parties to a collective bargaining agreement may agree on one or more permanent umpires to serve as arbitrator, or may agree on any impartial person to serve as arbitrator, or may agree to select arbitrators from any source available to them, including federal and private agencies, in addition to the staff and list of arbitrators maintained by the commission. If the parties cannot agree to the selection of an arbitrator, the commission shall supply a list of names in accordance with the procedures established by the commission.

(2) An arbitrator may require any person to attend as a witness and to bring with him or her any book, record, document, or other evidence. The fees for such attendance shall be paid by the party requesting issuance of the subpoena and shall be the same as the fees of witnesses in the superior court. Arbitrators may administer oaths. Subpoenas shall issue and be signed by the arbitrator and shall be served in the same manner as subpoenas to testify before a court of record in this state. If any person so summoned to testify refuses or neglects to obey such subpoena, upon petition authorized by the arbitrator, the superior court may compel the attendance of the person before the arbitrator or punish the person for contempt in the same manner provided for the attendance of witnesses or the punishment of them in the courts of this state.

(3) The arbitrator shall appoint a time and place for the hearing and notify the parties thereof, and may adjourn the hearing from time to time as may be necessary, and, on application of either party and for good cause, may postpone the hearing to a time not extending beyond the date fixed by the collective bargaining agreement for making the award. The arbitration award shall be in writing and signed by the arbitrator. The arbitrator shall, promptly upon its rendition, serve a true copy of the award on each of the parties or their attorneys of record.

(4) If a party to a collective bargaining agreement negotiated under this chapter refuses to submit a grievance for arbitration, the other party to the collective bargaining agreement may invoke the jurisdiction of the superior court of Thurston county or of any county in which the labor dispute exists and such court shall have jurisdiction to issue an order compelling arbitration. Disputes concerning compliance with grievance procedures shall be reserved for determination by the arbitrator. Arbitration shall be ordered if the grievance states a claim that on its face is covered by the collective bargaining agreement. Doubts as to the coverage of the arbitration clause shall be resolved in favor of arbitration.

(5) If a party to a collective bargaining agreement negotiated under this chapter refuses to comply with the award of an arbitrator determining a grievance arising under the col-

lective bargaining agreement, the other party to the collective bargaining agreement may invoke the jurisdiction of the superior court of Thurston county or of any county in which the labor dispute exists and such court shall have jurisdiction to issue an order enforcing the arbitration award. [2002 c 354 § 314.]

41.80.140 Office of financial management's labor relations service account—Created.

(1) The office of financial management's labor relations service account is created in the custody of the state treasurer to be used as a revolving fund for the payment of labor relations services required for the negotiation of the collective bargaining agreements entered into under this chapter. An amount not to exceed one-tenth of one percent of the approved allotments of salaries and wages for all bargaining unit positions in the classified service in each of the agencies subject to this chapter, except the institutions of higher education, shall be charged to the operations appropriations of each agency and credited to the office of financial management's labor relations service account as the allotments are approved pursuant to chapter 43.88 RCW. Subject to the above limitations, the amount shall be charged against the allotments pro rata, at a rate to be fixed by the director of financial management from time to time. Payment for services rendered under this chapter shall be made on a quarterly basis to the state treasurer and deposited into the office of financial management's labor relations service account.

(2) Moneys from the office of financial management's labor relations service account shall be disbursed by the state treasurer by warrants on vouchers authorized by the director of financial management or the director's designee. An appropriation is not required. [2002 c 354 § 322.]

41.80.905 Apportionment of funds. If apportionments of budgeted funds are required because of the transfers directed by *RCW 41.80.901 through 41.80.904, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification. [2002 c 354 § 320.]

*Reviser's note: RCW 41.80.901 through 41.80.904 were decodified pursuant to 2011 1st sp.s. c 43 § 479.

41.80.907 Short title—2002 c 354. This act may be known and cited as the personnel system reform act of 2002. [2002 c 354 § 101.]

41.80.908 Headings, captions not law—2002 c 354. Part headings and section captions used in this act do not constitute part of the law. [2002 c 354 § 405.]

41.80.909 Severability—2002 c 354. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2002 c 354 § 410.]

41.80.910 Effective dates—2002 c 354. (1) Sections 203, 204, 213 through 223, 227, 229 through 231, 241, 243, 246, 248, 301 through 307, 309 through 316, 318, 319, and 402 of this act take effect July 1, 2004.

(2) Section 224 of this act takes effect March 15, 2005.

(3) Sections 208, 234 through 238, and 403 of this act take effect July 1, 2005.

(4) Sections 225, 226, 233, and 404 of this act take effect July 1, 2006. [2002 c 354 § 411.]

41.80.911 Review of appropriateness of certain collective bargaining units. (1) By January 1, 2012, the public employment relations commission may review the appropriateness of the collective bargaining units transferred under RCW 43.19.900, 43.19.901, 43.19.902, 43.330.910, and 43.41A.900. The employer or the exclusive bargaining representative may petition the public employment relations commission to review the bargaining units in accordance with this section.

(2) If the commission determines that an existing collective bargaining unit is appropriate pursuant to RCW 41.80.070, the exclusive bargaining representative certified to represent the bargaining unit prior to January 1, 2012, shall continue as the exclusive bargaining representative without the necessity of an election.

(3) If the commission determines that existing collective bargaining units are not appropriate, the commission may modify the units and order an election pursuant to RCW 41.80.080. Certified bargaining representatives will not be required to demonstrate a showing of interest to be included on the ballot.

(4) The commission may require an election pursuant to RCW 41.80.080 if similarly situated employees are represented by more than one employee organization. Certified bargaining representatives will not be required to demonstrate a showing of interest to be included on the ballot. [2011 1st sp.s. c 43 § 1001.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Title 42

PUBLIC OFFICERS AND AGENCIES

Chapters

- 42.04 General provisions.
- 42.08 Official bonds.
- 42.12 Vacancies.
- 42.14 Continuity of government act.
- 42.16 Salaries and fees.
- 42.17A Campaign disclosure and contribution.
- 42.20 Misconduct of public officers.
- 42.23 Code of ethics for municipal officers—Contract interests.
- 42.24 Payment of claims for expenses, material, purchases—Advancements.
- 42.26 Agency vendor payment revolving fund—Petty cash accounts.
- 42.30 Open Public Meetings Act.
- 42.32 Meetings.
- 42.36 Appearance of fairness doctrine—Limitations.
- 42.40 State employee whistleblower protection.
- 42.41 Local government whistleblower protection.
- 42.44 Notaries public.
- 42.48 Release of records for research.
- 42.52 Ethics in public service.
- 42.56 Public records act.

Collection agencies retained to collect public debts—Fees: RCW 19.16.500.

County officers, general provisions: Chapter 36.16 RCW.

Credit card use by local governments: RCW 43.09.2855.

Elections: Title 29A RCW.

Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.

Military leave for public employees: RCW 38.40.060.

Public employment, civil service and pensions: Title 41 RCW.

State officers, general provisions: Chapter 43.01 RCW.

Chapter 42.04 RCW GENERAL PROVISIONS

Sections

- 42.04.020 Eligibility to hold office.
- 42.04.040 Proceedings to impeach, etc., preserved.
- 42.04.060 Business hours—Posting on web site.
- 42.04.070 Compensation for unofficial services.

42.04.020 Eligibility to hold office. That no person shall be competent to qualify for or hold any elective public office within the state of Washington, or any county, district, precinct, school district, municipal corporation or other district or political subdivision, unless he or she be a citizen of the United States and state of Washington and an elector of such county, district, precinct, school district, municipality or other district or political subdivision. [2012 c 117 § 94; 1919 c 139 § 1; RRS § 9929. FORMER PART OF SECTION: Code 1881 § 3050 codified as RCW 42.04.021.]

Apple commission, qualifications of members: RCW 15.24.020.

Attorney general, qualifications: RCW 43.10.010.

(2014 Ed.)

Cities, council-manager plan, qualifications of city manager: RCW 35.18.040.

Cities and towns, residence qualifications of officials and employees: RCW 35.21.200.

County hospital board of trustees, eligibility: RCW 36.62.140.

Court administrator: RCW 2.56.010.

Court commissioners, qualifications: RCW 2.24.010.

Dairy products commission, members, qualifications: RCW 15.44.030.

Electors, qualifications: State Constitution Art. 6 § 1 (Amendment 5).

Engineers and land surveyors' board of registration, qualifications: RCW 18.43.030.

Fire protection district commissioners, qualifications: RCW 52.14.010.

Fish and wildlife commission members, qualifications: RCW 77.04.040.

Flood control districts, qualifications of governing board: RCW 85.38.070.

Fruit commission, qualifications of members: RCW 15.28.030.

Hardwoods commission, qualifications: RCW 15.74.010.

Honey bee commission, qualifications: RCW 15.62.060.

Horse racing commission, qualifications: RCW 67.16.012.

Judges of superior court, eligibility: State Constitution Art. 4 § 17.

Judges of supreme court, eligibility: State Constitution Art. 4 § 17.

Legislators, eligibility: State Constitution Art. 2 § 7; Art. 2 § 14.

Mosquito control district board members, qualifications: RCW 17.28.120.

Municipal court judges, qualifications: RCW 35.20.170.

Prosecuting attorney, eligibility: RCW 36.27.010.

Public utility district commissioners, qualifications: RCW 54.12.010.

Religious qualification to hold public office or employment prohibited: State Constitution Art. 1 § 11 (Amendment 4).

Residence for eligibility to public office: State Constitution Art. 6 § 4.

School directors, qualifications: RCW 28A.343.340.

School teachers, qualifications: RCW 28A.410.025, 28A.405.040.

State hospitals for individuals with mental illness, superintendents' powers: RCW 72.23.030.

State officers, eligibility: State Constitution Art. 3 § 25 (Amendment 31).

State schools for blind and deaf, qualifications of superintendents: RCW 72.40.020.

Subversive activities as disqualification from holding public office: Chapter 9.81 RCW.

Superior court reporters, qualifications: RCW 2.32.180.

Towns, eligibility of officers: RCW 35.27.080.

Utilities and transportation commission, qualifications: RCW 80.01.020.

Veterinary board members, qualifications: RCW 18.92.021.

Weed district director and electors, qualifications: RCW 17.04.070.

Wine commission, qualifications: RCW 15.88.030.

42.04.040 Proceedings to impeach, etc., preserved.

The omission to specify or affirm in *this act any ground of forfeiture of a public office or other trust or special authority conferred by law, or any power conferred by law to impeach, remove, depose or suspend any public officer or other person holding any trust, appointment or other special authority conferred by law, shall not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such

impeachment, removal, deposition or suspension. [1909 c 249 § 45; RRS § 2297.]

*Reviser's note: The term "this act" relates to the criminal code of 1909. For disposition of sections, see note following RCW 9.01.120.

Forfeiture of office for conviction of felony or malfeasance: RCW 9.92.120. Impeachment and removal: State Constitution Art. 5.

Recall of elective officers: State Constitution Art. 1 § 33 (Amendment 8); chapter 29A.56 RCW.

42.04.060 Business hours—Posting on web site.

Except as provided in section 3, chapter 32, Laws of 2010 1st sp. sess., all state elective and appointive officers shall keep their offices open for the transaction of business for a minimum of forty hours per week, except weeks that include state legal holidays. Customary business hours must be posted on the agency or office's web site and made known by other means designed to provide the public with notice. [2010 1st sp.s. c 32 § 5; 2009 c 428 § 1; 1973 2nd ex.s. c 1 § 2; 1955 ex.s. c 9 § 3. Prior: 1951 c 100 §§ 3, 4; 1941 c 113 § 1; Rem. Supp. 1941 § 9963-1.]

Intent—2010 1st sp.s. c 32: "The legislature declares that unprecedented revenue shortfalls necessitate immediate action to reduce expenditures during the 2009-2011 fiscal biennium. From April 27, 2010, it is the intent of the legislature that state agencies of the legislative branch, judicial branch, and executive branch including institutions of higher education, shall achieve a reduction in government operating expenses as provided in this act. It is the legislature's intent that, to the extent that the reductions in expenditures reduce compensation costs, agencies and institutions shall strive to preserve family wage jobs by reducing the impact of temporary layoffs on lower-wage jobs." [2010 1st sp.s. c 32 § 1.]

Conflict with federal requirements—2010 1st sp.s. c 32: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2010 1st sp.s. c 32 § 11.]

Effective date—2010 1st sp.s. c 32: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 27, 2010]." [2010 1st sp.s. c 32 § 13.]

Office hours of city, county, precinct: RCW 35.21.175, 36.16.100.

42.04.070 Compensation for unofficial services.

That the directors, trustees and commissioners of state institutions in this state, serving as such without any compensation, shall not be precluded by reason of holding such offices from receiving compensation for services not official rendered without being procured or brought about by use of such official position, or by reason thereof, but such officers shall be allowed to receive such reasonable compensation for services not official or connected with their respective offices as they would otherwise be allowed were they not such officers. [1891 c 109 § 1; RRS § 10966.]

Chapter 42.08 RCW OFFICIAL BONDS

Sections

- 42.08.005 Official bonds—Payment of premiums. OFFICIAL BONDS—CODE OF 1881
42.08.010 Scope of coverage.
42.08.020 Who may maintain action.

- 42.08.030 Leave of court required.
42.08.040 Judgment no bar to further action.
42.08.050 Recoveries limited to amount of bond.

OFFICIAL BONDS—1890 ACT

- 42.08.060 Form of official bonds.
42.08.070 Effect of bonds.
42.08.080 Who may bring action on bond.
42.08.090 Defective bonds validated.
42.08.100 Approval and filing.
42.08.110 Procedure when bond of county or township officer is insufficient.
42.08.120 Additional bond.
42.08.130 Remedy when bond of state officer becomes insufficient.
42.08.140 Force of additional bond.
42.08.150 Number of sureties.
42.08.160 Justification of sureties.
42.08.170 Liability of sureties.
42.08.180 Release of sureties.

Adjutant general, official bond: RCW 38.12.010.

Apple commission treasurer, bond required: RCW 15.24.150.

Attorney general, official bonds: RCW 43.10.010, 43.10.020.

Cities, code city retaining second class form, bond of officers: RCW 35.23.835.

Cities, commission form, bonds required: RCW 35.17.100.

Cities, council-manager plan, bond of manager: RCW 35.18.050.

Cities, second class, bond required: RCW 35.23.081.

Commissioner of public lands, official bonds: RCW 43.12.041.

County clerk, new bond may be required: RCW 36.23.020.

County commissioners, official bond: RCW 36.32.060.

County officers, official bonds: RCW 36.16.050.

County sheriff, additional bond: RCW 36.28.030.

Dairy products commission treasurer, bond required: RCW 15.44.050.

Flood control districts, official bonds: RCW 86.09.301, 86.09.304, 86.09.307.

Fruit commission treasurer, bond required: RCW 15.28.190.

Horse racing commission, official bonds: RCW 67.16.012.

Insurance commissioner, official bond: RCW 48.02.030.

Irrigation districts, official bonds: RCW 87.03.082.

Liquor control board, official bond: RCW 66.08.014.

Municipal court judge, bond required: RCW 35.20.180.

Reclamation district directors, official bonds: RCW 89.30.259.

Reclamation districts, bond of secretary: RCW 89.30.262.

Secretary of state, official bond: RCW 43.07.010.

State administrative officers, official bonds: RCW 43.17.100.

State auditor, official bond: RCW 43.09.010.

State treasurer, official bond: RCW 43.08.020.

Superior court reporters, bond required: RCW 2.32.180.

Suretyship: Chapters 19.72, 48.28 RCW.

Towns, bond of officers: RCW 35.27.120.

University of Washington, board of regents, secretary to give bond: RCW 28B.30.135.

Utilities and transportation commission, official bonds: RCW 80.01.020.

Washington State University, board of regents, bonds required: RCW 28B.30.100, 28B.30.130.

Weed district officers, bond required: RCW 17.04.070.

42.08.005 Official bonds—Payment of premiums.

See RCW 48.28.040.

OFFICIAL BONDS—CODE OF 1881

42.08.010 Scope of coverage. The official bond of a public officer, to the state, or to any county, city, town or

other municipal or public corporation of like character therein, shall be deemed a security to the state, or to such county, city, town or other municipal or public corporation, as the case may be, and also to all persons severally, for the official delinquencies against which it is intended to provide. [Code 1881 § 652; 1877 p 135 § 655; 1869 p 152 § 592; RRS § 958.]

Bonds payable to state: RCW 42.08.060.

42.08.020 Who may maintain action. When a public officer by official misconduct or neglect of duty, shall forfeit his or her official bond or render his or her sureties therein liable upon such bond, any person injured by such misconduct or neglect, or who is by law entitled to the benefit of the security, may maintain an action at law thereon in his or her own name against the officer and his or her sureties to recover the amount to which he or she may by reason thereof be entitled. [2012 c 117 § 95; Code 1881 § 653; 1877 p 135 § 656; 1869 p 152 § 593; RRS § 959.]

Action on official bond: RCW 42.08.080.

42.08.030 Leave of court required. Before an action can be commenced by a plaintiff, other than the state, or the municipal or public corporation named in the bond, leave shall be obtained of the court or judge thereof where the action is triable. Such leave shall be granted upon the production of a certified copy of the bond and an affidavit of the plaintiff, or some person in his or her behalf, showing the delinquency. But if the matter set forth in his or her affidavit be such that, if true, the party applying would clearly not be entitled to recover in the action, the leave shall not be granted. If it does not appear from the complaint that the leave herein provided for has been granted, the defendant, on motion, shall be entitled to judgment of nonsuit; if it does, the defendant may controvert the allegation, and if the issue be found in his or her favor, judgment shall be given accordingly. [2012 c 117 § 96; Code 1881 § 654; 1877 p 136 § 657; 1869 p 152 § 594; RRS § 960.]

42.08.040 Judgment no bar to further action. A judgment in favor of a party for one delinquency shall not preclude the same or another party from maintaining another action on the same bond for another delinquency. [Code 1881 § 655; 1877 p 136 § 658; 1869 p 153 § 595; RRS § 961.]

42.08.050 Recoveries limited to amount of bond. In an action upon an official bond, if judgments have been recovered against the surety therein other than by confession, equal in the aggregate to the penalty or any part thereof of such bond, and if such recovery be established on the trial, judgment shall not be given against such surety for an amount exceeding such penalty, or such portion thereof as is not already recovered against him or her. [2012 c 117 § 97; Code 1881 § 656; 1877 p 136 § 659; 1869 p 153 § 596; RRS § 962.]

Liability of sureties: RCW 42.08.170.

OFFICIAL BONDS—1890 ACT

42.08.060 Form of official bonds. All official bonds required by law of officers shall be in form, joint and several, and made payable to the state of Washington, in such penal

sum and with such conditions as may be required by law. [1890 p 34 § 1; RRS § 9930.]

Bonds deemed security to state, county, city, town, etc.: RCW 42.08.010.

County commissioner bond is payable to county: RCW 36.32.060.

42.08.070 Effect of bonds. Every official bond executed by any officer pursuant to law shall be deemed and taken to be in force, and shall be obligatory upon the principal and sureties therein for any and all breach of the condition or conditions thereof committed during the time such officer shall continue to discharge any of the duties of, or hold such office, and every such bond shall be deemed to be in force and obligatory upon the principal and sureties therein for the faithful discharge of all duties which may be required of such officer by any law enacted subsequent to the execution of such bond, and such condition shall be expressed therein. [1890 p 34 § 2; RRS § 9931.]

42.08.080 Who may bring action on bond. Every official bond executed by any officer pursuant to law, shall be in force and obligatory upon the principal and sureties therein, to and for the state of Washington, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer, in his official capacity, and any person so injured or aggrieved may bring suit on such bond in his or her own name without an assignment thereof. [1890 p 34 § 3; RRS § 9932.]

Action on official bond: RCW 42.08.020.

42.08.090 Defective bonds validated. Whenever any such official bond shall not contain the substantial matter or condition or conditions required by law, or there shall be any defect in the approval or filing thereof, such bond shall not be void so as to discharge such officer and his or her sureties, but they shall be bound to the state, or party interested, and the state or such party may, by action instituted in any court of competent jurisdiction, suggest the defect of such bond or such approval or filing, and recover his or her proper and equitable demand or damages from such officer, and the person or persons, who intended to become, and were included in such bond as sureties. [2012 c 117 § 98; 1890 p 35 § 4; RRS § 9933.]

42.08.100 Approval and filing. The official bonds of officers shall be approved and filed as follows, to wit: The official bond of the secretary of state shall be approved by the governor and filed in the office of the state auditor. The official bonds of all other state officers required by law to give bonds, except as otherwise expressly provided by law, shall be approved by the governor and filed in the office of the secretary of state.

The official bonds of all county and township officers, except the county superintendent of schools, shall be approved by the board of county commissioners, if in session, and if not in session, by the chair of such board, and filed and recorded in the office of the county clerk of their respective counties: PROVIDED, That the bond of the county clerk shall be recorded in the office of the county auditor and filed in the office of the county treasurer. [2012 c 117 § 99; 1955 c 157 § 11. Prior: 1890 p 35 § 5; RRS § 9934.]

Contractor's bonds: Chapter 39.08 RCW.

Official bonds—Payment of premiums: RCW 48.28.040.

Surety insurance: Chapter 48.28 RCW.

42.08.110 Procedure when bond of county or township officer is insufficient. Whenever the sureties, or any one of them, in the official bond of any county or township officer shall die, remove from the state, become insolvent or insufficient, or the penalty of such bond shall become insufficient, on account of recoveries had thereon, or otherwise, it shall be the duty of the board of county commissioners of the proper county, of their own motion, or on the showing of any person, supported by affidavit, to summon any such officer to appear before them at a stated time, not less than five days after service of such summons, and show cause why he or she should not execute an additional official bond with good and sufficient sureties. [2012 c 117 § 100; 1890 p 35 § 6; RRS § 9935.]

42.08.120 Additional bond. Should such officer, after due notice, fail to appear at the time appointed, the matter may be heard and determined in his or her absence; if after examination the board of county commissioners shall be of opinion that the bond of such officer has become insufficient from any cause whatever, they shall require an additional bond with such security as may be deemed necessary, which said additional bond shall be executed and filed within such time as the board of county commissioners may order; and if any such officer shall fail to execute and file such additional bond within the time prescribed by such order, his or her office shall become vacant. [2012 c 117 § 101; 1890 p 36 § 7; RRS § 9936.]

Failure to give or renew official bond a cause for vacation of office: RCW 42.12.010.

42.08.130 Remedy when bond of state officer becomes insufficient. Whenever the official bond of any state officer shall become insufficient from any cause whatever, the like proceedings may be had before the superior court of the county in which said state officer holds his or her office with reference thereto: PROVIDED, That such proceedings may be commenced by a written motion supported by affidavit. [2012 c 117 § 102; 1890 p 36 § 8; RRS § 9937.]

42.08.140 Force of additional bond. Every such additional bond shall be of like force and obligation upon the principal and sureties therein, and shall subject the officer and his or her sureties to the same liabilities as are prescribed respecting the original bonds of officers. [2012 c 117 § 103; 1890 p 36 § 9; RRS § 9938.]

42.08.150 Number of sureties. Unless otherwise expressly provided, there shall be at least two sureties upon the official bond of every officer. [1890 p 36 § 10; RRS § 9939.]

Corporate sureties: Chapter 48.28 RCW.

42.08.160 Justification of sureties. In all cases where official bonds are required or may be hereafter required, from state, county, township, or precinct officers, the officer or officers whose duty it is or may be to approve such bonds,

shall not accept or approve any such bonds except such bond be that of a surety company, unless the sureties thereon shall severally justify before an officer authorized to administer oaths as follows: (1) On a bond given by a state or county officer that he or she is a resident and freeholder within this state, and on a bond given by a township or precinct officer that he or she is a resident and freeholder within the county in which such township or precinct is situated. (2) That he or she is worth double the amount for which he or she becomes surety over and above all his or her debts and liabilities, in property situated within this state which is not exempt from seizure and sale under execution. [2012 c 117 § 104; 1901 c 14 § 1; 1890 p 36 § 11; RRS § 9940.]

Qualification of individual sureties: RCW 19.72.030.

42.08.170 Liability of sureties. When the penal sum of any bond amounts to more than two thousand dollars, the sureties may become severally liable for portions, not less than five hundred dollars, of such penal sum, making in the aggregate at least two sureties for the whole penal sum. [1890 p 37 § 12; RRS § 9941.]

Recoveries limited to amount of bond: RCW 42.08.050.

42.08.180 Release of sureties. Release of sureties (1937 act), see chapter 19.72 RCW.

Chapter 42.12 RCW VACANCIES

Sections

42.12.010	Causes of vacancy.
42.12.020	Resignations, to whom made.
42.12.030	Term of person elected to fill vacancy.
42.12.040	Vacancy in partisan elective office—Successor elected—When.
42.12.070	Filling nonpartisan vacancies.

Apple commission, vacancies, how filled: RCW 15.24.050.

Attorney general, removal from office: State Constitution Art. 4 § 9.

Bond, failure to file additional bond causes vacancy: RCW 42.08.120.

*City offices, vacancies, how filled
commission plan: RCW 35.17.020.
council-manager plan
council: RCW 35.18.020.*

optional municipal code: RCW 35A.13.020.

mayor-council plan, optional municipal code: RCW 35A.12.050.

second class: RCW 35.23.101.

Congress, vacancies, how filled: RCW 29A.28.050.

*County, township, precinct, or road district offices, vacancies, how filled:
State Constitution Art. 11 § 6.*

County annexation review board, vacancies: RCW 35A.14.170.

*County clerk, failure to file new bond vacates office: RCW 36.23.020,
42.08.120.*

County commissioners, vacancies, how filled: RCW 36.32.070.

County hospital board of trustees, vacancies, how filled: RCW 36.62.160.

County officers

conviction for taking illegal fees vacates office: RCW 36.18.180.

vacancies: RCW 36.16.110, 36.16.115, 42.12.040.

County treasurer, suspension for misconduct: RCW 36.29.090.

Educational service district superintendent: Chapter 28A.310 RCW.

*Engineers and land surveyors' board of registration, vacancies on: RCW
18.43.030.*

Fire protection district commissioners, vacancies: RCW 52.14.050.

Flood control districts, vacancies in governing board: RCW 85.38.070.

Fruit commission, vacancies, how filled: RCW 15.28.080.

Governor

appointive state office, vacancies in, filled by: RCW 43.06.090.

vacancy in office of: State Constitution Art. 3 § 10 (Amendment 6).

Horse racing commission, vacancies: RCW 67.16.012.

Impeachment: State Constitution Art. 5.

Irrigation district directors, vacancies, how filled: RCW 87.03.081, 87.04.020.

Joint legislative audit and review committee, vacancies, how filled: RCW 44.28.020.

Judges

removal from office: State Constitution Art. 4 § 9.

vacancies, how filled

court of appeals: RCW 2.06.080.

district court: RCW 3.34.100.

superior court: State Constitution Art. 4 § 5; RCW 2.08.069, 2.08.120.

supreme court: State Constitution Art. 4 § 3; RCW 2.04.100.

Judicial officer's absence from state as forfeiting office: State Constitution Art. 4 § 8.

Legislators, expulsion of member: State Constitution Art. 2 § 9.

Legislators, vacancies, how filled: State Constitution Art. 2 § 15 (Amendment 52), RCW 42.12.040.

Liquor control board, vacancies, how filled: RCW 66.08.014.

Militia, vacancies, how filled: RCW 38.12.095 through 38.12.115.

Mosquito control districts, vacancies in board of trustees: RCW 17.28.130.

Prosecuting attorney, removal from office: State Constitution Art. 4 § 9.

Public utility district commissioners, vacancies: RCW 54.12.010.

Recall proceedings, grounds: RCW 29A.56.110.

Reclamation district directors, vacancies: RCW 89.30.256.

Regional universities—Trustees, appointment, terms, quorum, vacancies: RCW 28B.35.100.

School directors in second and third-class districts, vacancies, how filled: RCW 28A.343.370.

State appointive office, vacancy in, how filled: State Constitution Art. 3 § 13; RCW 43.06.090.

State elective officers

recall: State Constitution Art. 1 § 33 (Amendment 8).

vacancy, successor elected: RCW 42.12.040.

State officers, removal from office: State Constitution Art. 5.

Statute law committee, vacancies, how filled: RCW 1.08.003.

The Evergreen State College—Trustees, appointment, terms, quorum, vacancies: RCW 28B.40.100.

United States senators, vacancies, how filled: RCW 29A.28.030.

University of Washington board of regents, vacancies, how filled: RCW 28B.20.100.

Utilities and transportation commission, vacancies, how filled: RCW 80.01.010.

Washington State University board of regents, vacancies: RCW 28B.30.100.

Water-sewer district commissioners, vacancies: RCW 57.12.020.

Weed district directors, vacancies, how filled: RCW 17.04.070.

42.12.010 Causes of vacancy. Every elective office shall become vacant on the happening of any of the following events:

(1) The death of the incumbent;

(2) His or her resignation. A vacancy caused by resignation shall be deemed to occur upon the effective date of the resignation;

(3) His or her removal;

(4) Except as provided in RCW *3.46.067 and 3.50.057, his or her ceasing to be a legally registered voter of the district, county, city, town, or other municipal or quasi municipal corporation from which he or she shall have been elected

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or appointed, including where applicable the council district, commissioner district, or ward from which he or she shall have been elected or appointed;

(5) His or her conviction of a felony, or of any offense involving a violation of his or her official oath;

(6) His or her refusal or neglect to take his or her oath of office, or to give or renew his or her official bond, or to deposit such oath or bond within the time prescribed by law;

(7) The decision of a competent tribunal declaring void his or her election or appointment; or

(8) Whenever a judgment shall be obtained against that incumbent for breach of the condition of his or her official bond. [1994 c 223 § 2; 1993 c 317 § 9; 1981 c 180 § 4; Code 1881 § 3063; 1866 p 28 § 2; RRS § 9950.]

*Reviser's note: RCW 3.46.067 was repealed by 2008 c 227 § 12, effective July 1, 2008.

*Reviser's note: The governor vetoed 1994 c 233 § 20.

Additional notes found at www.leg.wa.gov

42.12.020 Resignations, to whom made. Resignations shall be made as follows: By the state officers and members of the legislature, to the governor; by all county officers, to the county commissioners of their respective counties; by all other officers, holding their offices by appointment, to the body, board or officer that appointed them. [Code 1881 § 3062; 1865 p 28 § 1; RRS § 9949.]

Appointments to fill vacancies: State Constitution Art. 2 § 15 (Amendment 32).

42.12.030 Term of person elected to fill vacancy. Whenever any officer resigns his or her office before the expiration of his or her term, or the office becomes vacant from any other cause, and at a subsequent special election such vacancy is filled, the person so elected to fill such vacancy shall hold office for the remainder of the unexpired term. [2012 c 117 § 105; 1981 c 180 § 5; Code 1881 § 3066; 1866 p 30 § 6; RRS § 9951.]

Additional notes found at www.leg.wa.gov

42.12.040 Vacancy in partisan elective office—Successor elected—When. (1) If a vacancy occurs in any partisan elective office in the executive or legislative branches of state government or in any partisan county elective office before the first day of the regular filing period, the position must be open for filing during the regular filing period as provided in RCW 29A.24.171 and a successor shall be elected at the general election. Except during the last year of the term of office, if such a vacancy occurs on or after the first day of the regular filing period, the election of the successor shall occur at the next succeeding general election as provided in RCW 29A.24.171. The elected successor shall hold office for the remainder of the unexpired term. This section shall not apply to any vacancy occurring in a charter county which has charter provisions inconsistent with this section.

(2) If a vacancy occurs in any legislative office or in any partisan county office after the general election in a year that the position appears on the ballot and before the start of the next term, the term of the successor who is of the same party as the incumbent may commence once he or she has qualified as defined in RCW 29A.04.133 and shall continue through the term for which he or she was elected. [2013 c 11 § 88;

2011 c 349 § 27. Prior: 2006 c 344 § 29; 2005 c 2 § 15 (Initiative Measure No. 872, approved November 2, 2004); 2003 c 238 § 4; 2002 c 108 § 2; 1981 c 180 § 1.]

Effective date—2011 c 349 §§ 10-12, 27, 28, and 30: See note following RCW 29A.24.171.

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

Short title—Intent—Contingent effective date—2005 c 2 (Initiative Measure No. 872): See notes following RCW 29A.52.112.

County office, appointment of acting official: RCW 36.16.115.

Additional notes found at www.leg.wa.gov

42.12.070 Filling nonpartisan vacancies. A vacancy on an elected nonpartisan governing body of a special purpose district where property ownership is not a qualification to vote, a town, or a city other than a first-class city or a charter code city, shall be filled as follows unless the provisions of law relating to the special district, town, or city provide otherwise:

(1) Where one position is vacant, the remaining members of the governing body shall appoint a qualified person to fill the vacant position.

(2) Where two or more positions are vacant and two or more members of the governing body remain in office, the remaining members of the governing body shall appoint a qualified person to fill one of the vacant positions, the remaining members of the governing body and the newly appointed person shall appoint another qualified person to fill another vacant position, and so on until each of the vacant positions is filled with each of the new appointees participating in each appointment that is made after his or her appointment.

(3) If less than two members of a governing body remain in office, the county legislative authority of the county in which all or the largest geographic portion of the city, town, or special district is located shall appoint a qualified person or persons to the governing body until the governing body has two members.

(4) If a governing body fails to appoint a qualified person to fill a vacancy within ninety days of the occurrence of the vacancy, the authority of the governing body to fill the vacancy shall cease and the county legislative authority of the county in which all or the largest geographic portion of the city, town, or special district is located shall appoint a qualified person to fill the vacancy.

(5) If the county legislative authority of the county fails to appoint a qualified person within one hundred eighty days of the occurrence of the vacancy, the county legislative authority or the remaining members of the governing body of the city, town, or special district may petition the governor to appoint a qualified person to fill the vacancy. The governor may appoint a qualified person to fill the vacancy after being petitioned if at the time the governor fills the vacancy the county legislative authority has not appointed a qualified person to fill the vacancy.

(6) As provided in chapter 29A.24 RCW, each person who is appointed shall serve until a qualified person is elected at the next election at which a member of the governing body normally would be elected. The person elected shall take office immediately and serve the remainder of the unexpired term. [2013 c 11 § 89; 2011 c 349 § 28; 1994 c 223 § 1.]

Effective date—2011 c 349 §§ 10-12, 27, 28, and 30: See note following RCW 29A.24.171.

Chapter 42.14 RCW CONTINUITY OF GOVERNMENT ACT

Sections

42.14.010	Definitions.
42.14.020	Office of governor.
42.14.030	Legislature.
42.14.035	Convening legislature at locations other than usual seat of government.
42.14.040	County commissioners.
42.14.050	City or town officers.
42.14.060	Appointed officers of the state.
42.14.070	Officers of political subdivisions.
42.14.075	Meetings of governing bodies of political subdivisions at other than usual places.
42.14.900	Short title.
42.14.910	Severability—1963 c 203.

Continuity of government: State Constitution Art. 2 § 42 (Amendment 39).

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

42.14.010 Definitions. Unless otherwise clearly required by the context, the following definitions apply:

(1) "Unavailable" means either that a vacancy in the office exists or that the lawful incumbent of the office is absent or unable to exercise the powers and discharge the duties of the office following an attack and a declaration of existing emergency by the governor or his or her successor.

(2) "Attack" means any acts of warfare taken by an enemy of the United States causing substantial damage or injury to persons or property in the United States and in the state of Washington. [2012 c 117 § 106; 1963 c 203 § 2.]

42.14.020 Office of governor. (1) In the event that all successors to the office of governor as provided by Article 3, section 10, as amended by amendment 6 of the Constitution of the state of Washington are unavailable following an enemy attack, the powers and duties of the office of governor shall be exercised and discharged by the speaker of the house of representatives.

(2) In the event the speaker of the house is unavailable, the powers and duties of the office of governor shall be exercised and discharged by the president pro tem of the senate.

(3) In the event that neither the speaker nor the president pro tem is available, the house of representatives and the senate in joint assembly shall elect an emergency interim governor. [1963 c 203 § 3.]

42.14.030 Legislature. In the event enemy attack reduces the number of legislators available for duty, then those legislators available for duty shall constitute the legislature and shall have full power to act in separate or joint assembly by majority vote of those present. In the event of an attack, (1) quorum requirements for the legislature shall be suspended, and (2) where the affirmative vote of a specified proportion of members for approval of a bill, resolution, or other action would otherwise be required, the same proportion of those voting thereon shall be sufficient. In the event of an attack, the governor shall call the legislature into session as soon as practicable, and in any case within thirty days following the inception of the attack. If the governor fails to

issue such call, the legislature shall, on the thirtieth day from the date of inception of the attack, automatically convene at the place where the governor then has his or her office. Each legislator shall proceed to the place of session as expeditiously as practicable. At such session or at any session in operation at the inception of the attack, and at any subsequent sessions, limitations on the length of session and on the subjects which may be acted upon shall be suspended. [2012 c 117 § 107; 1963 c 203 § 4.]

42.14.035 Convening legislature at locations other than usual seat of government. Whenever, in the judgment of the governor, it becomes impracticable, due to an emergency resulting from enemy attack or natural disaster, to convene the legislature in the usual seat of government at Olympia, the governor may call the legislature into emergency session in any location within this or an adjoining state. The first order of business of any legislature so convened shall be the establishment of temporary emergency seats of government for the state. After any emergency relocation, the affairs of state government shall be lawfully conducted at such emergency temporary location or locations for the duration of the emergency. [1969 ex.s. c 106 § 1.]

42.14.040 County commissioners. In the event enemy attack reduces the number of county commissioners of any county, then those commissioners available for duty shall have full authority to act in all matters as a board of county commissioners. In the event no county commissioner is available for duty, then those elected county officials, except for the members of the county board of education, as are available for duty shall jointly act as the board of county commissioners and shall possess by majority vote the full authority of the board of county commissioners. [1963 c 203 § 5.]

42.14.050 City or town officers. In the event that the executive head of any city or town is unavailable by reason of enemy attack to exercise the powers and discharge the duties of the office, then those members of the city or town council or commission available for duty shall by majority vote select one of their number to act as the executive head of such city or town. In the event enemy attack reduces the number of city or town councilmembers or commission members, then those members available for duty shall have full power to act by majority vote of those present. [1981 c 213 § 8; 1963 c 203 § 6.]

42.14.060 Appointed officers of the state. The governor shall, subject to such rules and regulations as he or she may adopt, permit each appointed officer of the state to designate temporary interim successors to the office of such officer. [2012 c 117 § 108; 1963 c 203 § 7.]

42.14.070 Officers of political subdivisions. The legislative authority of each political subdivision, subject to the provisions of this chapter, shall adopt rules and regulations providing for appointment of temporary interim successors to the elected and appointed offices of the political subdivisions. [1963 c 203 § 8.]

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42.14.075 Meetings of governing bodies of political subdivisions at other than usual places. Whenever, due to a natural disaster, an attack or an attack is imminent, it becomes imprudent, inexpedient or impossible to conduct the affairs of a political subdivision at the regular or usual place or places, the governing body of the political subdivision may meet at any place within or without the territorial limits of the political subdivision on the call of the presiding official or any two members of the governing body. After any emergency relocation, the affairs of political subdivisions shall be lawfully conducted at such emergency temporary location or locations for the duration of the emergency. [1969 ex.s. c 106 § 2.]

42.14.900 Short title. This act shall be known as the "continuity of government act." [1963 c 203 § 1.]

42.14.910 Severability—1963 c 203. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1963 c 203 § 9.]

Chapter 42.16 RCW SALARIES AND FEES

Sections

- 42.16.010 Salaries paid twice each month—Policies and procedures to assure full payment—Exceptions.
- 42.16.011 State payroll revolving account—Use.
- 42.16.012 State payroll revolving account—Disbursements—Sources.
- 42.16.013 Transfers to state payroll revolving account—Certification by agencies or director of financial management.
- 42.16.014 Disbursements by warrants—Certifications.
- 42.16.015 Cancellation of warrants—Transfer of increased balance amounts in state payroll revolving account.
- 42.16.017 Payroll preparation and accounting—Establishment of policies, procedures, and paydates.
- 42.16.020 Salaried officers not to receive witness fees—Exceptions.
- 42.16.030 Disposition of fees.
- 42.16.040 Official fees payable in advance.

Boards and commissions, state, part-time, compensation: RCW 43.03.220 through 43.03.250.

Cities

*commission form, salaries: RCW 35.17.108.
council-manager plan, salaries: RCW 35.18.220.
optional municipal code
council-manager plan, compensation: RCW 35A.13.040.
mayor-council plan, compensation: RCW 35A.12.070.*

Commissioner of public lands

*fees: RCW 79.02.240.
salary: State Constitution Art. 3 § 23; RCW 43.03.010.*

Compensation not to be increased or diminished during term of office: State Constitution Art. 2 § 13; Art. 2 § 25; Art. 3 § 25 (Amendment 31); Art. 4 § 13; Art. 11 § 8; Art. 28 § 1 (Amendment 20).

County officers, compensation: State Constitution Art. 11 § 8.

County officers, fees: Chapter 36.18 RCW.

County officers, salaries: Chapter 36.17 RCW.

County sheriff, fees payable in advance: RCW 36.28.040.

Court commissioners, salary: RCW 2.24.030.

Courts of limited jurisdiction, salaries and fees: State Constitution Art. 4 § 10 (Amendment 28).

Department of personnel: RCW 43.03.028.

Elected officials, executive branch, salaries: RCW 43.03.011.

Judges, salaries: RCW 43.03.012.

Judicial officers, salaries, how paid, etc.: State Constitution Art. 4 § 13.

Justices of supreme court, salaries: State Constitution Art. 4 § 14.
Legislators, salaries: RCW 43.03.013.
Militia, salaries and pay: RCW 38.24.050.
Municipal court judges, salaries: RCW 35.20.160.
Reformatory chief executive officer, salary: RCW 72.01.060.
Secretary of state, fees: RCW 43.07.120.
Secretary of transportation, salary: RCW 47.01.041.
State appointive officers, governor may fix salaries, maximum: RCW 43.03.040.
State boards and commissions, part-time, compensation: RCW 43.03.220 through 43.03.250.
State elective officers, salaries: RCW 43.03.011.
Superior court reporters, salaries: RCW 2.32.210.
Supreme court reporter, salary: State Constitution Art. 4 § 18; Rules of court: SAR 17(1).
University of Washington, disposition of fees: RCW 28B.15.210, 28B.15.220.
Utilities and transportation commission, salaries: RCW 80.01.010.
Washington State University, disposition of fees: RCW 28B.15.310.

42.16.010 Salaries paid twice each month—Policies and procedures to assure full payment—Exceptions. (1) Except as provided otherwise in subsections (2) and (3) of this section, all state officers and employees shall be paid for services rendered from the first day of the month through the fifteenth day of the month and for services rendered from the sixteenth day of the month through the last calendar day of the month. Paydates for these two pay periods shall be established by the director of financial management through the administrative hearing process and the official paydates shall be established six months prior to the beginning of each subsequent calendar year. Under no circumstance shall the paydate be established more than ten days after the pay period in which the wages are earned except when the designated paydate falls on Sunday, in which case the paydate shall not be later than the following Monday. Payment shall be deemed to have been made by the established paydates if: (a) The salary warrant is available at the geographic work location at which the warrant is normally available to the employee; or (b) the salary has been electronically transferred into the employee's account at the employee's designated financial institution; or (c) the salary warrants are mailed at least two days before the established paydate for those employees engaged in work in remote or varying locations from the geographic location at which the payroll is prepared, provided that the employee has requested payment by mail.

The office of financial management shall develop the necessary policies and operating procedures to assure that all remuneration for services rendered including basic salary, shift differential, standby pay, overtime, penalty pay, salary due based on contractual agreements, and special pay provisions, as provided for by law, agency policy or rule, or contract, shall be available to the employee on the designated paydate. Overtime, penalty pay, and special pay provisions may be paid by the next following paydate if the postponement of payment is attributable to: The employee's not making a timely or accurate report of the facts which are the basis for the payment, or the employer's lack of reasonable opportunity to verify the claim.

Compensable benefits payable because of separation from state service shall be paid with the earnings for the final

period worked unless the employee separating has not provided the agency with the proper notification of intent to terminate.

One-half of the employee's basic monthly salary shall be paid in each pay period. Employees paid on an hourly basis or employees who work less than a full pay period shall be paid for actual salary earned.

(2) Subsection (1) of this section shall not apply in instances where it would conflict with contractual rights or, with the approval of the office of financial management, to short-term, intermittent, noncareer state employees, to student employees of institutions of higher education, to national or state guard members participating in state active duty, and to liquor control agency managers who are paid a percentage of monthly liquor sales.

(3) When a national or state guard member is called to participate in state active duty, the paydate shall be no more than seven days following completion of duty or the end of the pay period, whichever is first. When the seventh day falls on Sunday, the paydate shall not be later than the following Monday. This subsection shall apply only to the pay a national or state guard member receives from the military department for state active duty.

(4) Notwithstanding subsections (1) and (2) of this section, a bargained contract at an institution of higher education may include a provision for paying part-time academic employees on a pay schedule that coincides with all the paydays used for full-time academic employees.

(5)(a) Notwithstanding subsections (1), (2), and (4) of this section, an institution of higher education as defined in RCW 28B.10.016 may pay its employees for services rendered biweekly, in pay periods consisting of two consecutive seven calendar-day weeks. The paydate for each pay period shall be seven calendar days after the end of the pay period. Under no circumstance may the paydate be established more than seven days after the pay period in which the wages are earned except that when the designated paydate falls on a holiday, the paydate shall not be later than the following Monday.

(b) Employees on a biweekly payroll cycle under this subsection (5) who are paid a salary may receive a prorated amount of their annualized salary each pay period. The prorated amount must be proportional to the number of pay periods worked in the calendar year. Employees on a biweekly payroll cycle under this subsection (5) who are paid hourly, or who work less than a full pay period may be paid the actual salary amount earned during the pay period.

(c) Each institution that adopts a biweekly pay schedule under this subsection (5) must establish, publish, and notify the director of the office of financial management of the official paydates six months before the beginning of each subsequent calendar year.

(6) Notwithstanding subsections (1), (2), and (4) of this section, academic employees at institutions of higher education as defined in RCW 28B.10.016 whose employment appointments are less than twelve months may have their salaries prorated in such a way that coincides with the paydays used for full-time employees. [2014 c 162 § 2; 2011 1st sp.s. c 43 § 446; 2008 c 186 § 1; 2004 c 56 § 1; 1993 c 281 § 42; 1983 1st ex.s. c 28 § 1; 1979 c 151 § 68; 1969 c 59 § 1; 1967 ex.s. c 25 § 1; 1891 c 130 § 1; RRS § 10965.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

42.16.011 State payroll revolving account—Use. A state payroll revolving account is created in the state treasury, for the payment of compensation to employees and officers of the state and distribution of all amounts withheld therefrom pursuant to law and amounts authorized by employees to be withheld pursuant to law; also for the payment of the state's contributions for retirement and insurance and other employee benefits: PROVIDED, That the utilization of the state payroll revolving account shall be optional except for agencies whose payrolls are prepared under a centralized system established pursuant to regulations of the director of financial management. [2012 c 198 § 20; 1985 c 57 § 25; 1981 c 9 § 1; 1979 c 151 § 69; 1969 c 59 § 2; 1967 ex.s. c 25 § 2.]

Effective date—2012 c 198: See note following RCW 70.94.6532.

Transfer from state payroll revolving fund: "All moneys in the state treasury to the credit of the state payroll revolving fund shall be transferred on the effective date of this act to the state payroll revolving account." [1981 c 9 § 7.] The effective date of 1981 c 9 was February 27, 1981.

Additional notes found at www.leg.wa.gov

42.16.012 State payroll revolving account—Disbursements—Sources. The amounts to be disbursed from the state payroll revolving account from time to time on behalf of agencies utilizing such account shall be transferred thereto by the state treasurer from appropriated funds properly chargeable with the disbursement for the purposes set forth in RCW 42.16.011, on or before the day prior to scheduled disbursement. [2012 c 198 § 21; 1981 c 9 § 2; 1967 ex.s. c 25 § 3.]

Effective date—2012 c 198: See note following RCW 70.94.6532.

42.16.013 Transfers to state payroll revolving account—Certification by agencies or director of financial management. The state treasurer shall make such transfers to the state payroll revolving account in the amounts to be disbursed as certified by the respective agencies: PROVIDED, That if the payroll is prepared on behalf of an agency from data authenticated and certified by the agency under a centralized system established pursuant to regulation of the director of financial management, the state treasurer shall make the transfer upon the certification of the head of the agency preparing the centralized payroll or his or her designee. [2012 c 117 § 109; 1981 c 9 § 3; 1979 c 151 § 70; 1969 c 59 § 3; 1967 ex.s. c 25 § 4.]

42.16.014 Disbursements by warrants—Certifications. Disbursements from the revolving account and fund created by RCW 42.16.010 through 42.16.017 shall be by warrant in accordance with the provisions of RCW 43.88.160: PROVIDED, That when the payroll is prepared under a centralized system established pursuant to regulations of the director of financial management, disbursements on behalf of the agency shall be certified by the head of the agency preparing the centralized payroll or his or her designee: PROVIDED FURTHER, That disbursements from a centralized paying agency representing amounts withheld, and/or contributions, for payment to any individual payee on

behalf of several agencies, may be by single warrant representing the aggregate amounts payable by all such agencies to such payee. The procedure for disbursement and certification of these aggregate amounts shall be established by the director of financial management.

All payments to employees or other payees, from the revolving account and fund created by RCW 42.16.010 through 42.16.017, whether certified by an agency or by the director of financial management on behalf of such agency, shall be made wherever possible by a single warrant reflecting on its face the amount charged to each revolving account and fund. [2012 c 117 § 110; 1981 c 9 § 4; 1979 c 151 § 71; 1969 c 59 § 4; 1967 ex.s. c 25 § 5.]

42.16.015 Cancellation of warrants—Transfer of increased balance amounts in state payroll revolving account. All amounts increasing the balance in the state payroll revolving account, as a result of the cancellation of warrants issued therefrom shall be transferred by the state treasurer to the fund from which the canceled warrant would originally have been paid except for the provisions of RCW 42.16.010 through 42.16.017. [1981 c 9 § 5; 1967 ex.s. c 25 § 6.]

42.16.017 Payroll preparation and accounting—Establishment of policies, procedures, and paydates. The director of financial management shall adopt the necessary policies and procedures to implement RCW 42.16.010 through 42.16.017, including the establishment of paydates. Such paydates shall conform to RCW 42.16.010. The director of financial management shall have approval over all agency and state payroll systems and shall determine the payroll systems to be used by state agencies to ensure the implementation of RCW 42.16.010 and 41.04.232: PROVIDED, That for purposes of the central personnel payroll system, the provisions of RCW 41.07.020 shall apply. [1998 c 245 § 45; 1983 1st ex.s. c 28 § 6; 1979 c 151 § 72; 1967 ex.s. c 25 § 8.]

Additional notes found at www.leg.wa.gov

42.16.020 Salaried officers not to receive witness fees—Exceptions. No state, county, municipal, or other public officer within the state of Washington, who receives from the state, or from any county or municipality therein, a fixed and stated salary as compensation for services rendered as such public officer shall be allowed or paid any per diem for attending or testifying on behalf of the state of Washington, or any county or municipality therein, at any trial or other judicial proceeding, in any state, county, or municipal court within this state; nor shall such officer, in any case, be allowed nor paid any per diem for attending or testifying in any state or municipal court of this state, in regard to matters and information that have come to his or her knowledge in connection with and as a result of the performance of his or her duties as a public officer as aforesaid: PROVIDED, This section shall not apply when any deduction shall be made from the regular salary of such officer by reason of his or her being in attendance upon the superior court, but in such cases regular witness fees shall be paid; and further, that if a public officer be subpoenaed and required to appear or testify in judicial proceedings in a county other than that in which he or she resides, then said public officer shall be entitled to

receive per diem and mileage as provided by statute in other cases; and, PROVIDED FURTHER, That this section shall not apply to police officers when called as witnesses in the superior courts during hours when they are off duty as such officers. A law enforcement officer who has issued a notice of traffic infraction is not entitled to receive witness fees or mileage in a contested traffic infraction case. [2012 c 117 § 111; 1981 c 19 § 3; 1903 c 10 § 1; 1901 c 101 § 1; RRS § 499.]

Additional notes found at www.leg.wa.gov

42.16.030 Disposition of fees. All officers enumerated in *this section, who are paid a salary in lieu of fees, shall collect the fees herein prescribed for the use of the state or county, as the case may be, and shall pay the same into the state or county treasury, as the case may be, on the first Monday of each month. [1907 c 56 § 1, part; RRS § 4217. Prior: 1903 c 151 § 1, part; 1893 c 130 § 1, part.]

***Reviser's note:** The term "this section" refers to 1907 c 56 § 1, of which RCW 42.16.030 is but a part. The other parts of 1907 c 56 § 1, as amended, are codified as RCW 2.32.070 (supreme court clerk's fees), 2.40.010 (witnesses' fees), 36.18.020 (superior court clerks' fees), 36.18.040 (sheriff's fees), 36.18.010 (county auditor's fees), 36.18.030 (county coroner's fees), 2.36.150 (jurors' fees), 3.16.100 (constables' fees), and 42.28.090 (notaries' fees).

Daily remittance of moneys to state treasury required: RCW 43.01.050.

42.16.040 Official fees payable in advance. All fees are invariably due in advance where demanded by the officer required to perform any official act, and no officer shall be required to perform any official act unless his or her fees are paid when he or she demands the same: PROVIDED, This section shall not apply when the officer performs any official act for his or her county or the state. [2012 c 117 § 112; Code 1881 § 2099; 1869 p 374 § 21; RRS § 505. Formerly codified as RCW 42.04.050.]

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Chapter 42.17A RCW

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42.17A.001 Declaration of policy. It is hereby declared by the sovereign people to be the public policy of the state of Washington:

(1) That political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided.

(2) That the people have the right to expect from their elected representatives at all levels of government the utmost of integrity, honesty, and fairness in their dealings.

(3) That the people shall be assured that the private financial dealings of their public officials, and of candidates for those offices, present no conflict of interest between the public trust and private interest.

(4) That our representative form of government is founded on a belief that those entrusted with the offices of government have nothing to fear from full public disclosure of their financial and business holdings, provided those officials deal honestly and fairly with the people.

(5) That public confidence in government at all levels is essential and must be promoted by all possible means.

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(6) That public confidence in government at all levels can best be sustained by assuring the people of the impartiality and honesty of the officials in all public transactions and decisions.

(7) That the concept of attempting to increase financial participation of individual contributors in political campaigns is encouraged by the passage of the Revenue Act of 1971 by the Congress of the United States, and in consequence thereof, it is desirable to have implementing legislation at the state level.

(8) That the concepts of disclosure and limitation of election campaign financing are established by the passage of the Federal Election Campaign Act of 1971 by the Congress of the United States, and in consequence thereof it is desirable to have implementing legislation at the state level.

(9) That small contributions by individual contributors are to be encouraged, and that not requiring the reporting of small contributions may tend to encourage such contributions.

(10) That the public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private.

(11) That, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.

The provisions of this chapter shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns and lobbying, and the financial affairs of elected officials and candidates, and full access to public records so as to assure continuing public confidence of fairness of elections and governmental processes, and so as to assure that the public interest will be fully protected. In promoting such complete disclosure, however, this chapter shall be enforced so as to insure that the information disclosed will not be misused for arbitrary and capricious purposes and to insure that all persons reporting under this chapter will be protected from harassment and unfounded allegations based on information they have freely disclosed. [1975 1st ex.s. c 294 § 1; 1973 c 1 § 1 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.010.]

GENERAL PROVISIONS

42.17A.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity.

(2) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(3) "Authorized committee" means the political committee authorized by a candidate, or by the public official against whom recall charges have been filed, to accept contributions or make expenditures on behalf of the candidate or public official.

(4) "Ballot proposition" means any "measure" as defined by RCW 29A.04.091, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency before its circulation for signatures.

(5) "Benefit" means a commercial, proprietary, financial, economic, or monetary advantage, or the avoidance of a commercial, proprietary, financial, economic, or monetary disadvantage.

(6) "Bona fide political party" means:

(a) An organization that has been recognized as a minor political party by the secretary of state;

(b) The governing body of the state organization of a major political party, as defined in RCW 29A.04.086, that is the body authorized by the charter or bylaws of the party to exercise authority on behalf of the state party; or

(c) The county central committee or legislative district committee of a major political party. There may be only one legislative district committee for each party in each legislative district.

(7) "Candidate" means any individual who seeks nomination for election or election to public office. An individual seeks nomination or election when he or she first:

(a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his or her candidacy for office;

(b) Announces publicly or files for office;

(c) Purchases commercial advertising space or broadcast time to promote his or her candidacy; or

(d) Gives his or her consent to another person to take on behalf of the individual any of the actions in (a) or (c) of this subsection.

(8) "Caucus political committee" means a political committee organized and maintained by the members of a major political party in the state senate or state house of representatives.

(9) "Commercial advertiser" means any person who sells the service of communicating messages or producing printed material for broadcast or distribution to the general public or segments of the general public whether through the use of newspapers, magazines, television and radio stations, billboard companies, direct mail advertising companies, printing companies, or otherwise.

(10) "Commission" means the agency established under RCW 42.17A.100.

(11) "Compensation" unless the context requires a narrower meaning, includes payment in any form for real or personal property or services of any kind. For the purpose of compliance with RCW 42.17A.710, "compensation" does not include per diem allowances or other payments made by a governmental entity to reimburse a public official for expenses incurred while the official is engaged in the official business of the governmental entity.

(12) "Continuing political committee" means a political committee that is an organization of continuing existence not established in anticipation of any particular election campaign.

(13)(a) "Contribution" includes:

(i) A loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or anything of value, including personal and professional services for less than full consideration;

(ii) An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, the person or persons named on the candidate's or committee's registration form who direct expenditures on behalf of the candidate or committee, or their agents;

(iii) The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising or electioneering communication prepared by a candidate, a political committee, or its authorized agent;

(iv) Sums paid for tickets to fund-raising events such as dinners and parties, except for the actual cost of the consumables furnished at the event.

(b) "Contribution" does not include:

(i) Standard interest on money deposited in a political committee's account;

(ii) Ordinary home hospitality;

(iii) A contribution received by a candidate or political committee that is returned to the contributor within five business days of the date on which it is received by the candidate or political committee;

(iv) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary interest to the general public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee;

(v) An internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(vi) The rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this subsection, means services or labor for which the individual is not compensated by any person;

(vii) Messages in the form of reader boards, banners, or yard or window signs displayed on a person's own property or property occupied by a person. However, a facility used for such political advertising for which a rental charge is normally made must be reported as an in-kind contribution and counts towards any applicable contribution limit of the person providing the facility;

(viii) Legal or accounting services rendered to or on behalf of:

(A) A political party or caucus political committee if the person paying for the services is the regular employer of the person rendering such services; or

(B) A candidate or an authorized committee if the person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of ensuring compliance with state election or public disclosure laws; or

(ix) The performance of ministerial functions by a person on behalf of two or more candidates or political committees either as volunteer services defined in (b)(vi) of this subsection or for payment by the candidate or political committee for whom the services are performed as long as:

(A) The person performs solely ministerial functions;

(B) A person who is paid by two or more candidates or political committees is identified by the candidates and political committees on whose behalf services are performed as part of their respective statements of organization under RCW 42.17A.205; and

(C) The person does not disclose, except as required by law, any information regarding a candidate's or committee's plans, projects, activities, or needs, or regarding a candidate's or committee's contributions or expenditures that is not already publicly available from campaign reports filed with the commission, or otherwise engage in activity that constitutes a contribution under (a)(ii) of this subsection.

A person who performs ministerial functions under this subsection (13)(b)(ix) is not considered an agent of the candidate or committee as long as he or she has no authority to authorize expenditures or make decisions on behalf of the candidate or committee.

(c) Contributions other than money or its equivalent are deemed to have a monetary value equivalent to the fair market value of the contribution. Services or property or rights furnished at less than their fair market value for the purpose of assisting any candidate or political committee are deemed a contribution. Such a contribution must be reported as an in-kind contribution at its fair market value and counts towards any applicable contribution limit of the provider.

(14) "Depository" means a bank, mutual savings bank, savings and loan association, or credit union doing business in this state.

(15) "Elected official" means any person elected at a general or special election to any public office, and any person appointed to fill a vacancy in any such office.

(16) "Election" includes any primary, general, or special election for public office and any election in which a ballot proposition is submitted to the voters. An election in which the qualifications for voting include other than those requirements set forth in Article VI, section 1 (Amendment 63) of the Constitution of the state of Washington shall not be considered an election for purposes of this chapter.

(17) "Election campaign" means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a ballot proposition.

(18) "Election cycle" means the period beginning on the first day of January after the date of the last previous general election for the office that the candidate seeks and ending on December 31st after the next election for the office. In the case of a special election to fill a vacancy in an office, "elec-

tion cycle" means the period beginning on the day the vacancy occurs and ending on December 31st after the special election.

(19)(a) "Electioneering communication" means any broadcast, cable, or satellite television or radio transmission, United States postal service mailing, billboard, newspaper, or periodical that:

(i) Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;

(ii) Is broadcast, transmitted, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and

(iii) Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of one thousand dollars or more.

(b) "Electioneering communication" does not include:

(i) Usual and customary advertising of a business owned by a candidate, even if the candidate is mentioned in the advertising when the candidate has been regularly mentioned in that advertising appearing at least twelve months preceding his or her becoming a candidate;

(ii) Advertising for candidate debates or forums when the advertising is paid for by or on behalf of the debate or forum sponsor, so long as two or more candidates for the same position have been invited to participate in the debate or forum;

(iii) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is:

(A) Of primary interest to the general public;

(B) In a news medium controlled by a person whose business is that news medium; and

(C) Not a medium controlled by a candidate or a political committee;

(iv) Slate cards and sample ballots;

(v) Advertising for books, films, dissertations, or similar works (A) written by a candidate when the candidate entered into a contract for such publications or media at least twelve months before becoming a candidate, or (B) written about a candidate;

(vi) Public service announcements;

(vii) A mailed internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(viii) An expenditure by or contribution to the authorized committee of a candidate for state, local, or judicial office; or

(ix) Any other communication exempted by the commission through rule consistent with the intent of this chapter.

(20) "Expenditure" includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. "Expenditure" also includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefiting, or honoring any public

official or candidate, or assisting in furthering or opposing any election campaign. For the purposes of this chapter, agreements to make expenditures, contracts, and promises to pay may be reported as estimated obligations until actual payment is made. "Expenditure" shall not include the partial or complete repayment by a candidate or political committee of the principal of a loan, the receipt of which loan has been properly reported.

(21) "Final report" means the report described as a final report in RCW 42.17A.235(2).

(22) "General election" for the purposes of RCW 42.17A.405 means the election that results in the election of a person to a state or local office. It does not include a primary.

(23) "Gift" has the definition in RCW 42.52.010.

(24) "Immediate family" includes the spouse or domestic partner, dependent children, and other dependent relatives, if living in the household. For the purposes of the definition of "intermediary" in this section, "immediate family" means an individual's spouse or domestic partner, and child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual and the spouse or the domestic partner of any such person and a child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual's spouse or domestic partner and the spouse or the domestic partner of any such person.

(25) "Incumbent" means a person who is in present possession of an elected office.

(26) "Independent expenditure" means an expenditure that has each of the following elements:

(a) It is made in support of or in opposition to a candidate for office by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office, or (iv) a person with whom the candidate has collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(b) The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

(c) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of *eight hundred dollars or more. A series of expenditures, each of which is under eight hundred dollars, constitutes one independent expenditure if their cumulative value is eight hundred dollars or more.

(27)(a) "Intermediary" means an individual who transmits a contribution to a candidate or committee from another person unless the contribution is from the individual's employer, immediate family, or an association to which the individual belongs.

(b) A treasurer or a candidate is not an intermediary for purposes of the committee that the treasurer or candidate serves.

(c) A professional fund-raiser is not an intermediary if the fund-raiser is compensated for fund-raising services at the usual and customary rate.

(d) A volunteer hosting a fund-raising event at the individual's home is not an intermediary for purposes of that event.

(28) "Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter that may be the subject of action by either house or any committee of the legislature and all bills and resolutions that, having passed both houses, are pending approval by the governor.

(29) "Legislative office" means the office of a member of the state house of representatives or the office of a member of the state senate.

(30) "Lobby" and "lobbying" each mean attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state administrative procedure act, chapter 34.05 RCW. Neither "lobby" nor "lobbying" includes an association's or other organization's act of communicating with the members of that association or organization.

(31) "Lobbyist" includes any person who lobbies either in his or her own or another's behalf.

(32) "Lobbyist's employer" means the person or persons by whom a lobbyist is employed and all persons by whom he or she is compensated for acting as a lobbyist.

(33) "Ministerial functions" means an act or duty carried out as part of the duties of an administrative office without exercise of personal judgment or discretion.

(34) "Participate" means that, with respect to a particular election, an entity:

(a) Makes either a monetary or in-kind contribution to a candidate;

(b) Makes an independent expenditure or electioneering communication in support of or opposition to a candidate;

(c) Endorses a candidate before contributions are made by a subsidiary corporation or local unit with respect to that candidate or that candidate's opponent;

(d) Makes a recommendation regarding whether a candidate should be supported or opposed before a contribution is made by a subsidiary corporation or local unit with respect to that candidate or that candidate's opponent; or

(e) Directly or indirectly collaborates or consults with a subsidiary corporation or local unit on matters relating to the support of or opposition to a candidate, including, but not limited to, the amount of a contribution, when a contribution should be given, and what assistance, services or independent expenditures, or electioneering communications, if any, will be made or should be made in support of or opposition to a candidate.

(35) "Person" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political

party, executive committee thereof, or any other organization or group of persons, however organized.

(36) "Political advertising" includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

(37) "Political committee" means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

(38) "Primary" for the purposes of RCW 42.17A.405 means the procedure for nominating a candidate to state or local office under chapter 29A.52 RCW or any other primary for an election that uses, in large measure, the procedures established in chapter 29A.52 RCW.

(39) "Public office" means any federal, state, judicial, county, city, town, school district, port district, special district, or other state political subdivision elective office.

(40) "Public record" has the definition in RCW 42.56.010.

(41) "Recall campaign" means the period of time beginning on the date of the filing of recall charges under RCW 29A.56.120 and ending thirty days after the recall election.

(42)(a) "Sponsor" for purposes of an electioneering communications, independent expenditures, or political advertising means the person paying for the electioneering communication, independent expenditure, or political advertising. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor.

(b) "Sponsor," for purposes of a political committee, means any person, except an authorized committee, to whom any of the following applies:

(i) The committee receives eighty percent or more of its contributions either from the person or from the person's members, officers, employees, or shareholders;

(ii) The person collects contributions for the committee by use of payroll deductions or dues from its members, officers, or employees.

(43) "Sponsored committee" means a committee, other than an authorized committee, that has one or more sponsors.

(44) "State office" means state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.

(45) "State official" means a person who holds a state office.

(46) "Surplus funds" mean, in the case of a political committee or candidate, the balance of contributions that remain in the possession or control of that committee or candidate subsequent to the election for which the contributions were received, and that are in excess of the amount necessary to pay remaining debts incurred by the committee or candidate with respect to that election. In the case of a continuing political committee, "surplus funds" mean those contributions remaining in the possession or control of the committee that

are in excess of the amount necessary to pay all remaining debts when it makes its final report under RCW 42.17A.255.

(47) "Treasurer" and "deputy treasurer" mean the individuals appointed by a candidate or political committee, pursuant to RCW 42.17A.210, to perform the duties specified in that section. [2011 c 145 § 2; 2011 c 60 § 19. Prior: 2010 c 204 § 101; 2008 c 6 § 201; prior: 2007 c 358 § 1; 2007 c 180 § 1; 2005 c 445 § 6; 2002 c 75 § 1; 1995 c 397 § 1; 1992 c 139 § 1; 1991 sp.s. c 18 § 1; 1990 c 139 § 2; prior: 1989 c 280 § 1; 1989 c 175 § 89; 1984 c 34 § 5; 1979 ex.s. c 50 § 1; 1977 ex.s. c 313 § 1; 1975 1st ex.s. c 294 § 2; 1973 c 1 § 2 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.020.]

Reviser's note: *(1) The dollar amounts in this section have been adjusted for inflation by rule of the commission adopted under the authority of RCW 42.17A.125. For current dollar amounts, see chapter 390-05 of the Washington Administrative Code (WAC).

(2) This section was amended by 2011 c 60 § 19 and by 2011 c 145 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—2011 c 145: "The legislature finds that timely and full disclosure of election campaign funding and expenditures is essential to a well-functioning democracy in which Washington's voters can judge for themselves what is appropriate based on ideologies, programs, and policies. Long-term voter engagement and confidence depends on the public knowing who is funding the multiple and targeted messages distributed during election campaigns.

The legislature also finds that recent events have revealed the need for refining certain elements of our state's election campaign finance laws that have proven inadequate in preventing efforts to hide information from voters. The legislature intends, therefore, to promote greater transparency for the public by enhancing penalties for violations; regulating the formation of, and contributions between, political committees; and reducing the expenditure thresholds for purposes of mandatory electronic filing and disclosure." [2011 c 145 § 1.]

Effective date—2011 c 145: "This act takes effect January 1, 2012." [2011 c 145 § 8.]

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

Effective date—2007 c 358: "This act takes effect January 1, 2008." [2007 c 358 § 4.]

Legislative intent—1990 c 139: "The provisions of this act which repeal the reporting requirements established by chapter 423, Laws of 1987 for registered lobbyists and employers of lobbyists are not intended to alter, expand, or restrict whatsoever the definition of "lobby" or "lobbying" contained in RCW 42.17.020 as it existed prior to the enactment of chapter 423, Laws of 1987." [1990 c 139 § 1.]

Additional notes found at www.leg.wa.gov

42.17A.010 Conservation district exception. Elections of conservation district supervisors held pursuant to chapter 89.08 RCW shall not be considered general or special elections for purposes of the campaign disclosure and personal financial affairs reporting requirements of this chapter. Elected conservation district supervisors are not considered elected officials for purposes of the annual personal financial affairs reporting requirement of this chapter. [2002 c 43 § 4. Formerly RCW 42.17.035.]

Intent—Effective date—2002 c 43: See notes following RCW 29A.04.330.

42.17A.020 Statements and reports public records. All statements and reports filed under this chapter shall be public records of the agency where they are filed, and shall be available for public inspection and copying during normal

business hours at the expense of the person requesting copies, provided that the charge for such copies shall not exceed actual cost to the agency. [1973 c 1 § 44 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.440.]

ELECTRONIC ACCESS

42.17A.050 Web site for commission documents. The commission shall operate a web site or contract for the operation of a web site that allows access to reports, copies of reports, or copies of data and information submitted in reports, filed with the commission under RCW 42.17A.205, 42.17A.225, 42.17A.235, 42.17A.255, 42.17A.265, 42.17A.600, 42.17A.615, 42.17A.625, and 42.17A.630. In addition, the commission shall attempt to make available via the web site other public records submitted to or generated by the commission that are required by this chapter to be available for public use or inspection. [2010 c 204 § 201; 1999 c 401 § 9; 1994 c 40 § 2. Formerly RCW 42.17.367.]

Findings—1994 c 40: "The legislature finds that government information is a strategic resource and needs to be managed as such and that broad public access to nonrestricted public information and records must be guaranteed. The legislature further finds that reengineering government processes along with capitalizing on advancements made in digital technology can build greater efficiencies in government service delivery. The legislature further finds that providing citizen electronic access to presently available public documents will allow increased citizen involvement in state policies and empower citizens to participate in state policy decision making." [1994 c 40 § 1.]

Additional notes found at www.leg.wa.gov

42.17A.055 Electronic filing—Availability. (1) The commission shall make available to candidates, public officials, and political committees that are required to file reports under this chapter an electronic filing alternative for submitting financial affairs reports, contribution reports, and expenditure reports.

(2) The commission shall make available to lobbyists and lobbyists' employers required to file reports under RCW 42.17A.600, 42.17A.615, 42.17A.625, or 42.17A.630 an electronic filing alternative for submitting these reports.

(3) State agencies required to report under RCW 42.17A.635 must file all reports electronically.

(4) The commission shall make available to candidates, public officials, political committees, lobbyists, and lobbyists' employers an electronic copy of the appropriate reporting forms at no charge. [2013 c 166 § 2; 2010 c 204 § 202; 2000 c 237 § 3; 1999 c 401 § 11. Formerly RCW 42.17.369.]

Effective date—2013 c 166: "This act takes effect January 1, 2014." [2013 c 166 § 3.]

42.17A.060 Access to reports—Legislative intent. It is the intent of the legislature to ensure that the commission provide the general public timely access to all contribution and expenditure reports submitted by candidates, continuing political committees, bona fide political parties, lobbyists, and lobbyists' employers. The legislature finds that failure to meet goals for full and timely disclosure threatens to undermine our electoral process.

Furthermore, the legislature intends for the commission to consult with the office of the chief information officer as it seeks to implement chapter 401, Laws of 1999, and that the

commission follow the standards and procedures established by the office of the chief information officer in chapter 43.105 RCW as they relate to information technology. [2011 1st sp.s. c 43 § 732; 1999 c 401 § 1. Formerly RCW 42.17.460.]

Effective date—2011 1st sp.s. c 43 § 732: "Section 732 of this act takes effect January 1, 2012." [2011 1st sp.s. c 43 § 1015.]

Purpose—2011 1st sp.s. c 43: See note following RCW 43.19.003.

42.17A.061 Access goals. The commission shall establish goals that all reports, copies of reports, or copies of the data or information included in reports, filed under RCW 42.17A.205, 42.17A.225, 42.17A.235, 42.17A.255, 42.17A.265, 42.17A.600, 42.17A.615, 42.17A.625, and 42.17A.630, that are:

(1) Submitted using the commission's electronic filing system must be accessible in the commission's office and on the commission's web site within two business days of the commission's receipt of the report; and

(2) Submitted on paper must be accessible in the commission's office and on the commission's web site within four business days of the actual physical receipt of the report, and not the technical date of filing as provided under RCW 42.17A.140, as specified in rule adopted by the commission. [2010 c 204 § 203; 2000 c 237 § 5; 1999 c 401 § 2. Formerly RCW 42.17.461.]

42.17A.065 Access performance measures. By July 1st of each year, the commission shall calculate the following performance measures, provide a copy of the performance measures to the governor and appropriate legislative committees, and make the performance measures available to the public:

(1) The average number of days that elapse between the commission's receipt of reports filed under RCW 42.17A.205, 42.17A.225, 42.17A.235, and 42.17A.255 and the time that the report, a copy of the report, or a copy of the data or information included in the report, is first accessible to the general public (a) in the commission's office, and (b) via the commission's web site;

(2) The average number of days that elapse between the commission's receipt of reports filed under RCW 42.17A.265 and the time that the report, a copy of the report, or a copy of the data or information included in the report, is first accessible to the general public (a) in the commission's office, and (b) via the commission's web site;

(3) The average number of days that elapse between the commission's receipt of reports filed under RCW 42.17A.600, 42.17A.615, 42.17A.625, and 42.17A.630 and the time that the report, a copy of the report, or a copy of the data or information included in the report, is first accessible to the general public (a) in the commission's office, and (b) via the commission's web site;

(4) The percentage of candidates, categorized as statewide, legislative, or local, that have used each of the following methods to file reports under RCW 42.17A.235 or 42.17A.265: (a) Hard copy paper format; or (b) electronic format via the Internet;

(5) The percentage of continuing political committees that have used each of the following methods to file reports

under RCW 42.17A.225 or 42.17A.265: (a) Hard copy paper format; or (b) electronic format via the Internet; and

(6) The percentage of lobbyists and lobbyists' employers that have used each of the following methods to file reports under RCW 42.17A.600, 42.17A.615, 42.17A.625, or 42.17A.630: (a) Hard copy paper format; or (b) electronic format via the Internet. [2010 c 204 § 204; 1999 c 401 § 3. Formerly RCW 42.17.463.]

ADMINISTRATION

42.17A.100 Public disclosure commission—Established—Membership—Prohibited activities—Compensation, travel expenses. (1) The public disclosure commission is established. The commission shall be composed of five members appointed by the governor, with the consent of the senate. All appointees shall be persons of the highest integrity and qualifications. No more than three members shall have an identification with the same political party.

(2) The term of each member shall be five years. No member is eligible for appointment to more than one full term. Any member may be removed by the governor, but only upon grounds of neglect of duty or misconduct in office.

(3) During his or her tenure, a member of the commission is prohibited from engaging in any of the following activities, either within or outside the state of Washington:

(a) Holding or campaigning for elective office;

(b) Serving as an officer of any political party or political committee;

(c) Permitting his or her name to be used in support of or in opposition to a candidate or proposition;

(d) Soliciting or making contributions to a candidate or in support of or in opposition to any candidate or proposition;

(e) Participating in any way in any election campaign; or

(f) Lobbying, employing, or assisting a lobbyist, except that a member or the staff of the commission may lobby to the limited extent permitted by RCW 42.17A.635 on matters directly affecting this chapter.

(4) A vacancy on the commission shall be filled within thirty days of the vacancy by the governor, with the consent of the senate, and the appointee shall serve for the remaining term of his or her predecessor. A vacancy shall not impair the powers of the remaining members to exercise all of the powers of the commission.

(5) Three members of the commission shall constitute a quorum. The commission shall elect its own chair and adopt its own rules of procedure in the manner provided in chapter 34.05 RCW.

(6) Members shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for travel expenses incurred while engaged in the business of the commission as provided in RCW 43.03.050 and 43.03.060. The compensation provided pursuant to this section shall not be considered salary for purposes of the provisions of any retirement system created under the laws of this state. [2010 c 204 § 301; 1998 c 30 § 1; 1984 c 287 § 74; 1982 c 147 § 15; 1975-'76 2nd ex.s. c 112 § 8; 1975-'76 2nd ex.s. c 34 § 93; 1975 1st ex.s. c 294 § 23; 1973 c 1 § 35 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.350.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

(2014 Ed.)

Additional notes found at www.leg.wa.gov

42.17A.105 Commission—Duties. The commission shall:

(1) Develop and provide forms for the reports and statements required to be made under this chapter;

(2) Prepare and publish a manual setting forth recommended uniform methods of bookkeeping and reporting for use by persons required to make reports and statements under this chapter;

(3) Compile and maintain a current list of all filed reports and statements;

(4) Investigate whether properly completed statements and reports have been filed within the times required by this chapter;

(5) Upon complaint or upon its own motion, investigate and report apparent violations of this chapter to the appropriate law enforcement authorities;

(6) Conduct a sufficient number of audits and field investigations to provide a statistically valid finding regarding the degree of compliance with the provisions of this chapter by all required filers. Any documents, records, reports, computer files, papers, or materials provided to the commission for use in conducting audits and investigations must be returned to the candidate, campaign, or political committee from which they were received within one week of the commission's completion of an audit or field investigation;

(7) Prepare and publish an annual report to the governor as to the effectiveness of this chapter and its enforcement by appropriate law enforcement authorities;

(8) Enforce this chapter according to the powers granted it by law;

(9) Adopt rules governing the arrangement, handling, indexing, and disclosing of those reports required by this chapter to be filed with a county auditor or county elections official. The rules shall:

(a) Ensure ease of access by the public to the reports; and

(b) Include, but not be limited to, requirements for indexing the reports by the names of candidates or political committees and by the ballot proposition for or against which a political committee is receiving contributions or making expenditures;

(10) Adopt rules to carry out the policies of chapter 348, Laws of 2006. The adoption of these rules is not subject to the time restrictions of RCW 42.17A.110(1);

(11) Adopt administrative rules establishing requirements for filer participation in any system designed and implemented by the commission for the electronic filing of reports; and

(12) Maintain and make available to the public and political committees of this state a toll-free telephone number. [2010 c 204 § 302; 1973 c 1 § 36 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.360.]

42.17A.110 Commission—Additional powers (as amended by 2011 c 60). The commission may:

(1) Adopt, amend, and rescind suitable administrative rules to carry out the policies and purposes of this chapter, which rules shall be adopted under chapter 34.05 RCW. Any rule relating to campaign finance, political advertising, or related forms that would otherwise take effect after June 30th of a general election year shall take effect no earlier than the day following the general election in that year;

(2) Appoint an executive director and set, within the limits established by the *department of personnel under RCW 43.03.028, the executive director's compensation. The executive director shall perform such duties and have such powers as the commission may prescribe and delegate to implement and enforce this chapter efficiently and effectively. The commission shall not delegate its authority to adopt, amend, or rescind rules nor may it delegate authority to determine whether an actual violation of this chapter has occurred or to assess penalties for such violations;

(3) Prepare and publish reports and technical studies as in its judgment will tend to promote the purposes of this chapter, including reports and statistics concerning campaign financing, lobbying, financial interests of elected officials, and enforcement of this chapter;

(4) Conduct, as it deems appropriate, audits and field investigations;

(5) Make public the time and date of any formal hearing set to determine whether a violation has occurred, the question or questions to be considered, and the results thereof;

(6) Administer oaths and affirmations, issue subpoenas, and compel attendance, take evidence, and require the production of any records relevant to any investigation authorized under this chapter, or any other proceeding under this chapter;

(7) Adopt a code of fair campaign practices;

(8) Adopt rules relieving candidates or political committees of obligations to comply with the election campaign provisions of this chapter, if they have not received contributions nor made expenditures in connection with any election campaign of more than **five thousand dollars;

(9) Adopt rules prescribing reasonable requirements for keeping accounts of, and reporting on a quarterly basis, costs incurred by state agencies, counties, cities, and other municipalities and political subdivisions in preparing, publishing, and distributing legislative information. For the purposes of this subsection, "legislative information" means books, pamphlets, reports, and other materials prepared, published, or distributed at substantial cost, a substantial purpose of which is to influence the passage or defeat of any legislation. The state auditor in his or her regular examination of each agency under chapter 43.09 RCW shall review the rules, accounts, and reports and make appropriate findings, comments, and recommendations concerning those agencies; and

(10) Develop and provide to filers a system for certification of reports required under this chapter which are transmitted by facsimile or electronically to the commission. Implementation of the program is contingent on the availability of funds. [2011 c 60 § 20. Prior: 2010 1st sp.s. c 7 § 4; 2010 c 204 § 303; 1995 c 397 § 17; 1994 c 40 § 3; 1986 c 155 § 11; 1985 c 367 § 11; 1984 c 34 § 7; 1977 ex.s. c 336 § 7; 1975 1st ex.s. c 294 § 25; 1973 c 1 § 37 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.370.]

Reviser's note: *(1) The office of financial management has responsibility under RCW 43.03.028, in accordance with section 451, chapter 43, Laws of 2011 1st sp.s.

***(2) The dollar amounts in this section have been adjusted for inflation by rule of the commission adopted under the authority of this section. For current dollar amounts, see chapter 390-16 of the Washington Administrative Code (WAC).

42.17A.110 Commission—Additional powers (as amended by 2011 1st sp.s. c 43). The commission is empowered to:

(1) Adopt, promulgate, amend, and rescind suitable administrative rules to carry out the policies and purposes of this chapter, which rules shall be adopted under chapter 34.05 RCW. Any rule relating to campaign finance, political advertising, or related forms that would otherwise take effect after June 30th of a general election year shall take effect no earlier than the day following the general election in that year;

(2) Appoint and set, within the limits established by the ((committee on agency officials' salaries)) office of financial management under RCW 43.03.028, the compensation of an executive director who shall perform such duties and have such powers as the commission may prescribe and delegate to implement and enforce this chapter efficiently and effectively. The commission shall not delegate its authority to adopt, amend, or rescind rules nor shall it delegate authority to determine whether an actual violation of this chapter has occurred or to assess penalties for such violations;

(3) Prepare and publish such reports and technical studies as in its judgment will tend to promote the purposes of this chapter, including reports and statistics concerning campaign financing, lobbying, financial interests of elected officials, and enforcement of this chapter;

(4) Make from time to time, on its own motion, audits and field investigations;

(5) Make public the time and date of any formal hearing set to determine whether a violation has occurred, the question or questions to be considered, and the results thereof;

(6) Administer oaths and affirmations, issue subpoenas, and compel attendance, take evidence and require the production of any books, papers, correspondence, memorandums, or other records relevant or material for the purpose of any investigation authorized under this chapter, or any other proceeding under this chapter;

(7) Adopt and promulgate a code of fair campaign practices;

(8) Relieve, by rule, candidates or political committees of obligations to comply with the provisions of this chapter relating to election campaigns, if they have not received contributions nor made expenditures in connection with any election campaign of more than *one thousand dollars;

(9) Adopt rules prescribing reasonable requirements for keeping accounts of and reporting on a quarterly basis costs incurred by state agencies, counties, cities, and other municipalities and political subdivisions in preparing, publishing, and distributing legislative information. The term "legislative information," for the purposes of this subsection, means books, pamphlets, reports, and other materials prepared, published, or distributed at substantial cost, a substantial purpose of which is to influence the passage or defeat of any legislation. The state auditor in his or her regular examination of each agency under chapter 43.09 RCW shall review the rules, accounts, and reports and make appropriate findings, comments, and recommendations in his or her examination reports concerning those agencies;

(10) After hearing, by order approved and ratified by a majority of the membership of the commission, suspend or modify any of the reporting requirements of this chapter in a particular case if it finds that literal application of this chapter works a manifestly unreasonable hardship and if it also finds that the suspension or modification will not frustrate the purposes of the chapter. The commission shall find that a manifestly unreasonable hardship exists if reporting the name of an entity required to be reported under **RCW 42.17.241(1)(g)(ii) would be likely to adversely affect the competitive position of any entity in which the person filing the report or any member of his or her immediate family holds any office, directorship, general partnership interest, or an ownership interest of ten percent or more. Any suspension or modification shall be only to the extent necessary to substantially relieve the hardship. The commission shall act to suspend or modify any reporting requirements only if it determines that facts exist that are clear and convincing proof of the findings required under this section. Requests for renewals of reporting modifications may be heard in a brief adjudicative proceeding as set forth in RCW 34.05.482 through 34.05.494 and in accordance with the standards established in this section. No initial request may be heard in a brief adjudicative proceeding and no request for renewal may be heard in a brief adjudicative proceeding if the initial request was granted more than three years previously or if the applicant is holding an office or position of employment different from the office or position held when the initial request was granted. The commission shall adopt administrative rules governing the proceedings. Any citizen has standing to bring an action in Thurston county superior court to contest the propriety of any order entered under this section within one year from the date of the entry of the order; and

(11) Revise, at least once every five years but no more often than every two years, the monetary reporting thresholds and reporting code values of this chapter. The revisions shall be only for the purpose of recognizing economic changes as reflected by an inflationary index recommended by the office of financial management. The revisions shall be guided by the change in the index for the period commencing with the month of December preceding the last revision and concluding with the month of December preceding the month the revision is adopted. As to each of the three general categories of this chapter (reports of campaign finance, reports of lobbyist activity, and reports of the financial affairs of elected and appointed officials), the revisions shall equally affect all thresholds within each category. Revisions shall be adopted as rules under chapter 34.05 RCW. The first revision authorized by this subsection shall reflect economic changes from the time of the last legislative enactment affecting the respective code or threshold through December 1985;

(12) Develop and provide to filers a system for certification of reports required under this chapter which are transmitted by facsimile or electronically to the commission. Implementation of the program is contingent on the availability of funds. [2011 1st sp.s. c 43 § 448. Prior: 2010 1st sp.s. c 7 § 4; 2010 c 204 § 303; 1995 c 397 § 17; 1994 c 40 § 3; 1986 c 155 § 11; 1985 c 367 § 11; 1984 c 34 § 7; 1977 ex.s. c 336 § 7; 1975 1st ex.s. c 294 § 25; 1973 c 1 § 37 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.370.]

Reviser's note: *(1) The dollar amounts in this section have been adjusted for inflation by rule of the commission adopted under the authority of subsection (11) of this section. For current dollar amounts, see chapter

390-16 of the Washington Administrative Code (WAC).

** (2) RCW 42.17.241 was recodified as RCW 42.17A.710 pursuant to 2010 c 204 § 1102, effective January 1, 2012.

(3) RCW 42.17A.110 was reenacted and also reenacted and amended during the 2011 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2011 1st sp.s. c 43 § 448: "Section 448 of this act takes effect January 1, 2012." [2011 1st sp.s. c 43 § 481.]

Purpose—2011 1st sp.s. c 43: See note following RCW 43.19.003.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Findings—Severability—Effective date—1994 c 40: See notes following RCW 42.17A.050.

Additional notes found at www.leg.wa.gov

42.17A.120 Suspension or modification of reporting requirements. (1) The commission may suspend or modify any of the reporting requirements of this chapter if it finds that literal application of this chapter works a manifestly unreasonable hardship in a particular case and the suspension or modification will not frustrate the purposes of this chapter. The commission may suspend or modify reporting requirements only after a hearing is held and the suspension or modification receives approval from a majority of the commission. The commission shall act to suspend or modify any reporting requirements:

(a) Only if it determines that facts exist that are clear and convincing proof of the findings required under this section; and

(b) Only to the extent necessary to substantially relieve the hardship.

(2) A manifestly unreasonable hardship exists if reporting the name of an entity required to be reported under RCW 42.17A.710(1)(g)(ii) would be likely to adversely affect the competitive position of any entity in which the person filing the report, or any member of his or her immediate family, holds any office, directorship, general partnership interest, or an ownership interest of ten percent or more.

(3) Requests for renewals of reporting modifications may be heard in a brief adjudicative proceeding as set forth in RCW 34.05.482 through 34.05.494 and in accordance with the standards established in this section. No initial request may be heard in a brief adjudicative proceeding. No request for renewal may be heard in a brief adjudicative proceeding if the initial request was granted more than three years previously or if the applicant is holding an office or position of employment different from the office or position held when the initial request was granted.

(4) Any citizen has standing to bring an action in Thurston county superior court to contest the propriety of any order entered under this section within one year from the date of the entry of the order.

(5) The commission shall adopt rules governing the proceedings. [2010 c 204 § 304.]

42.17A.125 Changing monetary limits. (1) At the beginning of each even-numbered calendar year, the commission shall increase or decrease the dollar amounts in RCW 42.17A.005(26), 42.17A.405, 42.17A.410, 42.17A.445(3), 42.17A.475, and 42.17A.630(1) based on changes in economic conditions as reflected in the inflation-

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ary index recommended by the office of financial management. The new dollar amounts established by the commission under this section shall be rounded off to amounts as judged most convenient for public understanding and so as to be within ten percent of the target amount equal to the base amount provided in this chapter multiplied by the increase in the inflationary index since July 2008.

(2) The commission may revise, at least once every five years but no more often than every two years, the monetary reporting thresholds and reporting code values of this chapter. The revisions shall be only for the purpose of recognizing economic changes as reflected by an inflationary index recommended by the office of financial management. The revisions shall be guided by the change in the index for the period commencing with the month of December preceding the last revision and concluding with the month of December preceding the month the revision is adopted. As to each of the three general categories of this chapter, reports of campaign finance, reports of lobbyist activity, and reports of the financial affairs of elected and appointed officials, the revisions shall equally affect all thresholds within each category. The revisions authorized by this subsection shall reflect economic changes from the time of the last legislative enactment affecting the respective code or threshold.

(3) Revisions made in accordance with subsections (1) and (2) of this section shall be adopted as rules under chapter 34.05 RCW. [2011 c 60 § 21; 2010 c 204 § 305; 1993 c 2 § 9 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.690.]

42.17A.130 Duties of attorney general. The attorney general, through his or her office, shall provide assistance as required by the commission to carry out its responsibilities under this chapter. The commission may employ attorneys who are neither the attorney general nor an assistant attorney general to carry out any function of the attorney general prescribed in this chapter. [2010 c 205 § 8; 2010 c 204 § 306; 1982 c 35 § 196; 1975 1st ex.s. c 294 § 26; 1973 c 1 § 38 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.380.]

Reviser's note: This section was amended by 2010 c 204 § 306 and by 2010 c 205 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

42.17A.135 Application of reporting requirements in small political subdivisions. (1) Except as provided in subsections (2), (3), and (7) of this section, the reporting provisions of this chapter do not apply to:

(a) Candidates, elected officials, and agencies in political subdivisions with less than one thousand registered voters as of the date of the most recent general election in the jurisdiction;

(b) Political committees formed to support or oppose candidates or ballot propositions in such political subdivisions; or

(c) Persons making independent expenditures in support of or opposition to such ballot propositions.

(2) The reporting provisions of this chapter apply in any exempt political subdivision from which a "petition for dis-

closure" containing the valid signatures of fifteen percent of the number of registered voters, as of the date of the most recent general election in the political subdivision, is filed with the commission. The commission shall by rule prescribe the form of the petition. After the signatures are gathered, the petition shall be presented to the auditor or elections officer of the county, or counties, in which the political subdivision is located. The auditor or elections officer shall verify the signatures and certify to the commission that the petition contains no less than the required number of valid signatures. The commission, upon receipt of a valid petition, shall order every known affected person in the political subdivision to file the initially required statement and reports within fourteen days of the date of the order.

(3) The reporting provisions of this chapter apply in any exempt political subdivision that by ordinance, resolution, or other official action has petitioned the commission to make the provisions applicable to elected officials and candidates of the exempt political subdivision. A copy of the action shall be sent to the commission. If the commission finds the petition to be a valid action of the appropriate governing body or authority, the commission shall order every known affected person in the political subdivision to file the initially required statement and reports within fourteen days of the date of the order.

(4) The commission shall void any order issued by it pursuant to subsection (2) or (3) of this section when, at least four years after issuing the order, the commission is presented a petition or official action so requesting from the affected political subdivision. Such petition or official action shall meet the respective requirements of subsection (2) or (3) of this section.

(5) Any petition for disclosure, ordinance, resolution, or official action of an agency petitioning the commission to void the exemption in RCW 42.17A.200(3) shall not be considered unless it has been filed with the commission:

(a) In the case of a ballot measure, at least sixty days before the date of any election in which campaign finance reporting is to be required;

(b) In the case of a candidate, at least sixty days before the first day on which a person may file a declaration of candidacy for any election in which campaign finance reporting is to be required.

(6) Any person exempted from reporting under this chapter may at his or her option file the statement and reports.

(7) The reporting provisions of this chapter apply to a candidate in any political subdivision if the candidate receives or expects to receive five thousand dollars or more in contributions. [2010 c 204 § 307; 2006 c 240 § 2; 1986 c 12 § 3; 1985 c 367 § 13; 1982 c 60 § 1. Formerly RCW 42.17.405.]

42.17A.140 Date of receipt—Exceptions—Electronic filings. (1) Except as provided in subsection (2) of this section, the date of receipt of any properly addressed application, report, statement, notice, or payment required to be made under the provisions of this chapter is the date shown by the post office cancellation mark on the envelope of the submitted material. The provisions of this section do not apply to reports required to be delivered under RCW 42.17A.265 and 42.17A.625.

(2) When a report is filed electronically with the commission, it is deemed to have been received on the file transfer date. The commission shall notify the filer of receipt of the electronically filed report. Such notification may be sent by mail, facsimile, or electronic mail. If the notification of receipt of the electronically filed report is not received by the filer, the filer may offer his or her own proof of sending the report, and such proof shall be treated as if it were a receipt sent by the commission. Electronic filing may be used for purposes of filing the special reports required to be delivered under RCW 42.17A.265 and 42.17A.625. [2010 c 204 § 308; 1999 c 401 § 10; 1995 c 397 § 18; 1983 c 176 § 2; 1973 c 1 § 42 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.420.]

42.17A.145 Certification of reports. Every report and statement required to be filed under this chapter shall identify the person preparing it, and shall be certified as complete and correct, both by the person preparing it and by the person on whose behalf it is filed. [1973 c 1 § 43 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.430.]

42.17A.150 Duty to preserve statements and reports. The commission must preserve statements or reports required to be filed under this chapter for not less than ten years. [2010 c 205 § 9; 1973 c 1 § 45 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.450.]

CAMPAIGN FINANCE REPORTING

42.17A.200 Application of chapter—Exceptions. The provisions of this chapter relating to the financing of election campaigns shall apply in all election campaigns other than (1) for precinct committee officer; (2) for a federal elective office; and (3) for an office of a political subdivision of the state that does not encompass a whole county and that contains fewer than five thousand registered voters as of the date of the most recent general election in the subdivision, unless required by RCW 42.17A.135 (2) through (5) and (7). [2010 c 204 § 401; 2006 c 240 § 1; 1987 c 295 § 18; 1986 c 12 § 1; 1985 c 367 § 2; 1977 ex.s. c 313 § 2; 1973 c 1 § 3 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.030.]

Cemetery district commissioners exempt from chapter: RCW 68.52.140, 68.52.220.

Additional notes found at www.leg.wa.gov

42.17A.205 Statement of organization by political committees. (1) Every political committee shall file a statement of organization with the commission. The statement must be filed within two weeks after organization or within two weeks after the date the committee first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier. A political committee organized within the last three weeks before an election and having the expectation of receiving contributions or making expenditures during and for that election campaign shall file a statement of organization within three business days after its organization or when it first has the expectation of

receiving contributions or making expenditures in the election campaign.

(2) The statement of organization shall include but not be limited to:

(a) The name and address of the committee;

(b) The names and addresses of all related or affiliated committees or other persons, and the nature of the relationship or affiliation;

(c) The names, addresses, and titles of its officers; or if it has no officers, the names, addresses, and titles of its responsible leaders;

(d) The name and address of its treasurer and depository;

(e) A statement whether the committee is a continuing one;

(f) The name, office sought, and party affiliation of each candidate whom the committee is supporting or opposing, and, if the committee is supporting the entire ticket of any party, the name of the party;

(g) The ballot proposition concerned, if any, and whether the committee is in favor of or opposed to such proposition;

(h) What distribution of surplus funds will be made, in accordance with RCW 42.17A.430, in the event of dissolution;

(i) The street address of the place and the hours during which the committee will make available for public inspection its books of account and all reports filed in accordance with RCW 42.17A.235;

(j) Such other information as the commission may by regulation prescribe, in keeping with the policies and purposes of this chapter;

(k) The name, address, and title of any person who authorizes expenditures or makes decisions on behalf of the candidate or committee; and

(l) The name, address, and title of any person who is paid by or is a volunteer for a candidate or political committee to perform ministerial functions and who performs ministerial functions on behalf of two or more candidates or committees.

(3) No two political committees may have the same name.

(4) Any material change in information previously submitted in a statement of organization shall be reported to the commission within the ten days following the change.

(5) As used in this section, the "name" of a sponsored committee must include the name of the person that is the sponsor of the committee. If more than one person meets the definition of sponsor, the name of the committee must include the name of at least one sponsor, but may include the names of other sponsors. A person may sponsor only one political committee for the same elected office or same ballot measure per election cycle. [2011 c 145 § 3. Prior: 2010 c 205 § 1; 2010 c 204 § 402; 2007 c 358 § 2; 1989 c 280 § 2; 1982 c 147 § 1; 1977 ex.s. c 336 § 1; 1975 1st ex.s. c 294 § 3; 1973 c 1 § 4 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.040.]

Findings—Intent—Effective date—2011 c 145: See notes following RCW 42.17A.005.

Effective date—2007 c 358: See note following RCW 42.17A.005.

Additional notes found at www.leg.wa.gov

42.17A.210 Treasurer. (1) Each candidate, within two weeks after becoming a candidate, and each political commit-

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tee, at the time it is required to file a statement of organization, shall designate and file with the commission the name and address of one legally competent individual, who may be the candidate, to serve as a treasurer.

(2) A candidate, a political committee, or a treasurer may appoint as many deputy treasurers as is considered necessary and shall file the names and addresses of the deputy treasurers with the commission.

(3)(a) A candidate or political committee may at any time remove a treasurer or deputy treasurer.

(b) In the event of the death, resignation, removal, or change of a treasurer or deputy treasurer, the candidate or political committee shall designate and file with the commission the name and address of any successor.

(4) No treasurer or deputy treasurer may be deemed to be in compliance with the provisions of this chapter until his or her name and address is filed with the commission. [2010 c 205 § 2; 2010 c 204 § 403; 1989 c 280 § 3; 1985 c 367 § 3; 1982 c 147 § 2; 1973 c 1 § 5 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.050.]

Reviser's note: This section was amended by 2010 c 204 § 403 and by 2010 c 205 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at www.leg.wa.gov

42.17A.215 Depositories. Each candidate and each political committee shall designate and file with the commission and the appropriate county elections officer the name and address of not more than one depository for each county in which the campaign is conducted in which the candidate's or political committee's accounts are maintained and the name of the account or accounts maintained in that depository on behalf of the candidate or political committee. The candidate or political committee may at any time change the designated depository and shall file with the commission and the appropriate county elections officer the same information for the successor depository as for the original depository. The candidate or political committee may not be deemed in compliance with the provisions of this chapter until the information required for the depository is filed with the commission and the appropriate county elections officer. [2010 c 204 § 404.]

42.17A.220 Deposit of contributions—Investment—Unidentified contributions. (1) All monetary contributions received by a candidate or political committee shall be deposited by the treasurer or deputy treasurer in a depository in an account established and designated for that purpose. Such deposits shall be made within five business days of receipt of the contribution.

(2) Political committees that support or oppose more than one candidate or ballot proposition, or exist for more than one purpose, may maintain multiple separate bank accounts within the same designated depository for such purpose only if:

(a) Each such account bears the same name;

(b) Each such account is followed by an appropriate designation that accurately identifies its separate purpose; and

(c) Transfers of funds that must be reported under *RCW 42.17A.240(1)(e) are not made from more than one such account.

(3) Nothing in this section prohibits a candidate or political committee from investing funds on hand in a depository in bonds, certificates, or tax-exempt securities, or in savings accounts or other similar instruments in financial institutions, or in mutual funds other than the depository but only if:

(a) The commission are [is] notified in writing of the initiation and the termination of the investment; and

(b) The principal of such investment, when terminated together with all interest, dividends, and income derived from the investment, is deposited in the depository in the account from which the investment was made and properly reported to the commission before any further disposition or expenditure.

(4) Accumulated unidentified contributions, other than those made by persons whose names must be maintained on a separate and private list by a political committee's treasurer pursuant to **RCW 42.17A.240(1)(b), in excess of one percent of the total accumulated contributions received in the current calendar year, or three hundred dollars, whichever is more, may not be deposited, used, or expended, but shall be returned to the donor if his or her identity can be ascertained. If the donor cannot be ascertained, the contribution shall escheat to the state and shall be paid to the state treasurer for deposit in the state general fund. [2010 c 205 § 3; 2010 c 204 § 405; 1989 c 280 § 4; 1987 c 268 § 1; 1985 c 367 § 4; 1982 c 147 § 3; 1977 ex.s. c 313 § 3; 1975 1st ex.s. c 294 § 4; 1973 c 1 § 6 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.060.]

Reviser's note: *(1) The correct reference is RCW 42.17A.240(5) as a result of the recodification of RCW 42.17.090 by 2010 c 204 § 1102 and the subsection renumbering of RCW 42.17.090 by 2010 c 204 § 409.

***(2) The correct reference is RCW 42.17A.240(2) as a result of the recodification of RCW 42.17.090 by 2010 c 204 § 1102 and the subsection renumbering of RCW 42.17.090 by 2010 c 204 § 409.

(3) This section was amended by 2010 c 204 § 405 and by 2010 c 205 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at www.leg.wa.gov

42.17A.225 Filing and reporting by continuing political committee. (1) In addition to the provisions of this section, a continuing political committee shall file and report on the same conditions and at the same times as any other committee in accordance with the provisions of RCW 42.17A.205, 42.17A.210, and 42.17A.220.

(2) A continuing political committee shall file with the commission a report on the tenth day of each month detailing expenditures made and contributions received for the preceding calendar month. This report need only be filed if either the total contributions received or total expenditures made since the last such report exceed two hundred dollars. The report shall be on a form supplied by the commission and shall include the following information:

(a) The information required by RCW 42.17A.240;

(b) Each expenditure made to retire previously accumulated debts of the committee identified by recipient, amount, and date of payments;

(c) Other information the commission shall prescribe by rule.

(3) If a continuing political committee makes a contribution in support of or in opposition to a candidate or ballot proposition within sixty days before the date that the candi-

date or ballot proposition will be voted upon, the committee shall report pursuant to RCW 42.17A.235.

(4) A continuing political committee shall file reports as required by this chapter until it is dissolved, at which time a final report shall be filed. Upon submitting a final report, the duties of the treasurer shall cease and there shall be no obligation to make any further reports.

(5) The treasurer shall maintain books of account, current within five business days, that accurately reflect all contributions and expenditures. During the eight days immediately preceding the date of any election that the committee has received any contributions or made any expenditures, the books of account shall be kept current within one business day and shall be open for public inspection in the same manner as provided for candidates and other political committees in RCW 42.17A.235(4).

(6) All reports filed pursuant to this section shall be certified as correct by the treasurer.

(7) The treasurer shall preserve books of account, bills, receipts, and all other financial records of the campaign or political committee for not less than five calendar years following the year during which the transaction occurred. [2011 c 60 § 22. Prior: 2010 c 205 § 4; 2010 c 204 § 406; 2000 c 237 § 1; 1989 c 280 § 5; 1982 c 147 § 4; 1975 1st ex.s. c 294 § 5. Formerly RCW 42.17.065.]

Additional notes found at www.leg.wa.gov

42.17A.230 Fund-raising activities—Alternative reporting method. (1) Fund-raising activities meeting the standards of subsection (2) of this section may be reported in accordance with the provisions of this section in lieu of reporting in accordance with RCW 42.17A.235.

(2) Standards:

(a) The activity consists of one or more of the following:

(i) A sale of goods or services sold at a reasonable approximation of the fair market value of each item or service; or

(ii) A gambling operation that is licensed, conducted, or operated in accordance with the provisions of chapter 9.46 RCW; or

(iii) A gathering where food and beverages are purchased and the price of admission or the per person charge for the food and beverages is no more than twenty-five dollars; or

(iv) A concert, dance, theater performance, or similar entertainment event and the price of admission is no more than twenty-five dollars; or

(v) An auction or similar sale for which the total fair market value of items donated by any person is no more than fifty dollars; and

(b) No person responsible for receiving money at the fund-raising activity knowingly accepts payments from a single person at or from such an activity to the candidate or committee aggregating more than fifty dollars unless the name and address of the person making the payment, together with the amount paid to the candidate or committee, are disclosed in the report filed pursuant to subsection (6) of this section; and

(c) Any other standards established by rule of the commission to prevent frustration of the purposes of this chapter.

(3) All funds received from a fund-raising activity that conforms with subsection (2) of this section must be deposited in the depository within five business days of receipt by the treasurer or deputy treasurer.

(4) At the time reports are required under RCW 42.17A.235, the treasurer or deputy treasurer making the deposit shall file with the commission a report of the fund-raising activity which must contain the following information:

(a) The date of the activity;

(b) A precise description of the fund-raising methods used in the activity; and

(c) The total amount of cash receipts from persons, each of whom paid no more than fifty dollars.

(5) The treasurer or deputy treasurer shall certify the report is correct.

(6) The treasurer shall report pursuant to RCW 42.17A.235 and 42.17A.240:

(a) The name and address and the amount contributed by each person contributing goods or services with a fair market value of more than fifty dollars to a fund-raising activity reported under subsection (4) of this section; and

(b) The name and address and the amount paid by each person whose identity can be ascertained, who made a contribution to the candidate or committee aggregating more than fifty dollars at or from such a fund-raising activity. [2010 c 205 § 5; 2010 c 204 § 407; 1989 c 280 § 6; 1982 c 147 § 5; 1975-'76 2nd ex.s. c 112 § 9. Formerly RCW 42.17.067.]

Reviser's note: This section was amended by 2010 c 204 § 407 and by 2010 c 205 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at www.leg.wa.gov

42.17A.235 Reporting of contributions and expenditures—Public inspection of accounts. (1) In addition to the information required under RCW 42.17A.205 and 42.17A.210, on the day the treasurer is designated, each candidate or political committee must file with the commission a report of all contributions received and expenditures made prior to that date, if any.

(2) Each treasurer shall file with the commission a report containing the information required by RCW 42.17A.240 at the following intervals:

(a) On the twenty-first day and the seventh day immediately preceding the date on which the election is held;

(b) On the tenth day of the first month after the election; and

(c) On the tenth day of each month in which no other reports are required to be filed under this section only if the committee has received a contribution or made an expenditure in the preceding calendar month and either the total contributions received or total expenditures made since the last such report exceed two hundred dollars.

The report filed twenty-one days before the election shall report all contributions received and expenditures made as of the end of one business day before the date of the report. The report filed seven days before the election shall report all contributions received and expenditures made as of the end of one business day before the date of the report. Reports filed on the tenth day of the month shall report all contributions

received and expenditures made from the closing date of the last report filed through the last day of the month preceding the date of the current report.

(3) For the period beginning the first day of the fourth month preceding the date of the special election, or for the period beginning the first day of the fifth month before the date of the general election, and ending on the date of that special or general election, each Monday the treasurer shall file with the commission a report of each bank deposit made during the previous seven calendar days. The report shall contain the name of each person contributing the funds and the amount contributed by each person. However, persons who contribute no more than twenty-five dollars in the aggregate are not required to be identified in the report. A copy of the report shall be retained by the treasurer for his or her records. In the event of deposits made by a deputy treasurer, the copy shall be forwarded to the treasurer for his or her records. Each report shall be certified as correct by the treasurer or deputy treasurer making the deposit.

(4) The treasurer or candidate shall maintain books of account accurately reflecting all contributions and expenditures on a current basis within five business days of receipt or expenditure. During the eight days immediately preceding the date of the election the books of account shall be kept current within one business day. As specified in the committee's statement of organization filed under RCW 42.17A.205, the books of account must be open for public inspection by appointment at the designated place for inspections between 8:00 a.m. and 8:00 p.m. on any day from the eighth day immediately before the election through the day immediately before the election, other than Saturday, Sunday, or a legal holiday. It is a violation of this chapter for a candidate or political committee to refuse to allow and keep an appointment for an inspection to be conducted during these authorized times and days. The appointment must be allowed at an authorized time and day for such inspections that is within twenty-four hours of the time and day that is requested for the inspection.

(5) Copies of all reports filed pursuant to this section shall be readily available for public inspection by appointment, pursuant to subsection (4) of this section, at the principal headquarters or, if there is no headquarters, at the address of the treasurer or such other place as may be authorized by the commission.

(6) The treasurer or candidate shall preserve books of account, bills, receipts, and all other financial records of the campaign or political committee for not less than five calendar years following the year during which the transaction occurred.

(7) All reports filed pursuant to subsection (1) or (2) of this section shall be certified as correct by the candidate and the treasurer.

(8) When there is no outstanding debt or obligation, the campaign fund is closed, and the campaign is concluded in all respects or in the case of a political committee, the committee has ceased to function and has dissolved, the treasurer shall file a final report. Upon submitting a final report, the duties of the treasurer shall cease and there is no obligation to make any further reports. [2011 c 60 § 23. Prior: 2010 c 205 § 6; 2010 c 204 § 408; 2008 c 73 § 1; 2006 c 344 § 30; 2005 c 184 § 1; 2002 c 75 § 2; 2000 c 237 § 2; 1999 c 401 § 13; 1994 c

397 § 2; 1989 c 280 § 8; 1986 c 28 § 1; 1982 c 147 § 6; 1975 1st ex.s. c 294 § 6; 1973 c 1 § 8 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.080.]

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

Additional notes found at www.leg.wa.gov

42.17A.240 Contents of report. Each report required under RCW 42.17A.235 (1) and (2) must be certified as correct by the treasurer and the candidate and shall disclose the following:

- (1) The funds on hand at the beginning of the period;
- (2) The name and address of each person who has made one or more contributions during the period, together with the money value and date of each contribution and the aggregate value of all contributions received from each person during the campaign, or in the case of a continuing political committee, the current calendar year, with the following exceptions:
 - (a) Pledges in the aggregate of less than one hundred dollars from any one person need not be reported;
 - (b) Income that results from a fund-raising activity conducted in accordance with RCW 42.17A.230 may be reported as one lump sum, with the exception of that portion received from persons whose names and addresses are required to be included in the report required by RCW 42.17A.230;
 - (c) Contributions of no more than twenty-five dollars in the aggregate from any one person during the election campaign may be reported as one lump sum if the treasurer maintains a separate and private list of the name, address, and amount of each such contributor; and
 - (d) The money value of contributions of postage shall be the face value of the postage;
- (3) Each loan, promissory note, or security instrument to be used by or for the benefit of the candidate or political committee made by any person, including the names and addresses of the lender and each person liable directly, indirectly or contingently and the date and amount of each such loan, promissory note, or security instrument;
- (4) All other contributions not otherwise listed or exempted;
- (5) The name and address of each candidate or political committee to which any transfer of funds was made, including the amounts and dates of the transfers;
- (6) The name and address of each person to whom an expenditure was made in the aggregate amount of more than fifty dollars during the period covered by this report, the amount, date, and purpose of each expenditure, and the total sum of all expenditures;
- (7) The name and address of each person directly compensated for soliciting or procuring signatures on an initiative or referendum petition, the amount of the compensation to each person, and the total expenditures made for this purpose. Such expenditures shall be reported under this subsection in addition to what is required to be reported under subsection (6) of this section;
- (8) The name and address of any person and the amount owed for any debt, obligation, note, unpaid loan, or other liability in the amount of more than two hundred fifty dollars or in the amount of more than fifty dollars that has been outstanding for over thirty days;

(9) The surplus or deficit of contributions over expenditures;

(10) The disposition made in accordance with RCW 42.17A.430 of any surplus funds; and

(11) Any other information required by the commission by rule in conformance with the policies and purposes of this chapter. [2010 c 204 § 409; 2003 c 123 § 1; 1993 c 256 § 6; 1989 c 280 § 9. Prior: 1986 c 228 § 1; 1986 c 12 § 2; 1983 c 96 § 1; 1982 c 147 § 7; 1977 ex.s. c 336 § 2; 1975-'76 2nd ex.s. c 112 § 3; 1975 1st ex.s. c 294 § 7; 1973 c 1 § 9 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.090.]

Appearance of fairness doctrine—Application to candidates for public office—Campaign contributions: RCW 42.36.040, 42.36.050.

Additional notes found at www.leg.wa.gov

42.17A.245 Electronic filing—When required. (1) Each candidate or political committee that expended five thousand dollars or more in the preceding year or expects to expend five thousand dollars or more in the current year shall file all contribution reports and expenditure reports required by this chapter by the electronic alternative provided by the commission under RCW 42.17A.055. The commission may make exceptions on a case-by-case basis for candidates whose authorized committees lack the technological ability to file reports using the electronic alternative provided by the commission.

(2) Failure by a candidate or political committee to comply with this section is a violation of this chapter. [2011 c 145 § 4; 2010 c 204 § 410; 2000 c 237 § 4; 1999 c 401 § 12. Formerly RCW 42.17.3691.]

Findings—Intent—Effective date—2011 c 145: See notes following RCW 42.17A.005.

42.17A.250 Out-of-state political committees—Reports. (1) An out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state that is not otherwise required to report under RCW 42.17A.205 through 42.17A.240 shall report as required in this section when it makes an expenditure supporting or opposing a Washington state candidate or political committee. The committee shall file with the commission a statement disclosing:

- (a) Its name and address;
- (b) The purposes of the out-of-state committee;
- (c) The names, addresses, and titles of its officers or, if it has no officers, the names, addresses, and titles of its responsible leaders;
- (d) The name, office sought, and party affiliation of each candidate in the state of Washington whom the out-of-state committee is supporting or opposing and, if the committee is supporting or opposing the entire ticket of any party, the name of the party;
- (e) The ballot proposition supported or opposed in the state of Washington, if any, and whether the committee is in favor of or opposed to that proposition;
- (f) The name and address of each person residing in the state of Washington or corporation that has a place of business in the state of Washington who has made one or more contributions in the aggregate of more than twenty-five dollars to the out-of-state committee during the current calendar

year, together with the money value and date of the contributions;

(g) The name, address, and employer of each person or corporation residing outside the state of Washington who has made one or more contributions in the aggregate of more than two thousand five hundred fifty dollars to the out-of-state committee during the current calendar year, together with the money value and date of the contributions. Annually, the commission must modify the two thousand five hundred fifty dollar limit in this subsection based on percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the bureau of economic analysis of the federal department of commerce;

(h) The name and address of each person in the state of Washington to whom an expenditure was made by the out-of-state committee with respect to a candidate or political committee in the aggregate amount of more than fifty dollars, the amount, date, and purpose of the expenditure, and the total sum of the expenditures; and

(i) Any other information as the commission may prescribe by rule in keeping with the policies and purposes of this chapter.

(2) Each statement shall be filed no later than the tenth day of the month following any month in which a contribution or other expenditure reportable under subsection (1) of this section is made. An out-of-state committee incurring an obligation to file additional statements in a calendar year may satisfy the obligation by timely filing reports that supplement previously filed information. [2010 c 204 § 411; 2006 c 348 § 6; 2003 c 123 § 2. Formerly RCW 42.17.093.]

42.17A.255 Special reports—Independent expenditures. (1) For the purposes of this section the term "independent expenditure" means any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported pursuant to RCW 42.17A.220, 42.17A.235, and 42.17A.240. "Independent expenditure" does not include: An internal political communication primarily limited to the contributors to a political party organization or political action committee, or the officers, management staff, and stockholders of a corporation or similar enterprise, or the members of a labor organization or other membership organization; or the rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this section, means services or labor for which the individual is not compensated by any person.

(2) Within five days after the date of making an independent expenditure that by itself or when added to all other such independent expenditures made during the same election campaign by the same person equals one hundred dollars or more, or within five days after the date of making an independent expenditure for which no reasonable estimate of monetary value is practicable, whichever occurs first, the person who made the independent expenditure shall file with the commission an initial report of all independent expenditures made during the campaign prior to and including such date.

(3) At the following intervals each person who is required to file an initial report pursuant to subsection (2) of this section shall file with the commission a further report of the independent expenditures made since the date of the last report:

(a) On the twenty-first day and the seventh day preceding the date on which the election is held; and

(b) On the tenth day of the first month after the election; and

(c) On the tenth day of each month in which no other reports are required to be filed pursuant to this section. However, the further reports required by this subsection (3) shall only be filed if the reporting person has made an independent expenditure since the date of the last previous report filed.

The report filed pursuant to paragraph (a) of this subsection (3) shall be the final report, and upon submitting such final report the duties of the reporting person shall cease, and there shall be no obligation to make any further reports.

(4) All reports filed pursuant to this section shall be certified as correct by the reporting person.

(5) Each report required by subsections (2) and (3) of this section shall disclose for the period beginning at the end of the period for the last previous report filed or, in the case of an initial report, beginning at the time of the first independent expenditure, and ending not more than one business day before the date the report is due:

(a) The name and address of the person filing the report;

(b) The name and address of each person to whom an independent expenditure was made in the aggregate amount of more than fifty dollars, and the amount, date, and purpose of each such expenditure. If no reasonable estimate of the monetary value of a particular independent expenditure is practicable, it is sufficient to report instead a precise description of services, property, or rights furnished through the expenditure and where appropriate to attach a copy of the item produced or distributed by the expenditure;

(c) The total sum of all independent expenditures made during the campaign to date; and

(d) Such other information as shall be required by the commission by rule in conformance with the policies and purposes of this chapter. [2011 c 60 § 24; 2010 c 205 § 7; 1995 c 397 § 28; 1989 c 280 § 10; 1985 c 367 § 6; 1982 c 147 § 9; 1975-76 2nd ex.s. c 112 § 4; 1973 c 1 § 10 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.100.]

Additional notes found at www.leg.wa.gov

42.17A.260 Special reports—Political advertising. (1) The sponsor of political advertising who, within twenty-one days of an election, publishes, mails, or otherwise presents to the public political advertising supporting or opposing a candidate or ballot proposition that qualifies as an independent expenditure with a fair market value of one thousand dollars or more shall deliver, either electronically or in written form, a special report to the commission within twenty-four hours of, or on the first working day after, the date the political advertising is first published, mailed, or otherwise presented to the public.

(2) If a sponsor is required to file a special report under this section, the sponsor shall also deliver to the commission within the delivery period established in subsection (1) of this

section a special report for each subsequent independent expenditure of any size supporting or opposing the same candidate who was the subject of the previous independent expenditure, supporting or opposing that candidate's opponent, or supporting or opposing the same ballot proposition that was the subject of the previous independent expenditure.

(3) The special report must include:

(a) The name and address of the person making the expenditure;

(b) The name and address of the person to whom the expenditure was made;

(c) A detailed description of the expenditure;

(d) The date the expenditure was made and the date the political advertising was first published or otherwise presented to the public;

(e) The amount of the expenditure;

(f) The name of the candidate supported or opposed by the expenditure, the office being sought by the candidate, and whether the expenditure supports or opposes the candidate; or the name of the ballot proposition supported or opposed by the expenditure and whether the expenditure supports or opposes the ballot proposition; and

(g) Any other information the commission may require by rule.

(4) All persons required to report under RCW 42.17A.225, 42.17A.235, 42.17A.240, 42.17A.255, and 42.17A.305 are subject to the requirements of this section. The commission may determine that reports filed pursuant to this section also satisfy the requirements of RCW 42.17A.255.

(5) The sponsor of independent expenditures supporting a candidate or opposing that candidate's opponent required to report under this section shall file with each required report an affidavit or declaration of the person responsible for making the independent expenditure that the expenditure was not made in cooperation, consultation, or concert with, or at the request or suggestion of, the candidate, the candidate's authorized committee, or the candidate's agent, or with the encouragement or approval of the candidate, the candidate's authorized committee, or the candidate's agent. [2010 c 204 § 413; 2005 c 445 § 7; 2001 c 54 § 1. Formerly RCW 42.17.103.]

Additional notes found at www.leg.wa.gov

42.17A.265 Special reports—Late contributions or large totals—Certain late contributions prohibited. (1) Treasurers shall prepare and deliver to the commission a special report when a contribution or aggregate of contributions totals one thousand dollars or more, is from a single person or entity, and is received during a special reporting period.

(2) A political committee shall prepare and deliver to the commission a special report when it makes a contribution or an aggregate of contributions to a single entity that totals one thousand dollars or more during a special reporting period.

(3) An aggregate of contributions includes only those contributions made to or received from a single entity during any one special reporting period. Any subsequent contribution of any size made to or received from the same person or entity during the special reporting period must also be reported.

(4) Special reporting periods, for purposes of this section, include:

(a) The period beginning on the day after the last report required by RCW 42.17A.235 and 42.17A.240 to be filed before a primary and concluding on the end of the day before that primary;

(b) The period twenty-one days preceding a general election; and

(c) An aggregate of contributions includes only those contributions received from a single entity during any one special reporting period or made by the contributing political committee to a single entity during any one special reporting period.

(5) If a campaign treasurer files a special report under this section for one or more contributions received from a single entity during a special reporting period, the treasurer shall also file a special report under this section for each subsequent contribution of any size which is received from that entity during the special reporting period. If a political committee files a special report under this section for a contribution or contributions made to a single entity during a special reporting period, the political committee shall also file a special report for each subsequent contribution of any size which is made to that entity during the special reporting period.

(6) Special reports required by this section shall be delivered electronically or in written form, including but not limited to mailgram, telegram, or nightletter. The special report may be transmitted orally by telephone to the commission if the written form of the report is postmarked and mailed to the commission or the electronic filing is transferred to the commission within the delivery periods established in (a) and (b) of this subsection.

(a) The special report required of a contribution recipient under subsection (1) of this section shall be delivered to the commission within forty-eight hours of the time, or on the first working day after: The contribution of one thousand dollars or more is received by the candidate or treasurer; the aggregate received by the candidate or treasurer first equals one thousand dollars or more; or any subsequent contribution from the same source is received by the candidate or treasurer.

(b) The special report required of a contributor under subsection (2) of this section or RCW 42.17A.625 shall be delivered to the commission, and the candidate or political committee to whom the contribution or contributions are made, within twenty-four hours of the time, or on the first working day after: The contribution is made; the aggregate of contributions made first equals one thousand dollars or more; or any subsequent contribution to the same person or entity is made.

(7) The special report shall include:

(a) The amount of the contribution or contributions;

(b) The date or dates of receipt;

(c) The name and address of the donor;

(d) The name and address of the recipient; and

(e) Any other information the commission may by rule require.

(8) Contributions reported under this section shall also be reported as required by other provisions of this chapter.

(9) The commission shall prepare daily a summary of the special reports made under this section and RCW 42.17A.625.

(10) Contributions governed by this section include, but are not limited to, contributions made or received indirectly through a third party or entity whether the contributions are or are not reported to the commission as earmarked contributions under RCW 42.17A.270. [2010 c 204 § 414; 2001 c 54 § 2; 1995 c 397 § 4; 1991 c 157 § 1; 1989 c 280 § 11; 1986 c 228 § 2; 1985 c 359 § 1; 1983 c 176 § 1. Formerly RCW 42.17.105.]

Additional notes found at www.leg.wa.gov

42.17A.270 Earmarked contributions. A political committee receiving a contribution earmarked for the benefit of a candidate or another political committee shall:

(1) Report the contribution as required in RCW 42.17A.235 and 42.17A.240;

(2) Complete a report, entitled "Earmarked contributions," on a form prescribed by the commission that identifies the name and address of the person who made the contribution, the candidate or political committee for whose benefit the contribution is earmarked, the amount of the contribution, and the date that the contribution was received; and

(3) Mail or deliver to the commission and the candidate or political committee benefiting from the contribution a copy of the "Earmarked contributions" report within two working days of receipt of the contribution.

(4) A candidate or political committee receiving notification of an earmarked contribution under subsection (3) of this section shall report the contribution, once notification of the contribution is received by the candidate or committee, in the same manner as any other contribution, as required by RCW 42.17A.235 and 42.17A.240. [2010 c 204 § 416; 1989 c 280 § 13; 1986 c 228 § 3. Formerly RCW 42.17.135.]

Additional notes found at www.leg.wa.gov

POLITICAL ADVERTISING AND ELECTIONEERING COMMUNICATIONS

42.17A.300 Findings—Intent—Rule-making authority. (1) The legislature finds that:

(a) Timely disclosure to voters of the identity and sources of funding for electioneering communications is vitally important to the integrity of state, local, and judicial elections.

(b) Electioneering communications that identify political candidates for state, local, or judicial office and that are distributed sixty days before an election for those offices are intended to influence voters and the outcome of those elections.

(c) The state has a compelling interest in providing voters information about electioneering communications in political campaigns concerning candidates for state, local, or judicial office so that voters can be fully informed as to the: (i) Source of support or opposition to those candidates; and (ii) identity of persons attempting to influence the outcome of state, local, and judicial candidate elections.

(d) Nondisclosure of financial information about advertising that masquerades as relating only to issues and not to candidate campaigns fosters corruption or the appearance of corruption. These consequences can be substantially avoided by full disclosure of the identity and funding of those persons paying for such advertising.

(2014 Ed.)

(e) The United States supreme court held in *McConnell et al. v. Federal Elections Commission*, 540 U.S. 93, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003) that speakers seeking to influence elections do not possess an inviolable free speech right to engage in electioneering communications regarding elections, including when issue advocacy is the functional equivalent of express advocacy. Therefore, such election campaign communications can be regulated and the source of funding disclosed.

(f) The state has a sufficiently compelling interest in preventing corruption in political campaigns to justify and restore contribution limits and restrictions on the use of soft money in RCW 42.17A.405. Those interests include restoring restrictions on the use of such funds for electioneering communications, as well as the laws preventing circumvention of those limits and restrictions.

(2) Based upon the findings in this section, chapter 445, Laws of 2005 is narrowly tailored to accomplish the following and is intended to:

(a) Improve the disclosure to voters of information concerning persons and entities seeking to influence state, local, and judicial campaigns through reasonable and effective mechanisms, including improving disclosure of the source, identity, and funding of electioneering communications concerning state, local, and judicial candidate campaigns;

(b) Regulate electioneering communications that mention state, local, and judicial candidates and that are broadcast, mailed, erected, distributed, or otherwise published right before the election so that the public knows who is paying for such communications;

(c) Reenact and amend the contribution limits in RCW 42.17A.405 (7) and (15) and the restrictions on the use of soft money, including as applied to electioneering communications, as those limits and restrictions were in effect following the passage of chapter 2, Laws of 1993 (Initiative Measure No. 134) and before the state supreme court decision in *Washington State Republican Party v. Washington State Public Disclosure Commission*, 141 Wn.2d 245, 4 P.3d 808 (2000). The commission is authorized to fully restore the implementation of the limits and restrictions of RCW 42.17A.405 (7) and (15) in light of *McConnell et al. v. Federal Elections Commission*, 540 U.S. 93, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003). The United States supreme court upheld the disclosure and regulation of electioneering communications in political campaigns, including but not limited to issue advocacy that is the functional equivalent of express advocacy; and

(d) Authorize the commission to adopt rules to implement chapter 445, Laws of 2005. [2010 c 204 § 501; 2005 c 445 § 1. Formerly RCW 42.17.561.]

42.17A.305 Report—Information required—Time—Method—By whom—Penalty. (1) A payment for or promise to pay for any electioneering communication shall be reported to the commission by the sponsor on forms the commission shall develop by rule to include, at a minimum, the following information:

(a) Name and address of the sponsor;

(b) Source of funds for the communication, including:

(i) General treasury funds. The name and address of businesses, unions, groups, associations, or other organiza-

tions using general treasury funds for the communication, however, if a business, union, group, association, or other organization undertakes a special solicitation of its members or other persons for an electioneering communication, or it otherwise receives funds for an electioneering communication, that entity shall report pursuant to (b)(ii) of this subsection;

(ii) Special solicitations and other funds. The name, address, and, for individuals, occupation and employer, of a person whose funds were used to pay for the electioneering communication, along with the amount, if such funds from the person have exceeded two hundred fifty dollars in the aggregate for the electioneering communication; and

(iii) Any other source information required or exempted by the commission by rule;

(c) Name and address of the person to whom an electioneering communication related expenditure was made;

(d) A detailed description of each expenditure of more than one hundred dollars;

(e) The date the expenditure was made and the date the electioneering communication was first broadcast, transmitted, mailed, erected, distributed, or otherwise published;

(f) The amount of the expenditure;

(g) The name of each candidate clearly identified in the electioneering communication, the office being sought by each candidate, and the amount of the expenditure attributable to each candidate; and

(h) Any other information the commission may require or exempt by rule.

(2) Electioneering communications shall be reported as follows: The sponsor of an electioneering communication shall report to the commission within twenty-four hours of, or on the first working day after, the date the electioneering communication is broadcast, transmitted, mailed, erected, distributed, or otherwise published.

(3) Electioneering communications shall be reported electronically by the sponsor using software provided or approved by the commission. The commission may make exceptions on a case-by-case basis for a sponsor who lacks the technological ability to file reports using the electronic means provided or approved by the commission.

(4) All persons required to report under RCW 42.17A.225, 42.17A.235, 42.17A.240, and 42.17A.255 are subject to the requirements of this section, although the commission may determine by rule that persons filing according to those sections may be exempt from reporting some of the information otherwise required by this section. The commission may determine that reports filed pursuant to this section also satisfy the requirements of RCW 42.17A.255 and 42.17A.260.

(5) Failure of any sponsor to report electronically under this section shall be a violation of this chapter. [2010 c 204 § 502; 2005 c 445 § 3. Formerly RCW 42.17.565.]

42.17A.310 When a contribution. (1) An electioneering communication made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents is a contribution to the candidate.

(2) An electioneering communication made by a person in cooperation, consultation, or concert with, or at the request

or suggestion of, a political committee or its agents is a contribution to the political committee.

(3) If an electioneering communication is not a contribution pursuant to subsection (1) or (2) of this section, the sponsor shall file an affidavit or declaration so stating at the time the sponsor is required to report the electioneering communication expense under RCW 42.17A.305. [2010 c 204 § 503; 2005 c 445 § 4. Formerly RCW 42.17.570.]

42.17A.315 Recordkeeping. (1) The sponsor of an electioneering communication shall preserve all financial records relating to the communication, including books of account, bills, receipts, contributor information, and ledgers, for not less than five calendar years following the year in which the communication was broadcast, transmitted, mailed, erected, or otherwise published.

(2) All reports filed under RCW 42.17A.305 shall be certified as correct by the sponsor. If the sponsor is an individual using his or her own funds to pay for the communication, the certification shall be signed by the individual. If the sponsor is a political committee, the certification shall be signed by the committee treasurer. If the sponsor is another entity, the certification shall be signed by the individual responsible for authorizing the expenditure on the entity's behalf. [2010 c 204 § 504; 2005 c 445 § 5. Formerly RCW 42.17.575.]

42.17A.320 Identification of sponsor—Exemptions.

(1) All written political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name and address. All radio and television political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name. The use of an assumed name for the sponsor of electioneering communications, independent expenditures, or political advertising shall be unlawful. For partisan office, if a candidate has expressed a party or independent preference on the declaration of candidacy, that party or independent designation shall be clearly identified in electioneering communications, independent expenditures, or political advertising.

(2) In addition to the information required by subsection (1) of this section, except as specifically addressed in subsections (4) and (5) of this section, all political advertising undertaken as an independent expenditure or an electioneering communication by a person or entity other than a bona fide political party must include as part of the communication:

(a) The statement: "No candidate authorized this ad. It is paid for by (name, address, city, state)";

(b) If the sponsor is a political committee, the statement: "Top Five Contributors," followed by a listing of the names of the five persons or entities making the largest contributions in excess of seven hundred dollars reportable under this chapter during the twelve-month period before the date of the advertisement or communication; and

(c) If the sponsor is a political committee established, maintained, or controlled directly, or indirectly through the formation of one or more political committees, by an individual, corporation, union, association, or other entity, the full name of that individual or entity.

(3) The information required by subsections (1) and (2) of this section shall:

(a) Appear on the first page or fold of the written advertisement or communication in at least ten-point type, or in type at least ten percent of the largest size type used in a written advertisement or communication directed at more than one voter, such as a billboard or poster, whichever is larger;

(b) Not be subject to the half-tone or screening process; and

(c) Be set apart from any other printed matter.

(4) In an independent expenditure or electioneering communication transmitted via television or other medium that includes a visual image, the following statement must either be clearly spoken, or appear in print and be visible for at least four seconds, appear in letters greater than four percent of the visual screen height, and have a reasonable color contrast with the background: "No candidate authorized this ad. Paid for by (name, city, state)." If the advertisement or communication is undertaken by a nonindividual other than a party organization, then the following notation must also be included: "Top Five Contributors" followed by a listing of the names of the five persons or entities making the largest contributions in excess of seven hundred dollars reportable under this chapter during the twelve-month period preceding the date on which the advertisement is initially published or otherwise presented to the public. Abbreviations may be used to describe contributing entities if the full name of the entity has been clearly spoken previously during the broadcast advertisement.

(5) The following statement shall be clearly spoken in an independent expenditure or electioneering communication transmitted by a method that does not include a visual image: "No candidate authorized this ad. Paid for by (name, city, state)." If the independent expenditure or electioneering communication is undertaken by a nonindividual other than a party organization, then the following statement must also be included: "Top Five Contributors" followed by a listing of the names of the five persons or entities making the largest contributions in excess of seven hundred dollars reportable under this chapter during the twelve-month period preceding the date on which the advertisement is initially published or otherwise presented to the public. Abbreviations may be used to describe contributing entities if the full name of the entity has been clearly spoken previously during the broadcast advertisement.

(6) Political advertising costing one thousand dollars or more supporting or opposing ballot measures sponsored by a political committee must include the information on the "Top Five Contributors" consistent with subsections (2), (4), and (5) of this section. A series of political advertising sponsored by the same political committee, each of which is under one thousand dollars, must include the "Top Five Contributors" information required by this section once their cumulative value reaches one thousand dollars or more.

(7) Political yard signs are exempt from the requirements of this section that the sponsor's name and address, and "Top Five Contributor" information, be listed on the advertising. In addition, the public disclosure commission shall, by rule, exempt from the identification requirements of this section forms of political advertising such as campaign buttons, balloons, pens, pencils, sky-writing, inscriptions, and other forms of advertising where identification is impractical.

(8) For the purposes of this section, "yard sign" means any outdoor sign with dimensions no greater than eight feet by four feet. [2013 c 138 § 1; 2012 c 226 § 1; 2010 c 204 § 505; 2005 c 445 § 9; 1995 c 397 § 19; 1993 c 2 § 22 (Initiative Measure No. 134, approved November 3, 1992); 1984 c 216 § 1. Formerly RCW 42.17.510.]

Advertising rates for political candidates: RCW 65.16.095.

42.17A.330 Picture of candidate. At least one picture of the candidate used in any political advertising shall have been taken within the last five years and shall be no smaller than any other picture of the same candidate used in the same advertisement. [2010 c 204 § 506; 1984 c 216 § 2. Formerly RCW 42.17.520.]

42.17A.335 Political advertising or electioneering communication—Libel or defamation per se. (1) It is a violation of this chapter for a person to sponsor with actual malice a statement constituting libel or defamation per se under the following circumstances:

(a) Political advertising or an electioneering communication that contains a false statement of material fact about a candidate for public office;

(b) Political advertising or an electioneering communication that falsely represents that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent;

(c) Political advertising or an electioneering communication that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.

(2) For the purposes of this section, "libel or defamation per se" means statements that tend (a) to expose a living person to hatred, contempt, ridicule, or obloquy, or to deprive him or her of the benefit of public confidence or social intercourse, or to injure him or her in his or her business or occupation, or (b) to injure any person, corporation, or association in his, her, or its business or occupation.

(3) It is not a violation of this section for a candidate or his or her agent to make statements described in subsection (1)(a) or (b) of this section about the candidate himself or herself because a person cannot defame himself or herself. It is not a violation of this section for a person or organization referenced in subsection (1)(c) of this section to make a statement about that person or organization because such persons and organizations cannot defame themselves.

(4) Any violation of this section shall be proven by clear and convincing evidence. If a violation is proven, damages are presumed and do not need to be proven. [2009 c 222 § 2; 2005 c 445 § 10; 1999 c 304 § 2; 1988 c 199 § 2; 1984 c 216 § 3. Formerly RCW 42.17.530.]

Intent—Findings—2009 c 222: "(1) The concurring opinion of the Washington state supreme court in *Rickert v. State, Public Disclosure Commission*, 161 Wn.2d 843, 168 P. 3d 826 (2007) found the statute that prohibits persons from sponsoring, with actual malice, political advertising and electioneering communications about a candidate containing false statements of material fact to be invalid under the First Amendment to the United States Constitution because it posed no requirement that the prohibited statements be defamatory.

(2) It is the intent of the legislature to amend *chapter 42.17 RCW to find that a violation of state law occurs if a person sponsors false statements about candidates in political advertising and electioneering communications

when the statements are made with actual malice and are defamatory.

(3) The legislature finds that in such circumstances damages are presumed and do not need to be established when such statements are made with actual malice in political advertising and electioneering communications and constitute libel or defamation per se. The legislature finds that incumbents, challengers, voters, and the political process will benefit from vigorous political debate that is not made with actual malice and is not defamatory.

(4) The legislature finds that when such defamatory statements contain a false statement of material fact about a candidate for public office they expose the candidate to contempt, ridicule, or reproach and can deprive the candidate of the benefit of public confidence, or prejudice him or her in his or her profession, trade, or vocation. The legislature finds that when such statements falsely represent that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent they deprive the actual incumbent and the candidates of the benefit of public confidence and injure the actual incumbent in the ability to effectively serve as an elected official. The legislature further finds that defamatory statements made by an incumbent regarding the incumbent's challenger may deter individuals from seeking public office and harm the democratic process. Further, the legislature finds that when such statements make, either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement, they deprive the person or organization of the benefit of public confidence and/or will expose the person or organization to contempt, ridicule, or reproach, or injure the person or organization in their business or occupation.

(5) The legislature finds that defamatory statements, made with actual malice, damage the integrity of elections by distorting the electoral process. Democracy is premised on an informed electorate. To the extent such defamatory statements misinform the voters, they interfere with the process upon which democracy is based. Such defamatory statements also lower the quality of campaign discourse and debate, and lead or add to voter alienation by fostering voter cynicism and distrust of the political process." [2009 c 222 § 1.]

***Reviser's note:** Provisions in chapter 42.17 RCW relating to campaign finance were reidentified in chapter 42.17A RCW by 2010 c 204, effective January 1, 2012.

Finding—Intent—1999 c 304: "(1) The Washington supreme court in a case involving a ballot measure, *State v. 119 Vote No! Committee*, 135 Wn.2d 618 (1998), found the statute that prohibits persons from sponsoring, with actual malice, political advertising containing false statements of material fact to be invalid under the First Amendment to the United States Constitution.

(2) The legislature finds that a review of the opinions indicates that a majority of the supreme court may find valid a statute that limited such a prohibition on sponsoring with actual malice false statements of material fact in a political campaign to statements about a candidate in an election for public office.

(3) It is the intent of the legislature to amend the current law to provide protection for candidates for public office against false statements of material fact sponsored with actual malice." [1999 c 304 § 1.]

42.17A.340 Responsibility for compliance. (1) Except as provided in subsection (2) of this section, the responsibility for compliance with RCW 42.17A.320 through 42.17A.335 shall be with the sponsor of the political advertising and not with the broadcasting station or other medium.

(2) If a broadcasting station or other medium changes the content of a political advertisement, the station or medium shall be responsible for any failure of the advertisement to comply with RCW 42.17A.320 through 42.17A.335 that results from that change. [2010 c 204 § 507; 1984 c 216 § 4. Formerly RCW 42.17.540.]

42.17A.345 Commercial advertisers—Public inspection of documents—Copies to commission. (1) Each commercial advertiser who has accepted or provided political advertising or electioneering communications during the election campaign shall maintain documents and books of account that shall be open for public inspection during normal business hours during the campaign and for a period of

no less than three years after the date of the applicable election. The documents and books of account shall specify:

(a) The names and addresses of persons from whom it accepted political advertising or electioneering communications;

(b) The exact nature and extent of the services rendered; and

(c) The total cost and the manner of payment for the services.

(2) At the request of the commission, each commercial advertiser required to comply with subsection (1) of this section shall deliver to the commission copies of the information that must be maintained and be open for public inspection pursuant to subsection (1) of this section. [2010 c 204 § 508; 2005 c 445 § 8; 1975-'76 2nd ex.s. c 112 § 5; 1973 c 1 § 11 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.110.]

CAMPAIGN CONTRIBUTION LIMITS AND OTHER RESTRICTIONS

42.17A.400 Findings—Intent. (1) The people of the state of Washington find and declare that:

(a) The financial strength of certain individuals or organizations should not permit them to exercise a disproportionate or controlling influence on the election of candidates.

(b) Rapidly increasing political campaign costs have led many candidates to raise larger percentages of money from special interests with a specific financial stake in matters before state government. This has caused the public perception that decisions of elected officials are being improperly influenced by monetary contributions.

(c) Candidates are raising less money in small contributions from individuals and more money from special interests. This has created the public perception that individuals have an insignificant role to play in the political process.

(2) By limiting campaign contributions, the people intend to:

(a) Ensure that individuals and interest groups have fair and equal opportunity to influence elective and governmental processes;

(b) Reduce the influence of large organizational contributors; and

(c) Restore public trust in governmental institutions and the electoral process. [2010 c 204 § 601; 1993 c 2 § 1 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.610.]

42.17A.405 Limits specified—Exemptions. (1) The contribution limits in this section apply to:

(a) Candidates for legislative office;

(b) Candidates for state office other than legislative office;

(c) Candidates for county office;

(d) Candidates for special purpose district office if that district is authorized to provide freight and passenger transfer and terminal facilities and that district has over two hundred thousand registered voters;

(e) Candidates for city council office;

(f) Candidates for mayoral office;

(g) Candidates for school board office;

(h) Candidates for public hospital district board of commissioners in districts with a population over one hundred fifty thousand;

(i) Persons holding an office in (a) through (h) of this subsection against whom recall charges have been filed or to a political committee having the expectation of making expenditures in support of the recall of a person holding the office;

(j) Caucus political committees;

(k) Bona fide political parties.

(2) No person, other than a bona fide political party or a caucus political committee, may make contributions to a candidate for a legislative office, county office, city council office, mayoral office, school board office, or public hospital district board of commissioners that in the aggregate exceed eight hundred dollars or to a candidate for a public office in a special purpose district or a state office other than a legislative office that in the aggregate exceed one thousand six hundred dollars for each election in which the candidate is on the ballot or appears as a write-in candidate. Contributions to candidates subject to the limits in this section made with respect to a primary may not be made after the date of the primary. However, contributions to a candidate or a candidate's authorized committee may be made with respect to a primary until thirty days after the primary, subject to the following limitations: (a) The candidate lost the primary; (b) the candidate's authorized committee has insufficient funds to pay debts outstanding as of the date of the primary; and (c) the contributions may only be raised and spent to satisfy the outstanding debt. Contributions to candidates subject to the limits in this section made with respect to a general election may not be made after the final day of the applicable election cycle.

(3) No person, other than a bona fide political party or a caucus political committee, may make contributions to a state official, a county official, a city official, a school board member, a public hospital district commissioner, or a public official in a special purpose district against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the state official, county official, city official, school board member, public hospital district commissioner, or public official in a special purpose district during a recall campaign that in the aggregate exceed eight hundred dollars if for a legislative office, county office, school board office, public hospital district office, or city office, or one thousand six hundred dollars if for a special purpose district office or a state office other than a legislative office.

(4)(a) Notwithstanding subsection (2) of this section, no bona fide political party or caucus political committee may make contributions to a candidate during an election cycle that in the aggregate exceed (i) eighty cents multiplied by the number of eligible registered voters in the jurisdiction from which the candidate is elected if the contributor is a caucus political committee or the governing body of a state organization, or (ii) forty cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected if the contributor is a county central committee or a legislative district committee.

(b) No candidate may accept contributions from a county central committee or a legislative district committee during

an election cycle that when combined with contributions from other county central committees or legislative district committees would in the aggregate exceed forty cents times the number of registered voters in the jurisdiction from which the candidate is elected.

(5)(a) Notwithstanding subsection (3) of this section, no bona fide political party or caucus political committee may make contributions to a state official, county official, city official, school board member, public hospital district commissioner, or a public official in a special purpose district against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the state official, county official, city official, school board member, public hospital district commissioner, or a public official in a special purpose district during a recall campaign that in the aggregate exceed (i) eighty cents multiplied by the number of eligible registered voters in the jurisdiction entitled to recall the state official if the contributor is a caucus political committee or the governing body of a state organization, or (ii) forty cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected if the contributor is a county central committee or a legislative district committee.

(b) No official holding an office specified in subsection (1) of this section against whom recall charges have been filed, no authorized committee of the official, and no political committee having the expectation of making expenditures in support of the recall of the official may accept contributions from a county central committee or a legislative district committee during an election cycle that when combined with contributions from other county central committees or legislative district committees would in the aggregate exceed forty cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected.

(6) For purposes of determining contribution limits under subsections (4) and (5) of this section, the number of eligible registered voters in a jurisdiction is the number at the time of the most recent general election in the jurisdiction.

(7) Notwithstanding subsections (2) through (5) of this section, no person other than an individual, bona fide political party, or caucus political committee may make contributions reportable under this chapter to a caucus political committee that in the aggregate exceed eight hundred dollars in a calendar year or to a bona fide political party that in the aggregate exceed four thousand dollars in a calendar year. This subsection does not apply to loans made in the ordinary course of business.

(8) For the purposes of RCW 42.17A.125, 42.17A.405 through 42.17A.415, 42.17A.450 through 42.17A.495, 42.17A.500, 42.17A.560, and 42.17A.565, a contribution to the authorized political committee of a candidate or of an official specified in subsection (1) of this section against whom recall charges have been filed is considered to be a contribution to the candidate or official.

(9) A contribution received within the twelve-month period after a recall election concerning an office specified in subsection (1) of this section is considered to be a contribution during that recall campaign if the contribution is used to pay a debt or obligation incurred to influence the outcome of that recall campaign.

(10) The contributions allowed by subsection (3) of this section are in addition to those allowed by subsection (2) of this section, and the contributions allowed by subsection (5) of this section are in addition to those allowed by subsection (4) of this section.

(11) RCW 42.17A.125, 42.17A.405 through 42.17A.415, 42.17A.450 through 42.17A.495, 42.17A.500, 42.17A.560, and 42.17A.565 apply to a special election conducted to fill a vacancy in an office specified in subsection (1) of this section. However, the contributions made to a candidate or received by a candidate for a primary or special election conducted to fill such a vacancy shall not be counted toward any of the limitations that apply to the candidate or to contributions made to the candidate for any other primary or election.

(12) Notwithstanding the other subsections of this section, no corporation or business entity not doing business in Washington state, no labor union with fewer than ten members who reside in Washington state, and no political committee that has not received contributions of ten dollars or more from at least ten persons registered to vote in Washington state during the preceding one hundred eighty days may make contributions reportable under this chapter to a state office candidate, to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the official. This subsection does not apply to loans made in the ordinary course of business.

(13) Notwithstanding the other subsections of this section, no county central committee or legislative district committee may make contributions reportable under this chapter to a candidate specified in subsection (1) of this section, or an official specified in subsection (1) of this section against whom recall charges have been filed, or political committee having the expectation of making expenditures in support of the recall of an official specified in subsection (1) of this section if the county central committee or legislative district committee is outside of the jurisdiction entitled to elect the candidate or recall the official.

(14) No person may accept contributions that exceed the contribution limitations provided in this section.

(15) The following contributions are exempt from the contribution limits of this section:

(a) An expenditure or contribution earmarked for voter registration, for absentee ballot information, for precinct caucuses, for get-out-the-vote campaigns, for precinct judges or inspectors, for sample ballots, or for ballot counting, all without promotion of or political advertising for individual candidates;

(b) An expenditure by a political committee for its own internal organization or fund-raising without direct association with individual candidates; or

(c) An expenditure or contribution for independent expenditures as defined in RCW 42.17A.005 or electioneering communications as defined in RCW 42.17A.005. [2013 c 311 § 1; 2012 c 202 § 1. Prior: 2010 c 206 § 1; 2010 c 204 § 602; 2006 c 348 § 1; 2005 c 445 § 11; prior: 2001 c 208 § 1; 1995 c 397 § 20; 1993 c 2 § 4 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.640.]

42.17A.410 Candidates for judicial office—Special elections to fill vacancies—Contribution limits—Adjustments. (1) No person may make contributions to a candidate for judicial office that in the aggregate exceed one thousand six hundred dollars for each election in which the candidate is on the ballot or appears as a write-in candidate. Contributions made with respect to a primary may not be made after the date of the primary. However, contributions to a candidate or a candidate's authorized committee may be made with respect to a primary until thirty days after the primary, subject to the following limitations: (a) The candidate lost the primary; (b) the candidate's authorized committee has insufficient funds to pay debts outstanding as of the date of the primary; and (c) the contributions may only be raised and spent to satisfy the outstanding debt. Contributions made with respect to a general election may not be made after the final day of the applicable election cycle.

(2) This section through RCW 42.17A.490 apply to a special election conducted to fill a vacancy in an office. However, the contributions made to a candidate or received by a candidate for a primary or special election conducted to fill such a vacancy will not be counted toward any of the limitations that apply to the candidate or to contributions made to the candidate for any other primary or election.

(3) No person may accept contributions that exceed the contribution limitations provided in this section.

(4) The dollar limits in this section must be adjusted according to RCW 42.17A.125. [2010 c 204 § 603; 2006 c 348 § 2. Formerly RCW 42.17.645.]

42.17A.415 Contributions. (1) Contributions to candidates for state office made and received before December 3, 1992, are considered to be contributions under *RCW 42.17.640 through 42.17.790. Monetary contributions that exceed the contribution limitations and that have not been spent by the recipient of the contribution by December 3, 1992, must be disposed of in accordance with RCW 42.17A.430.

(2) Contributions to other candidates subject to the contribution limits of this chapter made and received before June 7, 2006, are considered to be contributions under *RCW 42.17.640 through 42.17.790. Contributions that exceed the contribution limitations and that have not been spent by the recipient of the contribution by June 7, 2006, must be disposed of in accordance with RCW 42.17A.430 except for subsections (6) and (7) of that section. [2011 c 60 § 25; 2006 c 348 § 4; 1993 c 2 § 10 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.700.]

*Reviser's note: RCW 42.17.640 through 42.17.790 were recodified as RCW 42.17A.125, 42.17A.405 through 42.17A.415, 42.17A.450 through 42.17A.495, 42.17A.500, 42.17A.560, and 42.17A.565 pursuant to 2010 c 204 § 1102, effective January 1, 2012.

42.17A.420 Reportable contributions—Preelection limitations. (1) It is a violation of this chapter for any person to make, or for any candidate or political committee to accept from any one person, contributions reportable under RCW 42.17A.240 in the aggregate exceeding fifty thousand dollars for any campaign for statewide office or exceeding five thousand dollars for any other campaign subject to the provisions of this chapter within twenty-one days of a general election. This subsection does not apply to contributions made by, or

accepted from, a bona fide political party as defined in this chapter, excluding the county central committee or legislative district committee.

(2) Contributions governed by this section include, but are not limited to, contributions made or received indirectly through a third party or entity whether the contributions are or are not reported to the commission as earmarked contributions under RCW 42.17A.270. [2010 c 204 § 604.]

42.17A.425 Expenditures—Authorization of and restrictions on. No expenditures may be made or incurred by any candidate or political committee unless authorized by the candidate or the person or persons named on the candidate's or committee's registration form. A record of all such expenditures shall be maintained by the treasurer.

No expenditure of more than fifty dollars may be made in currency unless a receipt, signed by the recipient and by the candidate or treasurer, is prepared and made a part of the campaign's or political committee's financial records. [2010 c 204 § 605; 2007 c 358 § 3; 1989 c 280 § 7; 1985 c 367 § 5; 1973 c 1 § 7 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.070.]

Effective date—2007 c 358: See note following RCW 42.17A.005.

Additional notes found at www.leg.wa.gov

42.17A.430 Disposal of surplus funds. The surplus funds of a candidate or a candidate's authorized committee may only be disposed of in any one or more of the following ways:

(1) Return the surplus to a contributor in an amount not to exceed that contributor's original contribution;

(2) Using surplus, reimburse the candidate for lost earnings incurred as a result of that candidate's election campaign. Lost earnings shall be verifiable as unpaid salary or, when the candidate is not salaried, as an amount not to exceed income received by the candidate for services rendered during an appropriate, corresponding time period. All lost earnings incurred shall be documented and a record thereof shall be maintained by the candidate or the candidate's authorized committee. The committee shall maintain a copy of this record in accordance with *RCW 42.17A.235(6);

(3) Transfer the surplus without limit to a political party or to a caucus political committee;

(4) Donate the surplus to a charitable organization registered in accordance with chapter 19.09 RCW;

(5) Transmit the surplus to the state treasurer for deposit in the general fund, the Washington state legacy project, state library, and archives account under RCW 43.07.380, or the legislative international trade account under RCW 43.15.050, as specified by the candidate or political committee; or

(6) Hold the surplus in the depository or depositories designated in accordance with RCW 42.17A.215 for possible use in a future election campaign for the same office last sought by the candidate and report any such disposition in accordance with RCW 42.17A.240. If the candidate subsequently announces or publicly files for office, the appropriate information must be reported to the commission in accordance with RCW 42.17A.205 through 42.17A.240. If a subsequent office is not sought the surplus held shall be disposed of in accordance with the requirements of this section.

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(7) Hold the surplus campaign funds in a separate account for nonreimbursed public office-related expenses or as provided in this section, and report any such disposition in accordance with RCW 42.17A.240. The separate account required under this subsection shall not be used for deposits of campaign funds that are not surplus.

(8) No candidate or authorized committee may transfer funds to any other candidate or other political committee.

The disposal of surplus funds under this section shall not be considered a contribution for purposes of this chapter. [2010 c 204 § 606; 2005 c 467 § 1; 1995 c 397 § 31; 1993 c 2 § 20 (Initiative Measure No. 134, approved November 3, 1992); 1982 c 147 § 8; 1977 ex.s. c 336 § 3. Formerly RCW 42.17.095.]

***Reviser's note:** RCW 42.17.080(6) was recodified as RCW 42.17A.235(6) pursuant to 2010 c 204 § 1102. However, RCW 42.17.080 was also amended by 2010 c 205 § 6, changing subsection (6) to subsection (5).

Effective date—2005 c 467: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 13, 2005]." [2005 c 467 § 2.]

Additional notes found at www.leg.wa.gov

42.17A.435 Identification of contributions and communications. No contribution shall be made and no expenditure shall be incurred, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative, or other person in such a manner as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment. [1975 1st ex.s. c 294 § 8; 1973 c 1 § 12 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.120.]

42.17A.440 Candidates' political committees—Limitations. A candidate may not knowingly establish, use, direct, or control more than one political committee for the purpose of supporting that candidate during a particular election campaign. This does not prohibit: (1) In addition to a candidate's having his or her own political committee, the candidate's participation in a political committee established to support a slate of candidates that includes the candidate; or (2) joint fund-raising efforts by candidates when a separate political committee is established for that purpose and all contributions are disbursed to and accounted for on a pro rata basis by the benefiting candidates. [2010 c 204 § 607.]

42.17A.442 Contributions by political committees to political committees. A political committee may make a contribution to another political committee only when the contributing political committee has received contributions of ten dollars or more each from at least ten persons registered to vote in Washington state. [2011 c 145 § 5.]

Findings—Intent—Effective date—2011 c 145: See notes following RCW 42.17A.005.

42.17A.445 Personal use of contributions—When permitted. Contributions received and reported in accordance with RCW 42.17A.220 through 42.17A.240 and 42.17A.425 may only be paid to a candidate, or a treasurer or other individual or expended for such individual's personal use under the following circumstances:

(1) Reimbursement for or payments to cover lost earnings incurred as a result of campaigning or services performed for the political committee. Lost earnings shall be verifiable as unpaid salary, or when the individual is not salaried, as an amount not to exceed income received by the individual for services rendered during an appropriate, corresponding time period. All lost earnings incurred shall be documented and a record shall be maintained by the candidate or the candidate's authorized committee in accordance with RCW 42.17A.235.

(2) Reimbursement for direct out-of-pocket election campaign and postelection campaign related expenses made by the individual. To receive reimbursement from the political committee, the individual shall provide the political committee with written documentation as to the amount, date, and description of each expense, and the political committee shall include a copy of such information when its expenditure for such reimbursement is reported pursuant to RCW 42.17A.240.

(3) Repayment of loans made by the individual to political committees shall be reported pursuant to RCW 42.17A.240. However, contributions may not be used to reimburse a candidate for loans totaling more than *four thousand seven hundred dollars made by the candidate to the candidate's own authorized committee. [2010 c 204 § 608; 1995 c 397 § 29; 1993 c 2 § 21 (Initiative Measure No. 134, approved November 3, 1992); 1989 c 280 § 12; 1985 c 367 § 7; 1977 ex.s. c 336 § 6. Formerly RCW 42.17.125.]

*Reviser's note: The dollar amounts in this section have been adjusted for inflation by rule of the commission adopted under the authority of RCW 42.17A.125. For current dollar amounts, see chapter 390-05 of the Washington Administrative Code (WAC).

Additional notes found at www.leg.wa.gov

42.17A.450 Attribution and aggregation of family contributions. (1) Contributions by a husband and wife are considered separate contributions.

(2) Contributions by unemancipated children under eighteen years of age are considered contributions by their parents and are attributed proportionately to each parent. Fifty percent of the contributions are attributed to each parent or, in the case of a single custodial parent, the total amount is attributed to the parent. [1993 c 2 § 5 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.650.]

42.17A.455 Attribution of contributions by controlled entities. For purposes of this chapter:

(1) A contribution by a political committee with funds that have all been contributed by one person who exercises exclusive control over the distribution of the funds of the political committee is a contribution by the controlling person.

(2) Two or more entities are treated as a single entity if one of the two or more entities is a subsidiary, branch, or department of a corporation that is participating in an election campaign or making contributions, or a local unit or branch of a trade association, labor union, or collective bargaining association that is participating in an election campaign or making contributions. All contributions made by a person or political committee whose contribution or expenditure activity is financed, maintained, or controlled by a trade association, labor union, collective bargaining organization, or the

local unit of a trade association, labor union, or collective bargaining organization are considered made by the trade association, labor union, collective bargaining organization, or local unit of a trade association, labor union, or collective bargaining organization.

(3) The commission shall adopt rules to carry out this section and is not subject to the time restrictions of RCW 42.17A.110(1). [2010 c 204 § 609; 2005 c 445 § 12; 1993 c 2 § 6 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.660.]

42.17A.460 Attribution of contributions generally—"Earmarking." All contributions made by a person or entity, either directly or indirectly, to a candidate, to a state official against whom recall charges have been filed, or to a political committee, are considered to be contributions from that person or entity to the candidate, state official, or political committee, as are contributions that are in any way earmarked or otherwise directed through an intermediary or conduit to the candidate, state official, or political committee. For the purposes of this section, "earmarked" means a designation, instruction, or encumbrance, whether direct or indirect, expressed or implied, or oral or written, that is intended to result in or does result in all or any part of a contribution being made to a certain candidate or state official. If a conduit or intermediary exercises any direction or control over the choice of the recipient candidate or state official, the contribution is considered to be by both the original contributor and the conduit or intermediary. [1993 c 2 § 7 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.670.]

42.17A.465 Restriction on loans. (1) A loan is considered to be a contribution from the lender and any guarantor of the loan and is subject to the contribution limitations of this chapter. The full amount of the loan shall be attributed to the lender and to each guarantor.

(2) A loan to a candidate for public office or the candidate's authorized committee must be by written agreement.

(3) The proceeds of a loan made to a candidate for public office:

(a) By a commercial lending institution;

(b) Made in the regular course of business; and

(c) On the same terms ordinarily available to members of the public, are not subject to the contribution limits of this chapter. [2010 c 204 § 610; 1995 c 397 § 22; 1993 c 2 § 12 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.720.]

42.17A.470 Contributions on behalf of another. (1) A person, other than an individual, may not be an intermediary or an agent for a contribution.

(2) An individual may not make a contribution on behalf of another person or entity, or while acting as the intermediary or agent of another person or entity, without disclosing to the recipient of the contribution both his or her full name, street address, occupation, name of employer, if any, or place of business if self-employed, and the same information for each contributor for whom the individual serves as intermediary or agent. [1993 c 2 § 13 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.730.]

42.17A.475 Certain contributions required to be by written instrument. (1) A person may not make a contribution of more than *eighty dollars, other than an in-kind contribution, except by a written instrument containing the name of the donor and the name of the payee.

(2) A political committee may not make a contribution, other than in-kind, except by a written instrument containing the name of the donor and the name of the payee. [2010 c 204 § 611; 1995 c 397 § 23; 1993 c 2 § 14 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.740.]

***Reviser's note:** The dollar amounts in this section have been adjusted for inflation by rule of the commission adopted under the authority of RCW 42.17A.125. For current dollar amounts, see chapter 390-05 of the Washington Administrative Code (WAC).

42.17A.480 Solicitation of endorsement fees. A person may not solicit from a candidate for public office, political committee, political party, or other person money or other property as a condition or consideration for an endorsement, article, or other communication in the news media promoting or opposing a candidate for public office, political committee, or political party. [1995 c 397 § 25; 1993 c 2 § 17 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.770.]

42.17A.485 Reimbursement for contributions. A person may not, directly or indirectly, reimburse another person for a contribution to a candidate for public office, political committee, or political party. [1995 c 397 § 26; 1993 c 2 § 18 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.780.]

42.17A.490 Prohibition on use of contributions for a different office. (1) Except as provided in subsection (2) of this section, a candidate for public office or the candidate's authorized committee may not use or permit the use of contributions, whether or not surplus, solicited for or received by the candidate or the candidate's authorized committee to further the candidacy of the individual for an office other than the office designated on the statement of organization. A contribution solicited for or received on behalf of the candidate is considered solicited or received for the candidacy for which the individual is then a candidate if the contribution is solicited or received before the general election for which the candidate is a nominee or is unopposed.

(2) With the written approval of the contributor, a candidate or the candidate's authorized committee may use or permit the use of contributions, whether or not surplus, solicited for or received by the candidate or the candidate's authorized committee from that contributor to further the candidacy of the individual for an office other than the office designated on the statement of organization. If the contributor does not approve the use of his or her contribution to further the candidacy of the individual for an office other than the office designated on the statement of organization at the time of the contribution, the contribution must be considered surplus funds and disposed of in accordance with RCW 42.17A.430. [2010 c 204 § 612; 1995 c 397 § 27; 1993 c 2 § 19 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.790.]

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42.17A.495 Limitations on employers or labor organizations. (1) No employer or labor organization may increase the salary of an officer or employee, or compensate an officer, employee, or other person or entity, with the intention that the increase in salary, or the compensation, or a part of it, be contributed or spent to support or oppose a candidate, state official against whom recall charges have been filed, political party, or political committee.

(2) No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (a) the failure to contribute to, (b) the failure in any way to support or oppose, or (c) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee. At least annually, an employee from whom wages or salary are withheld under subsection (3) of this section shall be notified of the provisions of this subsection.

(3) No employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries may withhold or divert a portion of an employee's wages or salaries for contributions to political committees or for use as political contributions except upon the written request of the employee. The request must be made on a form prescribed by the commission informing the employee of the prohibition against employer and labor organization discrimination described in subsection (2) of this section. The employee may revoke the request at any time. At least annually, the employee shall be notified about the right to revoke the request.

(4) Each person or entity who withholds contributions under subsection (3) of this section shall maintain open for public inspection for a period of no less than three years, during normal business hours, documents and books of accounts that shall include a copy of each employee's request, the amounts and dates funds were actually withheld, and the amounts and dates funds were transferred to a political committee. Copies of such information shall be delivered to the commission upon request. [2010 c 204 § 613; 2002 c 156 § 1; 1993 c 2 § 8 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.680.]

Additional notes found at www.leg.wa.gov

42.17A.500 Agency shop fees as contributions. (1) A labor organization may not use agency shop fees paid by an individual who is not a member of the organization to make contributions or expenditures to influence an election or to operate a political committee, unless affirmatively authorized by the individual.

(2) A labor organization does not use agency shop fees when it uses its general treasury funds to make such contributions or expenditures if it has sufficient revenues from sources other than agency shop fees in its general treasury to fund such contributions or expenditures. [2007 c 438 § 1; 1993 c 2 § 16 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.760.]

Effective date—2007 c 438: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2007]." [2007 c 438 § 2.]

42.17A.550 Use of public funds for political purposes. Public funds, whether derived through taxes, fees,

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penalties, or any other sources, shall not be used to finance political campaigns for state or school district office. A county, city, town, or district that establishes a program to publicly finance local political campaigns may only use funds derived from local sources to fund the program. A local government must submit any proposal for public financing of local political campaigns to voters for their adoption and approval or rejection. [2008 c 29 § 1; 1993 c 2 § 24 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.128.]

PUBLIC OFFICIALS', EMPLOYEES', AND AGENCIES'
CAMPAIGN RESTRICTIONS AND
PROHIBITIONS—REPORTING

42.17A.555 Use of public office or agency facilities in campaigns—Prohibition—Exceptions. No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, fire districts, public hospital districts, library districts, park districts, port districts, public utility districts, school districts, sewer districts, and water districts, to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body, members of the board, council, or commission of the special purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;

(3) Activities which are part of the normal and regular conduct of the office or agency.

(4) This section does not apply to any person who is a state officer or state employee as defined in RCW 42.52.010. [2010 c 204 § 701; 2006 c 215 § 2; 1979 ex.s. c 265 § 2; 1975-'76 2nd ex.s. c 112 § 6; 1973 c 1 § 13 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.130.]

Finding—Intent—2006 c 215: "(1) The legislature finds that the public benefits from an open and inclusive discussion of proposed ballot measures by local elected leaders, and that for twenty-five years these discussions have included the opportunity for elected boards, councils, and commissions of special purpose districts to vote in open public meetings in order to express their support of, or opposition to, ballot propositions affecting their jurisdictions.

(2) The legislature intends to affirm and clarify the state's long-standing policy of promoting informed public discussion and understanding of ballot propositions by allowing elected boards, councils, and commissions of special purpose districts to adopt resolutions supporting or opposing ballot propositions." [2006 c 215 § 1.]

Disposition of violations before January 1, 1995: "Any violations occurring prior to January 1, 1995, of any of the following laws shall be disposed of as if chapter 154, Laws of 1994 were not enacted and such laws continued in full force and effect: *RCW 42.17.130, chapter 42.18 RCW, chapter 42.21 RCW, and chapter 42.22 RCW." [1994 c 154 § 226.]

***Reviser's note:** RCW 42.17.130 was recodified as RCW 42.17A.555 pursuant to 2010 c 204 § 1102, effective January 1, 2012.

42.17A.560 Time limit for state official to solicit or accept contributions. (1) During the period beginning on the thirtieth day before the date a regular legislative session convenes and continuing through the date of final adjournment, and during the period beginning on the date a special legislative session convenes and continuing through the date that session adjourns, no state official or a person employed by or acting on behalf of a state official or state legislator may solicit or accept contributions to a public office fund, to a candidate or authorized committee, or to retire a campaign debt. Contributions received through the mail after the thirtieth day before a regular legislative session may be accepted if the contribution is postmarked prior to the thirtieth day before the session.

(2) This section does not apply to activities authorized in RCW 43.07.370. [2006 c 348 § 5; 2006 c 344 § 31; 2003 c 164 § 3; 1993 c 2 § 11 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.710.]

Reviser's note: This section was amended by 2006 c 344 § 31 and by 2006 c 348 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

42.17A.565 Solicitation of contributions by public officials or employees. (1) No state or local official or state or local official's agent may knowingly solicit, directly or indirectly, a contribution to a candidate for public office, political party, or political committee from an employee in the state or local official's agency.

(2) No state or local official or public employee may provide an advantage or disadvantage to an employee or applicant for employment in the classified civil service concerning the applicant's or employee's:

- (a) Employment;
- (b) Conditions of employment; or
- (c) Application for employment,

based on the employee's or applicant's contribution or promise to contribute or failure to make a contribution or contribute to a political party or political committee. [1995 c 397 § 24; 1993 c 2 § 15 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.750.]

42.17A.570 Public accounts of governmental entities held by financial institutions—Statements and reports—Contents—Filing. After January 1st and before April 15th of each calendar year, the state treasurer, each county, public utility district, and port district treasurer, and each treasurer of an incorporated city or town whose population exceeds one thousand shall file with the commission:

(1) A statement under oath that no public funds under that treasurer's control were invested in any institution where the treasurer or, in the case of a county, a member of the county finance committee, held during the reporting period an office, directorship, partnership interest, or ownership interest; or

(2) A report disclosing for the previous calendar year: (a) The name and address of each financial institution in which the treasurer or, in the case of a county, a member of the county finance committee, held during the reporting period an office, directorship, partnership interest, or ownership interest which holds or has held during the reporting period public accounts of the governmental entity for which the treasurer is responsible; (b) the aggregate sum of time and demand deposits held in each such financial institution on December 31; and (c) the highest balance held at any time during such reporting period. The state treasurer shall disclose the highest balance information only upon a public records request under chapter 42.56 RCW. The statement or report required by this section shall be filed either with the statement required under RCW 42.17A.700 or separately. [2010 c 204 § 702; 2005 c 274 § 282; 1983 c 213 § 1; 1981 c 102 § 1; 1975-'76 2nd ex.s. c 112 § 10. Formerly RCW 42.17.245.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

42.17A.575 Public service announcements. No state-elected official or municipal officer may speak or appear in a public service announcement that is broadcast, shown, or distributed in any form whatsoever during the period beginning January 1st and continuing through the general election if that official or officer is a candidate. If the official or officer does not control the broadcast, showing, or distribution of a public service announcement in which he or she speaks or appears, then the official or officer shall contractually limit the use of the public service announcement to be consistent with this section prior to participating in the public service announcement. This section does not apply to public service announcements that are part of the regular duties of the office that only mention or visually display the office or office seal or logo and do not mention or visually display the name of the official or officer in the announcement. [2010 c 204 § 703.]

LOBBYING DISCLOSURE AND RESTRICTIONS

42.17A.600 Registration of lobbyists. (1) Before lobbying, or within thirty days after being employed as a lobbyist, whichever occurs first, a lobbyist shall register by filing with the commission a lobbyist registration statement, in such detail as the commission shall prescribe, that includes the following information:

(a) The lobbyist's name, permanent business address, and any temporary residential and business addresses in Thurston county during the legislative session;

(b) The name, address and occupation or business of the lobbyist's employer;

(c) The duration of the lobbyist's employment;

(d) The compensation to be received for lobbying, the amount to be paid for expenses, and what expenses are to be reimbursed;

(e) Whether the lobbyist is employed solely as a lobbyist or whether the lobbyist is a regular employee performing services for his or her employer which include but are not limited to the influencing of legislation;

(f) The general subject or subjects to be lobbied;

(g) A written authorization from each of the lobbyist's employers confirming such employment;

(h) The name and address of the person who will have custody of the accounts, bills, receipts, books, papers, and documents required to be kept under this chapter;

(i) If the lobbyist's employer is an entity (including, but not limited to, business and trade associations) whose members include, or which as a representative entity undertakes lobbying activities for, businesses, groups, associations, or organizations, the name and address of each member of such entity or person represented by such entity whose fees, dues, payments, or other consideration paid to such entity during either of the prior two years have exceeded five hundred dollars or who is obligated to or has agreed to pay fees, dues, payments, or other consideration exceeding five hundred dollars to such entity during the current year.

(2) Any lobbyist who receives or is to receive compensation from more than one person for lobbying shall file a separate notice of representation for each person. However, if two or more persons are jointly paying or contributing to the payment of the lobbyist, the lobbyist may file a single statement detailing the name, business address, and occupation of each person paying or contributing and the respective amounts to be paid or contributed.

(3) Whenever a change, modification, or termination of the lobbyist's employment occurs, the lobbyist shall file with the commission an amended registration statement within one week of the change, modification, or termination.

(4) Each registered lobbyist shall file a new registration statement, revised as appropriate, on the second Monday in January of each odd-numbered year. Failure to do so terminates the lobbyist's registration. [2010 c 204 § 801; 1987 c 201 § 1; 1982 c 147 § 10; 1973 c 1 § 15 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.150.]

42.17A.605 Photograph and information—Booklet—Publication. Each lobbyist shall at the time he or she registers submit to the commission a recent photograph of himself or herself of a size and format as determined by rule of the commission, together with the name of the lobbyist's employer, the length of his or her employment as a lobbyist before the legislature, a brief biographical description, and any other information he or she may wish to submit not to exceed fifty words in length. The photograph and information shall be published by the commission at least biennially in a booklet form for distribution to legislators and the public. [2010 c 204 § 802; 1995 c 397 § 6; 1985 c 367 § 8; 1982 c 147 § 11; 1975 1st ex.s. c 294 § 21. Formerly RCW 42.17.155.]

42.17A.610 Exemption from registration. The following persons and activities are exempt from registration and reporting under RCW 42.17A.600, 42.17A.615, and 42.17A.640:

(1) Persons who limit their lobbying activities to appearing before public sessions of committees of the legislature, or public hearings of state agencies;

(2) Activities by lobbyists or other persons whose participation has been solicited by an agency under RCW 34.05.310(2);

(3) News or feature reporting activities and editorial comment by working members of the press, radio, or television and the publication or dissemination thereof by a newspaper, book publisher, regularly published periodical, radio station, or television station;

(4) Persons who lobby without compensation or other consideration for acting as a lobbyist, if the person makes no expenditure for or on behalf of any member of the legislature or elected official or public officer or employee of the state of Washington in connection with such lobbying. The exemption contained in this subsection is intended to permit and encourage citizens of this state to lobby any legislator, public official, or state agency without incurring any registration or reporting obligation provided they do not exceed the limits stated above. Any person exempt under this subsection (4) may at his or her option register and report under this chapter;

(5) Persons who restrict their lobbying activities to no more than four days or parts of four days during any three-month period and whose total expenditures during such three-month period for or on behalf of any one or more members of the legislature or state elected officials or public officers or employees of the state of Washington in connection with such lobbying do not exceed twenty-five dollars. The commission shall adopt rules to require disclosure by persons exempt under this subsection or their employers or entities which sponsor or coordinate the lobbying activities of such persons if it determines that such regulations are necessary to prevent frustration of the purposes of this chapter. Any person exempt under this subsection (5) may at his or her option register and report under this chapter;

(6) The governor;

(7) The lieutenant governor;

(8) Except as provided by RCW 42.17A.635(1), members of the legislature;

(9) Except as provided by RCW 42.17A.635(1), persons employed by the legislature for the purpose of aiding in the preparation or enactment of legislation or the performance of legislative duties;

(10) Elected officials, and officers and employees of any agency reporting under RCW 42.17A.635(5). [2010 c 204 § 803; 1998 c 55 § 3; 1995 c 397 § 32; 1982 c 147 § 12; 1977 ex.s. c 313 § 4; 1975 1st ex.s. c 294 § 9; 1973 c 1 § 16 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.160.]

Additional notes found at www.leg.wa.gov

42.17A.615 Reporting by lobbyists—Rules. (1) Any lobbyist registered under RCW 42.17A.600 and any person who lobbies shall file with the commission monthly reports of his or her lobbying activities. The reports shall be made in the form and manner prescribed by the commission and must be signed by the lobbyist. The monthly report shall be filed within fifteen days after the last day of the calendar month covered by the report.

(2) The monthly report shall contain:

(a) The totals of all expenditures for lobbying activities made or incurred by the lobbyist or on behalf of the lobbyist by the lobbyist's employer during the period covered by the report. Expenditure totals for lobbying activities shall be segregated according to financial category, including compensation; food and refreshments; living accommodations; advertising; travel; contributions; and other expenses or services. Each individual expenditure of more than twenty-five dollars for entertainment shall be identified by date, place, amount, and the names of all persons taking part in the entertainment, along with the dollar amount attributable to each person, including the lobbyist's portion.

(b) In the case of a lobbyist employed by more than one employer, the proportionate amount of expenditures in each category incurred on behalf of each of the lobbyist's employers.

(c) An itemized listing of each contribution of money or of tangible or intangible personal property, whether contributed by the lobbyist personally or delivered or transmitted by the lobbyist, to any candidate, elected official, or officer or employee of any agency, or any political committee supporting or opposing any ballot proposition, or for or on behalf of any candidate, elected official, or officer or employee of any agency, or any political committee supporting or opposing any ballot proposition. All contributions made to, or for the benefit of, any candidate, elected official, or officer or employee of any agency, or any political committee supporting or opposing any ballot proposition shall be identified by date, amount, and the name of the candidate, elected official, or officer or employee of any agency, or any political committee supporting or opposing any ballot proposition receiving, or to be benefited by each such contribution.

(d) The subject matter of proposed legislation or other legislative activity or rule making under chapter 34.05 RCW, the state administrative procedure act, and the state agency considering the same, which the lobbyist has been engaged in supporting or opposing during the reporting period, unless exempt under RCW 42.17A.610(2).

(e) A listing of each payment for an item specified in RCW 42.52.150(5) in excess of fifty dollars and each item specified in *RCW 42.52.010(10) (d) and (f) made to a state elected official, state officer, or state employee. Each item shall be identified by recipient, date, and approximate value of the item.

(f) The total expenditures paid or incurred during the reporting period by the lobbyist for lobbying purposes, whether through or on behalf of a lobbyist or otherwise, for (i) political advertising as defined in RCW 42.17A.005; and (ii) public relations, telemarketing, polling, or similar activities if the activities, directly or indirectly, are intended, designed, or calculated to influence legislation or the adoption or rejection of a rule, standard, or rate by an agency under the administrative procedure act. The report shall specify the amount, the person to whom the amount was paid, and a brief description of the activity.

(3) Lobbyists are not required to report the following:

(a) Unreimbursed personal living and travel expenses not incurred directly for lobbying;

(b) Any expenses incurred for his or her own living accommodations;

(c) Any expenses incurred for his or her own travel to and from hearings of the legislature;

(d) Any expenses incurred for telephone, and any office expenses, including rent and salaries and wages paid for staff and secretarial assistance.

(4) The commission may adopt rules to vary the content of lobbyist reports to address specific circumstances, consistent with this section. Lobbyist reports are subject to audit by the commission. [2010 c 204 § 804; 1995 c 397 § 33; 1991 sp.s. c 18 § 2; 1990 c 139 § 3; 1989 c 175 § 90; 1987 c 423 § 1; 1985 c 367 § 9; 1982 c 147 § 13; 1977 ex.s. c 313 § 5; 1975 1st ex.s. c 294 § 10; 1973 c 1 § 17 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.170.]

***Reviser's note:** RCW 42.52.010 was amended by 2011 c 60 § 28, changing subsection (10)(d) and (f) to subsection (9)(d) and (f).

Legislative intent—1990 c 139: See note following RCW 42.17A.005.

Additional notes found at www.leg.wa.gov

42.17A.620 Notification to person named in report.

(1) When a listing or a report of contributions is made to the commission under RCW 42.17A.615(2)(c), a copy of the listing or report must be given to the candidate, elected official, professional staff member of the legislature, or officer or employee of an agency, or a political committee supporting or opposing a ballot proposition named in the listing or report.

(2) If a state elected official or a member of the official's immediate family is identified by a lobbyist in a lobbyist report as having received from the lobbyist an item specified in RCW 42.52.150(5) or *42.52.010(10) (d) or (f), the lobbyist shall transmit to the official a copy of the completed form used to identify the item in the report at the same time the report is filed with the commission. [2010 c 204 § 805; 1993 c 2 § 32 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.172.]

***Reviser's note:** RCW 42.52.010 was amended by 2011 c 60 § 28, changing subsection (10)(d) or (f) to subsection (9)(d) or (f).

42.17A.625 Special reports—Lobbyists—Late contributions or large totals. Any lobbyist registered under RCW 42.17A.600, any person who lobbies, and any lobbyist's employer making a contribution or an aggregate of contributions to a single entity that is one thousand dollars or more during a special reporting period, as specified in RCW 42.17A.265, before a primary or general election shall file one or more special reports in the same manner and to the same extent that a contributing political committee must file under RCW 42.17A.265. [2010 c 204 § 806; 2001 c 54 § 3; 1991 c 157 § 2; 1985 c 359 § 2. Formerly RCW 42.17.175.]

Additional notes found at www.leg.wa.gov

42.17A.630 Reports by employers of registered lobbyists, other persons. (1) Every employer of a lobbyist registered under this chapter during the preceding calendar year and every person other than an individual that made contributions aggregating to more than *sixteen thousand dollars or independent expenditures aggregating to more than *eight hundred dollars during the preceding calendar year shall file with the commission on or before the last day of February of

each year a statement disclosing for the preceding calendar year the following information:

(a) The name of each state elected official and the name of each candidate for state office who was elected to the office and any member of the immediate family of those persons to whom the person reporting has paid any compensation in the amount of eight hundred dollars or more during the preceding calendar year for personal employment or professional services, including professional services rendered by a corporation, partnership, joint venture, association, union, or other entity in which the person holds any office, directorship, or any general partnership interest, or an ownership interest of ten percent or more, the value of the compensation in accordance with the reporting provisions set out in RCW 42.17A.710(2), and the consideration given or performed in exchange for the compensation.

(b) The name of each state elected official, successful candidate for state office, or members of his or her immediate family to whom the person reporting made expenditures, directly or indirectly, either through a lobbyist or otherwise, the amount of the expenditures and the purpose for the expenditures. For the purposes of this subsection, "expenditure" shall not include any expenditure made by the employer in the ordinary course of business if the expenditure is not made for the purpose of influencing, honoring, or benefiting the elected official, successful candidate, or member of his immediate family, as an elected official or candidate.

(c) The total expenditures made by the person reporting for lobbying purposes, whether through or on behalf of a registered lobbyist or otherwise.

(d) All contributions made to a political committee supporting or opposing a candidate for state office, or to a political committee supporting or opposing a statewide ballot proposition. Such contributions shall be identified by the name and the address of the recipient and the aggregate amount contributed to each such recipient.

(e) The name and address of each registered lobbyist employed by the person reporting and the total expenditures made by the person reporting for each lobbyist for lobbying purposes.

(f) The names, offices sought, and party affiliations of candidates for state offices supported or opposed by independent expenditures of the person reporting and the amount of each such expenditure.

(g) The identifying proposition number and a brief description of any statewide ballot proposition supported or opposed by expenditures not reported under (d) of this subsection and the amount of each such expenditure.

(h) Any other information the commission prescribes by rule.

(2)(a) Except as provided in (b) of this subsection, an employer of a lobbyist registered under this chapter shall file a special report with the commission if the employer makes a contribution or contributions aggregating more than one hundred dollars in a calendar month to any one of the following: A candidate, elected official, officer or employee of an agency, or political committee. The report shall identify the date and amount of each such contribution and the name of the candidate, elected official, agency officer or employee, or political committee receiving the contribution or to be benefited by the contribution. The report shall be filed on a form

prescribed by the commission and shall be filed within fifteen days after the last day of the calendar month during which the contribution was made.

(b) The provisions of (a) of this subsection do not apply to a contribution that is made through a registered lobbyist and reportable under RCW 42.17A.425. [2010 c 204 § 807; 1993 c 2 § 27 (Initiative Measure No. 134, approved November 3, 1992); 1990 c 139 § 4; 1987 c 423 § 2; 1984 c 34 § 6; 1975 1st ex.s. c 294 § 11; 1973 c 1 § 18 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.180.]

***Reviser's note:** The dollar amounts in this section have been adjusted for inflation by rule of the commission adopted under the authority of RCW 42.17A.110 or 42.17A.125. For current dollar amounts, see Title 390 of the Washington Administrative Code (WAC).

Legislative intent—1990 c 139: See note following RCW 42.17A.005.

42.17A.635 Legislative activities of state agencies, other units of government, elective officials, employees.

(1) The house of representatives and the senate shall report annually: The total budget; the portion of the total attributed to staff; and the number of full-time and part-time staff positions by assignment, with dollar figures as well as number of positions.

(2) Unless authorized by subsection (3) of this section or otherwise expressly authorized by law, no public funds may be used directly or indirectly for lobbying. However, this does not prevent officers or employees of an agency from communicating with a member of the legislature on the request of that member; or communicating to the legislature, through the proper official channels, requests for legislative action or appropriations that are deemed necessary for the efficient conduct of the public business or actually made in the proper performance of their official duties. This subsection does not apply to the legislative branch.

(3) Any agency, not otherwise expressly authorized by law, may expend public funds for lobbying, but such lobbying activity shall be limited to (a) providing information or communicating on matters pertaining to official agency business to any elected official or officer or employee of any agency or (b) advocating the official position or interests of the agency to any elected official or officer or employee of any agency. Public funds may not be expended as a direct or indirect gift or campaign contribution to any elected official or officer or employee of any agency. For the purposes of this subsection, "gift" means a voluntary transfer of any thing of value without consideration of equal or greater value, but does not include informational material transferred for the sole purpose of informing the recipient about matters pertaining to official agency business. This section does not permit the printing of a state publication that has been otherwise prohibited by law.

(4) No elective official or any employee of his or her office or any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, in any effort to support or oppose an initiative to the legislature. "Facilities of a public office or agency" has the same meaning as in RCW 42.17A.555 and 42.52.180. The provisions of this subsection shall not apply to the following activities:

(a) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose an initiative to the legislature so long as (i) any required notice of the meeting includes the title and number of the initiative to the legislature, and (ii) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(b) A statement by an elected official in support of or in opposition to any initiative to the legislature at an open press conference or in response to a specific inquiry;

(c) Activities that are part of the normal and regular conduct of the office or agency;

(d) Activities conducted regarding an initiative to the legislature that would be permitted under RCW 42.17A.555 and 42.52.180 if conducted regarding other ballot measures.

(5) Each state agency, county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district that expends public funds for lobbying shall file with the commission, except as exempted by (d) of this subsection, quarterly statements providing the following information for the quarter just completed:

(a) The name of the agency filing the statement;

(b) The name, title, and job description and salary of each elected official, officer, or employee who lobbied, a general description of the nature of the lobbying, and the proportionate amount of time spent on the lobbying;

(c) A listing of expenditures incurred by the agency for lobbying including but not limited to travel, consultant or other special contractual services, and brochures and other publications, the principal purpose of which is to influence legislation;

(d) For purposes of this subsection, "lobbying" does not include:

(i) Requests for appropriations by a state agency to the office of financial management pursuant to chapter 43.88 RCW nor requests by the office of financial management to the legislature for appropriations other than its own agency budget requests;

(ii) Recommendations or reports to the legislature in response to a legislative request expressly requesting or directing a specific study, recommendation, or report by an agency on a particular subject;

(iii) Official reports including recommendations submitted to the legislature on an annual or biennial basis by a state agency as required by law;

(iv) Requests, recommendations, or other communication between or within state agencies or between or within local agencies;

(v) Any other lobbying to the extent that it includes:

(A) Telephone conversations or preparation of written correspondence;

(B) In-person lobbying on behalf of an agency of no more than four days or parts thereof during any three-month period by officers or employees of that agency and in-person lobbying by any elected official of such agency on behalf of such agency or in connection with the powers, duties, or compensation of such official. The total expenditures of nonpublic funds made in connection with such lobbying for or on behalf of any one or more members of the legislature or state

elected officials or public officers or employees of the state of Washington may not exceed fifteen dollars for any three-month period. The exemption under this subsection (5)(d)(v)(B) is in addition to the exemption provided in (d)(v)(A) of this subsection;

(C) Preparation or adoption of policy positions.

The statements shall be in the form and the manner prescribed by the commission and shall be filed within one month after the end of the quarter covered by the report.

(6) In lieu of reporting under subsection (5) of this section, any county, city, town, municipal corporation, quasi municipal corporation, or special purpose district may determine and so notify the public disclosure commission that elected officials, officers, or employees who, on behalf of any such local agency, engage in lobbying reportable under subsection (5) of this section shall register and report such reportable lobbying in the same manner as a lobbyist who is required to register and report under RCW 42.17A.600 and 42.17A.615. Each such local agency shall report as a lobbyist employer pursuant to RCW 42.17A.630.

(7) The provisions of this section do not relieve any elected official or officer or employee of an agency from complying with other provisions of this chapter, if such elected official, officer, or employee is not otherwise exempted.

(8) The purpose of this section is to require each state agency and certain local agencies to report the identities of those persons who lobby on behalf of the agency for compensation, together with certain separately identifiable and measurable expenditures of an agency's funds for that purpose. This section shall be reasonably construed to accomplish that purpose and not to require any agency to report any of its general overhead cost or any other costs that relate only indirectly or incidentally to lobbying or that are equally attributable to or inseparable from nonlobbying activities of the agency.

The public disclosure commission may adopt rules clarifying and implementing this legislative interpretation and policy. [2010 c 204 § 808; 1995 c 397 § 7; 1986 c 239 § 1; 1979 ex.s. c 265 § 1; 1977 ex.s. c 313 § 6; 1975 1st ex.s. c 294 § 12; 1973 c 1 § 19 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.190.]

Additional notes found at www.leg.wa.gov

42.17A.640 Grass roots lobbying campaigns. (1) Any person who has made expenditures, not reported by a registered lobbyist under RCW 42.17A.615 or by a candidate or political committee under RCW 42.17A.225 or 42.17A.235, exceeding *one thousand dollars in the aggregate within any three-month period or exceeding *five hundred dollars in the aggregate within any one-month period in presenting a program to the public, a substantial portion of which is intended, designed, or calculated primarily to influence legislation shall register and report, as provided in subsection (2) of this section, as a sponsor of a grass roots lobbying campaign.

(2) Within thirty days after becoming a sponsor of a grass roots lobbying campaign, the sponsor shall register by filing with the commission a registration statement, in such detail as the commission shall prescribe, showing:

(a) The sponsor's name, address, and business or occupation, and, if the sponsor is not an individual, the names,

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addresses, and titles of the controlling persons responsible for managing the sponsor's affairs;

(b) The names, addresses, and business or occupation of all persons organizing and managing the campaign, or hired to assist the campaign, including any public relations or advertising firms participating in the campaign, and the terms of compensation for all such persons;

(c) The names and addresses of each person contributing twenty-five dollars or more to the campaign, and the aggregate amount contributed;

(d) The purpose of the campaign, including the specific legislation, rules, rates, standards, or proposals that are the subject matter of the campaign;

(e) The totals of all expenditures made or incurred to date on behalf of the campaign segregated according to financial category, including but not limited to the following: Advertising, segregated by media, and in the case of large expenditures (as provided by rule of the commission), by outlet; contributions; entertainment, including food and refreshments; office expenses including rent and the salaries and wages paid for staff and secretarial assistance, or the proportionate amount paid or incurred for lobbying campaign activities; consultants; and printing and mailing expenses.

(3) Every sponsor who has registered under this section shall file monthly reports with the commission by the tenth day of the month for the activity during the preceding month. The reports shall update the information contained in the sponsor's registration statement and in prior reports and shall show contributions received and totals of expenditures made during the month, in the same manner as provided for in the registration statement.

(4) When the campaign has been terminated, the sponsor shall file a notice of termination with the final monthly report. The final report shall state the totals of all contributions and expenditures made on behalf of the campaign, in the same manner as provided for in the registration statement. [2010 c 204 § 809; 1990 c 139 § 5; 1985 c 367 § 10; 1973 c 1 § 20 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.200.]

***Reviser's note:** The dollar amounts in this section have been adjusted for inflation by rule of the commission adopted under the authority of RCW 42.17A.110. For current dollar amounts, see chapter 390-20 of the Washington Administrative Code (WAC).

Legislative intent—1990 c 139: See note following RCW 42.17A.005.

42.17A.645 Employment of legislators, board or commission members, or state employees—Statement, contents. If any person registered or required to be registered as a lobbyist, or any employer of any person registered or required to be registered as a lobbyist, employs a member or an employee of the legislature, a member of a state board or commission, or a full-time state employee, and that new employee remains in the partial employ of the state, the new employer must file within fifteen days after employment a statement with the commission, signed under oath, setting out the nature of the employment, the name of the person employed, and the amount of pay or consideration. [2010 c 204 § 810; 1973 c 1 § 21 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.210.]

42.17A.650 Employment of unregistered persons. It is a violation of this chapter for any person to employ for pay

or any consideration, or pay or agree to pay any consideration to, a person to lobby who is not registered under this chapter except upon the condition that such a person must register as a lobbyist as provided by this chapter. [2010 c 204 § 811; 1973 c 1 § 22 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.220.]

42.17A.655 Lobbyists' duties, restrictions—Penalties for violations. (1) A person required to register as a lobbyist under RCW 42.17A.600 shall substantiate financial reports required to be made under this chapter with accounts, bills, receipts, books, papers, and other necessary documents. All such documents must be obtained and preserved for a period of at least five years from the date of filing the statement containing such items and shall be made available for inspection by the commission at any time. If the terms of the lobbyist's employment contract require that these records be turned over to his or her employer, responsibility for the preservation and inspection of these records under this subsection shall be with such employer.

(2) A person required to register as a lobbyist under RCW 42.17A.600 shall not:

(a) Engage in any lobbying activity before registering as a lobbyist;

(b) Knowingly deceive or attempt to deceive a legislator regarding the facts pertaining to any pending or proposed legislation;

(c) Cause or influence the introduction of a bill or amendment to that bill for the purpose of later being employed to secure its defeat;

(d) Knowingly represent an interest adverse to his or her employer without full disclosure of the adverse interest to the employer and obtaining the employer's written consent;

(e) Exercise any undue influence, extortion, or unlawful retaliation upon any legislator due to the legislator's position or vote on any pending or proposed legislation;

(f) Enter into any agreement, arrangement, or understanding in which any portion of his or her compensation is or will be contingent upon his or her success in influencing legislation.

(3) A violation by a lobbyist of this section shall be cause for revocation of his or her registration, and may subject the lobbyist and the lobbyist's employer, if the employer aids, abets, ratifies, or confirms the violation, to other civil liabilities as provided by this chapter. [2010 c 204 § 812; 1987 c 201 § 2; 1982 c 147 § 14; 1973 c 1 § 23 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.230.]

PERSONAL FINANCIAL AFFAIRS REPORTING BY CANDIDATES AND PUBLIC OFFICIALS

42.17A.700 Elected and appointed officials, candidates, and appointees—Reports of financial affairs and gifts. (1) After January 1st and before April 15th of each year, every elected official and every executive state officer shall file with the commission a statement of financial affairs for the preceding calendar year. However, any local elected official whose term of office ends on December 31st shall file the statement required to be filed by this section for the final year of his or her term.

(2) Within two weeks of becoming a candidate, every candidate shall file with the commission a statement of financial affairs for the preceding twelve months.

(3) Within two weeks of appointment, every person appointed to a vacancy in an elective office or executive state officer position shall file with the commission a statement of financial affairs for the preceding twelve months.

(4) A statement of a candidate or appointee filed during the period from January 1st to April 15th shall cover the period from January 1st of the preceding calendar year to the time of candidacy or appointment if the filing of the statement would relieve the individual of a prior obligation to file a statement covering the entire preceding calendar year.

(5) No individual may be required to file more than once in any calendar year.

(6) Each statement of financial affairs filed under this section shall be sworn as to its truth and accuracy.

(7) Every elected official and every executive state officer shall file with their statement of financial affairs a statement certifying that they have read and are familiar with RCW 42.17A.555 or 42.52.180, whichever is applicable.

(8) For the purposes of this section, the term "executive state officer" includes those listed in RCW 42.17A.705.

(9) This section does not apply to incumbents or candidates for a federal office or the office of precinct committee officer. [2010 c 204 § 901; 1995 c 397 § 8; 1993 c 2 § 31 (Initiative Measure No. 134, approved November 3, 1992); 1989 c 158 § 1; 1987 c 295 § 19. Prior: 1984 c 125 § 14; 1984 c 34 § 1; 1983 c 161 § 27; 1982 c 10 § 9; prior: 1981 c 311 § 20; 1981 c 67 § 15; 1979 ex.s. c 265 § 3; 1979 c 151 § 73; prior: 1975-'76 2nd ex.s. c 112 § 7; 1975-'76 2nd ex.s. c 104 § 1 (Ref. Bill No. 36); 1975 1st ex.s. c 294 § 13; 1973 c 1 § 24 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.240.]

Cemetery district commissioners exempt from chapter: RCW 68.52.140, 68.52.220.

Additional notes found at www.leg.wa.gov

42.17A.705 "Executive state officer" defined. For the purposes of RCW 42.17A.700, "executive state officer" includes:

(1) The chief administrative law judge, the director of agriculture, the director of the department of services for the blind, the chief information officer of the office of chief information officer, the director of the state system of community and technical colleges, the director of commerce, the director of the consolidated technology services agency, the secretary of corrections, the director of early learning, the director of ecology, the commissioner of employment security, the chair of the energy facility site evaluation council, the director of enterprise services, the secretary of the state finance committee, the director of financial management, the director of fish and wildlife, the executive secretary of the forest practices appeals board, the director of the gambling commission, the secretary of health, the administrator of the Washington state health care authority, the executive secretary of the health care facilities authority, the executive secretary of the higher education facilities authority, the executive secretary of the horse racing commission, the human resources director, the executive secretary of the human rights commission, the executive secretary of the indetermi-

nate sentence review board, the executive director of the state investment board, the director of labor and industries, the director of licensing, the director of the lottery commission, the director of the office of minority and women's business enterprises, the director of parks and recreation, the executive director of the public disclosure commission, the executive director of the Puget Sound partnership, the director of the recreation and conservation office, the director of retirement systems, the director of revenue, the secretary of social and health services, the chief of the Washington state patrol, the executive secretary of the board of tax appeals, the secretary of transportation, the secretary of the utilities and transportation commission, the director of veterans affairs, the president of each of the regional and state universities and the president of The Evergreen State College, and each district and each campus president of each state community college;

(2) Each professional staff member of the office of the governor;

(3) Each professional staff member of the legislature; and

(4) Central Washington University board of trustees, the boards of trustees of each community college and each technical college, each member of the state board for community and technical colleges, state convention and trade center board of directors, Eastern Washington University board of trustees, Washington economic development finance authority, Washington energy northwest executive board, The Evergreen State College board of trustees, executive ethics board, fish and wildlife commission, forest practices appeals board, forest practices board, gambling commission, Washington health care facilities authority, student achievement council, higher education facilities authority, horse racing commission, state housing finance commission, human rights commission, indeterminate sentence review board, board of industrial insurance appeals, state investment board, commission on judicial conduct, legislative ethics board, life sciences discovery fund authority board of trustees, liquor control board, lottery commission, Pacific Northwest electric power and conservation planning council, parks and recreation commission, Washington personnel resources board, board of pilotage commissioners, pollution control hearings board, public disclosure commission, public employees' benefits board, recreation and conservation funding board, salmon recovery funding board, shorelines hearings board, board of tax appeals, transportation commission, University of Washington board of regents, utilities and transportation commission, Washington State University board of regents, and Western Washington University board of trustees. [2012 c 229 § 582; 2011 1st sp.s. c 43 § 109; 2010 c 204 § 902; 2009 c 565 § 24. Prior: 2007 c 341 § 48; 2007 c 241 § 2; 2007 c 15 § 1; 2006 c 265 § 113; 2005 c 424 § 17; prior: 2001 c 36 § 1; 2001 c 9 § 1; 1996 c 186 § 504; prior: 1995 c 399 § 60; 1995 c 397 § 10; prior: 1993 sp.s. c 2 § 18; 1993 c 492 § 488; 1993 c 281 § 43; 1991 c 200 § 404; 1991 c 3 § 293; prior: 1989 1st ex.s. c 9 § 812; 1989 c 279 § 22; 1989 c 158 § 2; 1988 c 36 § 13; 1987 c 504 § 14; 1985 c 6 § 8; 1984 c 34 § 2. Formerly RCW 42.17.2401.]

Effective date—2012 c 229 ss 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

(2014 Ed.)

Effective date—2011 1st sp.s. c 43 § 109: "Section 109 of this act takes effect January 1, 2012." [2011 1st sp.s. c 43 § 111.]

Purpose—2011 1st sp.s. c 43: See note following RCW 43.19.003.

Alphabetization—2010 c 204 § 902: "When RCW 42.17A.705 is codified, the code reviser shall arrange the names of the agencies in each subsection in alphabetical order, arranged according to the first distinctive word of each agency's name." [2010 c 204 § 1101.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Part headings not law—Effective date—Severability—2006 c 265: See RCW 43.215.904 through 43.215.906.

Captions not law—Liberal construction—Severability—Effective dates—2005 c 424: See RCW 43.350.900 through 43.350.903.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

42.17A.710 Contents of report. (1) The statement of financial affairs required by RCW 42.17A.700 shall disclose the following information for the reporting individual and each member of his or her immediate family:

(a) Occupation, name of employer, and business address;

(b) Each bank account, savings account, and insurance policy in which a direct financial interest was held that exceeds *twenty thousand dollars at any time during the reporting period; each other item of intangible personal property in which a direct financial interest was held that exceeds *two thousand dollars during the reporting period; the name, address, and nature of the entity; and the nature and highest value of each direct financial interest during the reporting period;

(c) The name and address of each creditor to whom the value of *two thousand dollars or more was owed; the original amount of each debt to each creditor; the amount of each debt owed to each creditor as of the date of filing; the terms of repayment of each debt; and the security given, if any, for each such debt. Debts arising from a "retail installment transaction" as defined in chapter 63.14 RCW (retail installment sales act) need not be reported;

(d) Every public or private office, directorship, and position held as trustee;

(e) All persons for whom any legislation, rule, rate, or standard has been prepared, promoted, or opposed for current or deferred compensation. For the purposes of this subsection, "compensation" does not include payments made to the person reporting by the governmental entity for which the person serves as an elected official or state executive officer or professional staff member for his or her service in office; the description of such actual or proposed legislation, rules, rates, or standards; and the amount of current or deferred compensation paid or promised to be paid;

(f) The name and address of each governmental entity, corporation, partnership, joint venture, sole proprietorship, association, union, or other business or commercial entity from whom compensation has been received in any form of a total value of two thousand dollars or more; the value of the compensation; and the consideration given or performed in exchange for the compensation;

(g) The name of any corporation, partnership, joint venture, association, union, or other entity in which is held any office, directorship, or any general partnership interest, or an ownership interest of ten percent or more; the name or title of that office, directorship, or partnership; the nature of ownership interest; and: (i) With respect to a governmental unit in which the official seeks or holds any office or position, if the entity has received compensation in any form during the preceding twelve months from the governmental unit, the value of the compensation and the consideration given or performed in exchange for the compensation; and (ii) the name of each governmental unit, corporation, partnership, joint venture, sole proprietorship, association, union, or other business or commercial entity from which the entity has received compensation in any form in the amount of *ten thousand dollars or more during the preceding twelve months and the consideration given or performed in exchange for the compensation. As used in (g)(ii) of this subsection, "compensation" does not include payment for water and other utility services at rates approved by the Washington state utilities and transportation commission or the legislative authority of the public entity providing the service. With respect to any bank or commercial lending institution in which is held any office, directorship, partnership interest, or ownership interest, it shall only be necessary to report either the name, address, and occupation of every director and officer of the bank or commercial lending institution and the average monthly balance of each account held during the preceding twelve months by the bank or commercial lending institution from the governmental entity for which the individual is an official or candidate or professional staff member, or all interest paid by a borrower on loans from and all interest paid to a depositor by the bank or commercial lending institution if the interest exceeds *two thousand four hundred dollars;

(h) A list, including legal or other sufficient descriptions as prescribed by the commission, of all real property in the state of Washington, the assessed valuation of which exceeds *ten thousand dollars in which any direct financial interest was acquired during the preceding calendar year, and a statement of the amount and nature of the financial interest and of the consideration given in exchange for that interest;

(i) A list, including legal or other sufficient descriptions as prescribed by the commission, of all real property in the state of Washington, the assessed valuation of which exceeds *ten thousand dollars in which any direct financial interest was divested during the preceding calendar year, and a statement of the amount and nature of the consideration received in exchange for that interest, and the name and address of the person furnishing the consideration;

(j) A list, including legal or other sufficient descriptions as prescribed by the commission, of all real property in the state of Washington, the assessed valuation of which exceeds *ten thousand dollars in which a direct financial interest was held. If a description of the property has been included in a report previously filed, the property may be listed, for purposes of this subsection (1)(j), by reference to the previously filed report;

(k) A list, including legal or other sufficient descriptions as prescribed by the commission, of all real property in the state of Washington, the assessed valuation of which exceeds *twenty thousand dollars, in which a corporation, partner-

ship, firm, enterprise, or other entity had a direct financial interest, in which corporation, partnership, firm, or enterprise a ten percent or greater ownership interest was held;

(l) A list of each occasion, specifying date, donor, and amount, at which food and beverage in excess of fifty dollars was accepted under RCW 42.52.150(5);

(m) A list of each occasion, specifying date, donor, and amount, at which items specified in **RCW 42.52.010(10)(d) and (f) were accepted; and

(n) Such other information as the commission may deem necessary in order to properly carry out the purposes and policies of this chapter, as the commission shall prescribe by rule.

(2) Where an amount is required to be reported under subsection (1)(a) through (m) of this section, it shall be sufficient to comply with the requirement to report whether the amount is less than *four thousand dollars, at least *four thousand dollars but less than *twenty thousand dollars, at least *twenty thousand dollars but less than *forty thousand dollars, at least *forty thousand dollars but less than *one hundred thousand dollars, or *one hundred thousand dollars or more. An amount of stock may be reported by number of shares instead of by market value. No provision of this subsection may be interpreted to prevent any person from filing more information or more detailed information than required.

(3) Items of value given to an official's or employee's spouse, domestic partner, or family member are attributable to the official or employee, except the item is not attributable if an independent business, family, or social relationship exists between the donor and the spouse, domestic partner, or family member. [2010 c 204 § 903; 2008 c 6 § 202; 1995 c 397 § 9; 1984 c 34 § 3; 1979 ex.s. c 126 § 42. Formerly RCW 42.17.241.]

Reviser's note: *(1) The dollar amounts in this section have been adjusted for inflation by rule of the commission adopted under the authority of RCW 42.17A.110. For current dollar amounts, see chapter 390-24 of the Washington Administrative Code (WAC).

***(2) RCW 42.52.010 was amended by 2011 c 60 § 28, changing subsection (10)(d) and (f) to subsection (9)(d) and (f).

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

Purpose—1979 ex.s. c 126: See RCW 29A.60.280(1).

42.17A.715 Concealing identity of source of payment prohibited—Exception. No payment shall be made to any person required to report under RCW 42.17A.700 and no payment shall be accepted by any such person, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative, or other person in such a manner as to conceal the identity of the source of the payment or in any other manner so as to effect concealment. The commission may issue categorical and specific exemptions to the reporting of the actual source when there is an undisclosed principal for recognized legitimate business purposes. [2010 c 204 § 904; 1977 ex.s. c 336 § 4. Formerly RCW 42.17.242.]

Additional notes found at www.leg.wa.gov

ENFORCEMENT

42.17A.750 Civil remedies and sanctions—Referral for criminal prosecution. (1) In addition to the penalties in subsection (2) of this section, and any other remedies pro-

vided by law, one or more of the following civil remedies and sanctions may be imposed by court order in addition to any other remedies provided by law:

(a) If the court finds that the violation of any provision of this chapter by any candidate or political committee probably affected the outcome of any election, the result of that election may be held void and a special election held within sixty days of the finding. Any action to void an election shall be commenced within one year of the date of the election in question. It is intended that this remedy be imposed freely in all appropriate cases to protect the right of the electorate to an informed and knowledgeable vote.

(b) If any lobbyist or sponsor of any grass roots lobbying campaign violates any of the provisions of this chapter, his or her registration may be revoked or suspended and he or she may be enjoined from receiving compensation or making expenditures for lobbying. The imposition of a sanction shall not excuse the lobbyist from filing statements and reports required by this chapter.

(c) A person who violates any of the provisions of this chapter may be subject to a civil penalty of not more than ten thousand dollars for each violation. However, a person or entity who violates RCW 42.17A.405 may be subject to a civil penalty of ten thousand dollars or three times the amount of the contribution illegally made or accepted, whichever is greater.

(d) A person who fails to file a properly completed statement or report within the time required by this chapter may be subject to a civil penalty of ten dollars per day for each day each delinquency continues.

(e) Each state agency director who knowingly fails to file statements required by RCW 42.17A.635 shall be subject to personal liability in the form of a civil penalty in the amount of one hundred dollars per statement. These penalties are in addition to any other civil remedies or sanctions imposed on the agency.

(f) A person who fails to report a contribution or expenditure as required by this chapter may be subject to a civil penalty equivalent to the amount not reported as required.

(g) Any state agency official, officer, or employee who is responsible for or knowingly directs or expends public funds in violation of RCW 42.17A.635 (2) or (3) may be subject to personal liability in the form of a civil penalty in an amount that is at least equivalent to the amount of public funds expended in the violation.

(h) The court may enjoin any person to prevent the doing of any act herein prohibited, or to compel the performance of any act required herein.

(2) The commission may refer the following violations for criminal prosecution:

(a) A person who, with actual malice, violates a provision of this chapter is guilty of a misdemeanor under chapter 9.92 RCW;

(b) A person who, within a five-year period, with actual malice, violates three or more provisions of this chapter is guilty of a gross misdemeanor under chapter 9.92 RCW; and

(c) A person who, with actual malice, procures or offers any false or forged document to be filed, registered, or recorded with the commission under this chapter is guilty of a class C felony under chapter 9.94A RCW. [2013 c 166 § 1; 2011 c 145 § 6; 2010 c 204 § 1001; 2006 c 315 § 2; 1993 c 2

§ 28 (Initiative Measure No. 134, approved November 3, 1992); 1973 c 1 § 39 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.390.]

Effective date—2013 c 166: See note following RCW 42.17A.055.

Findings—Intent—Effective date—2011 c 145: See notes following RCW 42.17A.005.

Intent—2006 c 315: "It is the intent of the legislature to increase the authority of the public disclosure commission to more effectively foster compliance with our state's public disclosure and fair campaign practices act. It is the intent of the legislature to make the agency's penalty authority for violations of this chapter more consistent with other agencies that enforce state ethics laws and more commensurate with the level of political spending in the state of Washington." [2006 c 315 § 1.]

Severability—2006 c 315: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 315 § 4.]

42.17A.755 Violations—Determination by commission—Penalties—Procedure. (1) The commission may (a) determine whether an actual violation of this chapter has occurred; and (b) issue and enforce an appropriate order following such a determination.

(2) The commission, in cases where it chooses to determine whether an actual violation has occurred, shall hold a hearing pursuant to the administrative procedure act, chapter 34.05 RCW, to make a determination. Any order that the commission issues under this section shall be pursuant to such a hearing.

(3) In lieu of holding a hearing or issuing an order under this section, the commission may refer the matter to the attorney general or other enforcement agency as provided in RCW 42.17A.105.

(4) The person against whom an order is directed under this section shall be designated as the respondent. The order may require the respondent to cease and desist from the activity that constitutes a violation and in addition, or alternatively, may impose one or more of the remedies provided in *RCW 42.17A.750(1) (b) through (e). The commission may assess a penalty in an amount not to exceed ten thousand dollars.

(5) The commission has the authority to waive a fine for a first-time violation. A second violation of the same rule by the same person or individual, regardless if the person or individual committed the violation for a different political committee, shall result in a fine. Succeeding violations of the same rule shall result in successively increased fines.

(6) An order issued by the commission under this section shall be subject to judicial review under the administrative procedure act, chapter 34.05 RCW. If the commission's order is not satisfied and no petition for review is filed within thirty days, the commission may petition a court of competent jurisdiction of any county in which a petition for review could be filed under that section, for an order of enforcement. Proceedings in connection with the commission's petition shall be in accordance with RCW 42.17A.760. [2011 c 145 § 7; 2010 c 204 § 1002; 2006 c 315 § 3; 1989 c 175 § 91; 1985 c 367 § 12; 1982 c 147 § 16; 1975-'76 2nd ex.s. c 112 § 12. Formerly RCW 42.17.395.]

***Reviser's note:** RCW 42.17A.750 was amended by 2013 c 166 § 1, changing subsection (1)(b) through (e) to subsection (1)(b) through (f), effective January 1, 2014.

Findings—Intent—Effective date—2011 c 145: See notes following RCW 42.17A.005.

Intent—Severability—2006 c 315: See notes following RCW 42.17A.750.

Additional notes found at www.leg.wa.gov

42.17A.760 Procedure upon petition for enforcement of order of commission—Court's order of enforcement.

The following procedure shall apply in all cases where the commission has petitioned a court of competent jurisdiction for enforcement of any order it has issued pursuant to this chapter:

(1) A copy of the petition shall be served by certified mail directed to the respondent at his or her last known address. The court shall issue an order directing the respondent to appear at a time designated in the order, not less than five days from the date thereof, and show cause why the commission's order should not be enforced according to its terms.

(2) The commission's order shall be enforced by the court if the respondent does not appear, or if the respondent appears and the court finds, pursuant to a hearing held for that purpose:

(a) That the commission's order is unsatisfied;

(b) That the order is regular on its face; and

(c) That the respondent's answer discloses no valid reason why the commission's order should not be enforced or that the respondent had an appropriate remedy by review under RCW 34.05.570(3) and failed to avail himself or herself of that remedy without valid excuse.

(3) Upon appropriate application by the respondent, the court may, after hearing and for good cause, alter, amend, revise, suspend, or postpone all or part of the commission's order. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in writing, and the action shall be subject to review by the appellate courts by certiorari or other appropriate proceeding.

(4) The court's order of enforcement, when entered, shall have the same force and effect as a civil judgment.

(5) Notwithstanding RCW 34.05.578 through 34.05.590, this section is the exclusive method for enforcing an order of the commission. [2010 c 204 § 1003; 1989 c 175 § 92; 1982 c 147 § 17; 1975-'76 2nd ex.s. c 112 § 13. Formerly RCW 42.17.397.]

Additional notes found at www.leg.wa.gov

42.17A.765 Enforcement. (1) The attorney general and the prosecuting authorities of political subdivisions of this state may bring civil actions in the name of the state for any appropriate civil remedy, including but not limited to the special remedies provided in RCW 42.17A.750.

(2) The attorney general and the prosecuting authorities of political subdivisions of this state may investigate or cause to be investigated the activities of any person who there is reason to believe is or has been acting in violation of this chapter, and may require any such person or any other person reasonably believed to have information concerning the activities of such person to appear at a time and place designated in the county in which such person resides or is found, to give such information under oath and to produce all accounts, bills, receipts, books, paper and documents which

may be relevant or material to any investigation authorized under this chapter.

(3) When the attorney general or the prosecuting authority of any political subdivision of this state requires the attendance of any person to obtain such information or produce the accounts, bills, receipts, books, papers, and documents that may be relevant or material to any investigation authorized under this chapter, he or she shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least fourteen days before the date fixed for attendance. The order shall have the same force and effect as a subpoena, shall be effective statewide, and, upon application of the attorney general or the prosecuting authority, obedience to the order may be enforced by any superior court judge in the county where the person receiving it resides or is found, in the same manner as though the order were a subpoena. The court, after hearing, for good cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend, or postpone all or any part of its provisions. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in writing, and the action shall be subject to review by the appellate courts by certiorari or other appropriate proceeding.

(4) A person who has notified the attorney general and the prosecuting attorney in the county in which the violation occurred in writing that there is reason to believe that some provision of this chapter is being or has been violated may himself or herself bring in the name of the state any of the actions (hereinafter referred to as a citizen's action) authorized under this chapter.

(a) This citizen action may be brought only if:

(i) The attorney general and the prosecuting attorney have failed to commence an action hereunder within forty-five days after the notice;

(ii) The person has thereafter further notified the attorney general and prosecuting attorney that the person will commence a citizen's action within ten days upon their failure to do so;

(iii) The attorney general and the prosecuting attorney have in fact failed to bring such action within ten days of receipt of said second notice; and

(iv) The citizen's action is filed within two years after the date when the alleged violation occurred.

(b) If the person who brings the citizen's action prevails, the judgment awarded shall escheat to the state, but he or she shall be entitled to be reimbursed by the state of Washington for costs and attorneys' fees he or she has incurred. In the case of a citizen's action that is dismissed and that the court also finds was brought without reasonable cause, the court may order the person commencing the action to pay all costs of trial and reasonable attorneys' fees incurred by the defendant.

(5) In any action brought under this section, the court may award to the state all costs of investigation and trial, including reasonable attorneys' fees to be fixed by the court. If the violation is found to have been intentional, the amount of the judgment, which shall for this purpose include the costs, may be trebled as punitive damages. If damages or trebled damages are awarded in such an action brought against a lobbyist, the judgment may be awarded against the lobbyist,

and the lobbyist's employer or employers joined as defendants, jointly, severally, or both. If the defendant prevails, he or she shall be awarded all costs of trial, and may be awarded reasonable attorneys' fees to be fixed by the court to be paid by the state of Washington. [2010 c 204 § 1004; 2007 c 455 § 1; 1975 1st ex.s. c 294 § 27; 1973 c 1 § 40 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.400.]

42.17A.770 Limitation on actions. Except as provided in RCW 42.17A.765(4)(a)(iv), any action brought under the provisions of this chapter must be commenced within five years after the date when the violation occurred. [2011 c 60 § 26; 2007 c 455 § 2; 1982 c 147 § 18; 1973 c 1 § 41 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.410.]

CONSTRUCTION

42.17A.900 Effective date—1973 c 1. The effective date of this act shall be January 1, 1973. [1973 c 1 § 49 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.900.]

42.17A.901 Severability—1973 c 1. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 c 1 § 46 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.910.]

42.17A.902 Severability—1975 1st ex.s. c 294. If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 294 § 29. Formerly RCW 42.17.911.]

42.17A.903 Severability—1975-'76 2nd ex.s. c 112. If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975-'76 2nd ex.s. c 112 § 16. Formerly RCW 42.17.912.]

42.17A.904 Construction—1973 c 1. The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act. In the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern. [1973 c 1 § 47 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.920.]

42.17A.905 Chapter, section headings not part of law. Chapter and section captions or headings as used in this act do not constitute any part of the law. [1973 c 1 § 48 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.930.]

42.17A.906 Repealer—1973 c 1. Chapter 9, Laws of 1965, as amended by section 9, chapter 150, Laws of 1965

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ex. sess., and RCW 29.18.140; and chapter 131, Laws of 1967 ex. sess. and RCW 44.64 [chapter 44.64 RCW]; and chapter 82, Laws of 1972 (42nd Leg. 2nd Ex. Sess.) and Referendum Bill No. 24; and chapter 98, Laws of 1972 (42nd Leg. 2nd Ex. Sess.) and Referendum Bill No. 25 are each hereby repealed. [1973 c 1 § 50 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.940.]

42.17A.907 Construction—1975-'76 2nd ex.s. c 112. The provisions of this 1976 amendatory act are intended to be remedial and shall be liberally construed, and nothing in this 1976 amendatory act shall be construed to limit the power of the commission under any other provision of *chapter 42.17 RCW. [1975-'76 2nd ex.s. c 112 § 15. Formerly RCW 42.17.945.]

***Reviser's note:** Provisions in chapter 42.17 RCW relating to campaign disclosure and contribution were recodified in chapter 42.17A RCW by 2010 c 204, effective January 1, 2012.

42.17A.908 Captions. Section captions and part headings used in this act do not constitute any part of the law. [1993 c 2 § 34 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.950.]

42.17A.909 Short title—1993 c 2. This act may be known and cited as the Fair Campaign Practices Act. [1993 c 2 § 36 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.955.]

42.17A.910 Effective date—1995 c 397. Sections 1 through 32, 34, and 37 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995. [1995 c 397 § 35. Formerly RCW 42.17.960.]

42.17A.911 Captions—1995 c 397. Captions as used in chapter 397, Laws of 1995 constitute no part of the law. [1995 c 397 § 37. Formerly RCW 42.17.961.]

42.17A.912 Severability—1995 c 397. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 397 § 38. Formerly RCW 42.17.962.]

42.17A.913 Part headings not law—2005 c 445. Part headings used in this act are not any part of the law. [2005 c 445 § 14. Formerly RCW 42.17.963.]

42.17A.914 Severability—2005 c 445. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2005 c 445 § 16. Formerly RCW 42.17.964.]

42.17A.915 Effective dates—2005 c 445. Sections 6 and 12 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2005. The remainder of this act takes effect January 1, 2006. [2005 c 445 § 17. Formerly RCW 42.17.965.]

42.17A.916 Severability—2006 c 348. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2006 c 348 § 7. Formerly RCW 42.17.966.]

42.17A.917 Effective date—2010 c 204 §§ 505, 602, and 703. Sections 505, 602, and 703 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 25, 2010]. [2010 c 204 § 1104.]

42.17A.918 2010 c 204. Sections 101 through 504, 506 through 601, 603 through 702, and 801 through 1103 of chapter 204, Laws of 2010 take effect January 1, 2012. [2010 1st sp.s. c 26 § 10; 2010 c 204 § 1105.]

42.17A.919 Effective date—2011 c 60. This act takes effect January 1, 2012. [2011 c 60 § 53.]

Chapter 42.20 RCW

MISCONDUCT OF PUBLIC OFFICERS

Sections

42.20.020	Powers may not be delegated for profit.
42.20.030	Intrusion into and refusal to surrender public office.
42.20.040	False report.
42.20.050	Public officer making false certificate.
42.20.060	Falsely auditing and paying claims.
42.20.070	Misappropriation and falsification of accounts by public officer.
42.20.080	Other violations by officers.
42.20.090	Misappropriation, etc., by treasurer.
42.20.100	Failure of duty by public officer a misdemeanor.
42.20.110	Improper conduct by certain justices.

Bidding offenses: Chapter 9.18 RCW.

Bribery or corrupt solicitation prohibited: State Constitution Art. 2 § 30.

Cities

optional municipal code, council-manager plan, forfeiture of office for misconduct: RCW 35A.13.020.

optional municipal code, mayor-council plan, forfeiture of office for misconduct: RCW 35A.12.060.

Cities and towns, commission form, misconduct of officers and employees: RCW 35.17.150.

County officers, misconduct: RCW 36.18.160, 36.18.170.

County treasurer, suspension for misconduct: RCW 36.29.090.

Election officials, misconduct: Chapter 29A.84 RCW.

Flood control district officers, interest in contracts prohibited: RCW 86.09.286.

Forfeiture of office upon conviction of felony or malfeasance: RCW 9.92.120.

Free transportation for public officers prohibited: State Constitution Art. 2 § 39, Art. 12 § 20.

Impersonating public officer: RCW 9A.60.045.

Juries, misconduct of public officers concerning: Chapter 9.51 RCW.

Militia, misconduct: Chapter 38.32 RCW.

Official misconduct: RCW 9A.80.010.

Penitentiary employees, misconduct: RCW 72.01.060.

Private use of public funds, penalty: State Constitution Art. 11 § 14.

School funds, failure to turn over: RCW 28A.635.070.

School officials

disclosing examination questions: RCW 28A.635.040.

grafting: RCW 28A.635.050.

School teachers

failure to display flag: RCW 28A.230.140.

failure to enforce rules: RCW 28A.405.060.

revocation or suspension of certificate or permit to teach—investigation by superintendent of public instruction—mandatory revocation for crimes against children: RCW 28A.410.090.

State and judicial officers, impeachment: State Constitution Art. 5.

State treasurer, embezzlement: RCW 43.08.140.

Subversive activities, disqualification from holding public office: RCW 9.81.040.

Utilities and transportation commission members and employees, interest in regulated companies prohibited: RCW 80.01.020.

42.20.020 Powers may not be delegated for profit.

Every public officer who, for any reward, consideration, or gratuity paid or agreed to be paid, shall, directly or indirectly, grant to another the right or authority to discharge any function of his or her office, or permit another to perform any of his or her duties, shall be guilty of a gross misdemeanor. [2012 c 117 § 113; 1909 c 249 § 83; RRS § 2335.]

42.20.030 Intrusion into and refusal to surrender public office.

Every person who shall falsely personate or represent any public officer, or who shall willfully intrude himself or herself into a public office to which he or she has not been duly elected or appointed, or who shall willfully exercise any of the functions or perform any of the duties of such officer, without having duly qualified therefor, as required by law, or who, having been an executive or administrative officer, shall willfully exercise any of the functions of his or her office after his or her right to do so has ceased, or wrongfully refuse to surrender the official seal or any books or papers appertaining to such office, upon the demand of his or her lawful successor, shall be guilty of a gross misdemeanor. [2012 c 117 § 114; 1909 c 249 § 84; RRS § 2336.]

Impersonating a public officer: RCW 9A.60.045.

Quo warranto: Chapter 7.56 RCW.

42.20.040 False report. Every public officer who shall knowingly make any false or misleading statement in any official report or statement, under circumstances not otherwise prohibited by law, shall be guilty of a gross misdemeanor. [1909 c 249 § 98; RRS § 2350.]

42.20.050 Public officer making false certificate.

Every public officer who, being authorized by law to make or give a certificate or other writing, shall knowingly make and deliver as true such a certificate or writing containing any statement which he or she knows to be false, in a case where the punishment thereof is not expressly prescribed by law, shall be guilty of a gross misdemeanor. [2012 c 117 § 115; 1909 c 249 § 128; RRS § 2380.]

42.20.060 Falsely auditing and paying claims. Every public officer, or person holding or discharging the duties of any public office or place of trust under the state or in any county, town or city, a part of whose duty it is to audit, allow or pay, or take part in auditing, allowing or paying, claims or demands upon the state or such county, town or city, who shall knowingly audit, allow or pay, or, directly or indirectly, consent to or in any way connive at the auditing, allowance or payment of any claim or demand against the state or such

county, town or city, which is false or fraudulent or contains any charge, item or claim which is false or fraudulent, shall be guilty of a gross misdemeanor. [1909 c 249 § 129; RRS § 2381.]

42.20.070 Misappropriation and falsification of accounts by public officer. Every public officer, and every other person receiving money on behalf or for or on account of the people of the state or of any department of the state government or of any bureau or fund created by law in which the people are directly or indirectly interested, or for or on account of any county, city, town, or any school, diking, drainage, or irrigation district, who:

(1) Appropriates to his or her own use or the use of any person not entitled thereto, without authority of law, any money so received by him or her as such officer or otherwise; or

(2) Knowingly keeps any false account, or makes any false entry or erasure in any account, of or relating to any money so received by him or her; or

(3) Fraudulently alters, falsifies, conceals, destroys, or obliterates any such account; or

(4) Willfully omits or refuses to pay over to the state, its officer or agent authorized by law to receive the same, or to such county, city, town, or such school, diking, drainage, or irrigation district or to the proper officer or authority empowered to demand and receive the same, any money received by him or her as such officer when it is a duty imposed upon him or her by law to pay over and account for the same, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than fifteen years. [2003 c 53 § 219; 1992 c 7 § 37; 1909 c 249 § 317; RRS § 2569. Prior: Code 1881 § 890; 1873 p 202 § 92; 1854 p 91 § 83.]

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

42.20.080 Other violations by officers. Every officer or other person mentioned in RCW 42.20.070, who shall willfully disobey any provision of law regulating his or her official conduct in cases other than those specified in said section, shall be guilty of a gross misdemeanor. [2012 c 117 § 116; 1909 c 249 § 318; RRS § 2570.]

42.20.090 Misappropriation, etc., by treasurer. Every state, county, city, or town treasurer who willfully misappropriates any moneys, funds, or securities received by or deposited with him or her as such treasurer, or who shall be guilty of any other malfeasance or willful neglect of duty in his or her office, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years or by a fine of not more than five thousand dollars. [2003 c 53 § 220; 1992 c 7 § 38; 1909 c 249 § 319; RRS § 2571.]

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

County treasurer, suspension for misconduct: RCW 36.29.090.

State treasurer, embezzlement: RCW 43.08.140.

42.20.100 Failure of duty by public officer a misdemeanor. Whenever any duty is enjoined by law upon any

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public officer or other person holding any public trust or employment, their wilful neglect to perform such duty, except where otherwise specially provided for, shall be a misdemeanor. [1909 c 249 § 16; RRS § 2268. Prior: Code 1881 § 889; 1854 p 90 § 82.]

Official misconduct by public servant: RCW 9A.80.010.

42.20.110 Improper conduct by certain justices. It shall be a misdemeanor for any judge or justice of any court not of record, during the hearing of any cause or proceeding therein, to address any person in his or her presence in unfit, unseemly, or improper language. [2012 c 117 § 117; 1911 c 115 § 1; RRS § 2696-1.]

Chapter 42.23 RCW

CODE OF ETHICS FOR MUNICIPAL OFFICERS— CONTRACT INTERESTS

Sections

42.23.010	Declaration of purpose.
42.23.020	Definitions.
42.23.030	Interest in contracts prohibited—Exceptions.
42.23.040	Remote interests.
42.23.050	Prohibited contracts void—Penalties for violation of chapter.
42.23.060	Local charter controls chapter.
42.23.070	Prohibited acts.
42.23.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Cities, free passes, services prohibited: RCW 35.17.150.

County officers, general provisions: Chapter 36.16 RCW.

Ethics in public service act: Chapter 42.52 RCW.

Public employment, civil service: Title 41 RCW.

State officers, general provisions: Chapter 43.01 RCW.

42.23.010 Declaration of purpose. It is the purpose and intent of this chapter to revise and make uniform the laws of this state concerning the transaction of business by municipal officers, as defined in chapter 268, Laws of 1961, in conflict with the proper performance of their duties in the public interest; and to promote the efficiency of local government by prohibiting certain instances and areas of conflict while at the same time sanctioning, under sufficient controls, certain other instances and areas of conflict wherein the private interest of the municipal officer is deemed to be only remote, to the end that, without sacrificing necessary public responsibility and enforceability in areas of significant and clearly conflicting interests, the selection of municipal officers may be made from a wider group of responsible citizens of the communities which they are called upon to serve. [1961 c 268 § 2.]

42.23.020 Definitions. For the purpose of chapter 268, Laws of 1961:

(1) "Municipality" shall include all counties, cities, towns, districts, and other municipal corporations and quasi municipal corporations organized under the laws of the state of Washington;

(2) "Municipal officer" and "officer" shall each include all elected and appointed officers of a municipality, together with all deputies and assistants of such an officer, and all persons exercising or undertaking to exercise any of the powers or functions of a municipal officer;

(3) "Contract" shall include any contract, sale, lease or purchase;

(4) "Contracting party" shall include any person, partnership, association, cooperative, corporation, or other business entity which is a party to a contract with a municipality. [1961 c 268 § 3.]

42.23.030 Interest in contracts prohibited—Exceptions. No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein. This section shall not apply in the following cases:

(1) The furnishing of electrical, water or other utility services by a municipality engaged in the business of furnishing such services, at the same rates and on the same terms as are available to the public generally;

(2) The designation of public depositaries for municipal funds;

(3) The publication of legal notices required by law to be published by any municipality, upon competitive bidding or at rates not higher than prescribed by law for members of the general public;

(4) The designation of a school director as clerk or as both clerk and purchasing agent of a school district;

(5) The employment of any person by a municipality for unskilled day labor at wages not exceeding two hundred dollars in any calendar month. The exception provided in this subsection does not apply to a county with a population of one hundred twenty-five thousand or more, a city with a population of more than one thousand five hundred, an irrigation district encompassing more than fifty thousand acres, or a first-class school district;

(6)(a) The letting of any other contract in which the total amount received under the contract or contracts by the municipal officer or the municipal officer's business does not exceed one thousand five hundred dollars in any calendar month.

(b) However, in the case of a particular officer of a second-class city or town, or a noncharter optional code city, or a member of any county fair board in a county which has not established a county purchasing department pursuant to RCW 36.32.240, the total amount of such contract or contracts authorized in this subsection (6) may exceed one thousand five hundred dollars in any calendar month but shall not exceed eighteen thousand dollars in any calendar year.

(c)(i) In the case of a particular officer of a rural public hospital district, as defined in RCW 70.44.460, the total amount of such contract or contracts authorized in this subsection (6) may exceed one thousand five hundred dollars in any calendar month, but shall not exceed twenty-four thousand dollars in any calendar year.

(ii) At the beginning of each calendar year, beginning with the 2006 calendar year, the legislative authority of the rural public hospital district shall increase the calendar year limitation described in this subsection (6)(c) by an amount equal to the dollar amount for the previous calendar year multiplied by the change in the consumer price index as of the

close of the twelve-month period ending December 31st of that previous calendar year. If the new dollar amount established under this subsection is not a multiple of ten dollars, the increase shall be rounded to the next lowest multiple of ten dollars. As used in this subsection, "consumer price index" means the consumer price index compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used.

(d) The exceptions provided in this subsection (6) do not apply to:

(i) A sale or lease by the municipality as the seller or lessor;

(ii) The letting of any contract by a county with a population of one hundred twenty-five thousand or more, a city with a population of ten thousand or more, or an irrigation district encompassing more than fifty thousand acres; or

(iii) Contracts for legal services, except for reimbursement of expenditures.

(e) The municipality shall maintain a list of all contracts that are awarded under this subsection (6). The list must be made available for public inspection and copying;

(7) The leasing by a port district as lessor of port district property to a municipal officer or to a contracting party in which a municipal officer may be beneficially interested, if in addition to all other legal requirements, a board of three disinterested appraisers and the superior court in the county where the property is situated finds that all terms and conditions of such lease are fair to the port district and are in the public interest. The appraisers must be appointed from members of the American Institute of Real Estate Appraisers by the presiding judge of the superior court;

(8) The letting of any employment contract for the driving of a school bus in a second-class school district if the terms of such contract are commensurate with the pay plan or collective bargaining agreement operating in the district;

(9) The letting of an employment contract as a substitute teacher or substitute educational aide to an officer of a second-class school district that has two hundred or fewer full-time equivalent students, if the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district and the board of directors has found, consistent with the written policy under RCW 28A.330.240, that there is a shortage of substitute teachers in the school district;

(10) The letting of any employment contract to the spouse of an officer of a school district, when such contract is solely for employment as a substitute teacher for the school district. This exception applies only if the terms of the contract are commensurate with the pay plan or collective bargaining agreement applicable to all district employees and the board of directors has found, consistent with the written policy under RCW 28A.330.240, that there is a shortage of substitute teachers in the school district;

(11) The letting of any employment contract to the spouse of an officer of a school district if the spouse was under contract as a certificated or classified employee with the school district before the date in which the officer

assumes office and the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district. However, in a second-class school district that has less than two hundred full-time equivalent students enrolled at the start of the school year as defined in *RCW 28A.150.040, the spouse is not required to be under contract as a certificated or classified employee before the date on which the officer assumes office;

(12) The authorization, approval, or ratification of any employment contract with the spouse of a public hospital district commissioner if: (a) The spouse was employed by the public hospital district before the date the commissioner was initially elected; (b) the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district for similar employees; (c) the interest of the commissioner is disclosed to the board of commissioners and noted in the official minutes or similar records of the public hospital district prior to the letting or continuation of the contract; and (d) and the commissioner does not vote on the authorization, approval, or ratification of the contract or any conditions in the contract.

A municipal officer may not vote in the authorization, approval, or ratification of a contract in which he or she is beneficially interested even though one of the exemptions allowing the awarding of such a contract applies. The interest of the municipal officer must be disclosed to the governing body of the municipality and noted in the official minutes or similar records of the municipality before the formation of the contract. [2007 c 298 § 1; 2006 c 121 § 1; 2005 c 114 § 1; 1999 c 261 § 2; 1997 c 98 § 1; 1996 c 246 § 1. Prior: 1994 c 81 § 77; 1994 c 20 § 1; 1993 c 308 § 1; 1991 c 363 § 120; 1990 c 33 § 573; 1989 c 263 § 1; 1983 1st ex.s. c 44 § 1; prior: 1980 c 39 § 1; 1979 ex.s. c 4 § 1; 1971 ex.s. c 242 § 1; 1961 c 268 § 4.]

***Reviser's note:** RCW 28A.150.040 was repealed by 2009 c 548 § 710, effective September 1, 2011.

Findings—Intent—1999 c 261: "The legislature finds that:

(1) The current statutes pertaining to municipal officers' beneficial interest in contracts are quite confusing and have resulted in some inadvertent violations of the law.

(2) The dollar thresholds for many of the exemptions have not been changed in over thirty-five years, and the restrictions apply to the total amount of the contract instead of the portion of the contract that pertains to the business operated by the municipal officer.

(3) The confusion existing over these current statutes discourages some municipalities from accessing some efficiencies available to them.

Therefore, it is the intent of the legislature to clarify the statutes pertaining to municipal officers and contracts and to enact reasonable protections against inappropriate conflicts of interest." [1999 c 261 § 1.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Additional notes found at www.leg.wa.gov

42.23.040 Remote interests. A municipal officer is not interested in a contract, within the meaning of RCW 42.23.030, if the officer has only a remote interest in the contract and the extent of the interest is disclosed to the governing body of the municipality of which the officer is an officer and noted in the official minutes or similar records of the municipality prior to the formation of the contract, and thereafter the governing body authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient

for the purpose without counting the vote or votes of the officer having the remote interest. As used in this section "remote interest" means:

(1) That of a nonsalaried officer of a nonprofit corporation;

(2) That of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary;

(3) That of a landlord or tenant of a contracting party;

(4) That of a holder of less than one percent of the shares of a corporation or cooperative which is a contracting party.

None of the provisions of this section are applicable to any officer interested in a contract, even if the officer's interest is only remote, if the officer influences or attempts to influence any other officer of the municipality of which he or she is an officer to enter into the contract. [1999 c 261 § 3; 1961 c 268 § 5.]

Findings—Intent—1999 c 261: See note following RCW 42.23.030.

42.23.050 Prohibited contracts void—Penalties for violation of chapter. Any contract made in violation of the provisions of this chapter is void and the performance thereof, in full or in part, by a contracting party shall not be the basis of any claim against the municipality. Any officer violating the provisions of this chapter is liable to the municipality of which he or she is an officer for a penalty in the amount of five hundred dollars, in addition to such other civil or criminal liability or penalty as may otherwise be imposed upon the officer by law.

In addition to all other penalties, civil or criminal, the violation by any officer of the provisions of this chapter may be grounds for forfeiture of his or her office. [1999 c 261 § 4; 1961 c 268 § 6.]

Findings—Intent—1999 c 261: See note following RCW 42.23.030.

42.23.060 Local charter controls chapter. If any provision of this chapter conflicts with any provision of a city or county charter, or with any provision of a city-county charter, the charter shall control if it contains stricter requirements than this chapter. The provisions of this chapter shall be considered as minimum standards to be enforced by municipalities. [1999 c 261 § 5; 1961 c 268 § 16.]

Findings—Intent—1999 c 261: See note following RCW 42.23.030.

42.23.070 Prohibited acts. (1) No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.

(2) No municipal officer may, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the employing municipality, for a matter connected with or related to the officer's services as such an officer unless otherwise provided for by law.

(3) No municipal officer may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.

(4) No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the

officer otherwise use such information for his or her personal gain or benefit. [1994 c 154 § 121.]

Additional notes found at www.leg.wa.gov

42.23.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 104.]

Chapter 42.24 RCW

PAYMENT OF CLAIMS FOR EXPENSES, MATERIAL, PURCHASES—ADVANCEMENTS

Sections

42.24.035	Payment for postage, books, and periodicals.
42.24.080	Municipal corporations and political subdivisions—Claims against for contractual purposes—Auditing and payment—Forms—Authentication and certification.
42.24.090	Municipal corporations and political subdivisions—Reimbursement claims by officers and employees.
42.24.100	Municipal corporations and political subdivisions—Certificates need not be sworn—Penalty for false claim.
42.24.110	Municipal corporations and political subdivisions—Approving or paying false claim—Penalties.
42.24.115	Municipal corporations and political subdivisions—Charge cards for officers' and employees' travel expenses.
42.24.120	Advancements for travel expenses—Municipal corporation or political subdivision officers and employees.
42.24.130	Advancements for travel expenses—Revolving fund.
42.24.140	Advancements for travel expenses—Provision to assure repayment.
42.24.150	Advancements for travel expenses—Travel expense voucher.
42.24.160	Advancements for travel expenses—Purpose—Not personal loan.
42.24.170	Expenditures by special purpose districts to recruit job candidates—Reimbursement for travel expenses.
42.24.180	Taxing district—Issuance of warrants or checks before approval by legislative body—Conditions.

County auditor: Chapter 36.22 RCW.

State auditor: Chapter 43.09 RCW.

42.24.035 Payment for postage, books, and periodicals. Notwithstanding the provisions of chapter 42.24 RCW or any other existing statute, school districts and other public agencies including but not limited to state agencies and municipal corporations which are expressly or by necessary implication authorized to subscribe to magazines or other periodical publications or books or to purchase postage or publications from the United States government or any other publisher may make payment of the costs of such purchases in a manner as consistent as possible and practicable with normal and usual business methods, and in the case of subscriptions, for periods not in excess of three years. [1975 1st ex.s. c 72 § 1; 1963 c 116 § 1.]

[Title 42 RCW—page 52]

42.24.080 Municipal corporations and political subdivisions—Claims against for contractual purposes—Auditing and payment—Forms—Authentication and certification. (1) All claims presented against any county, city, district or other municipal corporation or political subdivision by persons furnishing materials, rendering services or performing labor, or for any other contractual purpose, shall be audited, before payment, by an auditing officer elected or appointed pursuant to statute or, in the absence of statute, an appropriate charter provision, ordinance or resolution of the municipal corporation or political subdivision. Such claims shall be prepared for audit and payment on a form and in the manner prescribed by the state auditor. The form shall provide for the authentication and certification by such auditing officer that the materials have been furnished, the services rendered, the labor performed as described, or that any advance payment is due and payable pursuant to a contract or is available as an option for full or partial fulfillment of a contractual obligation, and that the claim is a just, due and unpaid obligation against the municipal corporation or political subdivision. No claim shall be paid without such authentication and certification.

(2) Certification as to claims of officers and employees of a county, city, district or other municipal corporation or political subdivision, for services rendered, shall be made by the person charged with preparing and submitting vouchers for payment of services. He or she shall certify that the claim is just, true and unpaid, and that certification shall be part of the voucher. [2008 c 198 § 6; 1995 c 301 § 72; 1965 c 116 § 1.]

Finding—2008 c 198: See note following RCW 39.34.030.

42.24.090 Municipal corporations and political subdivisions—Reimbursement claims by officers and employees. No claim for reimbursement of any expenditures by officers or employees of any municipal corporation or political subdivision of the state for transportation, lodging, meals or any other purpose shall be allowed by any officer, employee or board charged with auditing accounts unless the same shall be presented in a detailed account: PROVIDED, That, unless otherwise authorized by law, the legislative body of any municipal corporation or political subdivision of the state may prescribe by ordinance or resolution the amounts to be paid officers or employees thereof as reimbursement for the use of their personal automobiles or other transportation equipment in connection with officially assigned duties and other travel for approved public purposes, or as reimbursement to such officers or employees in lieu of actual expenses incurred for lodging, meals or other purposes. The rates for such reimbursements may be computed on a mileage, hourly, per diem, monthly, or other basis as the respective legislative bodies shall determine to be proper in each instance: PROVIDED, That in lieu of such reimbursements, payments for the use of personal automobiles for official travel may be established if the legislative body determines that these payments would be less costly to the municipal corporation or political subdivision of the state than providing automobiles for official travel.

All claims authorized under this section shall be duly certified by the officer or employee submitting such claims

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on forms and in the manner prescribed by the state auditor. [1995 c 301 § 73; 1981 c 56 § 1; 1965 c 116 § 2.]

42.24.100 Municipal corporations and political subdivisions—Certificates need not be sworn—Penalty for false claim. The certificates required by RCW 42.24.080 through 42.24.110 need not be sworn, but any person certifying a claim or making a claim knowing the same to be false or untrue shall be guilty of perjury in the second degree. [1965 c 116 § 3.]

42.24.110 Municipal corporations and political subdivisions—Approving or paying false claim—Penalties. Any person who knowingly approves or pays or causes to be approved or paid a false or untrue claim shall be guilty of a gross misdemeanor and, in addition, he or she shall be civilly liable on his or her bond to the municipal corporation or political subdivision, as the case may be, for the amount so paid or for three hundred dollars whichever is the greater. [2012 c 117 § 118; 1965 c 116 § 4.]

42.24.115 Municipal corporations and political subdivisions—Charge cards for officers' and employees' travel expenses. (1) Any municipal corporation or political subdivision may provide for the issuance of charge cards to officers and employees for the purpose of covering expenses incident to authorized travel.

(2) If a charge card is issued for the purpose of covering expenses relating to authorized travel, upon billing or no later than thirty days of the billing date, the officer or employee using a charge card issued under this section shall submit a fully itemized travel expense voucher. Any charges against the charge card not properly identified on the travel expense voucher or not allowed following the audit required under RCW 42.24.080 shall be paid by the official or employee by check, United States currency, or salary deduction.

(3) If, for any reason, disallowed charges are not repaid before the charge card billing is due and payable, the municipal corporation or political subdivision shall have a prior lien against and a right to withhold any and all funds payable or to become payable to the official or employee up to an amount of the disallowed charges and interest at the same rate as charged by the company which issued the charge card. Any official or employee who has been issued a charge card by a municipal corporation or political subdivision shall not use the card if any disallowed charges are outstanding and shall surrender the card upon demand of the auditing officer. The municipal corporation or political subdivision shall have unlimited authority to revoke use of any charge card issued under this section, and, upon such revocation order being delivered to the charge card company, shall not be liable for any costs. [1995 c 30 § 3; 1984 c 203 § 5.]

Findings—1995 c 30: See note following RCW 43.09.2855.

Additional notes found at www.leg.wa.gov

42.24.120 Advancements for travel expenses—Municipal corporation or political subdivision officers and employees. Whenever it becomes necessary for an elected or appointed official or employee of the municipal corporation or political subdivision to travel and incur expenses, the legislative body of such municipal corporation

or political subdivision may provide, in the manner that local legislation is officially enacted, reasonable allowances to such officers and employees in advance of expenditure. Such advance shall be made under appropriate rules and regulations to be prescribed by the state auditor. [1969 c 74 § 1.]

42.24.130 Advancements for travel expenses—Revolving fund. The legislative body of a municipal corporation or political subdivision wishing to make advance payments of travel expenses to officials and employees, as provided in RCW 42.24.120 through 42.24.160, will establish, in the manner that local legislation is officially enacted, a revolving fund to be used solely for the purpose of making advance payments of travel expenses. The revolving fund will be maintained in a bank as a checking account and advances to officials or employees will be by check. The fund will be replenished by warrant. [1969 c 74 § 2.]

42.24.140 Advancements for travel expenses—Provision to assure repayment. To protect the municipal corporation or political subdivision from any losses on account of advances made as provided in RCW 42.24.120 through 42.24.160, the municipal corporation or political subdivision shall have a prior lien against and a right to withhold any and all funds payable or to become payable by the municipal corporation or political subdivision to such officer or employee to whom such advance has been given, as provided in RCW 42.24.120 through 42.24.160, up to the amount of such advance and interest at the rate of ten percent per annum, until such time as repayment or justification has been made. No advance of any kind may be made to any officer or employee under RCW 42.24.120 through 42.24.160, at any time when he or she is delinquent in accounting for or repaying a prior advance under RCW 42.24.120 through 42.24.160. [2012 c 117 § 119; 1969 c 74 § 3.]

42.24.150 Advancements for travel expenses—Travel expense voucher. On or before the fifteenth day following the close of the authorized travel period for which expenses have been advanced to any officer or employee, he or she shall submit to the appropriate official a fully itemized travel expense voucher, for all reimbursable items legally expended, accompanied by the unexpended portion of such advance, if any.

Any advance made for this purpose, or any portion thereof, not repaid or accounted for in the time and manner specified herein, shall bear interest at the rate of ten percent per annum from the date of default until paid. [2012 c 117 § 120; 1995 c 194 § 9; 1969 c 74 § 4.]

42.24.160 Advancements for travel expenses—Purpose—Not personal loan. An advance made under RCW 42.24.120 through 42.24.160 shall be considered as having been made to such officer or employee to be expended by him or her as an agent of the municipal corporation or political subdivision for the municipal corporation's or political subdivision's purposes only, and specifically to defray necessary costs while performing his or her official duties.

No such advance shall be considered as a personal loan to such officer or employee and any expenditure thereof, other than for official business purposes, shall be considered

a misappropriation of public funds. [2012 c 117 § 121; 1969 c 74 § 5.]

42.24.170 Expenditures by special purpose districts to recruit job candidates—Reimbursement for travel expenses. Special purpose districts may expend funds to recruit job candidates and reimburse candidates for reasonable and necessary travel expenses, including transportation, subsistence, and lodging. [1981 c 190 § 1.]

42.24.180 *Taxing district—Issuance of warrants or checks before approval by legislative body—Conditions. In order to expedite the payment of claims, the legislative body of any *taxing district, as defined in RCW 43.09.260, may authorize the issuance of warrants or checks in payment of claims after the provisions of this chapter have been met and after the officer designated by statute, or, in the absence of statute, an appropriate charter provision, ordinance, or resolution of the *taxing district, has signed the checks or warrants, but before the legislative body has acted to approve the claims. The legislative body may stipulate that certain kinds or amounts of claims shall not be paid before the board has reviewed the supporting documentation and approved the issue of checks or warrants in payment of those claims. However, all of the following conditions shall be met before the payment:

(1) The auditing officer and the officer designated to sign the checks or warrants shall each be required to furnish an official bond for the faithful discharge of his or her duties in an amount determined by the legislative body but not less than fifty thousand dollars;

(2) The legislative body shall adopt contracting, hiring, purchasing, and disbursing policies that implement effective internal control;

(3) The legislative body shall provide for its review of the documentation supporting claims paid and for its approval of all checks or warrants issued in payment of claims at its next regularly scheduled public meeting or, for cities and towns, at a regularly scheduled public meeting within one month of issuance; and

(4) The legislative body shall require that if, upon review, it disapproves some claims, the auditing officer and the officer designated to sign the checks or warrants shall jointly cause the disapproved claims to be recognized as receivables of the *taxing district and to pursue collection diligently until the amounts disapproved are collected or until the legislative body is satisfied and approves the claims. [1994 c 273 § 18; 1984 c 128 § 11.]

*Reviser's note: "Taxing district" redesignated "local government" by 1995 c 301 § 15.

Chapter 42.26 RCW

AGENCY VENDOR PAYMENT REVOLVING FUND—PETTY CASH ACCOUNTS

Sections

42.26.020	Disbursements—Deposits to cover.
42.26.030	Regulations.
42.26.040	Petty cash accounts—Authorized—Advancements.
42.26.050	Request for petty cash advancement—Approval.
42.26.060	Restrictions on use of petty cash account—Expenditures—Reimbursement.
42.26.070	Custodian of petty cash account—Bond.

42.26.080	Violation of petty cash account requirements.
42.26.090	Regulations for petty cash and accounts.
42.26.900	Effective date—1969 ex.s. c 60.

42.26.020 Disbursements—Deposits to cover. The amount to be disbursed from the vendor payment revolving fund on behalf of an agency electing to utilize such fund shall be deposited therein by the agency on or before the day prior to scheduled disbursement. The deposit shall be made from funds held by the agency outside the state treasury pursuant to law and which are properly chargeable for the disbursement. Disbursements from the revolving fund created by this chapter shall be by warrant in accordance with the provisions of RCW 43.88.160. [1969 ex.s. c 60 § 2.]

42.26.030 Regulations. The director of financial management shall adopt such regulations as may be necessary or desirable to implement the provisions of this chapter relating to the establishment of an agency vendor payment revolving fund. [1979 c 151 § 74; 1969 ex.s. c 60 § 3.]

42.26.040 Petty cash accounts—Authorized—Advancements. The state treasurer is authorized to advance moneys from treasury funds to state agencies for the purpose of establishing petty cash accounts. Any agency may petition the office of financial management for the establishment of a petty cash account. The maximum amount of such accounts shall be based on the special needs of the petitioning agency and shall be subject to approval by the office of financial management. The amount so advanced shall be reflected in the state treasurer's accounts as an amount due from the agency to the fund or account from which the advance was made. [1979 c 151 § 75; 1977 c 40 § 1; 1969 ex.s. c 60 § 4.]

42.26.050 Request for petty cash advancement—Approval. The agency requesting a petty cash account or an increase in the amount of petty cash advanced under the provisions of this chapter shall submit its request to the director of financial management in the form and detail prescribed by him or her. The agency's written request and the approval authorized by this chapter shall be the only documentation or certification required as a condition precedent to the issuance of such warrant. A copy of his or her approval shall be forwarded by the director of financial management to the state treasurer. [2012 c 117 § 122; 1979 c 151 § 76; 1969 ex.s. c 60 § 5.]

42.26.060 Restrictions on use of petty cash account—Expenditures—Reimbursement. The use of the petty cash account shall be restricted to miscellaneous petty or emergency expenditures, refunds legally payable by an agency, and for cash change to be used in the transaction of the agency's official business. All expenditures made from petty cash shall be charged to an existing appropriation for such purpose, except expenditures chargeable against funds for which no appropriation is required by law. All expenditures or refunds made from petty cash shall be reimbursed out of and charged to the proper appropriation or fund at the close of each month and such other times as may be necessary. [1969 ex.s. c 60 § 6.]

42.26.070 Custodian of petty cash account—Bond.

The head of the agency or an employee designated by him or her shall have full responsibility as custodian for the petty cash account and its proper use under this chapter and applicable regulations of the director of financial management. The custodian of the petty cash account shall be covered by a surety bond in the full amount of the account at all times and all advances to it, conditioned upon the proper accounting for and legal expenditure of all such funds, in addition to other conditions required by law. [2012 c 117 § 123; 1979 c 151 § 77; 1969 ex.s. c 60 § 7.]

42.26.080 Violation of petty cash account requirements. If a post audit by the state auditor discloses the amount of the petty cash account of any agency under this chapter to be excessive or the use of the account to be in violation of requirements governing its operation, the director of financial management may require the return of the account or of the excessive amount to the state treasury for credit to the fund from which the advance was made. [1979 c 151 § 78; 1969 ex.s. c 60 § 8.]

42.26.090 Regulations for petty cash and accounts.

The director of financial management shall adopt such regulations as may be necessary or desirable to implement the provisions of this chapter. Such regulation shall include but not be limited to, (1) defining limitations on the use of petty cash, and (2) providing accounting and reporting procedures for operation of the petty cash account. [1979 c 151 § 79; 1969 ex.s. c 60 § 9.]

42.26.900 Effective date—1969 ex.s. c 60. This chapter shall take effect July 1, 1969. [1969 ex.s. c 60 § 12.]

Chapter 42.30 RCW OPEN PUBLIC MEETINGS ACT

Sections

42.30.010	Legislative declaration.
42.30.020	Definitions.
42.30.030	Meetings declared open and public.
42.30.040	Conditions to attendance not to be required.
42.30.050	Interruptions—Procedure.
42.30.060	Ordinances, rules, resolutions, regulations, etc., adopted at public meetings—Notice—Secret voting prohibited.
42.30.070	Times and places for meetings—Emergencies—Exception.
42.30.075	Schedule of regular meetings—Publication in state register—Notice of change—"Regular" meetings defined.
42.30.077	Agendas of regular meetings—Online availability.
42.30.080	Special meetings.
42.30.090	Adjournments.
42.30.100	Continuances.
42.30.110	Executive sessions.
42.30.120	Violations—Personal liability—Civil penalty—Attorneys' fees and costs.
42.30.130	Violations—Mandamus or injunction.
42.30.140	Chapter controlling—Application.
42.30.200	Governing body of recognized student association at college or university—Chapter applicability to.
42.30.205	Training.
42.30.210	Assistance by attorney general.
42.30.900	Short title.
42.30.910	Construction—1971 ex.s. c 250.
42.30.920	Severability—1971 ex.s. c 250.

Drug reimbursement policy recommendations: RCW 74.09.653.

42.30.010 Legislative declaration. The legislature finds and declares that all public commissions, boards, coun-

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cils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. [1971 ex.s. c 250 § 1.]

Reviser's note: Throughout this chapter, the phrases "this act" and "this 1971 amendatory act" have been changed to "this chapter." "This act" [1971 ex.s. c 250] consists of this chapter, the amendment to RCW 34.04.025, and the repeal of RCW 42.32.010 and 42.32.020.

42.30.020 Definitions. As used in this chapter unless the context indicates otherwise:

(1) "Public agency" means:

(a) Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the legislature;

(b) Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state of Washington;

(c) Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies;

(d) Any policy group whose membership includes representatives of publicly owned utilities formed by or pursuant to the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency.

(2) "Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.

(3) "Action" means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. "Final action" means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.

(4) "Meeting" means meetings at which action is taken. [1985 c 366 § 1; 1983 c 155 § 1; 1982 1st ex.s. c 43 § 10; 1971 ex.s. c 250 § 2.]

Additional notes found at www.leg.wa.gov

42.30.030 Meetings declared open and public. All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter. [1971 ex.s. c 250 § 3.]

42.30.040 Conditions to attendance not to be required. A member of the public shall not be required, as a

condition to attendance at a meeting of a governing body, to register his or her name and other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance. [2012 c 117 § 124; 1971 ex.s. c 250 § 4.]

42.30.050 Interruptions—Procedure. In the event that any meeting is interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are interrupting the meeting, the members of the governing body conducting the meeting may order the meeting room cleared and continue in session or may adjourn the meeting and reconvene at another location selected by majority vote of the members. In such a session, final disposition may be taken only on matters appearing on the agenda. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the governing body from establishing a procedure for readmitting an individual or individuals not responsible for disturbing the orderly conduct of the meeting. [1971 ex.s. c 250 § 5.]

42.30.060 Ordinances, rules, resolutions, regulations, etc., adopted at public meetings—Notice—Secret voting prohibited. (1) No governing body of a public agency shall adopt any ordinance, resolution, rule, regulation, order, or directive, except in a meeting open to the public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of which notice has been given according to the provisions of this chapter. Any action taken at meetings failing to comply with the provisions of this subsection shall be null and void.

(2) No governing body of a public agency at any meeting required to be open to the public shall vote by secret ballot. Any vote taken in violation of this subsection shall be null and void, and shall be considered an "action" under this chapter. [1989 c 42 § 1; 1971 ex.s. c 250 § 6.]

42.30.070 Times and places for meetings—Emergencies—Exception. The governing body of a public agency shall provide the time for holding regular meetings by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body. Unless otherwise provided for in the act under which the public agency was formed, meetings of the governing body need not be held within the boundaries of the territory over which the public agency exercises jurisdiction. If at any time any regular meeting falls on a holiday, such regular meeting shall be held on the next business day. If, by reason of fire, flood, earthquake, or other emergency, there is a need for expedited action by a governing body to meet the emergency, the presiding officer of the governing body may provide for a meeting site other than the regular meeting site and the notice requirements of this chapter shall be suspended during such emergency. It shall not be a violation of the requirements of this chapter for a majority of the members of a governing body to travel together or gather for purposes other than a regular meeting or a special meeting as these terms are used in this chapter:

PROVIDED, That they take no action as defined in this chapter. [1983 c 155 § 2; 1973 c 66 § 1; 1971 ex.s. c 250 § 7.]

42.30.075 Schedule of regular meetings—Publication in state register—Notice of change—"Regular" meetings defined. State agencies which hold regular meetings shall file with the code reviser a schedule of the time and place of such meetings on or before January of each year for publication in the Washington state register. Notice of any change from such meeting schedule shall be published in the state register for distribution at least twenty days prior to the rescheduled meeting date.

For the purposes of this section "regular" meetings shall mean recurring meetings held in accordance with a periodic schedule declared by statute or rule. [1977 ex.s. c 240 § 12.]

Public meeting notices in state register: RCW 34.08.020.

Additional notes found at www.leg.wa.gov

42.30.077 Agendas of regular meetings—Online availability. Public agencies with governing bodies must make the agenda of each regular meeting of the governing body available online no later than twenty-four hours in advance of the published start time of the meeting. An agency subject to provisions of this section is not required to post an agenda if it does not have a web site or if it employs fewer than ten full-time equivalent employees. Nothing in this section prohibits subsequent modifications to agendas nor invalidates any otherwise legal action taken at a meeting where the agenda was not posted in accordance with this section. Nothing in this section modifies notice requirements or shall be construed as establishing that a public body or agency's online posting of an agenda as required by this section is sufficient notice to satisfy public notice requirements established under other laws. Failure to post an agenda in accordance with this section shall not provide a basis for awarding attorney fees under RCW 42.30.120 or commencing an action for mandamus or injunction under RCW 42.30.130. [2014 c 61 § 2.]

Intent—Finding—2014 c 61: "The legislature intends to promote transparency in government and strengthen the Washington's open public meetings act. The legislature finds that it is in the best interest of citizens for public agencies with governing bodies to post meeting agendas on web sites before meetings. Full public review and inspection of meeting agendas will promote a greater exchange of information so the public can provide meaningful input related to government decisions." [2014 c 61 § 1.]

42.30.080 Special meetings. (1) A special meeting may be called at any time by the presiding officer of the governing body of a public agency or by a majority of the members of the governing body by delivering written notice personally, by mail, by fax, or by electronic mail to each member of the governing body. Written notice shall be deemed waived in the following circumstances:

(a) A member submits a written waiver of notice with the clerk or secretary of the governing body at or prior to the time the meeting convenes. A written waiver may be given by telegram, fax, or electronic mail; or

(b) A member is actually present at the time the meeting convenes.

(2) Notice of a special meeting called under subsection (1) of this section shall be:

(a) Delivered to each local newspaper of general circulation and local radio or television station that has on file with the governing body a written request to be notified of such special meeting or of all special meetings;

(b) Posted on the agency's web site. An agency is not required to post a special meeting notice on its web site if it (i) does not have a web site; (ii) employs fewer than ten full-time equivalent employees; or (iii) does not employ personnel whose duty, as defined by a job description or existing contract, is to maintain or update the web site; and

(c) Prominently displayed at the main entrance of the agency's principal location and the meeting site if it is not held at the agency's principal location.

Such notice must be delivered or posted, as applicable, at least twenty-four hours before the time of such meeting as specified in the notice.

(3) The call and notices required under subsections (1) and (2) of this section shall specify the time and place of the special meeting and the business to be transacted. Final disposition shall not be taken on any other matter at such meetings by the governing body.

(4) The notices provided in this section may be dispensed with in the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage. [2012 c 188 § 1; 2005 c 273 § 1; 1971 ex.s. c 250 § 8.]

42.30.090 Adjournments. The governing body of a public agency may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the governing body may declare the meeting adjourned to a stated time and place. He or she shall cause a written notice of the adjournment to be given in the same manner as provided in RCW 42.30.080 for special meetings, unless such notice is waived as provided for special meetings. Whenever any meeting is adjourned a copy of the order or notice of adjournment shall be conspicuously posted immediately after the time of the adjournment on or near the door of the place where the regular, adjourned regular, special, or adjourned special meeting was held. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule. [2012 c 117 § 125; 1971 ex.s. c 250 § 9.]

42.30.100 Continuances. Any hearing being held, noticed, or ordered to be held by a governing body at any meeting may by order or notice of continuance be continued or reconvened to any subsequent meeting of the governing body in the same manner and to the same extent set forth in RCW 42.30.090 for the adjournment of meetings. [1971 ex.s. c 250 § 10.]

(2014 Ed.)

42.30.110 Executive sessions. (1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting:

(a) To consider matters affecting national security;

(b) To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;

(c) To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;

(d) To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;

(e) To consider, in the case of an export trading company, financial and commercial information supplied by private persons to the export trading company;

(f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;

(g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public;

(h) To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;

(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) concerning:

(i) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;

(ii) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or

(iii) Litigation or legal risks of a proposed action or current practice that the agency has identified when public dis-

cussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency;

(j) To consider, in the case of the state library commission or its advisory bodies, western library network prices, products, equipment, and services, when such discussion would be likely to adversely affect the network's ability to conduct business in a competitive economic climate. However, final action on these matters shall be taken in a meeting open to the public;

(k) To consider, in the case of the state investment board, financial and commercial information when the information relates to the investment of public trust or retirement funds and when public knowledge regarding the discussion would result in loss to such funds or in private loss to the providers of this information;

(l) To consider proprietary or confidential nonpublished information related to the development, acquisition, or implementation of state purchased health care services as provided in RCW 41.05.026;

(m) To consider in the case of the life sciences discovery fund authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information;

(n) To consider in the case of a health sciences and services authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information.

(2) Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer. [2014 c 174 § 4; 2011 1st sp.s. c 14 § 14; 2010 1st sp.s. c 33 § 5; 2005 c 424 § 13; 2003 c 277 § 1; 2001 c 216 § 1; 1989 c 238 § 2; 1987 c 389 § 3; 1986 c 276 § 8; 1985 c 366 § 2; 1983 c 155 § 3; 1979 c 42 § 1; 1973 c 66 § 2; 1971 ex.s. c 250 § 11.]

Intent—2014 c 174: See note following RCW 43.333.011.

Captions not law—Liberal construction—Severability—Effective dates—2005 c 424: See RCW 43.350.900 through 43.350.903.

Additional notes found at www.leg.wa.gov

42.30.120 Violations—Personal liability—Civil penalty—Attorneys' fees and costs. (1) Each member of the governing body who attends a meeting of such governing body where action is taken in violation of any provision of this chapter applicable to him or her, with knowledge of the fact that the meeting is in violation thereof, shall be subject to personal liability in the form of a civil penalty in the amount of one hundred dollars. The civil penalty shall be assessed by a judge of the superior court and an action to enforce this penalty may be brought by any person. A violation of this chapter does not constitute a crime and assessment of the civil penalty by a judge shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

(2) Any person who prevails against a public agency in any action in the courts for a violation of this chapter shall be awarded all costs, including reasonable attorneys' fees, incurred in connection with such legal action. Pursuant to

RCW 4.84.185, any public agency who prevails in any action in the courts for a violation of this chapter may be awarded reasonable expenses and attorney fees upon final judgment and written findings by the trial judge that the action was frivolous and advanced without reasonable cause. [2012 c 117 § 126; 1985 c 69 § 1; 1973 c 66 § 3; 1971 ex.s. c 250 § 12.]

42.30.130 Violations—Mandamus or injunction.

Any person may commence an action either by mandamus or injunction for the purpose of stopping violations or preventing threatened violations of this chapter by members of a governing body. [1971 ex.s. c 250 § 13.]

42.30.140 Chapter controlling—Application. If any provision of this chapter conflicts with the provisions of any other statute, the provisions of this chapter shall control: PROVIDED, That this chapter shall not apply to:

(1) The proceedings concerned with the formal issuance of an order granting, suspending, revoking, or denying any license, permit, or certificate to engage in any business, occupation, or profession or to any disciplinary proceedings involving a member of such business, occupation, or profession, or to receive a license for a sports activity or to operate any mechanical device or motor vehicle where a license or registration is necessary; or

(2) That portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties as distinguished from a matter having general effect on the public or on a class or group; or

(3) Matters governed by chapter 34.05 RCW, the Administrative Procedure Act; or

(4)(a) Collective bargaining sessions with employee organizations, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement; or (b) that portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by the governing body during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress. [1990 c 98 § 1; 1989 c 175 § 94; 1973 c 66 § 4; 1971 ex.s. c 250 § 14.]

Drug reimbursement policy recommendations: RCW 74.09.653.

Mediation testimony competency: RCW 5.60.070 and 5.60.072.

Additional notes found at www.leg.wa.gov

42.30.200 Governing body of recognized student association at college or university—Chapter applicability to. The multimember student board which is the governing body of the recognized student association at a given campus of a public institution of higher education is hereby declared to be subject to the provisions of the open public meetings act as contained in this chapter, as now or hereafter amended. For the purposes of this section, "recognized student association" shall mean any body at any of the state's colleges and universities which selects officers through a process approved by the student body and which represents the interests of students. Any such body so selected shall be recognized by and registered with the respective boards of trustees and regents of the state's colleges and universities: PROVIDED, That there be no more than one such association rep-

representing undergraduate students, no more than one such association representing graduate students, and no more than one such association representing each group of professional students so recognized and registered at any of the state's colleges or universities. [1980 c 49 § 1.]

42.30.205 Training. (1) Every member of the governing body of a public agency must complete training on the requirements of this chapter no later than ninety days after the date the member either:

(a) Takes the oath of office, if the member is required to take an oath of office to assume his or her duties as a public official; or

(b) Otherwise assumes his or her duties as a public official.

(2) In addition to the training required under subsection (1) of this section, every member of the governing body of a public agency must complete training at intervals of no more than four years as long as the individual is a member of the governing body or public agency.

(3) Training may be completed remotely with technology including but not limited to internet-based training. [2014 c 66 § 2.]

Findings—Short title—Effective date—2014 c 66: See notes following RCW 42.56.150.

42.30.210 Assistance by attorney general. The attorney general's office may provide information, technical assistance, and training on the provisions of this chapter. [2001 c 216 § 2.]

42.30.900 Short title. This chapter may be cited as the "Open Public Meetings Act of 1971". [1971 ex.s. c 250 § 16.]

42.30.910 Construction—1971 ex.s. c 250. The purposes of this chapter are hereby declared remedial and shall be liberally construed. [1971 ex.s. c 250 § 18.]

42.30.920 Severability—1971 ex.s. c 250. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 250 § 19.]

Chapter 42.32 RCW MEETINGS

Sections

42.32.030 Minutes.

Drug reimbursement policy recommendations: RCW 74.09.653.

Open Public Meetings Act: Chapter 42.30 RCW.

42.32.030 Minutes. The minutes of all regular and special meetings except executive sessions of such boards, commissions, agencies or authorities shall be promptly recorded and such records shall be open to public inspection. [1953 c 216 § 3.]

Reviser's note: RCW 42.32.010 and 42.32.020 were repealed by 1971 ex.s. c 250 § 15; later enactment, see chapter 42.30 RCW.

(2014 Ed.)

Chapter 42.36 RCW APPEARANCE OF FAIRNESS DOCTRINE—LIMITATIONS

Sections

42.36.010	Local land use decisions.
42.36.020	Members of local decision-making bodies.
42.36.030	Legislative action of local executive or legislative officials.
42.36.040	Public discussion by candidate for public office.
42.36.050	Campaign contributions.
42.36.060	Quasi-judicial proceedings—Ex parte communications prohibited, exceptions.
42.36.070	Quasi-judicial proceedings—Prior advisory proceedings.
42.36.080	Disqualification based on doctrine—Time limitation for raising challenge.
42.36.090	Participation of challenged member of decision-making body.
42.36.100	Judicial restriction of doctrine not prohibited—Construction of chapter.
42.36.110	Right to fair hearing not impaired.
42.36.900	Severability—1982 c 229.

42.36.010 Local land use decisions. Application of the appearance of fairness doctrine to local land use decisions shall be limited to the quasi-judicial actions of local decision-making bodies as defined in this section. Quasi-judicial actions of local decision-making bodies are those actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding. Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents or the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance. [1982 c 229 § 1.]

42.36.020 Members of local decision-making bodies. No member of a local decision-making body may be disqualified by the appearance of fairness doctrine for conducting the business of his or her office with any constituent on any matter other than a quasi-judicial action then pending before the local legislative body. [1982 c 229 § 2.]

42.36.030 Legislative action of local executive or legislative officials. No legislative action taken by a local legislative body, its members, or local executive officials shall be invalidated by an application of the appearance of fairness doctrine. [1982 c 229 § 3.]

42.36.040 Public discussion by candidate for public office. Prior to declaring as a candidate for public office or while campaigning for public office as defined by RCW 42.17A.005 no public discussion or expression of an opinion by a person subsequently elected to a public office, on any pending or proposed quasi-judicial actions, shall be a violation of the appearance of fairness doctrine. [2011 c 60 § 27; 1982 c 229 § 4.]

Effective date—2011 c 60: See RCW 42.17A.919.

42.36.050 Campaign contributions. A candidate for public office who complies with all provisions of applicable public disclosure and ethics laws shall not be limited from accepting campaign contributions to finance the campaign, including outstanding debts; nor shall it be a violation of the

appearance of fairness doctrine to accept such campaign contributions. [1982 c 229 § 5.]

Public disclosure of campaign finances: Chapter 42.17A RCW.

42.36.060 Quasi-judicial proceedings—Ex parte communications prohibited, exceptions. During the pendency of any quasi-judicial proceeding, no member of a decision-making body may engage in ex parte communications with opponents or proponents with respect to the proposal which is the subject of the proceeding unless that person:

(1) Places on the record the substance of any written or oral ex parte communications concerning the decision of action; and

(2) Provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where action is considered or taken on the subject to which the communication related. This prohibition does not preclude a member of a decision-making body from seeking in a public hearing specific information or data from such parties relative to the decision if both the request and the results are a part of the record. Nor does such prohibition preclude correspondence between a citizen and his or her elected official if any such correspondence is made a part of the record when it pertains to the subject matter of a quasi-judicial proceeding. [1984 c 191 § 1; 1982 c 229 § 6.]

42.36.070 Quasi-judicial proceedings—Prior advisory proceedings. Participation by a member of a decision-making body in earlier proceedings that result in an advisory recommendation to a decision-making body shall not disqualify that person from participating in any subsequent quasi-judicial proceeding. [1982 c 229 § 7.]

42.36.080 Disqualification based on doctrine—Time limitation for raising challenge. Anyone seeking to rely on the appearance of fairness doctrine to disqualify a member of a decision-making body from participating in a decision must raise the challenge as soon as the basis for disqualification is made known to the individual. Where the basis is known or should reasonably have been known prior to the issuance of a decision and is not raised, it may not be relied on to invalidate the decision. [1982 c 229 § 8.]

42.36.090 Participation of challenged member of decision-making body. In the event of a challenge to a member or members of a decision-making body which would cause a lack of a quorum or would result in a failure to obtain a majority vote as required by law, any such challenged member(s) shall be permitted to fully participate in the proceeding and vote as though the challenge had not occurred, if the member or members publicly disclose the basis for disqualification prior to rendering a decision. Such participation shall not subject the decision to a challenge by reason of violation of the appearance of fairness doctrine. [1982 c 229 § 9.]

42.36.100 Judicial restriction of doctrine not prohibited—Construction of chapter. Nothing in this chapter prohibits the restriction or elimination of the appearance of fairness doctrine by the appellate courts. Nothing in this chapter

may be construed to expand the appearance of fairness doctrine. [1982 c 229 § 10.]

42.36.110 Right to fair hearing not impaired. Nothing in this chapter prohibits challenges to local land use decisions where actual violations of an individual's right to a fair hearing can be demonstrated. [1982 c 229 § 11.]

42.36.900 Severability—1982 c 229. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 229 § 12.]

Chapter 42.40 RCW STATE EMPLOYEE WHISTLEBLOWER PROTECTION

Sections

42.40.010	Policy.
42.40.020	Definitions.
42.40.030	Right to disclose improper governmental actions—Interference prohibited.
42.40.035	Duty of correctness—Penalties for false information.
42.40.040	Report of improper governmental action—Investigations and reports by auditor, agency.
42.40.050	Retaliatory action against whistleblower—Remedies.
42.40.070	Summary of chapter available to employees.
42.40.080	Contracting for assistance.
42.40.090	Administrative costs.
42.40.100	Assertions against auditor.
42.40.110	Performance audit.
42.40.900	Severability—1982 c 208.
42.40.901	Severability—2008 c 266.
42.40.910	Application of chapter.

42.40.010 Policy. It is the policy of the legislature that employees should be encouraged to disclose, to the extent not expressly prohibited by law, improper governmental actions, and it is the intent of the legislature to protect the rights of state employees making these disclosures. It is also the policy of the legislature that employees should be encouraged to identify rules warranting review or provide information to the rules review committee, and it is the intent of the legislature to protect the rights of these employees. [1995 c 403 § 508; 1982 c 208 § 1.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Additional notes found at www.leg.wa.gov

42.40.020 Definitions. As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "Auditor" means the office of the state auditor.

(2) "Employee" means any individual employed or holding office in any department or agency of state government.

(3) "Good faith" means the individual providing the information or report of improper governmental activity has a reasonable basis in fact for reporting or providing the information. An individual who knowingly provides or reports, or who reasonably ought to know he or she is providing or reporting, malicious, false, or frivolous information, or information that is provided with reckless disregard for the truth, or who knowingly omits relevant information is not acting in good faith.

(4) "Gross mismanagement" means the exercise of management responsibilities in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.

(5) "Gross waste of funds" means to spend or use funds or to allow funds to be used without valuable result in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.

(6)(a) "Improper governmental action" means any action by an employee undertaken in the performance of the employee's official duties:

(i) Which is a gross waste of public funds or resources as defined in this section;

(ii) Which is in violation of federal or state law or rule, if the violation is not merely technical or of a minimum nature;

(iii) Which is of substantial and specific danger to the public health or safety;

(iv) Which is gross mismanagement; or

(v) Which prevents the dissemination of scientific opinion or alters technical findings without scientifically valid justification, unless state law or a common law privilege prohibits disclosure. This provision is not meant to preclude the discretion of agency management to adopt a particular scientific opinion or technical finding from among differing opinions or technical findings to the exclusion of other scientific opinions or technical findings. Nothing in this subsection prevents or impairs a state agency's or public official's ability to manage its public resources or its employees in the performance of their official job duties. This subsection does not apply to de minimis, technical disagreements that are not relevant for otherwise improper governmental activity. Nothing in this provision requires the auditor to contract or consult with external experts regarding the scientific validity, invalidity, or justification of a finding or opinion.

(b) "Improper governmental action" does not include personnel actions, for which other remedies exist, including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of the state civil service law, alleged labor agreement violations, reprimands, claims of discriminatory treatment, or any action which may be taken under chapter 41.06 RCW, or other disciplinary action except as provided in RCW 42.40.030.

(7) "Public official" means the attorney general's designee or designees; the director, or equivalent thereof in the agency where the employee works; an appropriate number of individuals designated to receive whistleblower reports by the head of each agency; or the executive ethics board.

(8) "Substantial and specific danger" means a risk of serious injury, illness, peril, or loss, to which the exposure of the public is a gross deviation from the standard of care or competence which a reasonable person would observe in the same situation.

(9) "Use of official authority or influence" includes threatening, taking, directing others to take, recommending, processing, or approving any personnel action such as an appointment, promotion, transfer, assignment including but not limited to duties and office location, reassignment, reinstatement, restoration, reemployment, performance evaluation,

determining any material changes in pay, provision of training or benefits, tolerance of a hostile work environment, or any adverse action under chapter 41.06 RCW, or other disciplinary action.

(10)(a) "Whistleblower" means:

(i) An employee who in good faith reports alleged improper governmental action to the auditor or other public official, as defined in subsection (7) of this section, initiating an investigation by the auditor under RCW 42.40.040; or

(ii) An employee who is perceived by the employer as reporting, whether they did or not, alleged improper governmental action to the auditor or other public official, as defined in subsection (7) of this section, initiating an investigation by the auditor under RCW 42.40.040.

(b) For purposes of the provisions of this chapter and chapter 49.60 RCW relating to reprisals and retaliatory action, the term "whistleblower" also means:

(i) An employee who in good faith provides information to the auditor or other public official, as defined in subsection (7) of this section, in connection with an investigation under RCW 42.40.040 and an employee who is believed to have reported asserted improper governmental action to the auditor or other public official, as defined in subsection (7) of this section, or to have provided information to the auditor or other public official, as defined in subsection (7) of this section, in connection with an investigation under RCW 42.40.040 but who, in fact, has not reported such action or provided such information; or

(ii) An employee who in good faith identifies rules warranting review or provides information to the rules review committee, and an employee who is believed to have identified rules warranting review or provided information to the rules review committee but who, in fact, has not done so. [2008 c 266 § 2; 1999 c 361 § 1; 1995 c 403 § 509; 1992 c 118 § 1; 1989 c 284 § 1; 1982 c 208 § 2.]

Findings—Intent—2008 c 266: "The legislature finds and declares that government exists to conduct the people's business, and the people remaining informed about the actions of government contributes to the oversight of how the people's business is conducted. The legislature further finds that many public servants who expose actions of their government that are contrary to the law or public interest face the potential loss of their careers and livelihoods.

It is the policy of the legislature that employees should be encouraged to disclose, to the extent not expressly prohibited by law, improper governmental actions, and it is the intent of the legislature to protect the rights of state employees making these disclosures. It is also the policy of the legislature that employees should be encouraged to identify rules warranting review or provide information to the rules review committee, and it is the intent of the legislature to protect the rights of these employees.

This act shall be broadly construed in order to effectuate the purpose of this act." [2008 c 266 § 1.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Additional notes found at www.leg.wa.gov

42.40.030 Right to disclose improper governmental actions—Interference prohibited. (1) An employee shall not directly or indirectly use or attempt to use the employee's official authority or influence for the purpose of intimidating, threatening, coercing, commanding, influencing, or attempting to intimidate, threaten, coerce, command, or influence any individual for the purpose of interfering with the right of the individual to: (a) Disclose to the auditor (or representative thereof) or other public official, as defined in RCW

42.40.020, information concerning improper governmental action; or (b) identify rules warranting review or provide information to the rules review committee.

(2) Nothing in this section authorizes an individual to disclose information otherwise prohibited by law, except to the extent that information is necessary to substantiate the whistleblower complaint, in which case information may be disclosed to the auditor or public official, as defined in RCW 42.40.020, by the whistleblower for the limited purpose of providing information related to the complaint. Any information provided to the auditor or public official under the authority of this subsection may not be further disclosed. [2008 c 266 § 3; 1995 c 403 § 510; 1989 c 284 § 2; 1982 c 208 § 3.]

Findings—Intent—2008 c 266: See note following RCW 42.40.020.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Additional notes found at www.leg.wa.gov

42.40.035 Duty of correctness—Penalties for false information. An employee must make a reasonable attempt to ascertain the correctness of the information furnished and may be subject to disciplinary actions, including, but not limited to, suspension or termination, for knowingly furnishing false information as determined by the employee's appointing authority. [1999 c 361 § 2.]

42.40.040 Report of improper governmental action—Investigations and reports by auditor, agency.

(1)(a) In order to be investigated, an assertion of improper governmental action must be provided to the auditor or other public official within one year after the occurrence of the asserted improper governmental action. The public official, as defined in RCW 42.40.020, receiving an assertion of improper governmental action must report the assertion to the auditor within fifteen calendar days of receipt of the assertion. The auditor retains sole authority to investigate an assertion of improper governmental action including those made to a public official. A failure of the public official to report the assertion to the auditor within fifteen days does not impair the rights of the whistleblower.

(b) Except as provided under RCW 42.40.910 for legislative and judicial branches of government, the auditor has the authority to determine whether to investigate any assertions received. In determining whether to conduct either a preliminary or further investigation, the auditor shall consider factors including, but not limited to: The nature and quality of evidence and the existence of relevant laws and rules; whether the action was isolated or systematic; the history of previous assertions regarding the same subject or subjects or subject matter; whether other avenues are available for addressing the matter; whether the matter has already been investigated or is in litigation; the seriousness or significance of the asserted improper governmental action; and the cost and benefit of the investigation. The auditor has the sole discretion to determine the priority and weight given to these and other relevant factors and to decide whether a matter is to be investigated. The auditor shall document the factors considered and the analysis applied.

(c) The auditor also has the authority to investigate assertions of improper governmental actions as part of an audit

conducted under chapter 43.09 RCW. The auditor shall document the reasons for handling the matter as part of such an audit.

(2) Subject to subsection (5)(c) of this section, the identity or identifying characteristics of a whistleblower is confidential at all times unless the whistleblower consents to disclosure by written waiver or by acknowledging his or her identity in a claim against the state for retaliation. In addition, the identity or identifying characteristics of any person who in good faith provides information in an investigation under this section is confidential at all times, unless the person consents to disclosure by written waiver or by acknowledging his or her identity as a witness who provides information in an investigation.

(3) Upon receiving specific information that an employee has engaged in improper governmental action, the auditor shall, within fifteen working days of receipt of the information, mail written acknowledgment to the whistleblower at the address provided stating whether a preliminary investigation will be conducted. For a period not to exceed sixty working days from receipt of the assertion, the auditor shall conduct such preliminary investigation of the matter as the auditor deems appropriate.

(4) In addition to the authority under subsection (3) of this section, the auditor may, on its own initiative, investigate incidents of improper state governmental action.

(5)(a) If it appears to the auditor, upon completion of the preliminary investigation, that the matter is so unsubstantiated that no further investigation, prosecution, or administrative action is warranted, the auditor shall so notify the whistleblower summarizing where the allegations are deficient, and provide a reasonable opportunity to reply. Such notification may be by electronic means.

(b) The written notification shall contain a summary of the information received and of the results of the preliminary investigation with regard to each assertion of improper governmental action.

(c) In any case to which this section applies, the identity or identifying characteristics of the whistleblower shall be kept confidential unless the auditor determines that the information has been provided other than in good faith. If the auditor makes such a determination, the auditor shall provide reasonable advance notice to the employee.

(d) With the agency's consent, the auditor may forward the assertions to an appropriate agency to investigate and report back to the auditor no later than sixty working days after the assertions are received from the auditor. The auditor is entitled to all investigative records resulting from such a referral. All procedural and confidentiality provisions of this chapter apply to investigations conducted under this subsection. The auditor shall document the reasons the assertions were referred.

(6) During the preliminary investigation, the auditor shall provide written notification of the nature of the assertions to the subject or subjects of the investigation and the agency head. The notification shall include the relevant facts and laws known at the time and the procedure for the subject or subjects of the investigation and the agency head to respond to the assertions and information obtained during the investigation. This notification does not limit the auditor

from considering additional facts or laws which become known during further investigation.

(a) If it appears to the auditor after completion of the preliminary investigation that further investigation, prosecution, or administrative action is warranted, the auditor shall so notify the whistleblower, the subject or subjects of the investigation, and the agency head and either conduct a further investigation or issue a report under subsection (9) of this section.

(b) If the preliminary investigation resulted from an anonymous assertion, a decision to conduct further investigation shall be subject to review by a three-person panel convened as necessary by the auditor prior to the commencement of any additional investigation. The panel shall include a state auditor representative knowledgeable of the subject agency operations, a citizen volunteer, and a representative of the attorney general's office. This group shall be briefed on the preliminary investigation and shall recommend whether the auditor should proceed with further investigation.

(c) If further investigation is to occur, the auditor shall provide written notification of the nature of the assertions to the subject or subjects of the investigation and the agency head. The notification shall include the relevant facts known at the time and the procedure to be used by the subject or subjects of the investigation and the agency head to respond to the assertions and information obtained during the investigation.

(7) Within sixty working days after the preliminary investigation period in subsection (3) of this section, the auditor shall complete the investigation and report its findings to the whistleblower unless written justification for the delay is furnished to the whistleblower, agency head, and subject or subjects of the investigation. In all such cases, the report of the auditor's investigation and findings shall be sent to the whistleblower within one year after the information was filed under subsection (3) of this section.

(8)(a) At any stage of an investigation under this section the auditor may require by subpoena the attendance and testimony of witnesses and the production of documentary or other evidence relating to the investigation at any designated place in the state. The auditor may issue subpoenas, administer oaths, examine witnesses, and receive evidence. In the case of contumacy or failure to obey a subpoena, the superior court for the county in which the person to whom the subpoena is addressed resides or is served may issue an order requiring the person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(b) The auditor may order the taking of depositions at any stage of a proceeding or investigation under this chapter. Depositions shall be taken before an individual designated by the auditor and having the power to administer oaths. Testimony shall be reduced to writing by or under the direction of the individual taking the deposition and shall be subscribed by the deponent.

(c) Agencies shall cooperate fully in the investigation and shall take appropriate action to preclude the destruction of any evidence during the course of the investigation.

(d) During the investigation the auditor shall interview each subject of the investigation. If it is determined there is

reasonable cause to believe improper governmental action has occurred, the subject or subjects and the agency head shall be given fifteen working days to respond to the assertions prior to the issuance of the final report.

(9)(a) If the auditor determines there is reasonable cause to believe an employee has engaged in improper governmental action, the auditor shall report, to the extent allowable under existing public disclosure laws, the nature and details of the activity to:

(i) The subject or subjects of the investigation and the head of the employing agency;

(ii) If appropriate, the attorney general or such other authority as the auditor determines appropriate;

(iii) Electronically to the governor, secretary of the senate, and chief clerk of the house of representatives; and

(iv) Except for information whose release is specifically prohibited by statute or executive order, the public through the public file of whistleblower reports maintained by the auditor.

(b) The auditor has no enforcement power except that in any case in which the auditor submits an investigative report containing reasonable cause determinations to the agency, the agency shall send its plan for resolution to the auditor within fifteen working days of having received the report. The agency is encouraged to consult with the subject or subjects of the investigation in establishing the resolution plan. The auditor may require periodic reports of agency action until all resolution has occurred. If the auditor determines that appropriate action has not been taken, the auditor shall report the determination to the governor and to the legislature and may include this determination in the agency audit under chapter 43.09 RCW.

(10) Once the auditor concludes that appropriate action has been taken to resolve the matter, the auditor shall so notify the whistleblower, the agency head, and the subject or subjects of the investigation. If the resolution takes more than one year, the auditor shall provide annual notification of its status to the whistleblower, agency head, and subject or subjects of the investigation.

(11) Failure to cooperate with such audit or investigation, or retaliation against anyone who assists the auditor by engaging in activity protected by this chapter shall be reported as a separate finding with recommendations for corrective action in the associated report whenever it occurs.

(12) This section does not limit any authority conferred upon the attorney general or any other agency of government to investigate any matter. [2008 c 266 § 4; 1999 c 361 § 3; 1992 c 118 § 2; 1989 c 284 § 3; 1982 c 208 § 4.]

Findings—Intent—2008 c 266: See note following RCW 42.40.020.

42.40.050 Retaliatory action against whistleblower—Remedies. (1)(a) Any person who is a whistleblower, as defined in RCW 42.40.020, and who has been subjected to workplace reprisal or retaliatory action is presumed to have established a cause of action for the remedies provided under chapter 49.60 RCW.

(b) For the purpose of this section, "reprisal or retaliatory action" means, but is not limited to, any of the following:

(i) Denial of adequate staff to perform duties;

(ii) Frequent staff changes;

(iii) Frequent and undesirable office changes;

- (iv) Refusal to assign meaningful work;
- (v) Unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations;
- (vi) Demotion;
- (vii) Reduction in pay;
- (viii) Denial of promotion;
- (ix) Suspension;
- (x) Dismissal;
- (xi) Denial of employment;
- (xii) A supervisor or superior behaving in or encouraging coworkers to behave in a hostile manner toward the whistleblower;
- (xiii) A change in the physical location of the employee's workplace or a change in the basic nature of the employee's job, if either are in opposition to the employee's expressed wish;
- (xiv) Issuance of or attempt to enforce any nondisclosure policy or agreement in a manner inconsistent with prior practice; or
- (xv) Any other action that is inconsistent compared to actions taken before the employee engaged in conduct protected by this chapter, or compared to other employees who have not engaged in conduct protected by this chapter.

(2) The agency presumed to have taken retaliatory action under subsection (1) of this section may rebut that presumption by proving by a preponderance of the evidence that there have been a series of documented personnel problems or a single, egregious event, or that the agency action or actions were justified by reasons unrelated to the employee's status as a whistleblower and that improper motive was not a substantial factor.

(3) Nothing in this section prohibits an agency from making any decision exercising its authority to terminate, suspend, or discipline an employee who engages in workplace reprisal or retaliatory action against a whistleblower. However, the agency also shall implement any order under chapter 49.60 RCW (other than an order of suspension if the agency has terminated the retaliator). [2008 c 266 § 6; 1999 c 283 § 1; 1992 c 118 § 3; 1989 c 284 § 4; 1982 c 208 § 5.]

Findings—Intent—2008 c 266: See note following RCW 42.40.020.

42.40.070 Summary of chapter available to employees. A written summary of this chapter and procedures for reporting improper governmental actions established by the auditor's office shall be made available by each department or agency of state government to each employee upon entering public employment. Such notices may be in agency internal newsletters, included with paychecks or stubs, sent via electronic mail to all employees, or sent by other means that are cost-effective and reach all employees of the government level, division, or subdivision. Employees shall be notified by each department or agency of state government each year of the procedures and protections under this chapter. The annual notices shall include a list of public officials, as defined in RCW 42.40.020, authorized to receive whistleblower reports. The list of public officials authorized to receive whistleblower reports shall also be prominently displayed in all agency offices. [2008 c 266 § 5; 1989 c 284 § 5; 1982 c 208 § 7.]

Findings—Intent—2008 c 266: See note following RCW 42.40.020.

42.40.080 Contracting for assistance. The auditor has the authority to contract for any assistance necessary to carry out the provisions of this chapter. [1999 c 361 § 4.]

42.40.090 Administrative costs. The cost of administering this chapter is funded through the auditing services revolving account created in RCW 43.09.410. [1999 c 361 § 5.]

42.40.100 Assertions against auditor. A whistleblower wishing to provide information under this chapter regarding asserted improper governmental action against the state auditor or an employee of that office shall provide the information to the attorney general who shall act in place of the auditor in investigating and reporting the matter. [1999 c 361 § 6.]

42.40.110 Performance audit. The office of financial management shall contract for a performance audit of the state employee whistleblower program on a cycle to be determined by the office of financial management. The audit shall be done in accordance with generally accepted government auditing standards beginning with the fiscal year ending June 30, 2001. The audit shall determine at a minimum: Whether the program is acquiring, protecting, and using its resources such as personnel, property, and space economically and efficiently; the causes of inefficiencies or uneconomical practices; and whether the program has complied with laws and rules on matters of economy and efficiency. The audit shall also at a minimum determine the extent to which the desired results or benefits established by the legislature are being achieved, the effectiveness of the program, and whether the auditor has complied with significant laws and rules applicable to the program.

The cost of the audit is a cost of operating the program and shall be funded by the auditing services revolving account created by RCW 43.09.410. [1999 c 361 § 8.]

42.40.900 Severability—1982 c 208. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 208 § 14.]

42.40.901 Severability—2008 c 266. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2008 c 266 § 10.]

42.40.910 Application of chapter. Chapter 266, Laws of 2008 and chapter 361, Laws of 1999 do not affect the jurisdiction of the legislative ethics board, the executive ethics board, or the commission on judicial conduct, as set forth in chapter 42.52 RCW. The senate, the house of representatives, and the supreme court shall adopt policies regarding the applicability of chapter 42.40 RCW to the senate, house of representatives, and judicial branch. [2008 c 266 § 9; 1999 c 361 § 7.]

Findings—Intent—2008 c 266: See note following RCW 42.40.020.

Chapter 42.41 RCW
LOCAL GOVERNMENT
WHISTLEBLOWER PROTECTION

Sections

42.41.010	Policy.
42.41.020	Definitions.
42.41.030	Right to report improper governmental action—Policies and procedures.
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42.41.010 Policy. It is the policy of the legislature that local government employees should be encouraged to disclose, to the extent not expressly prohibited by law, improper governmental actions of local government officials and employees. The purpose of this chapter is to protect local government employees who make good-faith reports to appropriate governmental bodies and to provide remedies for such individuals who are subjected to retaliation for having made such reports. [1992 c 44 § 1.]

42.41.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1)(a) "Improper governmental action" means any action by a local government officer or employee:

(i) That is undertaken in the performance of the officer's or employee's official duties, whether or not the action is within the scope of the employee's employment; and

(ii) That is in violation of any federal, state, or local law or rule, is an abuse of authority, is of substantial and specific danger to the public health or safety, or is a gross waste of public funds.

(b) "Improper governmental action" does not include personnel actions including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of the local government collective bargaining and civil service laws, alleged labor agreement violations, reprimands, or any action that may be taken under chapter 41.08, 41.12, 41.14, 41.56, 41.59, or 53.18 RCW or RCW 54.04.170 and 54.04.180.

(2) "Local government" means any governmental entity other than the state, federal agencies, or an operating system established under chapter 43.52 RCW. It includes, but is not limited to cities, counties, school districts, and special purpose districts.

(3) "Retaliatory action" means: (a) Any adverse change in a local government employee's employment status, or the terms and conditions of employment including denial of adequate staff to perform duties, frequent staff changes, frequent and undesirable office changes, refusal to assign meaningful work, unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations, demotion, transfer, reassignment, reduction in pay, denial of promotion, suspension, dismissal, or any other disciplinary action; or (b)

hostile actions by another employee towards a local government employee that were encouraged by a supervisor or senior manager or official.

(4) "Emergency" means a circumstance that if not immediately changed may cause damage to persons or property. [1994 c 210 § 1; 1992 c 44 § 2.]

42.41.030 Right to report improper governmental action—Policies and procedures. (1) Every local government employee has the right to report to the appropriate person or persons information concerning an alleged improper governmental action.

(2) The governing body or chief administrative officer of each local government shall adopt a policy on the appropriate procedures to follow for reporting such information and shall provide information to their employees on the policy. Local governments are encouraged to consult with their employees on the policy.

(3) The policy shall describe the appropriate person or persons within the local government to whom to report information and a list of appropriate person or persons outside the local government to whom to report. The list shall include the county prosecuting attorney.

(4) Each local government shall permanently post a summary of the procedures for reporting information on an alleged improper governmental action and the procedures for protection against retaliatory actions described in RCW 42.41.040 in a place where all employees will have reasonable access to it. A copy of the summary shall be made available to any employee upon request.

(5) A local government may require as part of its policy that, except in the case of an emergency, before an employee provides information of an improper governmental action to a person or an entity who is not a public official or a person listed pursuant to subsection (3) of this section, the employee shall submit a written report to the local government. Where a local government has adopted such a policy under this section, an employee who fails to make a good faith attempt to follow the policy shall not receive the protections of this chapter.

(6) If a local government has failed to adopt a policy as required by subsection (2) of this section, an employee may report alleged improper government action directly to the county prosecuting attorney or, if the prosecuting attorney or an employee of the prosecuting attorney participated in the alleged improper government action, to the state auditor. The cost incurred by the state auditor in such investigations shall be paid by the local government through the municipal revolving account authorized in RCW 43.09.282.

(7) The identity of a reporting employee shall be kept confidential to the extent possible under law, unless the employee authorizes the disclosure of his or her identity in writing. [1995 c 213 § 1; 1992 c 44 § 3.]

42.41.040 Retaliatory action unlawful—Relief by whistleblower—Penalty. (1) It is unlawful for any local government official or employee to take retaliatory action against a local government employee because the employee provided information in good faith in accordance with the provisions of this chapter that an improper governmental action occurred.

(2) In order to seek relief under this chapter, a local government employee shall provide a written notice of the charge of retaliatory action to the governing body of the local government that:

- (a) Specifies the alleged retaliatory action; and
- (b) Specifies the relief requested.

(3) The charge shall be delivered to the local government no later than thirty days after the occurrence of the alleged retaliatory action. The local government has thirty days to respond to the charge of retaliatory action and request for relief.

(4) Upon receipt of either the response of the local government or after the last day upon which the local government could respond, the local government employee may request a hearing to establish that a retaliatory action occurred and to obtain appropriate relief as defined in this section. The request for a hearing shall be delivered to the local government within fifteen days of delivery of the response from the local government, or within fifteen days of the last day on which the local government could respond.

(5) Within five working days of receipt of the request for hearing, the local government shall apply to the state office of administrative hearings for an adjudicative proceeding before an administrative law judge. Except as otherwise provided in this section, the proceedings shall comply with RCW 34.05.410 through 34.05.598.

(6) The employee, as the initiating party, must prove his or her claim by a preponderance of the evidence. The administrative law judge shall issue a final decision consisting of findings of fact, conclusions of law, and judgment no later than forty-five days after the date the request for hearing was delivered to the local government. The administrative law judge may grant specific extensions of time beyond this period of time for rendering a decision at the request of either party upon a showing of good cause, or upon his or her own motion.

(7) Relief that may be granted by the administrative law judge consists of reinstatement, with or without back pay, and such injunctive relief as may be found to be necessary in order to return the employee to the position he or she held before the retaliatory action and to prevent any recurrence of retaliatory action. The administrative law judge may award costs and reasonable attorneys' fees to the prevailing party.

(8) If a determination is made that retaliatory action has been taken against the employee, the administrative law judge may, in addition to any other remedy, impose a civil penalty personally upon the retaliator of up to three thousand dollars payable by each person found to have retaliated against the employee and recommend to the local government that any person found to have retaliated against the employee be suspended with or without pay or dismissed. All penalties recovered shall be paid to the local government administrative hearings account created in RCW 42.41.060.

(9) The final decision of the administrative law judge is subject to judicial review under the arbitrary and capricious standard. Relief ordered by the administrative law judge may be enforced by petition to superior court. [1992 c 44 § 4.]

42.41.045 Prohibition on intimidation of whistleblower—Nondisclosure of protected information. (1) A local government official or employee may not use his or her

official authority or influence, directly or indirectly, to threaten, intimidate, or coerce an employee for the purpose of interfering with that employee's right to disclose information concerning an improper governmental action in accordance with the provisions of this chapter.

(2) Nothing in this section authorizes an individual to disclose information prohibited by law. [1994 c 210 § 2.]

42.41.050 Exemptions. Any local government that has adopted or adopts a program for reporting alleged improper governmental actions and adjudicating retaliation resulting from such reporting shall be exempt from this chapter if the program meets the intent of this chapter. [1992 c 44 § 6.]

42.41.060 Local government administrative hearings account. The local government administrative hearings account is created in the custody of the state treasurer. All receipts from penalties in RCW 42.41.040 and the surcharges under RCW 43.09.2801 shall be deposited into the account. Expenditures from the account may be used only for administrative hearings under this chapter. Only the chief administrative law judge or his or her designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. [1992 c 44 § 7.]

42.41.900 Construction. This chapter shall not be construed to permit disclosures that would diminish the rights of any person to the continued protection of confidentiality of communications where statute or common law provides such protection. [1992 c 44 § 5.]

42.41.901 Effective dates—1992 c 44. Sections 1 through 10 of this act shall take effect January 1, 1993. Section 11 of this act shall take effect July 1, 1992. [1992 c 44 § 13.]

42.41.902 Severability—1992 c 44. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 44 § 14.]

Chapter 42.44 RCW NOTARIES PUBLIC

Sections

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42.44.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Director" means the director of licensing of the state of Washington or the director's designee.

(2) "Notarial act" and "notarization" mean: (a) Taking an acknowledgment; (b) administering an oath or affirmation; (c) taking a verification upon oath or affirmation; (d) witnessing or attesting a signature; (e) certifying or attesting a copy; (f) receiving a protest of a negotiable instrument; (g) certifying that an event has occurred or an act has been performed; and (h) any other act that a notary public of this state is authorized to perform.

(3) "Notary public" and "notary" mean any person appointed to perform notarial acts in this state.

(4) "Acknowledgment" means a statement by a person that the person has executed an instrument as the person's free and voluntary act for the uses and purposes stated therein and, if the instrument is executed in a representative capacity, a statement that the person signed the document with proper authority and executed it as the act of the person or entity represented and identified therein.

(5) "Verification upon oath or affirmation" means a statement by a person who asserts it to be true and makes the assertion upon oath or affirmation administered in accordance with chapter 5.28 RCW.

(6) "In a representative capacity" means:

(a) For and on behalf of a corporation, partnership, trust, or other entity, as an authorized officer, agent, partner, trustee, or other representative;

(b) As a public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument;

(c) As an attorney-in-fact for a principal; or

(d) In any other capacity as an authorized representative of another.

(7) "Serious crime" means any felony or any lesser crime, a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, the unauthorized practice of law, deceit, bribery, extortion, misappropriation, theft, or an attempt, a conspiracy, or the solicitation of another to commit a serious crime. [1985 c 156 § 1.]

42.44.020 Qualifications—Application—Bond. (1) The director may, upon application, appoint to be a notary public in this state, any person who:

(a) Is at least eighteen years of age;

(b) Resides in Washington state, or resides in an adjoining state and is regularly employed in Washington state or carries on business in Washington state; and

(c) Can read and write English.

(2) Each application shall be accompanied by endorsements by at least three residents of this state of the age of eighteen or more, who are not relatives of the applicant, in the following form:

I, (name of endorser), being a person eligible to vote in the state of Washington, believe the applicant for a notary public appointment, (applicant's name), who is not related to me, to be a person of integrity and good moral character and capable of performing notarial acts.

.....
(Endorser's signature and address, with date of signing)

(3) Every application for appointment as a notary public shall be accompanied by a fee established by the director by rule.

(4) Every applicant for appointment as a notary public shall submit an application in a form prescribed by the director, and shall sign the following declaration in the presence of a notary public of this state:

Declaration of Applicant

I, (name of applicant), solemnly swear or affirm under penalty of perjury that the personal information I have provided in this application is true, complete, and correct; that I carefully have read the materials provided with the application describing the duties of a notary public in and for the state of Washington; and, that I will perform, to the best of my ability, all notarial acts in accordance with the law.

.....
(Signature of applicant)

State of Washington

County of

On this day appeared before me, signed this Declaration of Application, and swore (or affirmed) that (he/she) understood its contents and that its contents are truthful.

Dated:

.....
Signature of notary public

(Seal or stamp)

Residing at

(5) Every applicant shall submit to the director proof from a surety company that a ten thousand dollar surety bond, insuring the proper performance of notarial acts by the applicant, will be effective for a term commencing on the date the person is appointed, and expiring on the date the applicant's notary appointment expires. The surety for the bond shall be a company qualified to write surety bonds in this state. [1985 c 156 § 2.]

42.44.030 Appointment—Denial for unprofessional conduct—Certificate of appointment. (1) In addition to the unprofessional conduct specified in RCW 18.235.130, the director may deny appointment as a notary public to any person based on the following conduct, acts, or conditions:

(a) Has had disciplinary action taken against any professional license in this or any other state;

(b) Has engaged in official misconduct as defined in RCW 42.44.160(1), whether or not criminal penalties resulted; or

(c) Has violated any of the provisions of chapter 19.154 RCW.

(2) The director shall deliver a certificate evidencing the appointment to each person appointed as a notary public. The certificate may be signed in facsimile by the governor, the secretary of state, and the director or the director's designee. The certificate must bear a printed seal of the state of Washington. [2011 c 244 § 6; 2002 c 86 § 287; 1985 c 156 § 3.]

Effective date—2011 c 244: See note following RCW 19.154.010.

Additional notes found at www.leg.wa.gov

42.44.050 Seal or stamp. Every person appointed as a notary public in this state shall procure a seal or stamp, on which shall be engraved or impressed the words "Notary Public" and "State of Washington," the date the appointment expires, the person's surname, and at least the initials of the person's first and middle names. The director shall prescribe by rule the size and form or forms of the seal or stamp. It is unlawful for any person intentionally to manufacture, give, sell, procure or possess a seal or stamp evidencing the current appointment of a person as a notary public until the director has delivered a certificate evidencing the appointment as provided for in *RCW 42.44.040. [1985 c 156 § 5.]

*Reviser's note: RCW 42.44.040 was repealed by 2003 c 199 § 1.

42.44.060 Term. A person appointed as a notary public by the director may perform notarial acts in this state for a term of four years, unless:

(1) Disciplinary action has been taken against the notarial appointment, including a shorter term, suspension, or revocation; or

(2) The notarial appointment has been resigned. [2002 c 86 § 288; 1985 c 156 § 6.]

Additional notes found at www.leg.wa.gov

42.44.070 Reappointment without endorsements. A person who has received an appointment as a notary public may be reappointed without the endorsements required in RCW 42.44.020(2) if the person submits a new application before the expiration date of the current appointment. [1985 c 156 § 7.]

42.44.080 Standards for notarial acts. A notary public is authorized to perform notarial acts in this state. Notarial acts shall be performed in accordance with the following, as applicable:

(1) In taking an acknowledgment, a notary public must determine and certify, either from personal knowledge or from satisfactory evidence, that the person appearing before the notary public and making the acknowledgment is the person whose true signature is on the document.

(2) In taking an acknowledgment authorized by RCW 64.08.100 from a person physically unable to sign his or her name or make a mark, a notary public shall, in addition to other requirements for taking an acknowledgment, determine and certify from personal knowledge or satisfactory evidence that the person appearing before the notary public is physically unable to sign his or her name or make a mark and is

otherwise competent. The notary public shall include in the acknowledgment a statement that the signature in the acknowledgment was obtained under the authority of RCW 64.08.100.

(3) In taking a verification upon oath or affirmation, a notary public must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the notary public and making the verification is the person whose true signature is on the statement verified.

(4) In witnessing or attesting a signature, a notary public must determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the notary public and named in the document.

(5) In certifying or attesting a copy of a document or other item, a notary public must determine that the proffered copy is a full, true, and accurate transcription or reproduction of that which was copied.

(6) In making or noting a protest of a negotiable instrument, a notary public must determine the matters set forth in *RCW 62A.3-509.

(7) In certifying that an event has occurred or an act has been performed, a notary public must determine the occurrence or performance either from personal knowledge or from satisfactory evidence based upon the oath or affirmation of a credible witness personally known to the notary public.

(8) A notary public has satisfactory evidence that a person is the person described in a document if that person: (a) Is personally known to the notary public; (b) is identified upon the oath or affirmation of a credible witness personally known to the notary public; or (c) is identified on the basis of identification documents.

(9) The signature and seal or stamp of a notary public are prima facie evidence that the signature of the notary is genuine and that the person is a notary public.

(10) A notary public is disqualified from performing a notarial act when the notary is a signer of the document which is to be notarized. [1987 c 76 § 3; 1985 c 156 § 8.]

*Reviser's note: RCW 62A.3-509 was repealed by 1993 c 229 § 76, effective July 1, 1994.

42.44.090 Form of certificate—General—Seal or stamp as exclusive property. (1) A notarial act by a notary public must be evidenced by a certificate signed and dated by a notary public. The certificate must include the name of the jurisdiction in which the notarial act is performed and the title of the notary public or other notarial officer and shall be accompanied by an impression of the official seal or stamp. It shall not be necessary for a notary public in certifying an oath to be used in any of the courts in this state, to append an impression of the official seal or stamp. If the notarial officer is a notary public, the certificate shall also indicate the date of expiration of such notary public's appointment, but omission of that information may subsequently be corrected.

(2) A certificate of a notarial act is sufficient if it meets the requirements of subsection (1) of this section and it:

(a) Is in the short form set forth in RCW 42.44.100;

(b) Is in a form otherwise permitted or prescribed by the laws of this state;

(c) Is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or

(d) Is in a form that sets forth the actions of the notary public and the described actions are sufficient to meet the requirements of the designated notarial act.

If any law of this state specifically requires a certificate in a form other than that set forth in RCW 42.44.100 in connection with a form of document or transaction, the certificate required by such law shall be used for such document or transaction.

(3) By executing a certificate of a notarial act, the notary public certifies that he or she has made the determinations required by RCW 42.44.080.

(4) A notary public's seal or stamp shall be the exclusive property of the notary public, shall not be used by any other person, and shall not be surrendered to an employer upon termination of employment, regardless of whether the employer paid for the seal or for the notary's bond or appointment fees. [1985 c 156 § 9.]

42.44.100 Short forms of certificate. The following short forms of notarial certificates are sufficient for the purposes indicated, if completed with the information required by this section:

(1) For an acknowledgment in an individual capacity:

State of Washington
County of

I certify that I know or have satisfactory evidence that (name of person) is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated:

.....
(Signature)

(Seal or stamp)

.....
Title
My appointment expires

(2) For an acknowledgment in a representative capacity:

State of Washington
County of

I certify that I know or have satisfactory evidence that (name of person) is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed) to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated:

.....
(Signature)

(Seal or stamp)

.....
Title
My appointment expires

(3) For a verification upon oath or affirmation:

State of Washington
County of

Signed and sworn to (or affirmed) before me on (date) by (name of person making statement).

.....
(Signature)

(Seal or stamp)

.....
Title
My appointment expires

(4) For witnessing or attesting a signature:

State of Washington
County of

Signed or attested before me on by

.....
(Signature)

(Seal or stamp)

.....
Title
My appointment expires

(5) For attestation of a copy of a document:

State of Washington
County of

I certify that this is a true and correct copy of a document in the possession of as of this date.

Dated:

.....
(Signature)

(Seal or stamp)

.....
Title
My appointment expires

(6) For certifying the occurrence of an event or the performance of an act:

State of Washington
County of

I certify that the event or act described in this document has occurred or been performed.

Dated:

.....
(Signature)

(Seal or stamp)

.....
Title
My appointment
expires

[1988 c 69 § 4; 1985 c 156 § 10.]

42.44.110 Illegible writing. The illegibility of any wording, writing, or marking required under this chapter does not in and of itself affect the validity of a document or transaction. [1985 c 156 § 11.]

42.44.120 Fees. (1) The director shall establish by rule the maximum fees that may be charged by notaries public for various notarial services.

(2) A notary public need not charge fees for notarial acts. [1985 c 156 § 12.]

42.44.130 Notarial acts by officials of other jurisdictions. (1) A notarial act has the same effect under the law of this state as if performed by a notary public of this state, if performed in another state, commonwealth, territory, district, or possession of the United States by any of the following persons:

- (a) A notary public of that jurisdiction;
- (b) A judge, clerk, or deputy clerk of a court of that jurisdiction; or
- (c) Any other person authorized by the law of that jurisdiction to perform notarial acts.

Notarial acts performed in other jurisdictions of the United States under federal authority as provided in RCW 42.44.140 have the same effect as if performed by a notarial officer of this state.

(2) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(3) The signature and title of an officer listed in subsection (1)(a) and (b) of this section conclusively establish the authority of a holder of that title to perform a notarial act. [1985 c 156 § 13.]

42.44.140 Notarial acts by federal authorities. (1) A notarial act has the same effect under the law of this state as if performed by a notary public of this state if performed by any of the following persons under authority granted by the law of the United States:

- (a) A judge, clerk, or deputy clerk of a court;
- (b) A commissioned officer in active service with the military forces of the United States;
- (c) An officer of the foreign service or consular agent of the United States; or
- (d) Any other person authorized by federal law to perform notarial acts.

(2) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(3) The signature and title or rank of an officer listed in subsection (1)(a), (b), and (c) of this section conclusively establish the authority of a holder of that title to perform a notarial act. [1985 c 156 § 14.]

42.44.150 Notarial acts by foreign authorities. (1) A notarial act has the same effect under the law of this state as if performed by a notary public of this state if performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

- (a) A notary public or notary;
- (b) A judge, clerk, or deputy clerk of a court of record; or
- (c) Any other person authorized by the law of that jurisdiction to perform notarial acts.

(2) An "apostille" in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the designated office.

(3) A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed, or a certificate by a foreign service or consular officer of that nation stationed in the United States, is prima facie evidence of the authenticity or validity of the notarial act set forth in the certificate.

(4) A stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds that designated title.

(5) A stamp or seal of an officer listed in subsection (1)(a) or (b) of this section is prima facie evidence that a person with that title has authority to perform notarial acts.

(6) If the title of officer and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established. [1985 c 156 § 15.]

42.44.160 Official misconduct—Penalty. (1) A notary public commits official misconduct when he or she signs a certificate evidencing a notarial act, knowing that the contents of the certificate are false. Official misconduct also constitutes unprofessional conduct for which disciplinary action may be taken.

(2) A notary public who commits an act of official misconduct shall be guilty of a gross misdemeanor.

(3) Any person not appointed as a notary public who acts as or otherwise impersonates a notary public shall be guilty of a gross misdemeanor. [2002 c 86 § 289; 1985 c 156 § 16.]

Additional notes found at www.leg.wa.gov

42.44.170 Revocation of appointment—Resignation. (1) The director shall revoke the appointment of a notary public upon a judicial finding of incompetency of the notary public. If a notary public is found to be incompetent, his or her guardian or conservator shall within thirty days of such finding mail or deliver to the director a letter of resignation on behalf of the notary public.

(2) A notary public may voluntarily resign by mailing or delivering to the director a letter of resignation. [2002 c 86 § 290; 1985 c 156 § 17.]

Additional notes found at www.leg.wa.gov

42.44.180 Evidence of authenticity of notarial seal and signature. (1) The authenticity of the notarial seal and official signature of a notary public of this state may be evidenced by:

(a) A certificate of authority from the director or the secretary of state; or

(b) An apostille in the form prescribed by the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents of October 5, 1961.

(2) An apostille as specified by the Hague Convention shall be attached to any document requiring authentication that is sent to a nation that has signed and ratified the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents. [1985 c 156 § 18.]

42.44.190 Rules. The director may adopt rules consistent with this chapter. Such rules shall include but shall not be limited to rules concerning applications for appointment, application and renewal fees, fees chargeable for notarial services, the replacement of lost or stolen seals or stamps, changes of names or addresses of notaries, resignations of notaries, and issuance of evidences of authenticity of notarial seals and signatures. [2002 c 86 § 291; 1985 c 156 § 20.]

Additional notes found at www.leg.wa.gov

42.44.200 Transfer of records. Records relating to the appointment and commissioning of notaries public that are in the custody of county clerks of this state on *the effective date of this act shall be transferred to the director of licensing on or before December 31, 1985. Such records may be archived by the director. [1985 c 156 § 22.]

*Reviser's note: As used in this section, the phrase "the effective date of this act," is ambiguous; see RCW 42.44.903.

42.44.210 Uniform regulation of business and professions act. The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2002 c 86 § 292.]

Additional notes found at www.leg.wa.gov

42.44.220 Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the director determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 351 § 18.]

42.44.221 Spouses of military personnel—Appointment. The director shall develop rules consistent with RCW 18.340.020 for the appointment of spouses of military personnel to perform notarial acts in this state. [2011 2nd sp.s. c 5 § 7.]

Implementation—2011 2nd sp.s. c 5: See note following RCW 18.340.010.

42.44.900 Savings—1985 c 156. Nothing in this act may be interpreted to revoke any notary public appointment or commission existing on January 1, 1986. This act does not terminate, or in any way modify, any liability, civil or crimi-

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nal, which exists on January 1, 1986. A notarial act performed before January 1, 1986, is not affected by this act. [1985 c 156 § 21.]

42.44.901 Construction. RCW 42.44.010, 42.44.080, 42.44.090, 42.44.100, 42.44.130, 42.44.140, and 42.44.150 shall be applied and construed to effectuate their general purpose to make the law uniform with respect to the subject of this chapter among states enacting such sections of this chapter. [1985 c 156 § 23.]

42.44.902 Severability—1985 c 156. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 156 § 24.]

42.44.903 Effective date—1985 c 156. Sections 1 through 19, 21, and 23 through 26 shall take effect on January 1, 1986. [1985 c 156 § 27.]

Chapter 42.48 RCW

RELEASE OF RECORDS FOR RESEARCH

Sections

42.48.010	Definitions.
42.48.020	Access to personal records.
42.48.030	Charge for costs of assistance.
42.48.040	Disclosure by research professional.
42.48.050	Unauthorized disclosure—Penalties.
42.48.060	Exclusions from chapter.
42.48.900	Severability—1985 c 334.

42.48.010 Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Individually identifiable" means that a record contains information which reveals or can likely be associated with the identity of the person or persons to whom the record pertains.

(2) "Legally authorized representative" means a person legally authorized to give consent for the disclosure of personal records on behalf of a minor or a legally incompetent adult.

(3) "Personal record" means any information obtained or maintained by a state agency which refers to a person and which is declared exempt from public disclosure, confidential, or privileged under state or federal law.

(4) "Research" means a planned and systematic sociological, psychological, epidemiological, biomedical, or other scientific investigation carried out by a state agency, by a scientific research professional associated with a bona fide scientific research organization, or by a graduate student currently enrolled in an advanced academic degree curriculum, with an objective to contribute to scientific knowledge, the solution of social and health problems, or the evaluation of public benefit and service programs. This definition excludes methods of record analysis and data collection that are subjective, do not permit replication, and are not designed to yield reliable and valid results.

(5) "Research record" means an item or grouping of information obtained for the purpose of research from or

about a person or extracted for the purpose of research from a personal record.

(6) "State agency" means: (a) The department of social and health services; (b) the department of corrections; (c) an institution of higher education as defined in RCW 28B.10.016; (d) the department of health; or (e) the department of early learning. [2007 c 17 § 6; 1989 1st ex.s. c 9 § 207; 1985 c 334 § 1.]

Additional notes found at www.leg.wa.gov

42.48.020 Access to personal records. (1) A state agency may authorize or provide access to or provide copies of an individually identifiable personal record for research purposes if informed written consent for the disclosure has been given to the appropriate department secretary, or the president of the institution, as applicable, or his or her designee, by the person to whom the record pertains or, in the case of minors and legally incompetent adults, the person's legally authorized representative.

(2) A state agency may authorize or provide access to or provide copies of an individually identifiable personal record for research purposes without the informed consent of the person to whom the record pertains or the person's legally authorized representative, only if:

(a) The state agency adopts research review and approval rules including, but not limited to, the requirement that the appropriate department secretary, or the president of the institution, as applicable, appoint a standing human research review board competent to review research proposals as to ethical and scientific soundness; and the review board determines that the disclosure request has scientific merit and is of importance in terms of the agency's program concerns, that the research purposes cannot be reasonably accomplished without disclosure of the information in individually identifiable form and without waiver of the informed consent of the person to whom the record pertains or the person's legally authorized representative, that disclosure risks have been minimized, and that remaining risks are outweighed by anticipated health, safety, or scientific benefits; and

(b) The disclosure does not violate federal law or regulations; and

(c) The state agency negotiates with the research professional receiving the records or record information a written and legally binding confidentiality agreement prior to disclosure. The agreement shall:

(i) Establish specific safeguards to assure the continued confidentiality and security of individually identifiable records or record information;

(ii) Ensure that the research professional will report or publish research findings and conclusions in a manner that does not permit identification of the person whose record was used for the research. Final research reports or publications shall not include photographs or other visual representations contained in personal records;

(iii) Establish that the research professional will destroy the individual identifiers associated with the records or record information as soon as the purposes of the research project have been accomplished and notify the agency to this effect in writing;

(iv) Prohibit any subsequent disclosure of the records or record information in individually identifiable form except as provided in RCW 42.48.040; and

(v) Provide for the signature of the research professional, or any of the research professional's team members who require access to the information in identified form, and of the agency official authorized to approve disclosure of identifiable records or record information for research purposes. [1985 c 334 § 2.]

42.48.030 Charge for costs of assistance. In addition to the copying charges provided in RCW 42.56.120, a state agency may impose a reasonable charge for costs incurred in providing assistance in the following research activities involving personal records:

(1) Manual or computer screening of personal records for scientific sampling purposes according to specifications provided by the research professional;

(2) Manual or computer extraction of information from a universe or sample of personal records according to specifications provided by the research professional;

(3) Statistical manipulation or analysis of personal record information, whether manually or by computer, according to specifications provided by the research professional.

The charges imposed by the agency may not exceed the amount necessary to reimburse the agency for its actual costs in providing requested research assistance. [2005 c 274 § 291; 1985 c 334 § 3.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

42.48.040 Disclosure by research professional. No research professional who has established an individually identifiable research record from personal record information pursuant to RCW 42.48.020(2), or who has established a research record from data or information voluntarily provided by an agency client or employee under a written confidentiality assurance for the explicit purpose of research, may disclose such a record in individually identifiable form unless:

(1) The person to whom the research record pertains or the person's legally authorized representative has given prior informed written consent for the disclosure; or

(2) The research professional reasonably believes that disclosure will prevent or minimize injury to a person and the disclosure is limited to information necessary to protect the person who has been or may be injured, and the research professional reports the disclosure only to the person involved or the person's guardian, the person's physician, and the agency; or

(3)(a) The research record is disclosed in individually identifiable form for the purposes of auditing or evaluating a research program; and

(b) The audit or evaluation is authorized or required by federal or state law or regulation or is based upon an explicit provision in a research contract, grant, or other written research agreement; and

(c) No subsequent disclosure of the research record in individually identifiable form will be made by the auditor or evaluator except as provided in this section; or

(4) The research record is furnished in compliance with a search warrant or court order: PROVIDED, That:

(a) The court issues the search warrant or judicial subpoena concerning the research record solely for the purpose of facilitating inquiry into an alleged violation of law by the research professional using the record for a research purpose or by the agency; and

(b) Any research record obtained pursuant to (a) of this subsection and any information directly or indirectly derived from the research record shall remain confidential to the extent possible and shall not be used as evidence in an administrative, judicial, or legislative proceeding except against the research professional using the record for a research purpose or against the state agency. [1985 c 334 § 4.]

42.48.050 Unauthorized disclosure—Penalties.

Unauthorized disclosure, whether wilful or negligent, by a research professional who has obtained an individually identifiable personal record or record information from a state agency pursuant to RCW 42.48.020(2) is a gross misdemeanor. In addition, violation of any provision of this chapter by the research professional or the state agency may subject the research professional or the agency to a civil penalty of not more than ten thousand dollars for each such violation. [1985 c 334 § 5.]

42.48.060 Exclusions from chapter. Nothing in this chapter is applicable to, or in any way affects, the powers and duties of the state auditor or the joint legislative audit and review committee. [1996 c 288 § 34; 1985 c 334 § 6.]

42.48.900 Severability—1985 c 334. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 334 § 8.]

Chapter 42.52 RCW ETHICS IN PUBLIC SERVICE

Sections

42.52.010	Definitions.
42.52.020	Activities incompatible with public duties.
42.52.030	Financial interests in transactions.
42.52.040	Assisting in transactions.
42.52.050	Confidential information—Improperly concealed records.
42.52.060	Testimony of state officers and state employees.
42.52.070	Special privileges.
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42.52.902	Parts and captions not law—1994 c 154.
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42.52.904	Effective date—1994 c 154.
42.52.905	Severability—1994 c 154.
42.52.906	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

42.52.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means any state board, commission, bureau, committee, department, institution, division, or tribunal in the legislative, executive, or judicial branch of state government. "Agency" includes all elective offices, the state legislature, those institutions of higher education created and supported by the state government, and those courts that are parts of state government.

(2) "Assist" means to act, or offer or agree to act, in such a way as to help, aid, advise, furnish information to, or otherwise provide assistance to another person, believing that the action is of help, aid, advice, or assistance to the person and with intent so to assist such person.

(3) "Beneficial interest" has the meaning ascribed to it under the Washington case law. However, an ownership interest in a mutual fund or similar investment pooling fund in which the owner has no management powers does not con-

stitute a beneficial interest in the entities in which the fund or pool invests.

(4) "Compensation" means anything of economic value, however designated, that is paid, loaned, granted, or transferred, or to be paid, loaned, granted, or transferred for, or in consideration of, personal services to any person.

(5) "Confidential information" means (a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law.

(6) "Contract" or "grant" means an agreement between two or more persons that creates an obligation to do or not to do a particular thing. "Contract" or "grant" includes, but is not limited to, an employment contract, a lease, a license, a purchase agreement, or a sales agreement.

(7) "Ethics boards" means the commission on judicial conduct, the legislative ethics board, and the executive ethics board.

(8) "Family" has the same meaning as "immediate family" in RCW 42.17A.005.

(9) "Gift" means anything of economic value for which no consideration is given. "Gift" does not include:

(a) Items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee;

(b) Items related to the outside business of the recipient that are customary and not related to the recipient's performance of official duties;

(c) Items exchanged among officials and employees or a social event hosted or sponsored by a state officer or state employee for coworkers;

(d) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(e) Items a state officer or state employee is authorized by law to accept;

(f) Payment of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(g) Items returned by the recipient to the donor within thirty days of receipt or donated to a charitable organization within thirty days of receipt;

(h) Campaign contributions reported under chapter 42.17A RCW;

(i) Discounts available to an individual as a member of an employee group, occupation, or similar broad-based group; and

(j) Awards, prizes, scholarships, or other items provided in recognition of academic or scientific achievement.

(10) "Head of agency" means the chief executive officer of an agency. In the case of an agency headed by a commis-

sion, board, committee, or other body consisting of more than one natural person, agency head means the person or board authorized to appoint agency employees and regulate their conduct.

(11) "Honorarium" means money or thing of value offered to a state officer or state employee for a speech, appearance, article, or similar item or activity in connection with the state officer's or state employee's official role.

(12) "Official duty" means those duties within the specific scope of employment of the state officer or state employee as defined by the officer's or employee's agency or by statute or the state Constitution.

(13) "Participate" means to participate in state action or a proceeding personally and substantially as a state officer or state employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation, or otherwise but does not include preparation, consideration, or enactment of legislation or the performance of legislative duties.

(14) "Person" means any individual, partnership, association, corporation, firm, institution, or other entity, whether or not operated for profit.

(15) "Regulatory agency" means any state board, commission, department, or officer, except those in the legislative or judicial branches, authorized by law to conduct adjudicative proceedings, issue permits or licenses, or to control or affect interests of identified persons.

(16) "Responsibility" in connection with a transaction involving the state, means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or through subordinates, effectively to approve, disapprove, or otherwise direct state action in respect of such transaction.

(17) "State action" means any action on the part of an agency, including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

(18) "State employee" means an individual who is employed by an agency in any branch of state government. For purposes of this chapter, employees of the superior courts are not state officers or state employees.

(19) "State officer" means every person holding a position of public trust in or under an executive, legislative, or judicial office of the state. "State officer" includes judges of the superior court, judges of the court of appeals, justices of the supreme court, members of the legislature together with the secretary of the senate and the chief clerk of the house of representatives, holders of elective offices in the executive branch of state government, chief executive officers of state agencies, members of boards, commissions, or committees with authority over one or more state agencies or institutions, and employees of the state who are engaged in supervisory, policy-making, or policy-enforcing work. For the purposes of this chapter, "state officer" also includes any person exercising or undertaking to exercise the powers or functions of a state officer.

(20) "Thing of economic value," in addition to its ordinary meaning, includes:

(a) A loan, property interest, interest in a contract or other chose in action, and employment or another arrangement involving a right to compensation;

(b) An option, irrespective of the conditions to the exercise of the option; and

(c) A promise or undertaking for the present or future delivery or procurement.

(21)(a) "Transaction involving the state" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the state officer, state employee, or former state officer or state employee in question believes, or has reason to believe:

(i) Is, or will be, the subject of state action; or

(ii) Is one to which the state is or will be a party; or

(iii) Is one in which the state has a direct and substantial proprietary interest.

(b) "Transaction involving the state" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by an officer or employee; or a claim, case, lawsuit, or similar matter if the officer or employee did not participate in the underlying transaction involving the state that is the basis for the claim, case, or lawsuit.

(22) "University" includes "state universities" and "regional universities" as defined in RCW 28B.10.016 and also includes any research or technology institute affiliated with a university, including without limitation, the *Spokane intercollegiate research and technology institute and the *Washington technology center.

(23) "University research employee" means a state officer or state employee employed by a university, but only to the extent the state officer or state employee is engaged in research, technology transfer, approved consulting activities related to research and technology transfer, or other incidental activities. [2011 c 60 § 28; 2005 c 106 § 1; 1998 c 7 § 1; 1996 c 213 § 1; 1994 c 154 § 101.]

Reviser's note: *(1) The Spokane intercollegiate research and technology institute and the Washington technology center were abolished by 2011 1st sp.s. c 14 § 17.

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

Effective date—2011 c 60: See RCW 42.17A.919.

42.52.020 Activities incompatible with public duties.

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties. [1996 c 213 § 2; 1994 c 154 § 102.]

42.52.030 Financial interests in transactions. (1) No state officer or state employee, except as provided in subsection (2) of this section, may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward

from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

(2) No state officer or state employee may participate in a transaction involving the state in his or her official capacity with a person of which the officer or employee is an officer, agent, employee, or member, or in which the officer or employee owns a beneficial interest, except that an officer or employee of an institution of higher education or the *Spokane intercollegiate research and technology institute may serve as an officer, agent, employee, or member, or on the board of directors, board of trustees, advisory board, or committee or review panel for any nonprofit institute, foundation, or fund-raising entity; and may serve as a member of an advisory board, committee, or review panel for a governmental or other nonprofit entity. [2005 c 106 § 2; 1996 c 213 § 3; 1994 c 154 § 103.]

***Reviser's note:** The Spokane intercollegiate research and technology institute was abolished by 2011 1st sp.s. c 14 § 17.

42.52.040 Assisting in transactions. (1) Except in the course of official duties or incident to official duties, no state officer or state employee may assist another person, directly or indirectly, whether or not for compensation, in a transaction involving the state:

(a) In which the state officer or state employee has at any time participated; or

(b) If the transaction involving the state is or has been under the official responsibility of the state officer or state employee within a period of two years preceding such assistance.

(2) No state officer or state employee may share in compensation received by another for assistance that the officer or employee is prohibited from providing under subsection (1) or (3) of this section.

(3) A business entity of which a state officer or state employee is a partner, managing officer, or employee shall not assist another person in a transaction involving the state if the state officer or state employee is prohibited from doing so by subsection (1) of this section.

(4) This chapter does not prevent a state officer or state employee from assisting, in a transaction involving the state:

(a) The state officer's or state employee's parent, spouse or domestic partner, or child, or a child thereof for whom the officer or employee is serving as guardian, executor, administrator, trustee, or other personal fiduciary, if the state officer or state employee did not participate in the transaction; or

(b) Another state employee involved in disciplinary or other personnel administration proceedings. [2008 c 6 § 203; 1994 c 154 § 104.]

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

42.52.050 Confidential information—Improperly concealed records. (1) No state officer or state employee may accept employment or engage in any business or professional activity that the officer or employee might reasonably expect would require or induce him or her to make an unauthorized disclosure of confidential information acquired by the official or employee by reason of the official's or employee's official position.

(2) No state officer or state employee may make a disclosure of confidential information gained by reason of the officer's or employee's official position or otherwise use the information for his or her personal gain or benefit or the gain or benefit of another, unless the disclosure has been authorized by statute or by the terms of a contract involving (a) the state officer's or state employee's agency and (b) the person or persons who have authority to waive the confidentiality of the information.

(3) No state officer or state employee may disclose confidential information to any person not entitled or authorized to receive the information.

(4) No state officer or state employee may intentionally conceal a record if the officer or employee knew the record was required to be released under chapter 42.56 RCW, was under a personal obligation to release the record, and failed to do so. This subsection does not apply where the decision to withhold the record was made in good faith. [2005 c 274 § 292; 1996 c 213 § 4; 1994 c 154 § 105.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

42.52.060 Testimony of state officers and state employees. This chapter does not prevent a state officer or state employee from giving testimony under oath or from making statements required to be made under penalty of perjury or contempt. [1994 c 154 § 106.]

42.52.070 Special privileges. Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons. [1994 c 154 § 107.]

42.52.080 Employment after public service. (1) No former state officer or state employee may, within a period of one year from the date of termination of state employment, accept employment or receive compensation from an employer if:

(a) The officer or employee, during the two years immediately preceding termination of state employment, was engaged in the negotiation or administration on behalf of the state or agency of one or more contracts with that employer and was in a position to make discretionary decisions affecting the outcome of such negotiation or the nature of such administration;

(b) Such a contract or contracts have a total value of more than ten thousand dollars; and

(c) The duties of the employment with the employer or the activities for which the compensation would be received include fulfilling or implementing, in whole or in part, the provisions of such a contract or contracts or include the supervision or control of actions taken to fulfill or implement, in whole or in part, the provisions of such a contract or contracts. This subsection shall not be construed to prohibit a state officer or state employee from accepting employment with a state employee organization.

(2) No person who has served as a state officer or state employee may, within a period of two years following the termination of state employment, have a direct or indirect

beneficial interest in a contract or grant that was expressly authorized or funded by specific legislative or executive action in which the former state officer or state employee participated.

(3) No former state officer or state employee may accept an offer of employment or receive compensation from an employer if the officer or employee knows or has reason to believe that the offer of employment or compensation was intended, in whole or in part, directly or indirectly, to influence the officer or employee or as compensation or reward for the performance or nonperformance of a duty by the officer or employee during the course of state employment.

(4) No former state officer or state employee may accept an offer of employment or receive compensation from an employer if the circumstances would lead a reasonable person to believe the offer has been made, or compensation given, for the purpose of influencing the performance or nonperformance of duties by the officer or employee during the course of state employment.

(5) No former state officer or state employee may at any time subsequent to his or her state employment assist another person, whether or not for compensation, in any transaction involving the state in which the former state officer or state employee at any time participated during state employment. This subsection shall not be construed to prohibit any employee or officer of a state employee organization from rendering assistance to state officers or state employees in the course of employee organization business.

(6) As used in this section, "employer" means a person as defined in RCW 42.52.010 or any other entity or business that the person owns or in which the person has a controlling interest. For purposes of subsection (1) of this section, the term "employer" does not include a successor organization to the rural development council under chapter 43.31 RCW. [1999 c 299 § 3; 1994 c 154 § 108.]

42.52.090 Limited assistance by former state officers and employees. This chapter shall not be construed to prevent a former state officer or state employee from rendering assistance to others if the assistance is provided without compensation in any form and is limited to one or more of the following:

(1) Providing the names, addresses, and telephone numbers of state agencies or state employees;

(2) Providing free transportation to another for the purpose of conducting business with a state agency;

(3) Assisting a natural person or nonprofit corporation in obtaining or completing application forms or other forms required by a state agency for the conduct of a state business; or

(4) Providing assistance to the poor and infirm. [1994 c 154 § 109.]

42.52.100 Conditions on appearance before state agencies or doing business with the state—Hearing—Judicial review. (1) The head of an agency, upon finding that any former state officer or state employee of such agency or any other person has violated any provision of this chapter or rules adopted under it, may, in addition to any other powers the head of such agency may have, bar or impose reasonable conditions upon:

(a) The appearance before such agency of such former state officer or state employee or other person; and

(b) The conduct of, or negotiation or competition for, business with such agency by such former state officer or state employee or other person, such period of time as may reasonably be necessary or appropriate to effectuate the purposes of this chapter.

(2) Findings of violations referred to in subsection (1)(b) of this section shall be made on record after notice and hearing, conducted in accordance with the Washington Administrative Procedure Act, chapter 34.05 RCW. Such findings and orders are subject to judicial review.

(3) This section does not apply to the legislative or judicial branches of government. [1994 c 154 § 110; 1969 ex.s. c 234 § 27. Formerly RCW 42.18.270.]

42.52.110 Compensation for official duties or non-performance. No state officer or state employee may, directly or indirectly, ask for or give or receive or agree to receive any compensation, gift, reward, or gratuity from a source for performing or omitting or deferring the performance of any official duty, unless otherwise authorized by law except: (1) The state of Washington; or (2) in the case of officers or employees of institutions of higher education or of the *Spokane intercollegiate research and technology institute, a governmental entity, an agency or instrumentality of a governmental entity, or a nonprofit corporation organized for the benefit and support of the state employee's agency or other state agencies pursuant to an agreement with the state employee's agency. [1996 c 213 § 5; 1994 c 154 § 111.]

*Reviser's note: The Spokane intercollegiate research and technology institute was abolished by 2011 1st sp.s. c 14 § 17.

42.52.120 Compensation for outside activities. (1) No state officer or state employee may receive any thing of economic value under any contract or grant outside of his or her official duties. The prohibition in this subsection does not apply where the state officer or state employee has complied with *RCW 42.52.030(2) or each of the following conditions are met:

(a) The contract or grant is bona fide and actually performed;

(b) The performance or administration of the contract or grant is not within the course of the officer's or employee's official duties, or is not under the officer's or employee's official supervision;

(c) The performance of the contract or grant is not prohibited by RCW 42.52.040 or by applicable laws or rules governing outside employment for the officer or employee;

(d) The contract or grant is neither performed for nor compensated by any person from whom such officer or employee would be prohibited by RCW 42.52.150(4) from receiving a gift;

(e) The contract or grant is not one expressly created or authorized by the officer or employee in his or her official capacity;

(f) The contract or grant would not require unauthorized disclosure of confidential information.

(2) In addition to satisfying the requirements of subsection (1) of this section, a state officer or state employee may have a beneficial interest in a grant or contract or a series of

substantially identical contracts or grants with a state agency only if:

(a) The contract or grant is awarded or issued as a result of an open and competitive bidding process in which more than one bid or grant application was received; or

(b) The contract or grant is awarded or issued as a result of an open and competitive bidding or selection process in which the officer's or employee's bid or proposal was the only bid or proposal received and the officer or employee has been advised by the appropriate ethics board, before execution of the contract or grant, that the contract or grant would not be in conflict with the proper discharge of the officer's or employee's official duties; or

(c) The process for awarding the contract or issuing the grant is not open and competitive, but the officer or employee has been advised by the appropriate ethics board that the contract or grant would not be in conflict with the proper discharge of the officer's or employee's official duties.

(3) A state officer or state employee awarded a contract or issued a grant in compliance with subsection (2) of this section shall file the contract or grant with the appropriate ethics board within thirty days after the date of execution; however, if proprietary formulae, designs, drawings, or research are included in the contract or grant, the proprietary formulae, designs, drawings, or research may be deleted from the contract or grant filed with the appropriate ethics board.

(4) This section does not prevent a state officer or state employee from receiving compensation contributed from the treasury of the United States, another state, county, or municipality if the compensation is received pursuant to arrangements entered into between such state, county, municipality, or the United States and the officer's or employee's agency. This section does not prohibit a state officer or state employee from serving or performing any duties under an employment contract with a governmental entity.

(5) As used in this section, "officer" and "employee" do not include officers and employees who, in accordance with the terms of their employment or appointment, are serving without compensation from the state of Washington or are receiving from the state only reimbursement of expenses incurred or a predetermined allowance for such expenses. [1997 c 318 § 1; 1996 c 213 § 6; 1994 c 154 § 112.]

*Reviser's note: RCW 42.52.030 was amended by 2005 c 106 § 2, deleting subsection (2).

42.52.130 Honoraria. (1) No state officer or state employee may receive honoraria unless specifically authorized by the agency where they serve as state officer or state employee.

(2) An agency may not permit honoraria under the following circumstances:

(a) The person offering the honorarium is seeking or is reasonably expected to seek contractual relations with or a grant from the employer of the state officer or state employee, and the officer or employee is in a position to participate in the terms or the award of the contract or grant;

(b) The person offering the honorarium is regulated by the employer of the state officer or state employee and the officer or employee is in a position to participate in the regulation; or

(c) The person offering the honorarium (i) is seeking or opposing or is reasonably likely to seek or oppose enactment of legislation or adoption of administrative rules or actions, or policy changes by the state officer's or state employee's agency; and (ii) the officer or employee may participate in the enactment or adoption. [1994 c 154 § 113.]

42.52.140 Gifts. No state officer or state employee may receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction. [1994 c 154 § 114.]

42.52.150 Limitations on gifts. (1) No state officer or state employee may accept gifts, other than those specified in subsections (2) and (5) of this section, with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars. For purposes of this section, "single source" means any person, as defined in RCW 42.52.010, whether acting directly or through any agent or other intermediary, and "single gift" includes any event, item, or group of items used in conjunction with each other or any trip including transportation, lodging, and attendant costs, not excluded from the definition of gift under RCW 42.52.010. The value of gifts given to an officer's or employee's family member or guest shall be attributed to the official or employee for the purpose of determining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member or guest.

(2) Except as provided in subsection (4) of this section, the following items are presumed not to influence under RCW 42.52.140, and may be accepted without regard to the limit established by subsection (1) of this section:

- (a) Unsolicited flowers, plants, and floral arrangements;
- (b) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;
- (c) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;
- (d) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;
- (e) Informational material, publications, or subscriptions related to the recipient's performance of official duties;
- (f) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;
- (g) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise accepted and solicited for deposit in the legislative international trade account created in RCW 43.15.050;
- (h) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise accepted and solicited for the purpose of promoting the expansion of tourism as provided for in *RCW 43.330.090;

(i) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, solicited on behalf of a national legislative association, 2006 official conference of the national lieutenant governors' association, or host committee for the purpose of hosting an official conference under the circumstances specified in RCW 42.52.820 and section 2, chapter 5, Laws of 2006. Anything solicited or accepted may only be received by the national association or host committee and may not be commingled with any funds or accounts that are the property of any person;

(j) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and

(k) Unsolicited gifts from dignitaries from another state or a foreign country that are intended to be personal in nature.

(3) The presumption in subsection (2) of this section is rebuttable and may be overcome based on the circumstances surrounding the giving and acceptance of the item.

(4) Notwithstanding subsections (2) and (5) of this section, a state officer or state employee of a regulatory agency or of an agency that seeks to acquire goods or services who participates in those regulatory or contractual matters may receive, accept, take, or seek, directly or indirectly, only the following items from a person regulated by the agency or from a person who seeks to provide goods or services to the agency:

(a) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

(b) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(c) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;

(d) Informational material, publications, or subscriptions related to the recipient's performance of official duties;

(e) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;

(f) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and

(g) Those items excluded from the definition of gift in RCW 42.52.010 except:

(i) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity;

(ii) Payments for seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution; and

(iii) Flowers, plants, and floral arrangements.

(5) A state officer or state employee may accept gifts in the form of food and beverage on infrequent occasions in the ordinary course of meals where attendance by the officer or employee is related to the performance of official duties. Gifts in the form of food and beverage that exceed fifty dollars on a single occasion shall be reported as provided in

chapter 42.17A RCW. [2011 c 60 § 29; 2006 c 5 § 3; 2003 1st sp.s. c 23 § 2. Prior: 2003 c 265 § 3; 2003 c 153 § 6; 1998 c 7 § 2; 1994 c 154 § 115.]

***Reviser's note:** RCW 43.330.090 was amended by 2007 c 228 § 201, deleting subsection (2) which directly related to "expansion of tourism."

Effective date—2011 c 60: See RCW 42.17A.919.

Findings—2006 c 5: "The legislature finds that due to the massive devastation inflicted on the city of New Orleans by hurricane Katrina on August 29, 2005, the city of New Orleans will not be able to meet its obligation to host the national lieutenant governors' association's annual conference scheduled for July 17 through July 19, 2006. As a result of this unfortunate situation, the members of the national lieutenant governors' association officially pressed to have Washington state host the next annual conference in Seattle, Washington, and lieutenant governor Brad Owen has agreed to do so. The legislature further finds, in recognition of the unprecedented situation created by this natural disaster, the high national visibility of this important event, and due to the limited amount of time remaining for planning and fund-raising, it is necessary to initiate fund-raising activities for this national conference as soon as possible." [2006 c 5 § 1.]

Effective date—2006 c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 7, 2006]." [2006 c 5 § 4.]

Findings—2003 c 153: See note following RCW 43.330.090.

42.52.160 Use of persons, money, or property for private gain. (1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

(2) This section does not prohibit the use of public resources to benefit others as part of a state officer's or state employee's official duties.

(3) This section does not prohibit de minimis use of state facilities to provide employees with information about (a) medical, surgical, and hospital care; (b) life insurance or accident and health disability insurance; or (c) individual retirement accounts, by any person, firm, or corporation administering such program as part of authorized payroll deductions pursuant to RCW 41.04.020.

(4) The appropriate ethics boards may adopt rules providing exceptions to this section for occasional use of the state officer or state employee, of de minimis cost and value, if the activity does not result in interference with the proper performance of public duties. [2014 c 28 § 1; 1996 c 213 § 7; 1994 c 154 § 116; 1987 c 426 § 3. Formerly RCW 42.18.217.]

42.52.170 Giving, paying, loaning, etc., any thing of economic value to state employee. No person shall give, pay, loan, transfer, or deliver, directly or indirectly, to any other person any thing of economic value believing or having reason to believe that there exist circumstances making the receipt thereof a violation of RCW 42.52.040, 42.52.110, 42.52.120, 42.52.140, or 42.52.150. [1994 c 154 § 117; 1987 c 426 § 5; 1969 ex.s. c 234 § 23. Formerly RCW 42.18.230.]

42.52.180 Use of public resources for political campaigns. (1) No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with

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authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. Facilities of an agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

(2) This section shall not apply to the following activities:

(a) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition as long as (i) required notice of the meeting includes the title and number of the ballot proposition, and (ii) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(b) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry. For the purposes of this subsection, it is not a violation of this section for an elected official to respond to an inquiry regarding a ballot proposition, to make incidental remarks concerning a ballot proposition in an official communication, or otherwise comment on a ballot proposition without an actual, measurable expenditure of public funds. The ethics boards shall adopt by rule a definition of measurable expenditure;

(c) The maintenance of official legislative web sites throughout the year, regardless of pending elections. The web sites may contain any discretionary material which was also specifically prepared for the legislator in the course of his or her duties as a legislator, including newsletters and press releases. The official legislative web sites of legislators seeking reelection shall not be altered between June 30th and November 15th of the election year. The web site shall not be used for campaign purposes;

(d) Activities that are part of the normal and regular conduct of the office or agency; and

(e) De minimis use of public facilities by statewide elected officials and legislators incidental to the preparation or delivery of permissible communications, including written and verbal communications initiated by them of their views on ballot propositions that foreseeably may affect a matter that falls within their constitutional or statutory responsibilities.

(3) As to state officers and employees, this section operates to the exclusion of RCW 42.17A.555. [2011 c 60 § 30; 2010 c 185 § 1; 1995 c 397 § 30; 1994 c 154 § 118.]

Effective date—2011 c 60: See RCW 42.17A.919.

Additional notes found at www.leg.wa.gov

42.52.185 Restrictions on mailings by legislators. (1) During the twelve-month period beginning on December 1st of the year before a general election for a state legislator's election to office and continuing through November 30th immediately after the general election, the legislator may not mail, either by regular mail or electronic mail, to a constituent at public expense a letter, newsletter, brochure, or other piece of literature, except as follows:

(a) The legislator may mail two mailings of newsletters to constituents. All newsletters within each mailing of newsletters must be identical as to their content but not as to the constituent name or address. One such mailing may be mailed no later than thirty days after the start of a regular legislative session, except that a legislator appointed during a regular legislative session to fill a vacant seat may have up to thirty days from the date of appointment to send out the first mailing. The other mailing may be mailed no later than sixty days after the end of a regular legislative session.

(b) The legislator may mail an individual letter to (i) an individual constituent who has contacted the legislator regarding the subject matter of the letter during the legislator's current term of office; (ii) an individual constituent who holds a governmental office with jurisdiction over the subject matter of the letter; or (iii) an individual constituent who has received an award or honor of extraordinary distinction of a type that is sufficiently infrequent to be noteworthy to a reasonable person, including, but not limited to: (A) An international or national award such as the Nobel prize or the Pulitzer prize; (B) a state award such as Washington scholar; (C) an Eagle Scout award; and (D) a Medal of Honor.

(c) In those cases where constituents have specifically indicated that they would like to be contacted to receive regular or periodic updates on legislative matters, legislators may provide such updates by electronic mail throughout the legislative session and up until thirty days from the conclusion of a legislative session.

(2) For purposes of subsection (1) of this section, "legislator" means a legislator who is a "candidate," as defined by RCW 42.17A.005, for any public office.

(3) A violation of this section constitutes use of the facilities of a public office for the purpose of assisting a campaign under RCW 42.52.180.

(4) The house of representatives and senate shall specifically limit expenditures per member for the total cost of mailings. Those costs include, but are not limited to, production costs, printing costs, and postage costs. The limits imposed under this subsection apply only to the total expenditures on mailings per member and not to any categorical cost within the total.

(5) For purposes of this section, persons residing outside the legislative district represented by the legislator are not considered to be constituents, but students, military personnel, or others temporarily employed outside of the district who normally reside in the district are considered to be constituents. [2011 c 60 § 31; 2008 c 39 § 2; 1997 c 320 § 1; 1995 c 397 § 5; 1993 c 2 § 25 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.132.]

Effective date—2011 c 60: See RCW 42.17A.919.

Findings—Intent—2008 c 39: "The legislature finds that the legislature's ability to communicate with its constituency is of the utmost importance in having a healthy representative democracy. It is the intent of the legislature to provide important information to constituents on an ongoing basis in order to truly be a government of the people and for the people. The legislature finds that this communication will only increase citizen access to legislative issues." [2008 c 39 § 1.]

42.52.190 Investments. (1) Except for permissible investments as defined in this section, no state officer or state employee of any agency responsible for the investment of funds, who acts in a decision-making, advisory, or policy-

influencing capacity with respect to investments, may have a direct or indirect interest in any property, security, equity, or debt instrument of a person, without prior written approval of the agency.

(2) Agencies responsible for the investment of funds shall adopt policies governing approval of investments and establishing criteria to be considered in the approval process. Criteria shall include the relationship between the proposed investment and investments held or under consideration by the state, the size and timing of the proposed investment, access by the state officer or state employee to nonpublic information relative to the proposed investment, and the availability of the investment in the public market. Agencies responsible for the investment of funds also shall adopt policies consistent with this chapter governing use by their officers and employees of financial information acquired by virtue of their state positions. A violation of such policies adopted to implement this subsection shall constitute a violation of this chapter.

(3) As used in this section, "permissible investments" means any mutual fund, deposit account, certificate of deposit, or money market fund maintained with a bank, broker, or other financial institution, a security publicly traded in an organized market if the interest in the security at acquisition is ten thousand dollars or less, or an interest in real estate, except if the real estate interest is in or with a party in whom the agency holds an investment. [1994 c 154 § 119.]

42.52.200 Agency rules. (1) Each agency may adopt rules consistent with law, for use within the agency to protect against violations of this chapter.

(2) Each agency proposing to adopt rules under this section shall forward the rules to the appropriate ethics board before they may take effect. The board may submit comments to the agency regarding the proposed rules.

(3) This section applies to universities only to the extent their activities are not subject to RCW 42.52.220. [2005 c 106 § 3; 1994 c 154 § 120.]

42.52.220 Universities—Administrative processes. (1) Consistent with the state policy to encourage basic and applied scientific research by the state's research universities as stated in RCW 28B.140.005, each university may develop, adopt, and implement one or more written administrative processes that shall, upon approval by the governor, apply in place of the obligations imposed on universities and university research employees under RCW 42.52.030, 42.52.040, 42.52.080, 42.52.110, 42.52.120, 42.52.130, 42.52.140, 42.52.150, and 42.52.160. The universities shall coordinate on the development of administrative processes to ensure the processes are comparable. A university research employee in compliance with the processes authorized in this section shall be deemed to be in compliance with RCW 42.52.030, 42.52.040, 42.52.080, 42.52.110, 42.52.120, 42.52.130, 42.52.140, 42.52.150, and 42.52.160.

(2) The executive ethics board shall enforce activity subject to the written approval processes under this section, as provided in RCW 42.52.360. [2005 c 106 § 4.]

42.52.310 Legislative ethics board. (1) The legislative ethics board is created, composed of nine members, selected as follows:

(a) Two senators, one from each of the two largest caucuses, appointed by the president of the senate;

(b) Two members of the house of representatives, one from each of the two largest caucuses, appointed by the speaker of the house of representatives;

(c) Five citizen members:

(i) One citizen member chosen by the governor from a list of three individuals submitted by each of the four legislative caucuses; and

(ii) One citizen member selected by three of the four other citizen members of the legislative ethics board.

(2) Except for initial members and members completing partial terms, nonlegislative members shall serve a single five-year term.

(3) No more than three of the public members may be identified with the same political party.

(4) Terms of initial nonlegislative board members shall be staggered as follows: One member shall be appointed to a one-year term; one member shall be appointed to a two-year term; one member shall be appointed to a three-year term; one member shall be appointed to a four-year term; and one member shall be appointed for a five-year term.

(5) A vacancy on the board shall be filled in the same manner as the original appointment.

(6) Legislative members shall serve two-year terms, from January 31st of an odd-numbered year until January 31st of the next odd-numbered year.

(7) Each member shall serve for the term of his or her appointment and until his or her successor is appointed.

(8) The citizen members shall annually select a chair from among themselves. [1994 c 154 § 201.]

42.52.320 Authority of legislative ethics board. (1) The legislative ethics board shall enforce this chapter and rules adopted under it with respect to members and employees of the legislature.

(2) The legislative ethics board shall:

(a) Develop educational materials and training with regard to legislative ethics for legislators and legislative employees;

(b) Issue advisory opinions;

(c) Adopt rules or policies governing the conduct of business by the board, and adopt rules defining working hours for purposes of RCW 42.52.180 and where otherwise authorized under chapter 154, Laws of 1994;

(d) Investigate, hear, and determine complaints by any person or on its own motion;

(e) Impose sanctions including reprimands and monetary penalties;

(f) Recommend suspension or removal to the appropriate legislative entity, or recommend prosecution to the appropriate authority; and

(g) Establish criteria regarding the levels of civil penalties appropriate for different types of violations of this chapter and rules adopted under it.

(3) The board may:

(a) Issue subpoenas for the attendance and testimony of witnesses and the production of documentary evidence relat-

ing to any matter under examination by the board or involved in any hearing;

(b) Administer oaths and affirmations;

(c) Examine witnesses; and

(d) Receive evidence.

(4) Subject to RCW 42.52.540, the board has jurisdiction over any alleged violation that occurred before January 1, 1995, and that was within the jurisdiction of any of the boards established under *chapter 44.60 RCW. The board's jurisdiction with respect to any such alleged violation shall be based on the statutes and rules in effect at [the] time of the violation. [1994 c 154 § 202.]

***Reviser's note:** Chapter 44.60 RCW was repealed by 1994 c 154 § 304, effective January 1, 1995.

42.52.330 Interpretation. By constitutional design, the legislature consists of citizen-legislators who bring to bear on the legislative process their individual experience and expertise. The provisions of this chapter shall be interpreted in light of this constitutional principle. [1994 c 154 § 203.]

42.52.340 Transfer of jurisdiction. On January 1, 1995, any complaints or other matters under investigation or consideration by the boards of legislative ethics in the house of representatives and the senate operating pursuant to *chapter 44.60 RCW shall be transferred to the legislative ethics board created by RCW 42.52.310. All files, including but not limited to minutes of meetings, investigative files, records of proceedings, exhibits, and expense records, shall be transferred to the legislative ethics board created in RCW 42.52.310 pursuant to their direction and the legislative ethics board created in RCW 42.52.310 shall assume full jurisdiction over all pending complaints, investigations, and proceedings. [1994 c 154 § 204.]

***Reviser's note:** Chapter 44.60 RCW was repealed by 1994 c 154 § 304, effective January 1, 1995.

42.52.350 Executive ethics board. (1) The executive ethics board is created, composed of five members, appointed by the governor as follows:

(a) One member shall be a classified service employee as defined in chapter 41.06 RCW;

(b) One member shall be a state officer or state employee in an exempt position;

(c) One member shall be a citizen selected from a list of three names submitted by the attorney general;

(d) One member shall be a citizen selected from a list of three names submitted by the state auditor; and

(e) One member shall be a citizen selected at large by the governor.

(2) Except for initial members and members completing partial terms, members shall serve a single five-year term.

(3) No more than three members may be identified with the same political party.

(4) Terms of initial board members shall be staggered as follows: One member shall be appointed to a one-year term; one member shall be appointed to a two-year term; one member shall be appointed to a three-year term; one member shall be appointed to a four-year term; and one member shall be appointed to a five-year term.

(5) A vacancy on the board shall be filled in the same manner as the original appointment.

(6) Each member shall serve for the term of his or her appointment and until his or her successor is appointed.

(7) The members shall annually select a chair from among themselves.

(8) Staff shall be provided by the office of the attorney general. [1994 c 154 § 205.]

42.52.360 Authority of executive ethics board. (1) The executive ethics board shall enforce this chapter and rules adopted under it with respect to statewide elected officers and all other officers and employees in the executive branch, boards and commissions, and institutions of higher education.

(2) The executive ethics board shall enforce this chapter with regard to the activities of university research employees as provided in this subsection.

(a) With respect to compliance with RCW 42.52.030, 42.52.110, 42.52.130, 42.52.140, and 42.52.150, the administrative process shall be consistent with and adhere to no less than the current standards in regulations of the United States public health service and the office of the secretary of the department of health and human services in Title 42 C.F.R. Part 50, Subpart F relating to promotion of objectivity in research.

(b) With respect to compliance with RCW 42.52.040, 42.52.080, and 42.52.120, the administrative process shall include a comprehensive system for the disclosure, review, and approval of outside work activities by university research employees while assuring that such employees are fulfilling their employment obligations to the university.

(c) With respect to compliance with RCW 42.52.160, the administrative process shall include a reasonable determination by the university of acceptable private uses having de minimis costs to the university and a method for establishing fair and reasonable reimbursement charges for private uses the costs of which are in excess of de minimis.

(3) The executive ethics board shall:

(a) Develop educational materials and training;

(b) Adopt rules and policies governing the conduct of business by the board, and adopt rules defining working hours for purposes of RCW 42.52.180 and where otherwise authorized under chapter 154, Laws of 1994;

(c) Issue advisory opinions;

(d) Investigate, hear, and determine complaints by any person or on its own motion;

(e) Impose sanctions including reprimands and monetary penalties;

(f) Recommend to the appropriate authorities suspension, removal from position, prosecution, or other appropriate remedy; and

(g) Establish criteria regarding the levels of civil penalties appropriate for violations of this chapter and rules adopted under it.

(4) The board may:

(a) Issue subpoenas for the attendance and testimony of witnesses and the production of documentary evidence relating to any matter under examination by the board or involved in any hearing;

(b) Administer oaths and affirmations;

(c) Examine witnesses; and

(d) Receive evidence.

(5) The board shall not delegate to the board's executive director its authority to issue advisories, advisory letters, or opinions.

(6) Except as provided in RCW 42.52.220, the executive ethics board may review and approve agency policies as provided for in this chapter.

(7) This section does not apply to state officers and state employees of the judicial branch. [2013 c 190 § 3; 2005 c 106 § 5; 1994 c 154 § 206.]

Finding—2013 c 190: See note following RCW 42.52.410.

42.52.365 Executive branch agencies—Ethics advisors—Ethics training. (1) Each executive branch agency shall designate an ethics advisor or advisors to assist the agency's employees in understanding their obligations under the ethics in public service act. Agencies shall inform the executive ethics board of their designated advisors. As funding permits and as determined by the executive ethics board and the agency head, the advisors shall receive regular ethics training.

(2) Executive branch officers and employees are encouraged to attend ethics training offered by the executive ethics board at least once every thirty-six months. [2013 c 190 § 6.]

Finding—2013 c 190: See note following RCW 42.52.410.

42.52.370 Authority of commission on judicial conduct. The commission on judicial conduct shall enforce this chapter and rules adopted under it with respect to state officers and employees of the judicial branch and may do so according to procedures prescribed in Article IV, section 31 of the state Constitution. In addition to the sanctions authorized in Article IV, section 31 of the state Constitution, the commission may impose sanctions authorized by this chapter. [1994 c 154 § 207.]

(1) No member of the executive ethics board may (a) hold or campaign for partisan elective office other than the position of precinct committeeperson, or any full-time nonpartisan office; (b) be an officer of any political party or political committee as defined in chapter 42.17A RCW other than the position of precinct committeeperson; (c) permit his or her name to be used, or make contributions, in support of or in opposition to any state candidate or state ballot measure; or (d) lobby or control, direct, or assist a lobbyist except that such member may appear before any committee of the legislature on matters pertaining to this chapter.

42.52.380 Political activities of board members. (1)

No member of the executive ethics board may (a) hold or campaign for partisan elective office other than the position of precinct committeeperson, or any full-time nonpartisan office; (b) be an officer of any political party or political committee as defined in chapter 42.17A RCW, other than the position of precinct committeeperson; (c) permit his or her name to be used, or make contributions, in support of or in opposition to any legislative candidate, any legislative caucus campaign committee that supports or opposes legislative candidates, or any political action committee that supports or opposes legislative candidates; or (d) engage in lobbying in the legislative branch under circumstances not exempt, under RCW 42.17A.610, from lobbyist registration and reporting.

(2) No citizen member of the legislative ethics board may (a) hold or campaign for partisan elective office other than the position of precinct committeeperson, or any full-time nonpartisan office; (b) be an officer of any political party or political committee as defined in chapter 42.17A RCW, other than the position of precinct committeeperson; (c) permit his or her name to be used, or make contributions, in support of or in opposition to any legislative candidate, any legislative caucus campaign committee that supports or opposes legislative candidates, or any political action committee that supports or opposes legislative candidates; or (d) engage in lobbying in the legislative branch under circumstances not exempt, under RCW 42.17A.610, from lobbyist registration and reporting.

(3) No citizen member of the legislative ethics board may hold or campaign for a seat in the state house of representatives or the state senate within two years of serving on the board if the citizen member opposes an incumbent who has been the respondent in a complaint before the board. [2011 c 60 § 32; 1997 c 11 § 1; 1994 c 154 § 208.]

Effective date—2011 c 60: See RCW 42.17A.919.

42.52.390 Hearing and subpoena authority. Except as otherwise provided by law, the ethics boards may hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of a person under oath, and in connection therewith, to require the production for examination of any books or papers relating to any matter under investigation or in question before the ethics board. The ethics board may make rules as to the issuance of subpoenas by individual members, as to service of complaints, decisions, orders, recommendations, and other process or papers of the ethics board. [1994 c 154 § 209.]

42.52.400 Enforcement of subpoena authority. In case of refusal to obey a subpoena issued to a person, the superior court of a county within the jurisdiction of which the investigation, proceeding, or hearing under this chapter is carried on or within the jurisdiction of which the person refusing to obey is found or resides or transacts business, upon application by the appropriate ethics board shall have jurisdiction to issue to the person an order requiring the person to appear before the ethics board or its member to produce evidence if so ordered, or to give testimony touching the matter under investigation or in question. Failure to obey such order of the court may be punished by the court as contempt. [1994 c 154 § 210.]

42.52.410 Filing complaint—Whistleblower protection—Penalty for reprisal or retaliation. (1) A person may, personally or by his or her attorney, make, sign, and file with the appropriate ethics board a complaint on a form provided by the appropriate ethics board. The complaint shall state the name of the person alleged to have violated this chapter or rules adopted under it and the particulars thereof, and contain such other information as may be required by the appropriate ethics board.

(2) If it has reason to believe that any person has been engaged or is engaging in a violation of this chapter or rules adopted under it, an ethics board may issue a complaint.

(3)(a) A state employee who files a complaint with the appropriate ethics board shall be afforded the protection afforded to a whistleblower under RCW 42.40.050 and 49.60.210(2), subject to the limitations of RCW 42.40.035 and 42.40.910. An agency, manager, or supervisor may not retaliate against a state employee who, after making a reasonable attempt to ascertain the correctness of the information furnished, files a complaint with the appropriate ethics board.

(b) A state employee may not be denied the protections in chapter 42.40 RCW even if the ethics board denies an investigation of the complaint.

(4) If a determination is made that a reprisal or retaliatory action has been taken against the state employee, the retaliator may be subject to a civil penalty of up to five thousand dollars. [2013 c 190 § 2; 1994 c 154 § 211.]

Finding—2013 c 190: "The legislature finds that ensuring public trust in government is a priority. The public expects its elected officials and state employees to adhere to the highest ethical standards during their service, and this includes a commitment to full and independent investigations, with proper penalties, in cases where the ethics in public service act is violated." [2013 c 190 § 1.]

42.52.420 Investigation. (1) After the filing of any complaint, except as provided in RCW 42.52.450, the staff of the appropriate ethics board shall investigate the complaint. The ethics board may request the assistance of the office of the attorney general or a contract investigator in conducting its investigation.

(2) The results of the investigation shall be reduced to writing and the staff shall either make a determination that the complaint should be dismissed pursuant to RCW 42.52.425, or recommend to the board that there is or that there is not reasonable cause to believe that a violation of this chapter or rules adopted under it has been or is being committed.

(3) The board's determination on reasonable cause shall be provided to the complainant and to the person named in such complaint.

(4) The identity of a person filing a complaint under RCW 42.52.410(1) is exempt from public disclosure, as provided in RCW 42.56.240. [2013 c 190 § 4; 2000 c 211 § 1; 1994 c 154 § 212.]

Finding—2013 c 190: See note following RCW 42.52.410.

42.52.425 Dismissal of complaint. (1) Based on the investigation conducted under RCW 42.52.420 or 42.52.450, and subject to rules issued by each board, the board or the staff of the appropriate ethics board may issue an order of dismissal based on any of the following findings:

(a) Any violation that may have occurred is not within the jurisdiction of the board;

(b) The complaint is obviously unfounded or frivolous; or

(c) Any violation that may have occurred does not constitute a material violation because it was inadvertent and minor, or has been cured, and, after consideration of all of the circumstances, further proceedings would not serve the purposes of this chapter.

(2) Written notice of the determination under subsection (1) of this section shall be provided to the complainant, respondent, and the board. The written notice to the complainant shall include a statement of the complainant's right to appeal to the board under subsection (3) of this section if the dismissal order was issued by staff.

(3) In the event that a complaint is dismissed by staff under this section, the complainant may request that the board review the action. Following review, the board shall:

(a) Affirm the staff dismissal;

(b) Direct the staff to conduct further investigation; or

(c) Issue a determination that there is reasonable cause to believe that a violation has been or is being committed.

(4) The board's decision under subsection (3) of this section shall be reduced to writing and provided to the complainant and the respondent. [2005 c 116 § 1; 2000 c 211 § 2.]

42.52.430 Public hearing—Findings. (1) If the ethics board determines there is reasonable cause under RCW

42.52.420 that a violation of this chapter or rules adopted under it occurred, a public hearing on the merits of the complaint shall be held.

(2) The ethics board shall designate the location of the hearing. The case in support of the complaint shall be presented at the hearing by staff of the ethics board.

(3) The respondent shall file a written answer to the complaint and appear at the hearing in person or otherwise, with or without counsel, and submit testimony and be fully heard. The respondent has the right to cross-examine witnesses.

(4) Testimony taken at the hearing shall be under oath and recorded.

(5) If, based upon a preponderance of the evidence, the ethics board finds that the respondent has violated this chapter or rules adopted under it, the board shall file an order stating findings of fact and enforcement action as authorized under this chapter.

(6) If, upon all the evidence, the ethics board finds that the respondent has not engaged in an alleged violation of this chapter or rules adopted under it, the ethics board shall state findings of fact and shall similarly issue and file an order dismissing the complaint.

(7) If the board makes a determination that there is not reasonable cause to believe that a violation has been or is being committed or has made a finding under subsection (6) of this section, the attorney general shall represent the officer or employee in any action subsequently commenced based on the alleged facts in the complaint. [1994 c 154 § 213.]

42.52.440 Review of order. Except as otherwise provided by law, reconsideration or judicial review of an ethics board's order that a violation of this chapter or rules adopted under it has occurred shall be governed by the provisions of chapter 34.05 RCW applicable to review of adjudicative proceedings. [1994 c 154 § 214.]

42.52.450 Complaint against legislator or statewide elected official. (1) If a complaint alleges a violation of RCW 42.52.180 by a legislator or statewide elected official other than the attorney general, the attorney general shall, if requested by the appropriate ethics board, conduct the investigation under RCW 42.52.420 and recommend action.

(2) If a complaint alleges a violation of RCW 42.52.180 by the attorney general, the state auditor shall conduct the investigation under RCW 42.52.420 and recommend action to the appropriate ethics board. [2005 c 116 § 2; 1994 c 154 § 215.]

42.52.460 Citizen actions. Any person who has notified the appropriate ethics board and the attorney general in writing that there is reason to believe that RCW 42.52.180 is being or has been violated may, in the name of the state, bring a citizen action for any of the actions authorized under this chapter. A citizen action may be brought only if the appropriate ethics board or the attorney general have failed to commence an action under this chapter within forty-five days after notice from the person, the person has thereafter notified the appropriate ethics board and the attorney general that the person will commence a citizen's action within ten days upon their failure to commence an action, and the appropriate ethics board and the attorney general have in fact failed to bring

an action within ten days of receipt of the second notice. An action is deemed to have been commenced when the appropriate ethics board or the board's executive director accepts a complaint for filing and initiates a preliminary investigation.

If the person who brings the citizen's action prevails, the judgment awarded shall escheat to the state, but the person shall be entitled to be reimbursed by the state of Washington for costs and attorneys' fees incurred. If a citizen's action that the court finds was brought without reasonable cause is dismissed, the court may order the person commencing the action to pay all costs of trial and reasonable attorneys' fees incurred by the defendant.

Upon commencement of a citizen action under this section, at the request of a state officer or state employee who is a defendant, the office of the attorney general shall represent the defendant if the attorney general finds that the defendant's conduct complied with this chapter and was within the scope of employment. [2013 c 190 § 5; 1994 c 154 § 216.]

Finding—2013 c 190: See note following RCW 42.52.410.

42.52.470 Referral for enforcement. As appropriate, an ethics board may refer a complaint:

(1) To an agency for initial investigation and proposed resolution which shall be referred back to the appropriate ethics board for action; or

(2) To the attorney general's office or prosecutor for appropriate action. [1994 c 154 § 217.]

42.52.480 Action by boards. (1) Except as otherwise provided by law, an ethics board may order payment of the following amounts if it finds a violation of this chapter or rules adopted under it after a hearing under RCW 42.52.370 or other applicable law:

(a) Any damages sustained by the state that are caused by the conduct constituting the violation;

(b) From each such person, a civil penalty of up to five thousand dollars per violation or three times the economic value of any thing received or sought in violation of this chapter or rules adopted under it, whichever is greater; and

(c) Costs, including reasonable investigative costs, which shall be included as part of the limit under (b) of this subsection. The costs may not exceed the penalty imposed. The payment owed on the penalty shall be reduced by the amount of the costs paid.

(2) Damages under this section may be enforced in the same manner as a judgment in a civil case. [1994 c 154 § 218.]

42.52.490 Action by attorney general. (1) Upon a written determination by the attorney general that the action of an ethics board was clearly erroneous or if requested by an ethics board, the attorney general may bring a civil action in the superior court of the county in which the violation is alleged to have occurred against a state officer, state employee, former state officer, former state employee, or other person who has violated or knowingly assisted another person in violating any of the provisions of this chapter or the rules adopted under it. In such action the attorney general may recover the following amounts on behalf of the state of Washington:

(a) Any damages sustained by the state that are caused by the conduct constituting the violation;

(b) From each such person, a civil penalty of up to five thousand dollars per violation or three times the economic value of any thing received or sought in violation of this chapter or the rules adopted under it, whichever is greater; and

(c) Costs, including reasonable investigative costs, which shall be included as part of the limit under (b) of this subsection. The costs may not exceed the penalty imposed. The payment owed on the penalty shall be reduced by the amount of the costs paid.

(2) In any civil action brought by the attorney general upon the basis that the attorney general has determined that the board's action was clearly erroneous, the court shall not proceed with the action unless the attorney general has first shown, and the court has found, that the action of the board was clearly erroneous. [1994 c 154 § 219.]

42.52.500 Optional hearings by administrative law judge. If an ethics board finds that there is reasonable cause to believe that a violation has occurred, the board shall consider the possibility of the alleged violator having to pay a total amount of penalty and costs of more than five hundred dollars. Based on such consideration, the board may give the person who is the subject of the complaint the option to have an administrative law judge conduct the hearing and rule on procedural and evidentiary matters. The board may also, on its own initiative, provide for retaining an administrative law judge. An ethics board may not require total payment of more than five hundred dollars in penalty and costs in any case where an administrative law judge is not used and the board did not give such option to the person who is the subject of the complaint. [1994 c 154 § 220.]

42.52.510 Rescission of state action. (1) The attorney general may, on request of the governor or the appropriate agency, and in addition to other available rights of rescission, bring an action in the superior court of Thurston county to cancel or rescind state action taken by a state officer or state employee, without liability to the state of Washington, contractual or otherwise, if the governor or ethics board has reason to believe that: (a) A violation of this chapter or rules adopted under it has substantially influenced the state action, and (b) the interest of the state requires the cancellation or rescission. The governor may suspend state action pending the determination of the merits of the controversy under this section. The court may permit persons affected by the governor's actions to post an adequate bond pending such resolution to ensure compliance by the defendant with the final judgment, decree, or other order of the court.

(2) This section does not limit other available remedies. [1994 c 154 § 221.]

42.52.520 Disciplinary action. (1) A violation of this chapter or rules adopted under it is grounds for disciplinary action.

(2) The procedures for any such action shall correspond to those applicable for disciplinary action for employee misconduct generally; for those state officers and state employees not specifically exempted in chapter 41.06 RCW, the

rules set forth in chapter 41.06 RCW shall apply. Any action against the state officer or state employee shall be subject to judicial review to the extent provided by law for disciplinary action for misconduct of state officers and state employees of the same category and grade. [1994 c 154 § 222; 1969 ex.s. c 234 § 26. Formerly RCW 42.18.260.]

42.52.530 Additional investigative authority. In addition to other authority under this chapter, the attorney general may investigate persons not under the jurisdiction of an ethics board whom the attorney general has reason to believe were involved in transactions in violation of this chapter or rules adopted under it. [1994 c 154 § 223.]

42.52.540 Limitations period. Any action taken under this chapter must be commenced within five years from the date of the violation. However, if it is shown that the violation was not discovered because of concealment by the person charged, then the action must be commenced within two years from the date the violation was discovered or reasonably should have been discovered: (1) By any person with direct or indirect supervisory responsibilities over the person who allegedly committed the violation; or (2) if no person has direct or indirect supervisory authority over the person who committed the violation, by the appropriate ethics board. [1994 c 154 § 224.]

42.52.550 Compensation of ethics boards. The citizen members of the legislative ethics board and the members of the executive ethics board shall be compensated as provided in RCW 43.03.250 and reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Legislator members of the legislative ethics board shall be reimbursed as provided in RCW 44.04.120. [1994 c 154 § 227.]

42.52.560 Communications from an employee organization or charitable organization—Distribution by state employee. (1) Nothing in this chapter prohibits a state employee from distributing communications from an employee organization or charitable organization to other state employees if the communications do not support or oppose a ballot proposition or candidate for federal, state, or local public office. Nothing in this section shall be construed to authorize any lobbying activity with public funds beyond the activity permitted by RCW 42.17A.635.

(2) "Employee organization," for purposes of this section, means any organization, union, or association in which employees participate and that exists for the purpose of collective bargaining with employers or for the purpose of opposing collective bargaining or certification of a union. [2011 c 60 § 33; 2006 c 217 § 1.]

Effective date—2011 c 60: See RCW 42.17A.919.

42.52.570 Private business activity policy—Department of fish and wildlife—Parks and recreation commission. (1) The department of fish and wildlife and the parks and recreation commission may approve private business activity in state-owned housing provided under Title 77 RCW or chapter 79A.05 RCW.

(2) Prior to granting approval of private business activity in state-owned housing, the department of fish and wildlife

and the parks and recreation commission must adopt a private business activity policy that is approved by the executive ethics board.

(a) The private business activity policy may only authorize private business activity by the resident state employee while the employee is off duty or the employee's spouse who is approved for residency in the agency housing or the employee's children.

(b) The private business activity policy may not allow private business activity that negatively impacts the agency's operations. For the purposes of this section, "negatively impacts" includes but is not limited to: (i) Negative impacts to visitors' services or access; (ii) in-person visits to state-owned housing for the purpose of transacting business that negatively impacts agency operations; (iii) the incurrence of additional expenses by the state; (iv) the use of signage in the state-owned residence; (v) advertising on state-owned property; or (vi) an appearance of state endorsement of the private business activity.

(3) The private business activity must comply with all other local, state, and federal laws.

(4) All approvals of a private business activity in state-owned housing must be by the agency director or designee in writing.

(5) A state employee is presumed not to be in violation of RCW 42.52.070 or 42.52.160 if the employee or the employee's spouse or child complies with this section. [2008 c 247 § 1.]

42.52.575 Information about scholarship opportunities. This chapter does not prohibit the department of labor and industries from providing information about scholarship opportunities offered by nonprofit organizations and available to children and spouses of workers who suffered an injury in the course of employment resulting in death or permanent total disability. The department of labor and industries may, in its sole discretion, provide information about one or more scholarship opportunities. The cost of printing and inserting materials, any additional mailing costs, and any other related costs must be borne by the scholarship organization. [2013 c 134 § 1.]

42.52.800 Exemptions—Solicitation for state capitol historic furnishings and preservation and restoration of state legislative building. (1) When soliciting charitable gifts, grants, or donations solely for the limited purposes of RCW 27.48.040, members of the capitol furnishings preservation committee are exempt from the laws of this chapter.

(2) When soliciting charitable gifts, grants, or donations solely for the limited purposes of RCW 27.48.050 or when assisting a nonprofit foundation established for the purposes of RCW 27.48.050, state officers and state employees are exempt from the laws of this chapter. [2002 c 167 § 3; 1999 c 343 § 4.]

Findings—Effective date—2002 c 167: See notes following RCW 27.48.050.

Findings—Purpose—1999 c 343: See note following RCW 27.48.040.

42.52.801 Exemption—Solicitation to promote tourism. When soliciting charitable gifts, grants, or donations solely for the purposes of promoting the *expansion of tourism

as provided for in RCW 43.330.090, state officers and state employees are presumed not to be in violation of the solicitation and receipt of gift provisions in RCW 42.52.140. [2003 c 153 § 5.]

***Reviser's note:** RCW 43.330.090 was amended by 2007 c 228 § 201, deleting subsection (2) which directly related to "expansion of tourism."

Findings—2003 c 153: See note following RCW 43.330.090.

42.52.802 Exemption—Solicitation for Washington state legacy project, state library, and archives account. This chapter does not prohibit the secretary of state or a designee from soliciting and accepting contributions to the Washington state legacy project, state library, and archives account created in RCW 43.07.380. [2008 c 222 § 14; 2003 c 164 § 4.]

Purpose—2008 c 222: See note following RCW 44.04.320.

42.52.8021 Exemption—Solicitation for Washington state flag account. This chapter does not prohibit the secretary of state or the secretary of state's designee from soliciting and accepting contributions to the Washington state flag account created in RCW 43.07.388. [2009 c 71 § 3.]

42.52.8022 Exemption—Informational or educational meetings regarding legislative issues. This chapter does not prohibit state employees from attending informational or educational meetings regarding legislative issues with a legislator or other elected official. It is not a violation of this chapter to hold such meetings in public facilities, including state-owned or leased buildings. This section is not intended to allow the use of state facilities for a political campaign or for the promotion of or opposition to a ballot proposition. [2011 c 63 § 1.]

42.52.803 Exemption—Solicitation for legislative oral history account. This chapter does not prohibit the secretary of the senate, the chief clerk of the house of representatives, or their designee from soliciting and accepting contributions to the legislative oral history account created in RCW 44.04.345. [2008 c 222 § 2.]

Purpose—2008 c 222: See note following RCW 44.04.320.

42.52.804 Exemption—Health profession board or commission—Professional opinions. Members of a health profession board or commission as identified in RCW 18.130.040(2)(b) may express their professional opinions to an elected official about the work of the board or commission on which the member serves, even if those opinions differ from the department of health's official position. Such communication shall be to inform the elected official and not to lobby in support or opposition to any initiative to the legislature. [2008 c 134 § 15.]

Finding—Intent—Severability—2008 c 134: See notes following RCW 18.130.020.

42.52.805 Solicitation for charitable activities of executive branch state employees—Limitations—Definitions. (1) When soliciting gifts, grants, or donations solely to support the charitable activities of executive branch state employees conducted pursuant to RCW 9.46.0209, the executive branch state officers and executive branch state

employees are presumed not to be in violation of the solicitation and receipt of gift provisions in RCW 42.52.140. However, the gifts, grants, or donations must only be solicited from state employees or businesses and organizations that have no business dealings with the soliciting employee's agency. For the purposes of this subsection, "business dealings" includes being subject to regulation by the agency, having a contractual relationship with the agency, and purchasing goods or services from the agency.

(2) For purposes of this section, activities are deemed to be charitable if the activities are devoted to the purposes authorized under RCW 9.46.0209 for charitable and non-profit organizations listed in that section, or are in support of the activities of those charitable or nonprofit organizations. [2007 c 452 § 2.]

42.52.810 Solicitation for the legislative international trade account—Report. (1) When soliciting charitable gifts, grants, or donations solely for the legislative international trade account created in *RCW 44.04.270, the president of the senate is presumed not to be in violation of the solicitation and receipt of gift provisions in RCW 42.52.140.

(2) When soliciting charitable gifts, grants, or donations solely for the legislative international trade account created in *RCW 44.04.270, state officers and state employees are presumed not to be in violation of the solicitation and receipt of gift provisions in RCW 42.52.140.

(3) An annual report of the legislative international trade account activities, including a list of receipts and expenditures, shall be published by the president of the senate and submitted to the house of representatives and the senate and be a public record for the purposes of RCW 42.56.070. [2005 c 274 § 293; 2003 c 265 § 2.]

*Reviser's note: RCW 44.04.270 was recodified as RCW 43.15.050 pursuant to 2006 c 317 § 5.

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

42.52.820 Solicitation for hosting national legislative association conference. When soliciting gifts, grants, or donations to host an official conference within the state of Washington of a national legislative association as approved by both the chief clerk and the secretary of the senate, designated legislative officials and designated legislative employees are presumed not to be in violation of the solicitation and receipt of gift provisions in this chapter. For the purposes of this section, any legislative association must include among its membership the Washington state legislature or individual legislators or legislative staff. [2003 1st sp.s. c 23 § 1.]

42.52.900 Legislative declaration. Government derives its powers from the people. Ethics in government are the foundation on which the structure of government rests. State officials and employees of government hold a public trust that obligates them, in a special way, to honesty and integrity in fulfilling the responsibilities to which they are elected and appointed. Paramount in that trust is the principle that public office, whether elected or appointed, may not be used for personal gain or private advantage.

The citizens of the state expect all state officials and employees to perform their public responsibilities in accor-

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dance with the highest ethical and moral standards and to conduct the business of the state only in a manner that advances the public's interest. State officials and employees are subject to the sanctions of law and scrutiny of the media; ultimately, however, they are accountable to the people and must consider this public accountability as a particular obligation of the public service. Only when affairs of government are conducted, at all levels, with openness as provided by law and an unswerving commitment to the public good does government work as it should.

The obligations of government rest equally on the state's citizenry. The effectiveness of government depends, fundamentally, on the confidence citizens can have in the judgments and decisions of their elected representatives. Citizens, therefore, should honor and respect the principles and the spirit of representative democracy, recognizing that both elected and appointed officials, together with state employees, seek to carry out their public duties with professional skill and dedication to the public interest. Such service merits public recognition and support.

All who have the privilege of working for the people of Washington state can have but one aim: To give the highest public service to its citizens. [1994 c 154 § 1.]

42.52.901 Liberal construction. This chapter shall be construed liberally to effectuate its purposes and policy and to supplement existing laws as may relate to the same subject. [1994 c 154 § 301.]

42.52.902 Parts and captions not law—1994 c 154. Parts and captions used in this act do not constitute any part of the law. [1994 c 154 § 302.]

42.52.903 Serving on board, committee, or commission not prevented. Nothing in this chapter shall be interpreted to prevent a member of a board, committee, advisory commission, or other body required or permitted by statute to be appointed from any identifiable group or interest, from serving on such body in accordance with the intent of the legislature in establishing such body. [1969 ex.s. c 234 § 33. Formerly RCW 42.18.330.]

42.52.904 Effective date—1994 c 154. Sections 101 through 121, 203, 204, 207 through 224, and 301 through 317 of this act shall take effect January 1, 1995. [1994 c 154 § 319.]

42.52.905 Severability—1994 c 154. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1994 c 154 § 320.]

42.52.906 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply

equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 105.]

Chapter 42.56 RCW PUBLIC RECORDS ACT

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42.56.904	Intent—2007 c 391.

Criminal records privacy: Chapter 10.97 RCW.

42.56.001 Finding, purpose. The legislature finds that *chapter 42.17 RCW contains laws relating to several discrete subjects. Therefore, the purpose of chapter 274, Laws of 2005 is to recodify some of those laws and create a new chapter in the Revised Code of Washington that contains laws pertaining to public records. [2005 c 274 § 1.]

***Reviser's note:** Provisions in chapter 42.17 RCW relating to public records were recodified in chapter 42.56 RCW by 2005 c 274, effective July 1, 2006. Provisions in chapter 42.17 RCW relating to campaign disclosure and contribution were recodified in chapter 42.17A RCW by 2010 c 204, effective January 1, 2012.

42.56.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(2) "Person in interest" means the person who is the subject of a record or any representative designated by that person, except that if that person is under a legal disability, "person in interest" means and includes the parent or duly appointed legal representative.

(3) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

(4) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated. [2010 c 204 § 1005; 2007 c 197 § 1; 2005 c 274 § 101.]

42.56.020 Short title. This chapter may be known and cited as the public records act. [2005 c 274 § 102.]

42.56.030 Construction. The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern. [2007 c 197 § 2; 2005 c 274 § 283; 1992 c 139 § 2. Formerly RCW 42.17.251.]

42.56.040 Duty to publish procedures. (1) Each state agency shall separately state and currently publish in the Washington Administrative Code and each local agency shall prominently display and make available for inspection and copying at the central office of such local agency, for guidance of the public:

(a) Descriptions of its central and field organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain copies of agency decisions;

(b) Statements of the general course and method by which its operations are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(e) Each amendment or revision to, or repeal of any of the foregoing.

(2) Except to the extent that he or she has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published or displayed and not so published or displayed. [2012 c 117 § 127; 1973 c 1 § 25 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.250.]

42.56.050 Invasion of privacy, when. A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public. The provisions of this chapter dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records. [1987 c 403 § 2. Formerly RCW 42.17.255.]

Intent—1987 c 403: "The legislature intends to restore the law relating to the release of public records largely to that which existed prior to the Washington Supreme Court decision in *In Re Rosier*," 105 Wn.2d 606 (1986). The intent of this legislation is to make clear that: (1) Absent statu-

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tory provisions to the contrary, agencies possessing records should in responding to requests for disclosure not make any distinctions in releasing or not releasing records based upon the identity of the person or agency which requested the records, and (2) agencies having public records should rely only upon statutory exemptions or prohibitions for refusal to provide public records. Further, to avoid unnecessary confusion, "privacy" as used in RCW 42.17.255 is intended to have the same meaning as the definition given that word by the Supreme Court in *Hearst v. Hoppe*," 90 Wn.2d 123, 135 (1978)." [1987 c 403 § 1.]

Additional notes found at www.leg.wa.gov

42.56.060 Disclaimer of public liability. No public agency, public official, public employee, or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record if the public agency, public official, public employee, or custodian acted in good faith in attempting to comply with the provisions of this chapter. [1992 c 139 § 11. Formerly RCW 42.17.258]

42.56.070 Documents and indexes to be made public.

(1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of *subsection (6) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

(2) For informational purposes, each agency shall publish and maintain a current list containing every law, other than those listed in this chapter, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency's failure to list an exemption shall not affect the efficacy of any exemption.

(3) Each local agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(4) A local agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:

(a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and

(b) Make available for public inspection and copying all indexes maintained for agency use.

(5) Each state agency shall, by rule, establish and implement a system of indexing for the identification and location of the following records:

(a) All records issued before July 1, 1990, for which the agency has maintained an index;

(b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(d) Interpretive statements as defined in RCW 34.05.010 that were entered after June 30, 1990; and

(e) Policy statements as defined in RCW 34.05.010 that were entered after June 30, 1990.

Rules establishing systems of indexing shall include, but not be limited to, requirements for the form and content of the index, its location and availability to the public, and the schedule for revising or updating the index. State agencies that have maintained indexes for records issued before July 1, 1990, shall continue to make such indexes available for public inspection and copying. Information in such indexes may be incorporated into indexes prepared pursuant to this subsection. State agencies may satisfy the requirements of this subsection by making available to the public indexes prepared by other parties but actually used by the agency in its operations. State agencies shall make indexes available for public inspection and copying. State agencies may charge a fee to cover the actual costs of providing individual mailed copies of indexes.

(6) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if:

(a) It has been indexed in an index available to the public; or

(b) Parties affected have timely notice (actual or constructive) of the terms thereof.

(7) Each agency shall establish, maintain, and make available for public inspection and copying a statement of the actual per page cost or other costs, if any, that it charges for providing photocopies of public records and a statement of the factors and manner used to determine the actual per page cost or other costs, if any.

(a) In determining the actual per page cost for providing photocopies of public records, an agency may include all costs directly incident to copying such public records including the actual cost of the paper and the per page cost for use of agency copying equipment. In determining other actual costs for providing photocopies of public records, an agency may include all costs directly incident to shipping such public records, including the cost of postage or delivery charges and the cost of any container or envelope used.

(b) In determining the actual per page cost or other costs for providing copies of public records, an agency may not include staff salaries, benefits, or other general administrative or overhead charges, unless those costs are directly related to the actual cost of copying the public records. Staff time to copy and mail the requested public records may be included in an agency's costs.

(8) An agency need not calculate the actual per page cost or other costs it charges for providing photocopies of public records if to do so would be unduly burdensome, but in that event: The agency may not charge in excess of fifteen cents per page for photocopies of public records or for the use of agency equipment to photocopy public records and the actual postage or delivery charge and the cost of any container or envelope used to mail the public records to the requestor.

(9) This chapter shall not be construed as giving authority to any agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall not do so unless specifically authorized or directed by law: PROVIDED, HOWEVER, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: PROVIDED FURTHER, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter 34.05 RCW, the Administrative Procedure Act. [2005 c 274 § 284; 1997 c 409 § 601. Prior: 1995 c 397 § 11; 1995 c 341 § 1; 1992 c 139 § 3; 1989 c 175 § 36; 1987 c 403 § 3; 1975 1st ex.s. c 294 § 14; 1973 c 1 § 26 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.260.]

***Reviser's note:** Subsection (6) of this section was renumbered as subsection (7) by 1992 c 139 § 3; and subsection (7) was subsequently renumbered as subsection (9) by 1995 c 341 § 1.

Intent—Severability—1987 c 403: See notes following RCW 42.56.050.

Exemption for registered trade names: RCW 19.80.065.

Additional notes found at www.leg.wa.gov

42.56.080 Facilities for copying—Availability of public records. Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person including, if applicable, on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure. Agencies shall not deny a request for identifiable public records solely on the basis that the request is overbroad. Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.56.070(9) or other statute which exempts or prohibits disclosure of specific information or records to certain persons. Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would

unreasonably disrupt the operations of the agency. Agencies shall honor requests received by mail for identifiable public records unless exempted by provisions of this chapter. [2005 c 483 § 1; 2005 c 274 § 285; 1987 c 403 § 4; 1975 1st ex.s. c 294 § 15; 1973 c 1 § 27 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.270.]

Reviser's note: This section was amended by 2005 c 274 § 285 and by 2005 c 483 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Severability—1987 c 403: See notes following RCW 42.56.050.

42.56.090 Times for inspection and copying—Posting on web site. Public records shall be available for inspection and copying during the customary office hours of the agency, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives for a minimum of thirty hours per week, except weeks that include state legal holidays, unless the person making the request and the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives or its representative agree on a different time. Customary business hours must be posted on the agency or office's web site and made known by other means designed to provide the public with notice. [2009 c 428 § 2; 1995 c 397 § 12; 1973 c 1 § 28 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.280.]

42.56.100 Protection of public records—Public access. Agencies shall adopt and enforce reasonable rules and regulations, and the office of the secretary of the senate and the office of the chief clerk of the house of representatives shall adopt reasonable procedures allowing for the time, resource, and personnel constraints associated with legislative sessions, consonant with the intent of this chapter to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives. Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information. Nothing in this section shall relieve agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives from honoring requests received by mail for copies of identifiable public records.

If a public record request is made at a time when such record exists but is scheduled for destruction in the near future, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives shall retain possession of the record, and may not destroy or erase the record until the request is resolved. [1995 c 397 § 13; 1992 c 139 § 4; 1975 1st ex.s. c 294 § 16; 1973 c 1 § 29 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.290.]

42.56.110 Destruction of information relating to employee misconduct. Nothing in this chapter prevents an agency from destroying information relating to employee misconduct or alleged misconduct, in accordance with RCW

41.06.450, to the extent necessary to ensure fairness to the employee. [1982 c 208 § 13. Formerly RCW 42.17.295.]

Additional notes found at www.leg.wa.gov

42.56.120 Charges for copying. No fee shall be charged for the inspection of public records. No fee shall be charged for locating public documents and making them available for copying. A reasonable charge may be imposed for providing copies of public records and for the use by any person of agency equipment or equipment of the office of the secretary of the senate or the office of the chief clerk of the house of representatives to copy public records, which charges shall not exceed the amount necessary to reimburse the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives for its actual costs directly incident to such copying. Agency charges for photocopies shall be imposed in accordance with the actual per page cost or other costs established and published by the agency. In no event may an agency charge a per page cost greater than the actual per page cost as established and published by the agency. To the extent the agency has not determined the actual per page cost for photocopies of public records, the agency may not charge in excess of fifteen cents per page. An agency may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request. If an agency makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the agency is not obligated to fulfill the balance of the request. [2005 c 483 § 2. Prior: 1995 c 397 § 14; 1995 c 341 § 2; 1973 c 1 § 30 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.300.]

42.56.130 Other provisions not superseded. The provisions of RCW 42.56.070(7) and (8) and 42.56.120 that establish or allow agencies to establish the costs charged for photocopies of public records do not supersede other statutory provisions, other than in this chapter, authorizing or governing fees for copying public records. [2005 c 274 § 286; 1995 c 341 § 3. Formerly RCW 42.17.305.]

42.56.140 Public records exemptions accountability committee. (1)(a) The public records exemptions accountability committee is created to review exemptions from public disclosure, with thirteen members as provided in this subsection.

(i) The governor shall appoint two members, one of whom represents the governor and one of whom represents local government.

(ii) The attorney general shall appoint two members, one of whom represents the attorney general and one of whom represents a statewide media association.

(iii) The state auditor shall appoint one member.

(iv) The president of the senate shall appoint one member from each of the two largest caucuses of the senate.

(v) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives.

(vi) The governor shall appoint four members of the public, with consideration given to diversity of viewpoint and geography.

(b) The governor shall select the chair of the committee from among its membership.

(c) Terms of the members shall be four years and shall be staggered, beginning August 1, 2007.

(2) The purpose of the public records exemptions accountability committee is to review public disclosure exemptions and provide recommendations pursuant to subsection (7)(d) of this section. The committee shall develop and publish criteria for review of public exemptions.

(3) All meetings of the committee shall be open to the public.

(4) The committee must consider input from interested parties.

(5) The office of the attorney general and the office of financial management shall provide staff support to the committee.

(6) Legislative members of the committee shall be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(7)(a) Beginning August 1, 2007, the code reviser shall provide the committee by August 1st of each year with a list of all public disclosure exemptions in the Revised Code of Washington.

(b) The committee shall develop a schedule to accomplish a review of each public disclosure exemption. The committee shall publish the schedule and publish any revisions made to the schedule.

(c) The chair shall convene an initial meeting of the committee by September 1, 2007. The committee shall meet at least once a quarter and may hold additional meetings at the call of the chair or by a majority vote of the members of the committee.

(d) For each public disclosure exemption, the committee shall provide a recommendation as to whether the exemption should be continued without modification, modified, scheduled for sunset review at a future date, or terminated. By November 15th of each year, the committee shall transmit its recommendations to the governor, the attorney general, and the appropriate committees of the house of representatives and the senate. [2007 c 198 § 2.]

Finding—2007 c 198: "The legislature recognizes that public disclosure exemptions are enacted to meet objectives that are determined to be in the public interest. Given the changing nature of information technology and management, recordkeeping, and the increasing number of public disclosure exemptions, the legislature finds that periodic reviews of public disclosure exemptions are needed to determine if each exemption serves the public interest." [2007 c 198 § 1.]

42.56.150 Training—Local elected and statewide elected officials. (1) Each local elected official and statewide elected official, and each person appointed to fill a vacancy in a local or statewide office, must complete a training course regarding the provisions of this chapter, and also chapter 40.14 RCW for records retention.

(2) Officials required to complete training under this section may complete their training before assuming office but must:

(a) Complete training no later than ninety days after the date the official either:

(i) Takes the oath of office, if the official is required to take an oath of office to assume his or her duties as a public official; or

(ii) Otherwise assumes his or her duties as a public official; and

(b) Complete refresher training at intervals of no more than four years for as long as he or she holds the office.

(3) Training must be consistent with the attorney general's model rules for compliance with the public records act.

(4) Training may be completed remotely with technology including but not limited to internet-based training. [2014 c 66 § 3.]

Findings—2014 c 66: "The legislature finds that the rights of citizens to observe the actions of their public officials and to have timely access to public records are the underpinnings of democracy and are essential for meaningful citizen participation in the democratic process. All too often, however, violations of the requirements of the public records act and the open public meetings act by public officials and agencies result in citizens being denied this important information and materials to which they are legally entitled. Such violations are often the result of inadvertent error or a lack of knowledge on the part of officials and agencies regarding their legal duties to the public pursuant to these acts. Also, whether due to error or ignorance, violations of the public records act and open public meetings act are very costly for state and local governments, both in terms of litigation expenses and administrative costs. The legislature also finds that the implementation of simple, cost-effective training programs will greatly increase the likelihood that public officials and agencies will better serve the public by improving citizen access to public records and encouraging public participation in governmental deliberations. Such improvements in public service will, in turn, enhance the public's trust in its government and result in significant cost savings by reducing the number of violations of the public records act and open public meetings act." [2014 c 66 § 1.]

Short title—2014 c 66: "This act may be known and cited as the open government trainings act." [2014 c 66 § 6.]

Effective date—2014 c 66: "This act takes effect July 1, 2014." [2014 c 66 § 7.]

42.56.152 Training—Public records officers. (1) Public records officers designated under RCW 42.56.580 and records officers designated under RCW 40.14.040 must complete a training course regarding the provisions of this chapter, and also chapter 40.14 RCW for records retention.

(2) Public records officers must:

(a) Complete training no later than ninety days after assuming responsibilities as a public records officer or records manager; and

(b) Complete refresher training at intervals of no more than four years as long as they maintain the designation.

(3) Training must be consistent with the attorney general's model rules for compliance with the public records act.

(4) Training may be completed remotely with technology including but not limited to internet-based training. [2014 c 66 § 4.]

Findings—Short title—Effective date—2014 c 66: See notes following RCW 42.56.150.

42.56.155 Assistance by attorney general. The attorney general's office may provide information, technical assistance, and training on the provisions of this chapter. [2014 c 66 § 5.]

Findings—Short title—Effective date—2014 c 66: See notes following RCW 42.56.150.

42.56.210 Certain personal and other records exempt. (1) Except for information described in *RCW 42.56.230(3)(a) and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this chapter are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(2) Inspection or copying of any specific records exempt under the provisions of this chapter may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(3) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld. [2005 c 274 § 402. Prior: (2006 c 302 § 11 expired July 1, 2006); (2006 c 75 § 2 expired July 1, 2006); (2006 c 8 § 111 expired July 1, 2006); (2003 1st sp.s. c 26 § 926 expired June 30, 2005); 2003 c 277 § 3; 2003 c 124 § 1; prior: 2002 c 335 § 1; 2002 c 224 § 2; 2002 c 205 § 4; 2002 c 172 § 1; prior: 2001 c 278 § 1; 2001 c 98 § 2; 2001 c 70 § 1; prior: 2000 c 134 § 3; 2000 c 56 § 1; 2000 c 6 § 5; prior: 1999 c 326 § 3; 1999 c 290 § 1; 1999 c 215 § 1; 1998 c 69 § 1; prior: 1997 c 310 § 2; 1997 c 274 § 8; 1997 c 250 § 7; 1997 c 239 § 4; 1997 c 220 § 120 (Referendum Bill No. 48, approved June 17, 1997); 1997 c 58 § 900; prior: 1996 c 305 § 2; 1996 c 253 § 302; 1996 c 191 § 88; 1996 c 80 § 1; 1995 c 267 § 6; prior: 1994 c 233 § 2; 1994 c 182 § 1; prior: 1993 c 360 § 2; 1993 c 320 § 9; 1993 c 280 § 35; prior: 1992 c 139 § 5; 1992 c 71 § 12; 1991 c 301 § 13; 1991 c 87 § 13; 1991 c 23 § 10; 1991 c 1 § 1; 1990 2nd ex.s. c 1 § 1103; 1990 c 256 § 1; prior: 1989 1st ex.s. c 9 § 407; 1989 c 352 § 7; 1989 c 279 § 23; 1989 c 238 § 1; 1989 c 205 § 20; 1989 c 189 § 3; 1989 c 11 § 12; prior: 1987 c 411 § 10; 1987 c 404 § 1; 1987 c 370 § 16; 1987 c 337 § 1; 1987 c 107 § 2; prior: 1986 c 299 § 25; 1986 c 276 § 7; 1985 c 414 § 8; 1984 c 143 § 21; 1983 c 133 § 10; 1982 c 64 § 1; 1977 ex.s. c 314 § 13; 1975-'76 2nd ex.s. c 82 § 5; 1975 1st ex.s. c 294 § 17; 1973 c 1 § 31 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.310.]

***Reviser's note:** RCW 42.56.230 was amended by 2011 c 173 § 1, changing subsection (3)(a) to subsection (4)(a).

Expiration date—2006 c 302 § 9 and 11: See note following RCW 66.28.180.

Expiration date—2006 c 75 § 2: "Section 2 of this act expires July 1, 2006." [2006 c 75 § 4.]

Expiration date—2006 c 8 § 111: "Section 111 of this act expires July 1, 2006." [2006 c 8 § 404.]

Working group on veterans' records: "The protection from identity theft for veterans who choose to file their discharge papers with the county auditor is a matter of gravest concern. At the same time, the integrity of the public record of each county is a matter of utmost importance to the economic life of this state and to the right of each citizen to be secure in his or her ownership of real property and other rights and obligations of our citi-

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zens that rely upon the public record for their proof. Likewise the integrity of the public record is essential for the establishment of ancestral ties that may be of interest to this and future generations. While the public record as now kept by the county auditors is sufficient by itself for the accomplishment of these and many other public and private purposes, the proposed use of the public record for purposes that in their nature and intent are not public, so as to keep the veterans' discharge papers from disclosure to those of ill intent, causes concern among many segments of the population of this state.

In order to voice these concerns effectively and thoroughly, a working group may be convened by the joint committee on veterans' and military affairs to develop a means to preserve the integrity of the public record while protecting those veterans from identity theft." [2002 c 224 § 1.]

Findings—Severability—Effective dates—2002 c 205 §§ 2, 3, and 4: See notes following RCW 28A.320.125.

Finding—2001 c 98: "The legislature finds that public health and safety is promoted when the public has knowledge that enables them to make informed choices about their health and safety. Therefore, the legislature declares, as a matter of public policy, that the public has a right to information necessary to protect members of the public from harm caused by alleged hazards or threats to the public.

The legislature also recognizes that the public disclosure of those portions of records containing specific and unique vulnerability assessments or specific and unique response plans, either of which is intended to prevent or mitigate criminal terrorist acts as defined in RCW 70.74.285, could have a substantial likelihood of threatening public safety. Therefore, the legislature declares, as a matter of public policy, that such specific and unique information should be protected from unnecessary disclosure." [2001 c 98 § 1.]

Findings—Conflict with federal requirements—Severability—2000 c 134: See notes following RCW 50.13.060.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Findings—Purpose—Severability—Part headings not law—1996 c 253: See notes following RCW 28B.109.010.

Finding—1991 c 301: See note following RCW 10.99.020.

Exemptions from public inspection

basic health plan records: RCW 70.47.150.

bill drafting service of code reviser's office: RCW 1.08.027, 44.68.060.

certificate submitted by individual with physical or mental disability seeking a driver's license: RCW 46.20.041.

commercial fertilizers, sales reports: RCW 15.54.362.

criminal records: Chapter 10.97 RCW.

employer information: RCW 50.13.060.

family and children's ombuds: RCW 43.06A.050.

legislative service center, information: RCW 44.68.060.

medical quality assurance commission, reports required to be filed with: RCW 18.71.0195.

organized crime investigative information: RCW 43.43.856.

public transportation information: RCW 47.04.240.

salary and fringe benefit survey information: RCW 41.06.160.

Additional notes found at www.leg.wa.gov

42.56.230 Personal information. The following personal information is exempt from public inspection and copying under this chapter:

(1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;

(2)(a) Personal information:

(i) For a child enrolled in licensed child care in any files maintained by the department of early learning; or

(ii) For a child enrolled in a public or nonprofit program serving or pertaining to children, adolescents, or students, including but not limited to early learning or child care services, parks and recreation programs, youth development programs, and after-school programs.

(b) Emergency contact information under this subsection (2) may be provided to appropriate authorities and medical

personnel for the purpose of treating the individual during an emergency situation;

(3) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;

(4) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would: (a) Be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance authorized under RCW 35.102.145; or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;

(5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law;

(6) Personal and financial information related to a small loan or any system of authorizing a small loan in RCW 31.45.093;

(7)(a) Any record used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identicard.

(b) Information provided under RCW 46.20.111 that indicates that an applicant declined to register with the selective service system.

(c) Any record pertaining to a vehicle license plate, driver's license, or identicard issued under RCW 46.08.066 that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement, confidential public health work, public assistance fraud, or child support investigative activity. This exemption does not prevent the release of the total number of vehicle license plates, drivers' licenses, or identicards that, under RCW 46.08.066, an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse.

(d) Any record pertaining to a vessel registration issued under RCW 88.02.330 that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement activity. This exemption does not prevent the release of the total number of vessel registrations that, under RCW 88.02.330, an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse; and

(8) All information related to individual claims resolution structured settlement agreements submitted to the board of industrial insurance appeals under RCW 51.04.063, other than final orders from the board of industrial insurance appeals.

Upon request by the legislature, the department of licensing shall provide a report to the legislature containing all of the information in subsection (7)(c) and (d) of this section that is subject to public disclosure. [2014 c 142 § 1. Prior: 2013 c 336 § 3; 2013 c 220 § 1; prior: 2011 c 350 § 2; 2011 c 173 § 1; 2010 c 106 § 102; 2009 c 510 § 8; 2008 c 200 § 5; 2005 c 274 § 403.]

Effective date—2013 c 336: See note following RCW 46.08.066.

Effective date—2011 c 350: See note following RCW 46.20.111.

Effective date—2010 c 106: See note following RCW 35.102.145.

Effective date—2009 c 510: See RCW 31.45.901.

Finding—Intent—Liberal construction—2009 c 510: See note following RCW 31.45.010.

42.56.240 Investigative, law enforcement, and crime victims. The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:

(1) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy;

(2) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath;

(3) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b);

(4) License applications under RCW 9.41.070; copies of license applications or information on the applications may be released to law enforcement or corrections agencies;

(5) Information revealing the identity of child victims of sexual assault who are under age eighteen. Identifying information means the child victim's name, address, location, photograph, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator;

(6) The statewide gang database referenced in RCW 43.43.762;

(7) Data from the electronic sales tracking system established in RCW 69.43.165;

(8) Information submitted to the statewide unified sex offender notification and registration program under RCW 36.28A.040(6) by a person for the purpose of receiving notification regarding a registered sex offender, including the person's name, residential address, and e-mail address;

(9) Personally identifying information collected by law enforcement agencies pursuant to local security alarm system programs and vacation crime watch programs. Nothing in this subsection shall be interpreted so as to prohibit the legal owner of a residence or business from accessing information regarding his or her residence or business; and

(10) The felony firearm offense conviction database of felony firearm offenders established in RCW 43.43.822; and

(11) The identity of a state employee or officer who has in good faith filed a complaint with an ethics board, as provided in RCW 42.52.410, or who has in good faith reported

improper governmental action, as defined in RCW 42.40.020, to the auditor or other public official, as defined in RCW 42.40.020; and

(12) The following security threat group information collected and maintained by the department of corrections pursuant to RCW 72.09.745: (a) Information that could lead to the identification of a person's security threat group status, affiliation, or activities; (b) information that reveals specific security threats associated with the operation and activities of security threat groups; and (c) information that identifies the number of security threat group members, affiliates, or associates. [2013 c 315 § 2; 2013 c 190 § 7; 2013 c 183 § 1; 2012 c 88 § 1. Prior: 2010 c 266 § 2; 2010 c 182 § 5; 2008 c 276 § 202; 2005 c 274 § 404.]

Reviser's note: This section was amended by 2013 c 183 § 1, 2013 c 190 § 7, and by 2013 c 315 § 2, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—2013 c 190: See note following RCW 42.52.410.

Severability—Part headings, subheadings not law—2008 c 276: See notes following RCW 36.28A.200.

42.56.250 Employment and licensing. The following employment and licensing information is exempt from public inspection and copying under this chapter:

(1) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination;

(2) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant;

(3) The following information held by any public agency in personnel records, public employment related records, volunteer rosters, or included in any mailing list of employees or volunteers of any public agency: Residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, driver's license numbers, identicard numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a public agency. For purposes of this subsection, "employees" includes independent provider home care workers as defined in RCW 74.39A.240;

(4) Information that identifies a person who, while an agency employee: (a) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (b) requests his or her identity or any identifying information not be disclosed;

(5) Investigative records compiled by an employing agency conducting an active and ongoing investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment;

(6) Criminal history records checks for board staff finalist candidates conducted pursuant to RCW 43.33A.025;

(7) Except as provided in *RCW 47.64.220, salary and benefit information for maritime employees collected from private employers under *RCW 47.64.220(1) and described in *RCW 47.64.220(2); and

(8) Photographs and month and year of birth in the personnel files of employees and workers of criminal justice agencies as defined in RCW 10.97.030. The news media, as defined in RCW 5.68.010(5), shall have access to the photographs and full date of birth. For the purposes of this subsection, news media does not include any person or organization of persons in the custody of a criminal justice agency as defined in RCW 10.97.030. [2014 c 106 § 1. Prior: 2010 c 257 § 1; 2010 c 128 § 9; 2006 c 209 § 6; 2005 c 274 § 405.]

***Reviser's note:** RCW 47.64.220 was repealed by 2010 c 283 § 20.

42.56.260 Real estate appraisals. Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, are exempt from disclosure under this chapter. In no event may disclosure be denied for more than three years after the appraisal. [2005 c 274 § 406.]

42.56.270 Financial, commercial, and proprietary information. The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10)(a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), marijuana producer, processor, or retailer license, liquor license, gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12)(a) When supplied to and in the records of the department of commerce:

(i) Financial and proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.330.050(8); and

(ii) Financial or proprietary information collected from any person and provided to the department of commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of commerce based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70.95N RCW to implement chapter 70.95N RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the

extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW 28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information; and

(21) Market share data submitted by a manufacturer under RCW 70.95N.190(4); and

(22) Financial information supplied to the department of financial institutions or to a portal under RCW 21.20.883, when filed by or on behalf of an issuer of securities for the purpose of obtaining the exemption from state securities registration for small securities offerings provided under RCW 21.20.880 or when filed by or on behalf of an investor for the purpose of purchasing such securities. [2014 c 192 § 6; 2014 c 174 § 5; 2014 c 144 § 6; 2013 c 305 § 14; 2011 1st sp.s. c 14 § 15; 2009 c 394 § 3; 2008 c 306 § 1. Prior: 2007 c 470 § 2; (2007 c 470 § 1 expired June 30, 2008); 2007 c 251 § 13; (2007 c 251 § 12 expired June 30, 2008); 2007 c 197 § 4; (2007 c 197 § 3 expired June 30, 2008); prior: 2006 c 369 § 2; 2006 c 341 § 6; 2006 c 338 § 5; 2006 c 302 § 12; 2006 c 209 § 7; 2006 c 183 § 37; 2006 c 171 § 8; 2005 c 274 § 407.]

Reviser's note: This section was amended by 2014 c 144 § 6, 2014 c 174 § 5, and by 2014 c 192 § 6, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2014 c 174: See note following RCW 43.333.011.

Short title—Findings—Intent—2014 c 144: See notes following RCW 21.20.880.

Effective date—2013 c 305: See note following RCW 70.95N.020.

Intent—2009 c 394: See note following RCW 28B.20.150.

Effective date—2008 c 306 § 1: "Section 1 of this act takes effect June 30, 2008." [2008 c 306 § 2.]

Effective date—2007 c 470 § 2: "Section 2 of this act takes effect June 30, 2008." [2007 c 470 § 4.]

Expiration date—2007 c 470 § 1: "Section 1 of this act expires June 30, 2008." [2007 c 470 § 3.]

Effective date—2007 c 251 § 13: "Section 13 of this act takes effect June 30, 2008." [2007 c 251 § 18.]

Expiration date—2007 c 251 § 12: "Section 12 of this act expires June 30, 2008." [2007 c 251 § 17.]

Captions not law—Severability—2007 c 251: See notes following RCW 35.104.010.

Effective date—2007 c 197 § 4: "Section 4 of this act takes effect June 30, 2008." [2007 c 197 § 11.]

Expiration date—2007 c 197 § 3: "Section 3 of this act expires June 30, 2008." [2007 c 197 § 10.]

Effective date—2006 c 369 § 2: "Section 2 of this act takes effect July 1, 2006." [2006 c 369 § 3.]

Effective date—2006 c 341 § 6: "Section 6 of this act takes effect July 1, 2006." [2006 c 341 § 7.]

Findings—Intent—2006 c 338: See note following RCW 19.112.110.

Effective date—Severability—2006 c 338: See RCW 19.112.903 and 19.112.904.

Effective date—2006 c 302 §§ 10 and 12: See note following RCW 66.28.180.

Construction—Severability—Effective date—2006 c 183: See RCW 70.95N.900 through 70.95N.902.

Effective date—2006 c 171 §§ 8 and 10: "Sections 8 and 10 of this act take effect July 1, 2006." [2006 c 171 § 13.]

Findings—Severability—2006 c 171: See RCW 43.325.001 and 43.325.901.

42.56.280 Preliminary drafts, notes, recommendations, intra-agency memorandums. Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended are exempt under this chapter, except that a specific record is not exempt when publicly cited by an agency in connection with any agency action. [2005 c 274 § 408.]

42.56.290 Agency party to controversy. Records that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts are exempt from disclosure under this chapter. [2005 c 274 § 409.]

42.56.300 Archaeological sites. (1) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites are exempt from disclosure under this chapter.

(2) Records, maps, and other information, acquired during watershed analysis pursuant to the forests and fish report under RCW 76.09.370, that identify the location of archaeological sites, historic sites, artifacts, or the sites of traditional religious, ceremonial, or social uses and activities of affected Indian tribes, are exempt from disclosure under this chapter in order to prevent the looting or depredation of such sites.

(3) Any site form, report, specific fields and tables relating to site form data within a database, or geographic information systems spatial layer obtained by any state agency or local government, or shared between any state agency, local

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government, or tribal government, is exempt from disclosure under this chapter, if the material is related to:

(a) An archaeological site as defined in RCW 27.53.030;

(b) Historical [Historic] archaeological resources as defined in RCW 27.53.030; or

(c) Traditional cultural places.

(4) The local government or agency shall respond to requests from the owner of the real property for public records exempt under subsection (1), (2), or (3) of this section by providing information to the requestor on how to contact the department of archaeology and historic preservation to obtain available locality information on archaeological and cultural resources. [2014 c 165 § 1; 2006 c 86 § 1; 2005 c 274 § 410.]

Effective date—2006 c 86: "This act takes effect July 1, 2006." [2006 c 86 § 2.]

42.56.310 Library records. Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, that discloses or could be used to disclose the identity of a library user is exempt from disclosure under this chapter. [2005 c 274 § 411.]

42.56.320 Educational information. The following educational information is exempt from disclosure under this chapter:

(1) Financial disclosures filed by private vocational schools under chapters 28B.85 and 28C.10 RCW;

(2) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units;

(3) Individually identifiable information received by the workforce training and education coordinating board for research or evaluation purposes;

(4) Except for public records as defined in RCW 40.14.010, any records or documents obtained by a state college, university, library, or archive through or concerning any gift, grant, conveyance, bequest, or devise, the terms of which restrict or regulate public access to those records or documents; and

(5) The annual declaration of intent filed by parents under RCW 28A.200.010 for a child to receive home-based instruction. [2009 c 191 § 1; 2005 c 274 § 412.]

42.56.330 Public utilities and transportation. The following information relating to public utilities and transportation is exempt from disclosure under this chapter:

(1) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 or 81.77.210 that a court has determined are confidential under RCW 80.04.095 or 81.77.210;

(2) The addresses, telephone numbers, electronic contact information, and customer-specific utility usage and billing information in increments less than a billing cycle of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social

security act, for the establishment, enforcement, or modification of a support order;

(3) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service; however, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides;

(4) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons;

(5) The personally identifying information of persons who acquire and use transit passes or other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose personally identifying information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media for the purpose of preventing fraud, or to the news media when reporting on public transportation or public safety. As used in this subsection, "personally identifying information" includes acquisition or use information pertaining to a specific, individual transit pass or fare payment media.

(a) Information regarding the acquisition or use of transit passes or fare payment media may be disclosed in aggregate form if the data does not contain any personally identifying information.

(b) Personally identifying information may be released to law enforcement agencies if the request is accompanied by a court order;

(6) Any information obtained by governmental agencies that is collected by the use of a motor carrier intelligent transportation system or any comparable information equipment attached to a truck, tractor, or trailer; however, the information may be given to other governmental agencies or the owners of the truck, tractor, or trailer from which the information is obtained. As used in this subsection, "motor carrier" has the same definition as provided in RCW 81.80.010;

(7) The personally identifying information of persons who acquire and use transponders or other technology to facilitate payment of tolls. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. For these purposes aggregate data may include the census tract of the account holder as long as any individual personally identifying information is not released. Personally identifying information may be released to law enforcement agencies only for toll enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order; and

(8) The personally identifying information of persons who acquire and use a driver's license or identicard that includes a radio frequency identification chip or similar technology to facilitate border crossing. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. Personally identifying information may be released to law enforcement agencies only for United States customs and border protec-

tion enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order. [2014 c 170 § 2; 2014 c 33 § 1; 2012 c 68 § 4; 2010 c 128 § 8; 2008 c 200 § 6; 2007 c 197 § 5; 2006 c 209 § 8; 2005 c 274 § 413.]

Reviser's note: This section was amended by 2014 c 33 § 1 and by 2014 c 170 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

42.56.335 Public utility districts and municipally owned electrical utilities—Restrictions on access by law enforcement authorities. A law enforcement authority may not request inspection or copying of records of any person who belongs to a public utility district or a municipally owned electrical utility unless the authority provides the public utility district or municipally owned electrical utility with a written statement in which the authority states that it suspects that the particular person to whom the records pertain has committed a crime and the authority has a reasonable belief that the records could determine or help determine whether the suspicion might be true. Information obtained in violation of this section is inadmissible in any criminal proceeding. [2007 c 197 § 6.]

42.56.340 Timeshare, condominium, etc. owner lists. Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department are exempt from disclosure under this chapter. [2005 c 274 § 414.]

42.56.350 Health professionals. (1) The federal social security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health is exempt from disclosure under this chapter. The exemption in this section does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations.

(2) The current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW maintained in the files of the department are exempt from disclosure under this chapter, if the provider requests that this information be withheld from public inspection and copying, and provides to the department of health an accurate alternate or business address and business telephone number. The current residential address and residential telephone number of a health care provider governed under RCW 18.130.040 maintained in the files of the department of health shall automatically be withheld from public inspection and copying unless the provider specifically requests the information be released, and except as provided for under RCW 42.56.070(9). [2005 c 274 § 415.]

42.56.360 Health care. (1) The following health care information is exempt from disclosure under this chapter:

(a) Information obtained by the pharmacy quality assurance commission as provided in RCW 69.45.090;

(b) Information obtained by the pharmacy quality assurance commission or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420;

(c) Information and documents created specifically for, and collected and maintained by a quality improvement committee under RCW 43.70.510, 70.230.080, or 70.41.200, or by a peer review committee under RCW 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, or by a hospital, as defined in RCW 43.70.056, for reporting of health care-associated infections under RCW 43.70.056, a notification of an incident under RCW 70.56.040(5), and reports regarding adverse events under RCW 70.56.020(2)(b), regardless of which agency is in possession of the information and documents;

(d)(i) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310;

(ii) If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this subsection (1)(d) as exempt from disclosure;

(iii) If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality;

(e) Records of the entity obtained in an action under RCW 18.71.300 through 18.71.340;

(f) Complaints filed under chapter 18.130 RCW after July 27, 1997, to the extent provided in RCW 18.130.095(1);

(g) Information obtained by the department of health under chapter 70.225 RCW;

(h) Information collected by the department of health under chapter 70.245 RCW except as provided in RCW 70.245.150;

(i) Cardiac and stroke system performance data submitted to national, state, or local data collection systems under RCW 70.168.150(2)(b);

(j) All documents, including completed forms, received pursuant to a wellness program under RCW 41.04.362, but not statistical reports that do not identify an individual; and

(k) Data and information exempt from disclosure under RCW 43.371.040.

(2) Chapter 70.02 RCW applies to public inspection and copying of health care information of patients.

(3)(a) Documents related to infant mortality reviews conducted pursuant to RCW 70.05.170 are exempt from disclosure as provided for in RCW 70.05.170(3).

(b)(i) If an agency provides copies of public records to another agency that are exempt from public disclosure under this subsection (3), those records remain exempt to the same

extent the records were exempt in the possession of the originating entity.

(ii) For notice purposes only, agencies providing exempt records under this subsection (3) to other agencies may mark any exempt records as "exempt" so that the receiving agency is aware of the exemption, however whether or not a record is marked exempt does not affect whether the record is actually exempt from disclosure. [2014 c 223 § 17; 2013 c 19 § 47. Prior: 2010 c 128 § 3; 2010 c 52 § 6; prior: 2009 c 1 § 24 (Initiative Measure No. 1000, approved November 4, 2008); (2009 c 1 § 23 (Initiative Measure No. 1000), approved November 4, 2008) expired July 1, 2009); 2008 c 136 § 5; (2008 c 136 § 4 expired July 1, 2009); prior: 2007 c 273 § 25; 2007 c 261 § 4; 2007 c 259 § 49; prior: 2006 c 209 § 9; 2006 c 8 § 112; 2005 c 274 § 416.]

Finding—2014 c 223: See note following RCW 41.05.800.

Findings—Intent—2010 c 52: See note following RCW 70.168.015.

Expiration date—2009 c 1 (Initiative Measure No. 1000) § 23: "Section 23 of this act expires July 1, 2009." [2009 c 1 § 31 (Initiative Measure No. 1000, approved November 4, 2008).]

Short title—Severability—Effective dates—Captions, part headings, and subpart headings not law—2009 c 1 (Initiative Measure No. 1000): See RCW 70.245.901 through 70.245.904.

Effective date—2008 c 136 § 5: "Section 5 of this act takes effect July 1, 2009." [2008 c 136 § 7.]

Expiration date—2008 c 136 § 4: "Section 4 of this act expires July 1, 2009." [2008 c 136 § 6.]

Effective date—Implementation—2007 c 273: See RCW 70.230.900 and 70.230.901.

Findings—2007 c 261: See note following RCW 43.70.056.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Effective date—2006 c 8 §§ 112 and 210: "Sections 112 and 210 of this act take effect July 1, 2006." [2006 c 8 § 405.]

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

Basic health plan—Confidentiality: RCW 70.47.150.

42.56.370 Client records of domestic violence programs, or community sexual assault programs or services for underserved populations. Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a community sexual assault program or services for underserved populations as defined in RCW 70.125.030 are exempt from disclosure under this chapter. [2012 c 29 § 13; 2005 c 274 § 417.]

42.56.380 Agriculture and livestock. The following information relating to agriculture and livestock is exempt from disclosure under this chapter:

(1) Business-related information under RCW 15.86.110;

(2) Information provided under RCW 15.54.362;

(3) Production or sales records required to determine assessment levels and actual assessment payments to commodity boards and commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.115, 15.100, 15.89, and 16.67 RCW or required by the department of agriculture to administer these chapters or the department's programs;

(4) Consignment information contained on phytosanitary certificates issued by the department of agriculture under chapters 15.13, 15.49, and 15.17 RCW or federal phytosanitary

tary certificates issued under 7 C.F.R. 353 through cooperative agreements with the animal and plant health inspection service, United States department of agriculture, or on applications for phytosanitary certification required by the department of agriculture;

(5) Financial and commercial information and records supplied by persons (a) to the department of agriculture for the purpose of conducting a referendum for the potential establishment of a commodity board or commission; or (b) to the department of agriculture or commodity boards or commissions formed under chapter 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.115, 15.100, 15.89, or 16.67 RCW with respect to domestic or export marketing activities or individual producer's production information;

(6) Information obtained regarding the purchases, sales, or production of an individual American ginseng grower or dealer, except for providing reports to the United States fish and wildlife service under RCW 15.19.080;

(7) Information collected regarding packers and shippers of fruits and vegetables for the issuance of certificates of compliance under RCW 15.17.140(2) and 15.17.143;

(8) Financial statements obtained under RCW 16.65.030(1)(d) for the purposes of determining whether or not the applicant meets the minimum net worth requirements to construct or operate a public livestock market;

(9) Information submitted by an individual or business to the department of agriculture under the requirements of chapters 16.36, 16.57, and 43.23 RCW for the purpose of herd inventory management for animal disease traceability. This information includes animal ownership, numbers of animals, locations, contact information, movements of livestock, financial information, the purchase and sale of livestock, account numbers or unique identifiers issued by government to private entities, and information related to livestock disease or injury that would identify an animal, a person, or location. Disclosure to local, state, and federal officials is not public disclosure. This exemption does not affect the disclosure of information used in reportable animal health investigations under chapter 16.36 RCW once they are complete;

(10) Results of testing for animal diseases from samples submitted by or at the direction of the animal owner or his or her designee that can be identified to a particular business or individual;

(11) Records of international livestock importation that can be identified to a particular animal, business, or individual received from the United States department of homeland security or the United States department of agriculture that are not disclosable by the federal agency under federal law including 5 U.S.C. Sec. 552; and

(12) Records related to the entry of prohibited agricultural products imported into Washington state or that had Washington state as a final destination received from the United States department of homeland security or the United States department of agriculture that are not disclosable by the federal agency under federal law including 5 U.S.C. Sec. 552. [2012 c 168 § 1; 2010 c 128 § 2; 2009 c 33 § 37; 2007 c 177 § 1. Prior: 2006 c 330 § 26; 2006 c 75 § 3; 2005 c 274 § 418.]

Effective date—2006 c 330 § 26: "Section 26 of this act takes effect July 1, 2006." [2006 c 330 § 32.]

Construction—Severability—2006 c 330: See RCW 15.89.900 and 15.89.901.

Effective date—2006 c 75 § 3: "Section 3 of this act takes effect July 1, 2006." [2006 c 75 § 5.]

Findings—2006 c 75: "The legislature finds that livestock identification numbers, premise information, and animal movement data are proprietary information that all have a role in defining a livestock producer's position within the marketplace, including his or her competitive advantage over other producers. The legislature therefore finds that exempting certain voluntary livestock identification, premise, and movement information from state public disclosure requirements will foster an environment that is more conducive to voluntary participation, and lead to a more effective livestock identification system." [2006 c 75 § 1.]

42.56.390 Emergency or transitional housing. Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043 are exempt from disclosure under this chapter. [2005 c 274 § 419.]

42.56.400 Insurance and financial institutions. (Effective until July 1, 2017.) The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of either all owners or all insureds, or both, received by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

(6) Examination reports and information obtained by the department of financial institutions from banks under *RCW 30.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(7) Information provided to the insurance commissioner under RCW 48.110.040(3);

(8) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged;

(9) Confidential proprietary and trade secret information provided to the commissioner under RCW 48.31C.020 through 48.31C.050 and 48.31C.070;

(10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and 7.70.140 that, alone or in combination with any other data, may reveal the identity of a claimant, health

care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:

(a) "Claimant" has the same meaning as in RCW 48.140.010(2).

(b) "Health care facility" has the same meaning as in RCW 48.140.010(6).

(c) "Health care provider" has the same meaning as in RCW 48.140.010(7).

(d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

(e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

(11) Documents, materials, or information obtained by the insurance commissioner under RCW 48.135.060;

(12) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.060;

(13) Confidential and privileged documents obtained or produced by the insurance commissioner and identified in RCW 48.37.080;

(14) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.140;

(15) Documents, materials, or information obtained by the insurance commissioner under RCW 48.17.595;

(16) Documents, materials, or information obtained by the insurance commissioner under RCW 48.102.051(1) and 48.102.140 (3) and (7)(a)(ii);

(17) Documents, materials, or information obtained by the insurance commissioner in the commissioner's capacity as receiver under RCW 48.31.025 and 48.99.017, which are records under the jurisdiction and control of the receivership court. The commissioner is not required to search for, log, produce, or otherwise comply with the public records act for any records that the commissioner obtains under chapters 48.31 and 48.99 RCW in the commissioner's capacity as a receiver, except as directed by the receivership court;

(18) Documents, materials, or information obtained by the insurance commissioner under RCW 48.13.151;

(19) Data, information, and documents provided by a carrier pursuant to section 1, chapter 172, Laws of 2010;

(20) Information in a filing of usage-based insurance about the usage-based component of the rate pursuant to RCW 48.19.040(5)(b);

(21) Data, information, and documents, other than those described in RCW 48.02.210(2), that are submitted to the office of the insurance commissioner by an entity providing health care coverage pursuant to RCW 28A.400.275 and 48.02.210; and

(22) Data, information, and documents obtained by the insurance commissioner under RCW 48.29.017; and

(23) Information not subject to public inspection or public disclosure under RCW 48.43.730(5). [2013 c 277 § 5; 2013 c 65 § 5; 2012 2nd sp.s. c 3 § 8; 2012 c 222 § 2; 2011 c 188 § 21. Prior: 2010 c 172 § 2; 2010 c 97 § 3; 2009 c 104 § 23; prior: 2007 c 197 § 7; 2007 c 117 § 36; 2007 c 82 § 17; prior: 2006 c 284 § 17; 2006 c 8 § 210; 2005 c 274 § 420.]

Reviser's note: *(1) RCW 30.04.075 was recodified as RCW 30A.04.075 pursuant to 2014 c 37 § 4, effective January 5, 2015.

(2) This section was amended by 2013 c 65 § 5 and by 2013 c 277 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Expiration date—2013 c 277: See note following RCW 48.43.730.

Findings—Goals—Intent—2012 2nd sp.s. c 3: See note following RCW 28A.400.275.

Effective date—2011 c 188: See RCW 48.13.900.

Severability—Effective date—2007 c 117: See RCW 48.17.900 and 48.17.901.

Severability—Effective date—2006 c 284: See RCW 48.135.900 and 48.135.901.

Effective date—2006 c 8 §§ 112 and 210: See note following RCW 42.56.360.

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

42.56.400 Insurance and financial institutions. (*Effective July 1, 2017.*) The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of either all owners or all insureds, or both, received by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

(6) Examination reports and information obtained by the department of financial institutions from banks under *RCW 30.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(7) Information provided to the insurance commissioner under RCW 48.110.040(3);

(8) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged;

(9) Confidential proprietary and trade secret information provided to the commissioner under RCW 48.31C.020 through 48.31C.050 and 48.31C.070;

(10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and 7.70.140 that, alone or in combination with any other data, may reveal the identity of a claimant, health care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:

(a) "Claimant" has the same meaning as in RCW 48.140.010(2).

(b) "Health care facility" has the same meaning as in RCW 48.140.010(6).

(c) "Health care provider" has the same meaning as in RCW 48.140.010(7).

(d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

(e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

(11) Documents, materials, or information obtained by the insurance commissioner under RCW 48.135.060;

(12) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.060;

(13) Confidential and privileged documents obtained or produced by the insurance commissioner and identified in RCW 48.37.080;

(14) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.140;

(15) Documents, materials, or information obtained by the insurance commissioner under RCW 48.17.595;

(16) Documents, materials, or information obtained by the insurance commissioner under RCW 48.102.051(1) and 48.102.140 (3) and (7)(a)(ii);

(17) Documents, materials, or information obtained by the insurance commissioner in the commissioner's capacity as receiver under RCW 48.31.025 and 48.99.017, which are records under the jurisdiction and control of the receivership court. The commissioner is not required to search for, log, produce, or otherwise comply with the public records act for any records that the commissioner obtains under chapters 48.31 and 48.99 RCW in the commissioner's capacity as a receiver, except as directed by the receivership court;

(18) Documents, materials, or information obtained by the insurance commissioner under RCW 48.13.151;

(19) Data, information, and documents provided by a carrier pursuant to section 1, chapter 172, Laws of 2010;

(20) Information in a filing of usage-based insurance about the usage-based component of the rate pursuant to RCW 48.19.040(5)(b);

(21) Data, information, and documents, other than those described in RCW 48.02.210(2), that are submitted to the office of the insurance commissioner by an entity providing health care coverage pursuant to RCW 28A.400.275 and 48.02.210; and

(22) Data, information, and documents obtained by the insurance commissioner under RCW 48.29.017. [2013 c 65 § 5; 2012 2nd sp.s. c 3 § 8; 2012 c 222 § 2; 2011 c 188 § 21. Prior: 2010 c 172 § 2; 2010 c 97 § 3; 2009 c 104 § 23; prior: 2007 c 197 § 7; 2007 c 117 § 36; 2007 c 82 § 17; prior: 2006 c 284 § 17; 2006 c 8 § 210; 2005 c 274 § 420.]

*Reviser's note: RCW 30.04.075 was recodified as RCW 30A.04.075 pursuant to 2014 c 37 § 4, effective January 5, 2015.

Findings—Goals—Intent—2012 2nd sp.s. c 3: See note following RCW 28A.400.275.

Effective date—2011 c 188: See RCW 48.13.900.

Severability—Effective date—2007 c 117: See RCW 48.17.900 and 48.17.901.

Severability—Effective date—2006 c 284: See RCW 48.135.900 and 48.135.901.

Effective date—2006 c 8 §§ 112 and 210: See note following RCW 42.56.360.

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

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42.56.403 Property and casualty insurance statements of actuarial opinion. Documents, materials, and information obtained by the insurance commissioner under RCW 48.05.385(2) are confidential and privileged and not subject to public disclosure under this chapter. [2006 c 25 § 3.]

Short title—2006 c 25 §§ 1-3: See note following RCW 48.05.383.

Effective date—2006 c 25 §§ 1-4: See note following RCW 48.05.383.

42.56.410 Employment security department records, certain purposes. Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another individual or organization for operational, research, or evaluation purposes are exempt from disclosure under this chapter. [2005 c 274 § 421.]

42.56.420 Security. The following information relating to security is exempt from disclosure under this chapter:

(1) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(a) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(b) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism;

(2) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, or secure facility for persons civilly confined under chapter 71.09 RCW, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility, secure facility for persons civilly confined under chapter 71.09 RCW, or any individual's safety;

(3) Information compiled by school districts or schools in the development of their comprehensive safe school plans under RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school;

(4) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities, and other such information the release of which may increase risk to the confidentiality, integrity, or availability of agency security, information technology infrastructure, or assets; and

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(5) The system security and emergency preparedness plan required under RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180. [2013 2nd sp.s. c 33 § 9; 2009 c 67 § 1; 2005 c 274 § 422.]

42.56.430 Fish and wildlife. The following information relating to fish and wildlife is exempt from disclosure under this chapter:

(1) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data, however, this information may be released to government agencies concerned with the management of fish and wildlife resources;

(2) Sensitive fish and wildlife data. Sensitive fish and wildlife data may be released to the following entities and their agents for fish, wildlife, land management purposes, or scientific research needs: Government agencies, public utilities, and accredited colleges and universities. Sensitive fish and wildlife data may be released to tribal governments. Sensitive fish and wildlife data may also be released to the owner, lessee, or right-of-way or easement holder of the private land to which the data pertains. The release of sensitive fish and wildlife data may be subject to a confidentiality agreement, except upon release of sensitive fish and wildlife data to the owner, lessee, or right-of-way or easement holder of private land who initially provided the data. Sensitive fish and wildlife data does not include data related to reports of predatory wildlife as specified in RCW 77.12.885. Sensitive fish and wildlife data must meet at least one of the following criteria of this subsection as applied by the department of fish and wildlife:

(a) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(b) Radio frequencies used in, or locational data generated by, telemetry studies; or

(c) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(i) The species has a known commercial or black market value;

(ii) There is a history of malicious take of that species and the species behavior or ecology renders it especially vulnerable;

(iii) There is a known demand to visit, take, or disturb the species; or

(iv) The species has an extremely limited distribution and concentration;

(3) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag; however, the department of fish and wildlife may disclose personally identifying information to:

(a) Government agencies concerned with the management of fish and wildlife resources;

(b) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(c) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040; and

(4) Information that the department of fish and wildlife has received or accessed but may not disclose due to confidentiality requirements in the Magnuson-Stevens fishery conservation and management reauthorization act of 2006 (16 U.S.C. Sec. 1861(h)(3) and (i), and Sec. 1881a(b)). [2008 c 252 § 1; 2007 c 293 § 1; 2005 c 274 § 423.]

42.56.440 Veterans' discharge papers—Exceptions.

(1) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have not been commingled with other recorded documents are exempt from disclosure under this chapter. These records will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding that veteran's general power of attorney, or to anyone else designated in writing by that veteran to receive the records.

(2) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have been commingled with other records are exempt from disclosure under this chapter, if the veteran has recorded a "request for exemption from public disclosure of discharge papers" with the county auditor. If such a request has been recorded, these records may be released only to the veteran filing the papers, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(3) Discharge papers of a veteran filed at the office of the county auditor after June 30, 2002, are not public records, but will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(4) For the purposes of this section, next of kin of deceased veterans have the same rights to full access to the record. Next of kin are the veteran's widow or widower who has not remarried, son, daughter, father, mother, brother, and sister. [2005 c 274 § 424.]

42.56.450 Check cashers and sellers licensing applications. Information in an application for licensing or a small loan endorsement under chapter 31.45 RCW regarding the personal residential address, telephone number of the applicant, or financial statement is exempt from disclosure under this chapter. [2005 c 274 § 425.]

42.56.460 Fireworks. All records obtained and all reports produced as required by state fireworks law, chapter 70.77 RCW, are exempt from disclosure under this chapter. [2005 c 274 § 426.]

42.56.470 Correctional industries workers. All records, documents, data, and other materials obtained under

the requirements of RCW 72.09.115 from an existing correctional industries class I work program participant or an applicant for a proposed new or expanded class I correctional industries work program are exempt from public disclosure under this chapter. [2005 c 274 § 427.]

42.56.480 Inactive programs. Information relating to the following programs and reports, which have no ongoing activity, is exempt from disclosure under this chapter:

(1) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under *RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter;

(2) Personal information in files maintained in a database created under **RCW 43.07.360; and

(3) Data collected by the department of social and health services for the reports required by section 8, chapter 231, Laws of 2003, except as compiled in the aggregate and reported to the senate and house of representatives. [2005 c 274 § 428.]

Reviser's note: *(1) RCW 81.34.070 was repealed by 1991 c 49 § 1.

** (2) RCW 43.07.360 expired December 31, 2000, pursuant to 1996 c 253 § 502.

42.56.510 Duty to disclose or withhold information—Otherwise provided. Nothing in RCW 42.56.250 and 42.56.330 shall affect a positive duty of an agency to disclose or a positive duty to withhold information which duty to disclose or withhold is contained in any other law. [2005 c 274 § 287; 1991 c 23 § 11; 1990 c 256 § 2; 1987 c 404 § 3. Formerly RCW 42.17.311.]

42.56.520 Prompt responses required. Responses to requests for public records shall be made promptly by agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives. Within five business days of receiving a public record request, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives must respond by either (1) providing the record; (2) providing an internet address and link on the agency's web site to the specific records requested, except that if the requester notifies the agency that he or she cannot access the records through the internet, then the agency must provide copies of the record or allow the requester to view copies using an agency computer; (3) acknowledging that the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives has received the request and providing a reasonable estimate of the time the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives will require to respond to the request; or (4) denying the public record request. Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, an agency, the office of the secretary of the senate, or the office of the

chief clerk of the house of representatives may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives need not respond to it. Denials of requests must be accompanied by a written statement of the specific reasons therefor. Agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action or final action by the office of the secretary of the senate or the office of the chief clerk of the house of representatives for the purposes of judicial review. [2010 c 69 § 2; 1995 c 397 § 15; 1992 c 139 § 6; 1975 1st ex.s. c 294 § 18; 1973 c 1 § 32 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.320.]

Finding—2010 c 69: "The internet provides for instant access to public records at a significantly reduced cost to the agency and the public. Agencies are encouraged to make commonly requested records available on agency web sites. When an agency has made records available on its web site, members of the public with computer access should be encouraged to preserve taxpayer resources by accessing those records online." [2010 c 69 § 1.]

42.56.530 Review of agency denial. Whenever a state agency concludes that a public record is exempt from disclosure and denies a person opportunity to inspect or copy a public record for that reason, the person may request the attorney general to review the matter. The attorney general shall provide the person with his or her written opinion on whether the record is exempt.

Nothing in this section shall be deemed to establish an attorney-client relationship between the attorney general and a person making a request under this section. [1992 c 139 § 10. Formerly RCW 42.17.325.]

42.56.540 Court protection of public records. The examination of any specific public record may be enjoined if, upon motion and affidavit by an agency or its representative or a person who is named in the record or to whom the record specifically pertains, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions. An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. However, this option does not exist where the agency is required by law to provide such notice. [1992 c 139 § 7; 1975 1st ex.s. c 294 § 19; 1973 c 1 § 33 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.330.]

42.56.550 Judicial review of agency actions. (1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public

record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

(2) Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.

(3) Judicial review of all agency actions taken or challenged under RCW 42.56.030 through 42.56.520 shall be de novo. Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record in camera in any proceeding brought under this section. The court may conduct a hearing based solely on affidavits.

(4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.

(5) For actions under this section against counties, the venue provisions of RCW 36.01.050 apply.

(6) Actions under this section must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis. [2011 c 273 § 1. Prior: 2005 c 483 § 5; 2005 c 274 § 288; 1992 c 139 § 8; 1987 c 403 § 5; 1975 1st ex.s. c 294 § 20; 1973 c 1 § 34 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.340.]

Intent—Severability—1987 c 403: See notes following RCW 42.56.050.

Application of chapter 300, Laws of 2011: See note following RCW 42.56.565.

42.56.560 Application of RCW 42.56.550. The procedures in RCW 42.56.550 govern denials of an opportunity to inspect or copy a public record by the office of the secretary of the senate or the office of the chief clerk of the house of representatives. [2005 c 274 § 289; 1995 c 397 § 16. Formerly RCW 42.17.341.]

42.56.565 Inspection or copying by persons serving criminal sentences—Injunction. (1) A court shall not award penalties under RCW 42.56.550(4) to a person who was serving a criminal sentence in a state, local, or privately operated correctional facility on the date the request for public records was made, unless the court finds that the agency acted in bad faith in denying the person the opportunity to inspect or copy a public record.

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(2) The inspection or copying of any nonexempt public record by persons serving criminal sentences in state, local, or privately operated correctional facilities may be enjoined pursuant to this section.

(a) The injunction may be requested by: (i) An agency or its representative; (ii) a person named in the record or his or her representative; or (iii) a person to whom the requests specifically pertains or his or her representative.

(b) The request must be filed in: (i) The superior court in which the movant resides; or (ii) the superior court in the county in which the record is maintained.

(c) In order to issue an injunction, the court must find that:

(i) The request was made to harass or intimidate the agency or its employees;

(ii) Fulfilling the request would likely threaten the security of correctional facilities;

(iii) Fulfilling the request would likely threaten the safety or security of staff, inmates, family members of staff, family members of other inmates, or any other person; or

(iv) Fulfilling the request may assist criminal activity.

(3) In deciding whether to enjoin a request under subsection (2) of this section, the court may consider all relevant factors including, but not limited to:

(a) Other requests by the requestor;

(b) The type of record or records sought;

(c) Statements offered by the requestor concerning the purpose for the request;

(d) Whether disclosure of the requested records would likely harm any person or vital government interest;

(e) Whether the request seeks a significant and burdensome number of documents;

(f) The impact of disclosure on correctional facility security and order, the safety or security of correctional facility staff, inmates, or others; and

(g) The deterrence of criminal activity.

(4) The motion proceeding described in this section shall be a summary proceeding based on affidavits or declarations, unless the court orders otherwise. Upon a showing by a preponderance of the evidence, the court may enjoin all or any part of a request or requests. Based on the evidence, the court may also enjoin, for a period of time the court deems reasonable, future requests by:

(a) The same requestor; or

(b) An entity owned or controlled in whole or in part by the same requestor.

(5) An agency shall not be liable for penalties under RCW 42.56.550(4) for any period during which an order under this section is in effect, including during an appeal of an order under this section, regardless of the outcome of the appeal. [2011 c 300 § 1; 2009 c 10 § 1.]

Application—2011 c 300: "This act applies to all actions brought under RCW 42.56.550 in which final judgment has not been entered as of July 22, 2011." [2011 c 300 § 2.]

Effective date—2009 c 10: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 20, 2009]." [2009 c 10 § 2.]

42.56.570 Explanatory pamphlet. (1) The attorney general's office shall publish, and update when appropriate, a pamphlet, written in plain language, explaining this chapter.

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(2) The attorney general, by February 1, 2006, shall adopt by rule an advisory model rule for state and local agencies, as defined in RCW 42.56.010, addressing the following subjects:

- (a) Providing fullest assistance to requestors;
- (b) Fulfilling large requests in the most efficient manner;
- (c) Fulfilling requests for electronic records; and
- (d) Any other issues pertaining to public disclosure as determined by the attorney general.

(3) The attorney general, in his or her discretion, may from time to time revise the model rule. [2007 c 197 § 8. Prior: 2005 c 483 § 4; 2005 c 274 § 290; 1992 c 139 § 9. Formerly RCW 42.17.348.]

42.56.580 Public records officers. (1) Each state and local agency shall appoint and publicly identify a public records officer whose responsibility is to serve as a point of contact for members of the public in requesting disclosure of public records and to oversee the agency's compliance with the public records disclosure requirements of this chapter. A state or local agency's public records officer may appoint an employee or official of another agency as its public records officer.

(2) For state agencies, the name and contact information of the agency's public records officer to whom members of the public may direct requests for disclosure of public records and who will oversee the agency's compliance with the public records disclosure requirements of this chapter shall be published in the state register at the time of designation and maintained thereafter on the code reviser web site for the duration of the designation.

(3) For local agencies, the name and contact information of the agency's public records officer to whom members of the public may direct requests for disclosure of public records and who will oversee the agency's compliance within the public records disclosure requirements of this chapter shall be made in a way reasonably calculated to provide notice to the public, including posting at the local agency's place of business, posting on its internet site, or including in its publications. [2007 c 456 § 6; 2005 c 483 § 3. Formerly RCW 42.17.253.]

42.56.590 Personal information—Notice of security breaches. (1)(a) Any agency that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of this state whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (3) of this section, or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(b) For purposes of this section, "agency" means the same as in RCW 42.56.010.

(2) Any agency that maintains computerized data that includes personal information that the agency does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following dis-

covery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(3) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(4) For purposes of this section, "breach of the security of the system" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the agency. Good faith acquisition of personal information by an employee or agent of the agency for the purposes of the agency is not a breach of the security of the system when the personal information is not used or subject to further unauthorized disclosure.

(5) For purposes of this section, "personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

- (a) Social security number;
- (b) Driver's license number or Washington identification card number; or
- (c) Account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(6) For purposes of this section, "personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(7) For purposes of this section and except under subsection (8) of this section, notice may be provided by one of the following methods:

- (a) Written notice;
- (b) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 U.S.C. Sec. 7001; or
- (c) Substitute notice, if the agency demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars, or that the affected class of subject persons to be notified exceeds five hundred thousand, or the agency does not have sufficient contact information. Substitute notice shall consist of all of the following:

(i) E-mail notice when the agency has an e-mail address for the subject persons;

(ii) Conspicuous posting of the notice on the agency's web site page, if the agency maintains one; and

(iii) Notification to major statewide media.

(8) An agency that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this section is in compliance with the notification requirements of this section if it notifies subject persons in accordance with its policies in the event of a breach of security of the system.

(9) Any waiver of the provisions of this section is contrary to public policy, and is void and unenforceable.

(10)(a) Any customer injured by a violation of this section may institute a civil action to recover damages.

(b) Any business that violates, proposes to violate, or has violated this section may be enjoined.

(c) The rights and remedies available under this section are cumulative to each other and to any other rights and remedies available under law.

(d) An agency shall not be required to disclose a technical breach of the security system that does not seem reasonably likely to subject customers to a risk of criminal activity. [2007 c 197 § 9; 2005 c 368 § 1. Formerly RCW 42.17.31922.]

Similar provision: RCW 19.255.010.

42.56.600 Mediation communications. Records of mediation communications that are privileged under chapter 7.07 RCW are exempt from disclosure under this chapter. [2006 c 209 § 15.]

42.56.610 Certain information from dairies and feedlots limited—Rules. The following information in plans, records, and reports obtained by state and local agencies from dairies, animal feeding operations, and concentrated animal feeding operations, not required to apply for a national pollutant discharge elimination system permit is disclosable only in ranges that provide meaningful information to the public while ensuring confidentiality of business information regarding: (1) Number of animals; (2) volume of livestock nutrients generated; (3) number of acres covered by the plan or used for land application of livestock nutrients; (4) livestock nutrients transferred to other persons; and (5) crop yields. The department of agriculture shall adopt rules to implement this section in consultation with affected state and local agencies. [2005 c 510 § 5. Formerly RCW 42.17.31923.]

42.56.615 Enumeration data used by the office of financial management for population estimates. Actual enumeration data collected under RCW 35.13.260, 35A.14.700, 36.13.030, and chapter 43.62 RCW shall be used and retained only by the office of financial management and only for the purposes of RCW 35.13.260, 35A.14.700, 36.13.030, and chapter 43.62 RCW. The enumeration data collected is confidential, is exempt from public inspection and copying under this chapter, and in accordance with RCW 43.41.435, must be destroyed after it is used. [2014 c 14 § 1.]

42.56.900 Purpose—2005 c 274 §§ 402-429. The purpose of sections 402 through 429 of this act is to reorganize the public inspection and copying exemptions in *RCW 42.17.310 through 42.17.31921 by creating smaller, discrete code sections organized by subject matter. The legislature does not intend that this act effectuate any substantive change to any public inspection and copying exemption in the Revised Code of Washington. [2005 c 274 § 401.]

***Reviser's note:** The substance of RCW 42.17.310 through 42.17.31921 was recodified in chapter 42.56 RCW. See the Comparative Table in the Table of Disposition of Former RCW Sections.

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42.56.901 Part headings not law—2005 c 274. Part headings used in this act are not any part of the law. [2005 c 274 § 501.]

42.56.902 Effective date—2005 c 274. This act takes effect July 1, 2006. [2005 c 274 § 502.]

42.56.903 Effective date—2006 c 209. This act takes effect July 1, 2006. [2006 c 209 § 17.]

42.56.904 Intent—2007 c 391. It is the intent of the legislature to clarify that no reasonable construction of chapter 42.56 RCW has ever allowed attorney invoices to be withheld in their entirety by any public entity in a request for documents under that chapter. It is further the intent of the legislature that specific descriptions of work performed be redacted only if they would reveal an attorney's mental impressions, actual legal advice, theories, or opinions, or are otherwise exempt under chapter 391, Laws of 2007 or other laws, with the burden upon the public entity to justify each redaction and narrowly construe any exception to full disclosure. The legislature intends to clarify that the public's interest in open, accountable government includes an accounting of any expenditure of public resources, including through liability insurance, upon private legal counsel or private consultants. [2007 c 391 § 1.]

